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MOVING AHEAD FOR PROGRESS IN THE 21ST CENTURY [MAP–21] PROGRAM CONSOLIDATION

HEARING

BEFORE THE

SUBCOMMITTEE ON
TRANSPORTATION AND PUBLIC ASSETS

OF THE

COMMITTEE ON OVERSIGHT
AND GOVERNMENT REFORM
HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTEENTH CONGRESS

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MOVING AHEAD FOR PROGRESS IN THE 21ST CENTURY [MAP–21] PROGRAM CONSOLIDATION

Tuesday, December 8, 2015

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON TRANSPORTATION AND PUBLIC ASSETS,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, D.C.

The subcommittee met, pursuant to call, at 2:14 p.m., in Room 2247, Rayburn House Office Building, Hon. John Mica [chairman of the subcommittee] presiding.

Present: Representatives Mica, DeSaulnier, and Duckworth.

Mr. MICA. Good afternoon. I would like to welcome everyone and call this hearing of the subcommittee of Government Oversight and Reform. Our subcommittee's title is Transportation and Public Assets. I call this hearing to order.

Welcome, everyone. And we will probably have some votes, but I would like to try to get our witnesses heard, and if we have to go back and forth, we will have to recess during those votes.

The title of today's subcommittee hearing is "Moving Ahead for Progress in the 21st Century" talking about MAP–21 and some of the program consolidation elimination and where we are with that.

We have three official witnesses. The Federal Highway Administration, Department of Transportation has two folks who will be participating also.

So the order of business will be opening statements, and I will start with mine and will defer to other Members. We will leave the record open for a period of 10 days for additional testimony or comments from Members or questions for our panelists.

So with that, I will start with my opening remarks, and then I will yield to Ms. Duckworth.

Today's hearing is being called—it is kind of interesting because this is the eve, the end of MAP–21 legislation we adopted a little over 3 years ago, and I had the chance to chair the committee at that time. It is commonly known as MAP–21. And within the last few days, we have enacted new legislation, FAST legislation, I guess, is the nickname for it. But it carries on where a lot of the policy which was established in MAP–21 some 3 years ago set forth a whole series of significant changes, some consolidation, some elimination of programs, and also importantly, devolution to some of the States. We tried to expedite a process, tried to eliminate, again, some of the duplications, and save taxpayers money, put

more money in the hands of those who are actually doing these infrastructure projects.

So this is one of the first times that we have had a chance to look at where we have been with MAP–21, and then we want to build on that with the new legislation just signed into law. And if there are some problems with operational standpoint from the Department, I know they try to comply but I think this is a good time to see how they have complied and get some of the facts as to what they have done to try to streamline the process, eliminate some of the duplication, and then devolve to those closest to projects the actual responsibility.

So we know that section 1301 of MAP–21 tasks the Secretary with identifying opportunities for States to assume responsibilities for again a whole host of activities, permitting being one of them, and then actually operating and functioning in some of the responsibilities previously tasked in Washington to the Federal Government.

So we said specifically in the bill that we want that done in a manner that protects public health, the environment, and also involves public participation.

So today, we are here to see again, take an inventory of where we are, where we have come, and where we need to go. We will look at the secretarial responsibilities such as environmental permitting or determinations regarding environmental rule. We want to judge if DOT has made available some of those opportunities for States. We will probably hear some problems. We will probably hear some success stories, I think, from one of our witnesses.

So our focus today is, again, whether the provisions of MAP–21 that were intended to make DOT more efficient and provide more flexibilities and devolve responsibilities to the State and other entities are in fact achieving the objectives we set out for.

So I look forward to hearing from our witnesses and participation. I think this can be a very positive lead into the new legislation that we have just adopted.

Mr. MICA. So those are my opening comments. Let me now yield to our distinguished ranking member Ms. Duckworth.

Ms. DUCKWORTH. Thank you, Mr. Chairman. And I will have to rely on your expertise since I was not here when MAP–21 was passed. And I am sure the institutional knowledge that you have will be very valuable in this hearing.

