Transportation Infrastructure - Roads, Highways, Bridges, Airports and Mass Transit

Surface Transportation

Funding and Federalism Considerations

David M. Boche
Editor

NOVA

TRANSPORTATION INFRASTRUCTURE – ROADS, HIGHWAYS, BRIDGES, AIRPORTS AND MASS TRANSIT

SURFACE TRANSPORTATION

FUNDING AND FEDERALISM CONSIDERATIONS

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PREFACE

Since the early 1980s, the periodic debate over the reauthorization of federal surface transportation programs has been primarily about money and its distribution. In each of the five reauthorizations that took place during that period, the federal fuel taxes and other sources of revenue dedicated to the highway trust were reliably providing the various surface transportation programs with more money year after year. In 2009, this was not the case. For the first time in decades, driving declined significantly, with a concomitant decrease in fuel tax revenues. Going forward the program cannot count on new money from the familiar sources. The law authorizing federal surface transportation programs expired at the end of 2009, but Congress has failed to enact a new authorization. This book examines the surface transportation program reauthorization issues for the 112th Congress; funding and finance; the Donor-Donee State issue of funding equity and federalism issues in surface transportation policy.

Chapter 1 - The law authorizing federal surface transportation programs expired at the end of FY2009, but Congress has failed to enact a new authorization. Surface transportation programs continue to operate on the basis of authority provided in extension legislation.

This situation should not be a surprise to those familiar with the history of the reauthorization process. Especially during the last two decades, reauthorization has become a difficult undertaking. This is primarily due to controversy over how and to whom federal-aid highway funds should be distributed. The most recent law, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU or SAFETEA) (P.L. 109-59), was enacted 22 months after previous legislation had originally expired. Previous reauthorization bills also were enacted well behind schedule.

Chapter 2 - Federal surface transportation programs are currently funded primarily through federal fuel taxes on gasoline, diesel, and other fuels that are deposited in the highway trust fund. Although there has been some modification to the tax system, the basic fuel taxes have not been increased at the federal level since 1993. Prior to the recession that began in 2007, annual increases in driving, with a concomitant increase in fuel use, were sufficient to keep revenues rising steadily on an annual basis. This is no longer the case. Further, future changes in the nation's vehicle fleet as a result of federal fuel economy standards, including increased use of electric hybrid and fully electric vehicles, are expected to suppress future fuel use even if annual increases in vehicle mileage resume.

Congress has yet to address the surface transportation program's revenue issues, except by increasing transport spending from the U.S. Treasury general fund. Many members of Congress have expressed an aversion to raising fuel taxes, and alternative methods of financing surface transportation have not received serious legislative consideration.

Chapter 3 - Few issues in the history of the Federal-Aid Highway Program have raised such heated debate as the argument over how closely the program's payments to the individual states should match the amount of federal highway taxes each state's highway users pay to the highway account of the Highway Trust Fund (HTF). Referred to as the donor-donee state issue, it is expected to reemerge during the debate over the reauthorization of federal surface transportation programs. The current authorization, under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: a Legacy for Users (SAFETEA; P.L. 109-59), expires on September 30, 2009.

Chapter 4 - American federalism, which shapes the roles, responsibilities, and interactions among and between the federal government, the states, and local governments, is continuously evolving, adapting to changes in American society and American political institutions. The nature of federalism relationships in surface transportation policy has also evolved over time, with the federal government's role becoming increasingly influential, especially since the Federal-Aid to Highway Act of 1956 which authorized the interstate highway system. In recent years, state and local government officials, through their public interest groups (especially the National Governors Association, National Conference of State Legislatures, National Association of Counties, National League of Cities, U.S. Conference of Mayors, and American Association of State Highway and Transportation Officials) have lobbied for increased federal assistance for surface transportation grants and increased flexibility in the use of those funds. They contend that they are better able to identify surface transportation needs in their states than federal officials and are capable of administering federal grant funds with relatively minimal federal oversight. They also argue that states have a long history of learning from one another. In their view, providing states flexibility in the use of federal funds results in better surface transportation policy because it enables states to experiment with innovative solutions to surface transportation problems and then share their experiences with other states. Others argue that the federal government has a responsibility to ensure that federal funds are used in the most efficient and effective manner possible to promote the national interest in expanding national economic growth and protecting the environment. In their view, providing states increased flexibility in the use of federal funds diminishes the federal government's ability to ensure that national needs are met. Still others have argued for a fundamental restructuring of federal and state government responsibilities in surface transportation policy, with some responsibilities devolved to states and others remaining with the federal government.

