U.S. House of Representatives
Committee on Transportation and Infrastructure
Washington, DC 20515

Don Young
Chairman

James L. Oberstar
Ranking Democratic Member

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October 9, 2002

The Honorable C. W. Bill Young
Chairman
Committee on Appropriations
U.S. House of Representatives
H218 Capitol
Washington, DC 20515

The Honorable David R. Obey
Ranking Democratic Member
Committee on Appropriations
U.S. House of Representatives
1016 Longworth HOB
Washington, DC 20515

Dear Chairman Young and Ranking Member Obey:

We write to express our deep concern with the Office of Management and Budget's interpretation of the Continuing Resolution's level of funding for the Federal-Aid Highway program. As described below, we believe that this interpretation is contrary to Congress' intent and must be clarified in any future Continuing Resolution.

As you know, fiscal year 2003 began on October 1, 2002. Given that Congress has been unable to pass conference reports on any of the 13 appropriations bills, the Federal Government is operating pursuant to a Continuing Resolution (P.L. 107-235), which provides funding through October 11.

Pursuant to the Continuing Resolution (P.L. 107-229, as amended by P.L. 107-235), programs continue all ongoing activities at the pro-rata share of current funding levels under the same terms and conditions as fiscal year 2002. In FY2002, the obligation limitation for the Federal-Aid Highway program was $31.8 billion. We believe that the Continuing Resolution was intended to and does provide a pro-rata share of this FY2002 funding for the period through October 11. Moreover, the Congressional Budget Office (CBO) agreed with this assessment. In reviewing the Continuing Resolution, CBO scored the Federal-Aid Highway program at the pro-rata share of the FY2002 level.

However, we understand that the Office of Management and Budget (OMB) has interpreted the Continuing Resolution to provide significantly less funding for the Federal-Aid Highway program. Based on vague boilerplate language in section 110 of the Continuing Resolution, OMB argues that the Continuing Resolution provides a pro-rata share of $27.7 billion – $4.1 billion less than FY2002 funding.

The OMB interpretation of the Continuing Resolution is not consistent with Congressional intent and must be reversed. First, this continuing resolution is designed to be a temporary measure to continue funding for government agencies at the current rate until final appropriations bills can be agreed to and enacted. The OMB interpretation of highway funding is wholly inconsistent with this purpose. To date, the House Appropriations Committee has reported H.R. 5559, the FY2003 Transportation Appropriations bill, and it provides $27.7 billion, the guaranteed level of funding for the Federal-Aid Highway program. The Senate Appropriations Committee has reported its companion bill, S. 2808, and it includes $31.8 billion for highway infrastructure investment. Congress will resolve the FY2003 highway funding level – whether $31.8 billion, $27.7 billion, or somewhere in between – when it passes a conference report on the Transportation Appropriations bill.

Second, OMB's reliance upon the vague boilerplate language of section 110 of P.L. 107-229 is in error. Section 110 does not apply to the Federal-Aid Highway program. Section 110 is designed to deal with programs that will be fully obligated early in the fiscal year, leaving Congress no opportunity to reduce the program later in the year. This contingency does not apply to the Federal-Aid Highway program. Under the Continuing Resolution, the Federal Highway Administration (FHWA) distributes a pro-rata share of Federal-Aid Highway program obligational authority to the States, to date only 11/365ths of annual highway funding. This pro-rata distribution in no way impinges on Congress' final funding prerogatives. If Congress subsequently decides to reduce highway funding from the FY2002 level, FHWA can implement the new level of funding by adjusting future distributions to the States. Furthermore, although this same provision has been included in prior continuing resolutions (e.g., section 112 of P.L. 107-44), to our knowledge, OMB has never before proposed this interpretation. FHWA has always distributed pro-rata Federal-Aid Highway funds based on the prior fiscal year level.

OMB is trying to usurp the role of Congress and prejudge this issue in favor of significantly less highway investment. This effort is inconsistent with the purposes of the Continuing Resolution and does not reflect Congressional intent.

Finally, we believe that infrastructure investment is critical to the long-term health of our Nation's economy. If, pursuant to the OMB interpretation, we cut highway infrastructure investment in these tough economic times, we will lose thousands of family-wage construction jobs.

We urge that any future Continuing Resolution include legislative language clarifying that the Federal-Aid highway program obligation limitation will be continued at the FY2002 rate until the Transportation Appropriations conference report establishes a FY2003 Federal-Aid Highway program obligation limitation.

We, and many Members of the Transportation and Infrastructure Committee, will not support consideration of a Continuing Resolution that does not include language to clarify that the Continuing Resolution provides a pro-rata share of the enacted FY2002 funding level ($31.8 billion) for the Federal-Aid Highway program.

Thank you for your consideration.

Sincerely,

Don Young
Chairman

James L. Oberstar
Ranking Democratic Member

Thomas E. Petri
Chairman
Subcommittee on Highways
and Transit

Robert A. Borski
Ranking Democratic Member
Subcommittee on Highways
and Transit