I want to thank you for holding today's hearing on MAP–21. This important bipartisan legislation included very important provisions that consolidated service transportation programs and mandated the use of performance management measures.

Congress has an essential oversight role in ensuring that these good government reforms are implemented properly, and I look forward to hearing from our witnesses today on the state of that implementation.

Last week, I was proud to join 358 of my colleagues in the House to pass the FAST Act, which authorizes approximately $300 billion to be invested in Federal highway and public transportation projects over the next 5 years.

Most importantly, this bipartisan act addressed my three transportation policy priorities, it provides States and industry with a

certainty, it strengthens public safety, and invests in innovative, multimodal transit solutions. When I travel home to Illinois' Eighth Congressional District, my local transportation community is constantly asking me why Washington can't come together to compromise on a long-term solution, and they have grown frustrated with the short-term, kick-the-can, bandaid fixes that prevent States and local government from effectively planning long-term projects.

So I am especially pleased that Congress has worked in a bipartisan manner to craft legislation that includes 5 years of funding at adequate levels. I am particularly relieved that, according to the Illinois Department of Transportation, the FAST Act will provide my home State with nearly $3 billion in public transit investments, the fourth-highest allotment behind only New York, California, and New Jersey, and approximately $7.5 billion in total highway investments.

However, it is important to note that while the FAST Act represents progress, it is far from perfect. Indeed, I am cosponsoring the GROW AMERICA Act, which authorizes $478 billion to rebuild our infrastructure over a 6-year period. I am on record supporting a bill that would provide States with even greater levels of investment and certainty than the FAST Act.

In my view, investing in American infrastructure is the ultimate taxpayer win-win. It sustains well-paying American transportation industry jobs and it creates new ones. Investing in American infrastructure is one of the most effective fiscal policy options to increase economic growth and employment. And yet, despite our nation's crumbling system of roads and bridges and the public support for investing their tax dollars in local projects that create new American jobs, Congress remains unable or unwilling to dramatically increase investments in our transportation system.

At the same time, the American Society of Civil Engineers gave America's roads a grade of D in its 2013 Infrastructure Report Card, and furthermore, their 2014 report card for my home State of Illinois the findings are just as disturbing. The report states that severe traffic congestion costs Illinois' economy billions of dollars in lost productivity each year. Congestion is estimated to cost approximately $4 billion annually for the Chicago area alone, and 42 percent of Illinois' major roads are in poor or mediocre condition. Driving on those roads cost Illinois motorists $3.7 billion a year in extra vehicle repairs and operating costs. This is simply unacceptable, especially when multiplied by 50.

The FAST Act is a step in the right direction, but further action is needed. I would simply note that it is my hope that over the next 5 years Congress can work in a bipartisan fashion to develop a truly sustainable and long-term infrastructure solution for our nation.

Throughout our nation's history, our economic growth has been driven by significant infrastructure investments from the construction of the Erie Canal in 1807 to the creation of the transcontinental railroad in 1869 to President Eisenhower's visionary establishment of the interstate highway system in the 1950s. It is our responsibility to preserve this proud legacy and continue in making important investments to enhance America's ability to thrive and compete well into the 21st century.

Again, I would like to thank you for holding the hearing, and I yield back.

Mr. MICA. I thank the gentlelady. And again, we will leave the record open for other Members who wish to submit a statement.

And now, I would like to recognize our panel of witnesses. I am pleased to welcome first Mr. Thomas Echikson. And he is the chief counsel at the Federal Highway Administration, Department of Transportation. Mr. Echikson is accompanied by two experts from the Federal Highway Administration, and I am going to swear them in, too, which we will do everyone in just a few minutes. One of those is staffer Brian Bezio, chief financial officer of the Federal Highway Administration. The other is Mr. Peter Stephanos, who is director of the Office of Transportation Performance Management of FHWA.