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Chapter 1

SURFACE TRANSPORTATION PROGRAM REAUTHORIZATION ISSUES FOR THE 112TH CONGRESS*

Congressional Research Service

SUMMARY

The law authorizing federal surface transportation programs expired at the end of FY2009, but Congress has failed to enact a new authorization. Surface transportation programs continue to operate on the basis of authority provided in extension legislation.

This situation should not be a surprise to those familiar with the history of the reauthorization process. Especially during the last two decades, reauthorization has become a difficult undertaking. This is primarily due to controversy over how and to whom federal-aid highway funds should be distributed. The most recent law, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU or SAFETEA) (P.L. 109-59), was enacted 22 months after previous legislation had originally expired. Previous reauthorization bills also were enacted well behind schedule.

The most difficult issue to be considered during reauthorization is how to finance it. The highway trust fund and the revenue sources that feed it have been a reliable mechanism for financing highway and transit programs for five decades, but this is no longer the case. Fuel taxes, which provide most of the money for surface transportation, are unlikely to provide a solid long-term foundation for this desired growth, even if Congress were to raise them modestly. The choice for policymakers, therefore, is to find new sources of income for an expanded program, or alternately to settle for a smaller program that might look very different from the one currently in place.

One perennial subject of debate concerning the highway program is whether grants to individual states are in line with the taxes those states' motorists pay into the highway trust fund—the so-called donor-donee issue. The use of earmarks and possible

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programmatic reorganization will likely be prominent concerns in committee discussions of reauthorization. Specific programs, such as the Highway Bridge Program, can be expected to receive extensive congressional attention due to public concerns about the condition of the nation's transportation infrastructure. Congress also can be expected to look closely at transit program spending levels and priorities.

Freight issues have also been of growing importance in recent years and figure to get significantly more attention as part of the reauthorization debate.

INTRODUCTION

Since the early 1980s, the periodic debate over reauthorization of federal surface transportation programs has been primarily about money and its distribution. In each of the five reauthorizations that took place during that period (1982, 1987, 1991, 1998, and 2005), the federal fuel taxes and other sources of revenue dedicated to the highway trust fund were reliably providing the various surface transportation programs with more money year after year.[1] In 2009 this was not the case. For the first time in decades, driving declined significantly, with a concomitant decrease in fuel tax revenues. Going forward the program cannot count on new money from the familiar sources.

The law authorizing federal surface transportation programs expired at the end of FY2009, but Congress has failed to enact a new authorization. Surface transportation programs continue to operate on the basis of authority provided in continuing resolutions and extension legislation.[2]

Reauthorization has become a difficult undertaking in the last two decades. The most recent law, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU or SAFETEA) (P.L. 109-59) was enacted 22 months after previous legislation had originally expired. The bill prior to SAFETEA, the Transportation Equity Act for the 21st Century (TEA21) (P.L. 105-178, as amended by P.L. 105-206) was also passed well after previous legislative authority had originally expired. In fact, no surface transportation authorization bill has been enacted on time since the 1970s. Over time, these bills have become increasingly complex in their structure and in their politics as states, other program beneficiaries, and related interest groups compete for constrained federal transportation resources.

SAFETEA has led to controversies over funding parity among the states (the so-called donor-donee debate), its large number of earmarks (exemplified by the so-called "bridge to nowhere"), and the funding problems ahead. Additionally, the structure of the surface transportation programs under SAFETEA and its predecessors has made it difficult for the federal government to respond to certain intermodal transportation needs. These issues could cause Congress to make significant changes to the surface transportation programs in this reauthorization.

PROGRAM STRUCTURE

The surface transportation programs can be difficult to understand. The language of transportation finance—contract authority, obligation limitations, and so on—is unfamiliar even to many who have a basic understanding of the annual congressional budget process. Therefore, this report begins with a discussion of how the surface transportation programs are structured and financed.