I also welcome Mr. David Zachry, chairman of the American Road and Transportation Builders Association.

And then our other witness is Mr. Carlos Swonke, and is the director of Environmental Affairs at the Texas Department of Transportation. We appreciate his traveling up to be with us and his participation today.

So I want to welcome all of you. This is an investigations and oversight subcommittee, so I will ask all of you to stand and the two that are behind you that are going to testify, raise your right hand.

[Witnesses sworn.]

Mr. MICA. All of the witnesses answered in the affirmative. And we will let the record reflect that.

I am not sure who has been before us before, but we try to have you give us a little 5-minute presentation. If you have lengthy materials you would like added to the record, just request that through the chair.

So we will proceed and we will hear from Mr. Thomas Echikson, Chief Counsel of the Federal Highway Administration, USDOT. Welcome, sir, and you are recognized.

WITNESS STATEMENTS

STATEMENT OF THOMAS G. ECHIKSON

Mr. ECHIKSON. Thank you, Chairman Mica and Ranking Member Duckworth. Thank you for inviting me here today to discuss program consolidation under MAP–21 and provisions within it that are designed to accelerate project delivery.

With me today are Brian Bezio, our Chief Finance Officer; and Peter Stephanos, Director of our Office of Transportation Performance Management. They are experts in some of the topics you may wish to discuss today and are available to answer questions, as am I.

Before discussing MAP–21, it's important to mention that just last Friday President Obama signed the Fixing America's Surface Transportation Act, the FAST Act, into law, marking the first long-term transportation funding bill Congress has passed in 10 years. Though the FAST Act isn't perfect, it reflects bipartisan compromise and ends the long cycle of uncertainty for State DOTs. I assure you that the Department is already hard at work imple-

menting the FAST Act, and we will continue to do so in the days and months ahead.

MAP–21 consolidated FHWA's programs into a smaller number of broader programs. These new programs, however, retain and continue the eligibilities that have previously existed. This modified program structure provides our grantees with greater flexibility to deliver projects more efficiently. It also allows our grantees to make data-driven decisions in order to meet performance targets.

Notwithstanding MAP–21's program consolidation, the same activities previously authorized remain eligible for funding under MAP–21. As such, neither the number nor the complexity of the projects and activities that we oversee has diminished. Throughout the country, FHWA personnel remain focused on overseeing a $42 billion program that is going to grow over the next 5 years, protecting taxpayers by ensuring that Federal funds are spent in accordance with the law. In fact, more than two-thirds of FHWA's employees are located in our field offices working directly with State DOTs to deliver projects.

The cornerstone of MAP–21's Federal highway program transformation was the adoption of a performance-based program. The Department has been working diligently to finalize the performance management rules. As the GAO has recognized, completing these rules has been an arduous task. The performance management requirements cover a number of areas at varying maturity levels. In some cases we have had to establish the new methods, standards, and data sources necessary to implement an effective national program. Because State and MPOs will need to comply with these new requirements, it has been particularly important for DOT to engage with these stakeholders and carefully consider the impact on them.

FHWA is looking forward to the benefits that performance-based policy framework will bring in terms of helping States focus their expenditures where they are most needed. Implementing the performance management requirements and assisting States and MPOs as they transition towards this framework remains a priority at FHWA. We believe performance management is a key tool to prepare the Federal-aid Highway Program for the future.

MAP–21 also included provisions designed to support innovation and improve efficiency in the delivery of transportation projects, and this complemented the successes of FHWA's Every Day Counts partnership with states, local governments, and the private sector. We believe these provisions, together with our EDC efforts, are helping move projects from concept to completion more efficiently, saving time and money and allowing the public to enjoy the benefits of upgraded infrastructure more quickly.

Immediately after passage of MAP–21, FHWA began working aggressively to implement these provisions by conducting outreach sessions with stakeholders, issuing guidance, and working collaboratively with other Federal agencies. These efforts helped us advance rulemaking and guidance documents in accordance with statutory deadlines and identify and resolve concerns from agency partners. We have now completed all the project delivery rulemakings with a statutory deadline and continue our broader ef-

forts under EDC to improve and expedite the delivery of highway projects.

Mr. Chairman, thank you again for the invitation to appear here today on behalf of FHWA. This concludes my remarks, and I look forward to your questions.

[Prepared statement of Mr. Echikson follows:]

STATEMENT OF
THOMAS G. ECHIKSON
CHIEF COUNSEL
FEDERAL HIGHWAY ADMINISTRATION
U.S. DEPARTMENT OF TRANSPORTATION

BEFORE THE

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
SUBCOMMITTEE ON TRANSPORTATION AND PUBLIC ASSETS
U.S. HOUSE OF REPRESENTATIVES

HEARING ON

MAP-21 PROGRAM CONSOLIDATION

DECEMBER 8, 2015

Chairman Mica, Ranking Member Duckworth, and Members of the Subcommittee, thank you for the invitation to appear before you today on behalf of the Federal Highway Administration (FHWA) to discuss program consolidation under the Moving Ahead for Progress in the 21st Century Act (MAP-21) and the implementation of key provisions designed to improve administrative flexibility and efficiency and accelerate project delivery. Accompanying me today are Brian Bezio, FHWA Chief Financial Officer, and Peter Stephanos, Director of FHWA's Office of Transportation Performance Management.

Consolidation of Programs

MAP-21 consolidated a complex array of FHWA programs into a smaller number of broader programs, with the eligibilities generally continuing under such programs. This revised program structure has helped provide our grantees with flexibility to deliver projects more efficiently. It also anticipates the flexibility grantees will need to make data-driven investment decisions to meet performance targets. However, while FHWA programs were consolidated for funding purposes, the same activities previously authorized remained eligible for funding under MAP-21. As such, FHWA remains responsible for administering a $42 billion program with eligible projects of a comparable number and breadth as under the pre-MAP 21 program. Because FHWA still must review and approve the eligibility of projects, including projects using funding still available under pre-MAP-21 authorities, neither the number nor the complexity of the projects we review has diminished. In order to carry out our dual mission of protecting taxpayers and advancing national goals, FHWA must still provide effective oversight of State implementation of the Federal-aid highway program. FHWA personnel remain focused on providing appropriate oversight, shortening project delivery, and advancing innovation.

In the past decade, while funding for the Federal-aid highway program has grown, the number of full-time employees (FTEs) employed to support this growth has remained relatively constant. In Fiscal Year (FY) 2003, 2,366 FTEs were dedicated to administer a $30.8 billion program. In FY 2012, FHWA used 2,302 FTEs to administer a $40 billion program; in FY 2014, FHWA

used 2,281 FTEs to administer a $42 billion program. It is important to note that FHWA is organized around areas of expertise, including safety, infrastructure, operations, environment, and planning, rather than by program, meaning the FTEs are not specifically dedicated to specific programs. Therefore, disaggregating an individual's time based on a particular program is not possible. Many discontinued or streamlined programs are still active as grantees spend down prior balances. Similarly, projects that were eligible under these discontinued programs still remain eligible under the larger, consolidated programs. While the structure under MAP-21 provides greater flexibility to the States using these funds, the program still requires the same amount of Federal oversight. In short, FHWA still has many of the same responsibilities for programs under MAP-21 as existed prior to MAP-21.

The areas around which FHWA has been and continues to be organized remain critical to delivering the consolidated program structure under MAP-21. More than two-thirds of FHWA's employees are located in our field offices, providing valuable expertise and working directly with State departments of transportation and other partners to deliver projects. FHWA staff workload is a function of the number and complexity of projects that FHWA oversees, not the number of programs.