The Federal-Aid Highway Program

The modern federal-aid highway program dates to the 1956 enactment of legislation that provided for the construction of the interstate highway system and created the highway trust fund to finance its construction.[3] The program has been reauthorized and expanded on numerous occasions during the last five and a half decades.

The federal highway program is fundamentally a state-run program. The state departments of transportation, within the federal programmatic framework, largely determine where and on what the money is spent (but have to comply with detailed federal planning guidelines as part of the decision-making process). The states let the contracts and oversee the project development and construction.

The flow of federal highway funds to the states to support this spending operates as follows. At the beginning of each fiscal year each state department of transportation is notified of the federal funds available to it to construct and maintain a designated system of roads known as the federal-aid highway system. The states do not get the money up front. Instead, as work is completed the states submit vouchers to the Federal Highway Administration (FHWA) and are reimbursed.[4]

The federal-aid highway program can be viewed as an umbrella term for various separately funded programs administered by FHWA. The programs, which are mostly for construction project spending, receive their funding in two ways: they are either "apportioned" (formula) programs or "allocated" (discretionary) programs.

Core (Apportioned) Programs

Most highway funding is reserved for six major programs, which are usually referred to as the core programs (*Table 1*). They, along with the Equity Bonus Program, accounted for 82.5% of the highway spending authorized for FY2005-FY2009 by SAFETEA. Each of these programs provides funding for specific segments of the federal-aid highway system or other statutorily enunciated activities, such as congestion relief projects. SAFETEA also combined many formerly separate highway safety programs into one Highway Safety Improvement Program.

Although it does not provide direct spending for highways, the Equity Bonus Program, discussed in more detail later in this report, provides additional funds for the six core programs. The equity bonus is the largest single highway program in SAFETEA, accounting for approximately 20% of all available funding. Funds for the core programs and the Equity Bonus Program are apportioned to the states on an annual basis using formulas found in SAFETEA. As a result they are sometimes referred to as the "apportioned" programs.

In addition to the core programs there are a couple of smaller apportioned programs: Coordinated Border Infrastructure Program; metropolitan planning; and the Recreational Trails Program. SAFETEA also creates some formulas within formulas.

Table 1. Core Program Authorizations for FY2009

Program	FY2009 SAFETEA Authorization
National Highway System Program	$6,306,611,031
Interstate Maintenance Program	$5,119,399,081
Surface Transportation Program	$6,576,630,046
Highway Bridge Program	$4,457,421,829
Congestion Mitigation and Air Quality Improvement Program	$1,777,263,247
Highway Safety Improvement Program	$1,296,474,396
Equity Bonus Program	$9,093,265,575

Source: P.L. 109-59, also Financing Federal-Aid Highways, Appendix B. http://www.fhwa.dot.gov /reports/financingfederalaid/appb.htm.

This is most notably the case for the Surface Transportation Program, which has a minimum set-aside for transportation enhancements and a sub-state distribution formula that allocates funds within states.

Allocated (Discretionary) Programs

All remaining highway programs are subject to allocations that are based on criteria established in highway authorization and appropriation laws and/or subject to congressional earmarking. Although all of the programs in this category are smaller than the core programs, there are nonetheless some programs with significant funding. The largest allocated program is for congressionally mandated High Priority Projects (earmarks). This program, which has a five-year authorization of $14.8 billion, is reserved for projects specifically designated in SAFETEA. Two other large earmarked programs, Projects of National and Regional Significance and Transportation Improvements, received $1.78 billion and $2.55 billion, respectively, over the same period. Among the other allocated programs are the Federal Lands Program, the National Corridor Infrastructure Improvement Program, the Interstate Maintenance Discretionary Program, the Bridge Discretionary Program, and the Transportation and Community and System Preservation Program.

The Transit Program

The federal transit program, administered by Federal Transit Administration (FTA) of the U.S. Department of Transportation (DOT), is a collection of individual programs, each with different funding distribution mechanisms and spending eligibility rules. Of the $10.4 billion made available for transit programs in FY2010, the Urbanized Area Formula Program accounted for about 40% ($4.2 billion), and the Capital Investment Program accounted for 45% ($4.6 billion). The Capital Investment Program has three elements: the Bus and Bus Facilities Capital Program, which receives about 20% of all transit capital investment funds; the Rail Modernization Program, which receives 40%; and the New Starts Program, which also has a 40% share.

The remaining 15% of federal transit monies ($1.6 billion) funds several other programs, such as the Other Than Urbanized Area Formula Program (commonly referred to as the Rural Formula Program), the Elderly Individuals and Individuals with Disabilities Formula Program, the Job Access and Reverse Commute Program, as well as state and metropolitan planning, research, and FTA operations.

Other Transportation Programs

There are a number of transportation activities that are outside of the highway and transit programs that are authorized by surface transportation legislation. These include highway safety, motor carrier safety, transportation research, hazardous materials transportation, some elements of rail transportation, and transportation planning activities. Some of these programs are discussed in more detail later in this report.

SURFACE TRANSPORTATION FINANCE

Federal funding for surface transportation has historically been linked to the revenue stream provided by the highway trust fund. The trust fund has two separate accounts—highways and mass transit.[5] The primary revenue sources for these accounts are the 18.4 cent per gallon tax on gasoline and a 24.4 cent per gallon tax on diesel fuel. Although there are other sources of revenue for the trust fund (truck registrations, truck tires, etc.), the fuel taxes provide about 90% of the income to the funds. The transit account receives 2.86 cents per gallon of fuel, and there is also a 0.1 cent per gallon fuel tax reserved for the Leaking Underground Storage Tank Fund, which is not included in the surface transportation programs. The federal motor fuels tax has been increased several times since its inception in 1956. At the time of the last increase, in 1993, some of the receipts were deposited in the Treasury general fund, but since FY1998 these revenues have been directed to the highway trust fund.

Other changes in recent years have modestly increased trust fund revenues. The American Jobs Creation Act of 2004 (P.L. 108-357) provided the trust fund with additional future income by changing elements of federal gasohol taxation. At the time, there were estimates that these changes could provide the trust fund with an additional $4 billion per year. SAFETEA also included a number of tax and other changes in its finance title. The revenue increases in this title were viewed as quite modest and were derived mostly from cutting back on tax fraud and by transferring some Treasury general fund revenues associated with transportation-related activities to the trust fund. It was believed at the time of passage that the changes enacted in SAFETEA, combined with the changes in gasohol legislation enacted in 2004 and enhanced by expected economic growth, would be sufficient to finance the act through FY2009.

The financial estimates associated with SAFETEA have proved to be overly optimistic. The highway account has already required three transfers from the general fund totaling $29.7 billion,[6] without which FHWA might not have been able to pay states for work they completed.[7] In late FY2008, $8 billion was transferred to carry the highway account into the

2009 fiscal year (P.L. 110-318, September 15, 2008). In FY2009 the transfer was $7 billion (P.L. 111-46, August 7, 2009). The Surface Transportation Extension Act of 2010 (P.L. 111-148, March 18, 2010) transferred $14.7 billion more to the highway account.

Historically, the trust fund-based revenue collection system was a reliably growing source of funding for surface transportation, as the trust funds collected more than was been expended to implement the program defined by Congress. This situation has changed under SAFETEA as spending on highways and transit has exceeded both highway and transit account revenues on a regular basis. The Congressional Budget Office (CBO), in its spring FY2009 baseline calculation, showed that, from FY2007 to FY2009, outlays from the highway account exceeded receipts in each fiscal year. CBO's summer 2010 baseline estimate projected a slight surplus for FY2010, with outlays of $32.5 billion against $32.7 billion in revenues.[8] CBO projects the fund to slip back into deficit in FY2011, with outlays of $37.4 billion and revenues of $34 billion.