Performance Management

The cornerstone of MAP-21's Federal highway program transformation is the transition to a performance-based program, which sets the stage for States and metropolitan planning organizations (MPOs) to make more strategic and efficient investment of Federal-aid highway funds through performance-based planning and programming. The performance-based structure promotes the use of system information to make informed investment and policy decisions to achieve the national performance goals established in statute. These performance measures are intended to assist States and MPOs in making data-driven funding and investment decisions.

The Department has been working diligently to finalize the performance management rules as quickly as possible. The MAP-21 requirements cover a number of performance areas that vary in maturity levels. In some cases, we have had to establish the new methods, standards, and data sources necessary to implement an effective national program. In addition, all States and MPOs receiving Federal-aid highway funds will need to comply with these new requirements. For these reasons, we have worked through many proposed implementation options, carefully considering the impact on these entities. Additionally, the Department felt strongly about engaging the public early before the formal rulemaking process began. Right after President Obama signed MAP-21 into law, the Department began a series of stakeholder engagements in which nearly 10,000 people participated.

FHWA is using a comprehensive approach to implement performance management, publishing rulemakings in three phases related to safety; infrastructure; and freight, traffic congestion, and air quality. In timeframes coinciding with these phases, FHWA also is issuing three program-related rulemakings: planning, highway safety improvement, and asset management. FHWA has published notices of proposed rulemaking (NPRM) for all but one of these rulemakings and anticipates publishing the final rules in the first half of next year. FHWA expects to publish the final NPRM focused on measures for the performance of the National Highway System, the

Congestion Mitigation and Air Quality Improvement program, and freight movement on the Interstate System soon. To provide transparency regarding these rulemakings, the Department updates the schedules on a monthly basis on its website: http://www.transportation.gov/regulations/report-on-significant-rulemakings.

At FHWA, we are looking forward to reaping the benefits that the performance-based policy framework in MAP-21 will create in terms of helping maximize investments. By focusing on national goals and increasing accountability and transparency, these changes will improve decision-making in States and MPOs through more informed planning and programming. Implementing the performance management requirements and assisting States and MPOs as they transition toward this framework remains a priority at FHWA. We believe performance management is a key tool in preparation for the Federal-aid highway program of the future.

Project Delivery and Innovation

MAP-21 included provisions designed to further increase innovation and improve efficiency in the delivery of transportation projects. Immediately after passage of MAP-21, FHWA began working aggressively to implement these provisions by conducting outreach sessions with stakeholders, issuing guidance, and working collaboratively with other Federal agencies. FHWA and the Federal Transit Administration (FTA) jointly took swift action to implement MAP-21 provisions requiring regulatory changes in the area of project delivery, including the exclusion from requirements under the National Environmental Policy Act to prepare an environmental impact statement or environmental assessment for actions following declarations of emergency. FHWA and FTA also published quickly an NPRM for new categorical exclusions related to actions within the operational right-of-way and for projects with limited Federal financial assistance.

Many MAP-21 provisions complement the successes of FHWA's Every Day Counts (EDC) partnership with States, local governments, and the private sector. EDC focuses on shortening project delivery and getting proven innovations quickly and broadly deployed to benefit road users. Designed to complement other initiatives centered on innovative technologies, practices and investment, EDC plays an important role in helping transportation agencies fulfill their obligation to the American people to deliver the greatest value for the tax dollars spent. Simply stated, EDC is a State-based model to identify and rapidly deploy proven, yet underutilized, innovations to move projects from concept to completion more efficiently, saving time and money, enhancing roadway safety, reducing congestion, and improving environmental sustainability.

Congress incorporated into MAP-21 process innovations advanced in EDC, such as Programmatic Agreements, and innovative contracting strategies such as Construction Manager/General Contractor (CM/GC). CM/GC and other innovative contracting methods allow a project owner to evaluate new ideas, receive constructability advice from the contractors, and consider approaches that have the potential to reduce time, cost, and overall risk in the construction of projects.

In addition to process innovations, technology innovations like Safety Edge$_{SM}$ and High Friction Surface Treatments are improving safety. Other innovations are helping to deliver transportation projects faster and cheaper. Using Accelerated Bridge Construction (ABC), transportation agencies have been able to replace bridges over a weekend (within 48 to 72 hours), reducing overall project construction time by months to years in some cases. Most States now have a specification and/or contractual language for use of Warm Mix Asphalt, which is mixed and placed at lower temperatures—saving fuel used for production; extending the paving season; and reducing emissions, odors, and fumes.

Across the Nation, transportation stakeholders want to look beyond "business as usual" and become more innovative in the way they deliver projects. Through the EDC model, FHWA works with stakeholders to identify a new collection of market-ready innovations to champion every two years. After the process of selecting EDC innovations for deployment is completed, transportation leaders from across the country gather at regional summits. These summits provide transportation professionals the opportunity to learn about and assess the innovations being promoted through EDC, exchange ideas with their agency and industry counterparts in neighboring States, and provide feedback to FHWA on the support and resources needed to adopt the innovations in their own States. These summits also begin the process for States and locals to focus on the innovations that make the most sense for their unique program needs, establish performance goals, and commit to finding opportunities to get those innovations into practice.

Forty-nine States have created State Transportation Innovation Councils (STICs), which are often responsible for the evaluation of innovations and oversight of deployment efforts. Co-chaired by a State DOT leader and FHWA Division Administrator in each State, the STICs can encourage innovation and cooperation among a wide range of partners at the State and local levels and allow each State to customize EDC implementation to its own needs and challenges. The STICs have become an essential component in helping create a national network to deploy innovation and get the most value out of every Federal, State, and local transportation dollar.

Through three cycles of EDC, a total of 32 proven innovations and enhanced business processes have been promoted, saving millions that can be used to deliver more projects for the same investment. Since EDC's inception in 2010, every State transportation agency has used eight or more of the innovations promoted under the initiative, and some have adopted over twenty. Through EDC, we are saving money, saving time, and saving lives—exactly the results we believed were possible if we and our State partners made innovation a standard industry practice.

Conclusion

As you know, last week, Congress passed a long-term transportation authorization bill, finally ending the cycle of continued short-term patches that create uncertainty for project sponsors and inhibit their ability to plan effectively. FHWA will continue to help prepare States and locals to deliver the highway program of the future while providing appropriate oversight and effective implementation.

Thank you again for the invitation to appear before you today to discuss MAP-21 program consolidation and implementation. I will gladly answer any questions at this time.

###

Mr. MICA. Okay. And they are not going to give opening testimony, but Brian Bezio and Peter Stephanos, come on up and take your chairs here.

And we will turn to the next witness, which is Mr. David Zachry, chairman of the American Road and Transportation Builders Association. Welcome, sir, and you are recognized.

STATEMENT OF DAVID S. ZACHRY

Mr. ZACHRY. Thank you, Chairman Mica, Representative Duckworth. I'm David Zachry. I'm CEO and president of Zachry Corporation in San Antonio, Texas, and I'm here today on behalf of the American Road and Transportation Builders Association where I'm honored to serve as the Chairman.

Chairman Mica, if I can begin by commending you for your leadership over many years in working to cut through the bureaucratic red tape that has plagued transportation project planning and approval process. You made great contributions to this effort as the lead author of MAP–21. We also appreciate the Subcommittee convening this session to review progress in this area since MAP–21's enactment.

Project delays not only waste federal resources, they also delay mobility and safety enhancements and stifle job and economic growth. The 2012 MAP–21 surface transportation law commendably and appropriately attempted to shorten the 9 to 19 months or years it takes to plan, gain approval of, and construct a major new federally funded highway project.

Among MAP–21's many significant reforms was an expansion in the use of categorical exclusions, or CEs. A CE is used when projects create minimal impacts on the environment. Under MAP–21, most TE projects were automatically classified as CEs, including those in response to emergency situations and projects undertaken within an existing right-of-way.