Congress provided another $14.7 billion transfer from the general fund on March 18, 2010, and CBO now projects that the balance in the highway account will remain above zero through FY2013. However the gap between tax revenues and outlays remains through FY2020. CBO projects that the mass transit account, which received a $4.8 billion general fund transfer in FY2010, will also remain above zero through FY2013.[9]

The recent declines in motor fuel tax receipts are unprecedented. Even during the oil shocks of the 1970s, driving, as measured by vehicle miles traveled, returned fairly quickly to the 2% average annual growth rate experienced since the 1960s. The same thing has not happened since 2007, even though fuel prices fell dramatically from their highs of around $4 per gallon in mid-2008, as the sluggish economy continues to depress freight, leisure travel, and commutes to work. As a rule of thumb, adding a penny to the federal fuels tax provides the trust fund with between $1.6 and $1.8 billion in new revenues. Without an increase in the existing fuel taxes, the mostly fuel-based trust fund taxation system will not be able to support increased surface transportation spending over the next few years. The immediate choice for policymakers, therefore, is to find new sources of revenue for the trust fund, or alternately, to settle for a smaller surface transportation program that might look very different than the one currently in place.

However Congress chooses to address the short-term funding issue, it will need to address the viability of the trust fund mechanism over the longer term. In recent years, Congress has acted to mandate higher fuel-economy standards for gasoline-powered cars and to encourage development of hybrid and battery-powered vehicles. As these more fuel-efficient vehicles come to make up a larger share of the U.S. vehicle fleet, consumption of motor fuels may decline even if driving increases. If it wishes to maintain or increase the size of the surface transportation programs, Congress may need to explore alternatives to the motor fuels tax as possible sources of funding.

The difficult outlook for motor fuel tax revenues clouds the outlook for surface transportation reauthorization. In the past, steady revenue growth enabled Congress to meet the competing demands for funding in each reauthorization. TEA21 benefitted from a run-up in fuel usage during the boom years of the late 1990s that was at least partially the result of the popularity of sport utility vehicles during the period. SAFETEA did not have quite the same financial backing, but the authors of the act were nonetheless able to find sufficient new revenues to expand the programs. The next reauthorization bill, as the above discussion indicates, lacks a ready source of cash to support expansion—a situation that will define the upcoming legislative debate much more than issues such as program structure and infrastructure needs.

The American Recovery and Reinvestment Act of 2009 (ARRA, P.L. 111-5)

The ARRA contained significant funding for activities normally funded through federal surface transportation legislation. It provided $27.5 billion for federal-aid highways, $8.4 billion for public transit, $1.5 billion for a new Surface Transportation Discretionary Grant Program, and $8 billion for high-speed rail. All money provided by the ARRA is from the general fund and carries no requirement for state or local matching funds. This one-time infusion represented a bit less than one year's funding for the existing surface transportation programs, although it was distributed differently. High speed rail, for example, is a very small program under SAFETA, but received a large share of funds in the ARRA. By giving states an additional source of surface transportation funding, the ARRA may have made the need for reauthorization of SAFETEA somewhat less immediate.

THE SAFETEA LEGACY

In public, the SAFETEA debate focused on the donor/donee issue and a later, more public, controversy over earmarking. The actual process of crafting the law, however, was complicated by the political need to satisfy the large number of interest groups supporting specific programs, most of which are funded from the highway trust fund but do not involve building highways.

Donor/Donee

The donor/donee debate concerns the efforts of individual states to achieve or maintain as large a share of the total distribution federal highway funds as possible. A donor state is one whose highway users pay more in revenues to the trust fund highway account than it receives in federal highway assistance. Conversely, a donee state receives more in assistance than it contributes to the trust fund. The debate is generally driven by representatives of donor states, who frame their arguments in terms of "equity" in the distribution of federal highway funds. The donor/donee state distinction, however, is far less straightforward than it appears. Federal fuel taxes are not actually collected at the state level, so determining whether a state is a donor or a donee requires a complicated mechanism that attributes fuel usage and associated revenues to individual states.[10]

In the last three surface transportation authorization bills, the donor/donee issue was resolved only by the availability of more money and the creation of a process to distribute it. In SAFETEA, this process, called the Equity Bonus Program, is the largest single highway program. For FY2008 and FY2009 SAFETEA promises that each state will receive a funding share of the major highway program allocations equal to at least 92% of the revenue share its highway users pay into the highway trust fund, an increase from the 90.5% promised under the prior legislation, TEA-21. The Equity Bonus Program, however, is so complicated that effectiveness of the guarantee is unclear. For FY2010 Congress based the distribution to the six core formula programs on their FY2009 totals. There was no equity bonus calculation for FY2010.

The transfer of $29.7 billion in general fund revenues to the highway account complicates the donor-donee framework as a basis for analyzing transportation funding. This is because payments into the general fund have nothing to do with highway tax payments but, because of the transfers, do support the flow of funds to the highway programs. For FY2007 through FY2009 each of the 50 states received more federal highway funding than it contributed to the highway account.

Earmarking

When the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA; P.L. 102-240) passed in 1991 it included 548 individual highway earmarks with a total value of $6.2 billion. In 1998, TEA21 incorporated 1,883 highway earmarks adding up to $9.6 billion. In SAFETEA, earmarking expanded exponentially, with over 5,600 earmarks accounting for $21.7 billion in the highway title of the act alone. With a few highly publicized exceptions, there was very little debate about the benefits or drawbacks of the individual earmarks in the bill.

Following the 2010 congressional elections, proposals to abolish the earmarking of individual projects have received increased interest. An earmark-free reauthorization could increase the attention given to program structure, funding formulas, and eligibility criteria, as Members attempt to assure the flow of transportation funds to their congressional districts or states.

SAFETEA Funding

SAFETEA provided $286.4 billion in guaranteed spending authority for the six-year period FY2004-FY2009. This was a significant nominal increase over the level in TEA-21, which provided $218 billion over the six-year period FY1998-2003. In reality, however, SAFETEA was barely a five-year bill by the time of its passage late in FY2005. A more useful representation of SAFETEA is that it provided $244 billion in spending authority from FY2005 through FY2009. (*CRS contacts: Bob Kirk and Will Mallett*)

Table 2 shows that all major programs affected by the legislation received significant new funding (the exempt obligation category is provided for equity bonus and emergency funding purposes and does not reflect a program per se). Spending increased in each year and total spending in FY2009 was almost 23% higher than spending in FY2005.[11]

Table 2. SAFETEA Guaranteed Obligations FY2005-FY2009 ($ billions)

	FY2005	*FY2006*	*FY2007*	*FY2008*	*FY2009*	*Total*
Highway Obligation Limitation	34.422	36.032	38.244	39.585	41.200	189.484
Exempt Highway Obligations	0.739	0.739	0.739	0.739	0.739	3.695
Highway Safety and Motor Carrier Safety Obligations	0.742	1.189	1.217	1.239	1.270	5.656
Mass Transit Obligations	7.646	8.623	8.975	9.731	10.338	45.313
Totals	*43.549*	*46.583*	*49.175*	*51.294*	*53.547*	*244.148*

Source: P.L. 109-59, see also http://www.fhwa.dot.gov/safetealu/fundtables.htm for highway amounts and for transit see http://www.fta.dot.gov/index_6536.html.

Issues Shaping the Current Reauthorization Debate

The reauthorization process will involve detailed consideration of the way in which surface transportation programs are funded, organized, and managed. A handful of fundamental issues, however, will influence the way in which the eventual legislation is constructed.

- *National goals and purposes.* Today's surface transportation programs have their origins in the creation of the interstate highway program (1956) and the collapse of public transit systems (early 1960s). In the intervening decades, it has become difficult to discern how federal surface transportation spending relates to national needs, as the vast majority of the funding is granted to states and localities based not on maximizing the national return on transportation investment, but as an entitlement to be spent largely as state and, to a lesser extent, local authorities think best. Changing the existing decision-making process, however, could involve a transfer of authority from state and local authorities to the federal government.
- *Productivity and performance management.* With the operation of surface transportation programs left largely to states and localities, federal officials often have a poor understanding of the efficiency and effectiveness with which federal funds are being used. States and localities have, in many cases, very robust processes in place to measure and analyze their programs.12 However, these mechanisms are largely internal, and their diversity makes it difficult to compare performance across the country. Federal performance standards might make such comparisons easier, potentially allowing the federal government to direct funding to the state and local governments with the most efficient and effective programs. Once imposed, however, such measures might be "gamed" by state and local officials in ways that negate their value. Even if Congress should decide to enforce performance measures by funding penalties, it is possible that the effect of such penalties would be counteracted by funding guarantees in the bill.