These—the use of CEs can shave years off an environmental review process. For example, the emergency CE was put in—put to use in May 2013 when a truck hit the I–5 Skagit River Bridge in Mount Vernon, Washington. Application of the CE allowed repairs to the bridge to begin within 24 hours of the accident and allowed the bridge to reopen to traffic after only 27 days.

MAP–21 also expanded the opportunity for states to conduct their own environmental reviews. Both California and Texas have taken advantage of this opportunity. Ohio is poised to do the same, and Florida and Utah have also indicated their interest.

The initial results are very positive. California said it has been able to reduce the amount of time for most—for the most complicated environmental review documents by years. Though Texas was only approved for the program late last year, it is estimated an average time savings of 25 percent for project reviews. However, it's important to note that these, as well as many other MAP–21 reforms, are discretionary, not mandatory. The more state and federal agencies choose to use the opportunities afforded by MAP–21, the greater will be its impact.

On a separate topic, MAP–21 included a provision originating in the House Reauthorization Proposal directing USDOT to provide transparency regarding the use of Federal highway funds. Similar

to what the Federal Government did with the highway funds spent from the Economic Stimulus Bill, this tool had the potential to provide a real tangible connection to the taxpayers by explaining exactly how the money they sent to the Federal Government is spent on projects in their states and communities. More than a year after expiration of the MAP–21, these efforts have yet to be started.

Mr. Chairman, we commend the USDOT for telling the public how $27 billion in highway stimulus funds were spent. The same treatment should apply to the $80 billion in core highway improvements that occurred over the same time period.

Unfortunately, there are not many examples yet of the time-and money-saving benefits MAP–21 reforms could provide. The MAP–21 reforms are aimed at large, complex, very expensive, multiyear projects. Without the assurance of stable and predictable long-term Federal funding, States are often reluctant to proceed with these types of projects. The recent enactment of a 5-year reauthorization bill should help remedy this concern.

Mr. Chairman, Representative Duckworth, ARTBA deeply appreciates the opportunity to take part in today's discussion. I look forward to answering any questions you might have.

[Prepared statement of Mr. Zachry follows:]

Testimony of

David S. Zachry
President & CEO
Zachry Corporation

On Behalf of the
American Road and Transportation Builders Association

Submitted to the
United States House of Representatives
Committee on Oversight and Government Reform
Subcommittee on Transportation and Public Assets

Hearing on Moving Ahead for Progress in the 21st Century (MAP-21) Program Consolidation

December 8, 2015

Chairman Mica and Ranking Member Duckworth, thank you for holding this hearing on Moving Ahead for Progress in the 21st Century (MAP-21) Program Consolidation. My name is David Zachry. I am currently President & CEO of the Zachry Corporation in San Antonio, Texas. I also serve as Chairman of the American Road and Transportation Builders Association (ARTBA) and am appearing before you today in that capacity.

ARTBA, now in its 113th year of service, provides federal representation for more than 6,000 members from all sectors of the U.S. transportation construction industry. ARTBA's membership includes private firms and organizations, as well as public agencies that own, plan, design, supply and construct transportation projects throughout the country. Our industry generates more than $380 billion annually in U.S. economic activity and sustains more than 3.3 million American jobs.

ARTBA members must directly navigate the regulatory process to deliver transportation improvements. As such, they have first-hand knowledge about specific federal burdens that can and should be alleviated.

Significant progress was made on a bipartisan basis to streamline the permitting and approval process for transportation improvements in the past three reauthorizations of the federal surface transportation program: the Transportation Equity Act for the 21st Century (TEA-21) of 1998; the Safe, Accountable, Flexible Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) of 2005; and the Moving Ahead for Progress in the 21st Century (MAP-21) Act of 2012. Each of these measures provides valuable insight about the successes and failures of legislative efforts to reduce delay in the delivery of needed transportation projects without sacrificing regulatory safeguards.

ARTBA recognizes that regulations play a vital role in protecting the public interest in the transportation review and approval process. They provide a sense of predictability and ensure a balance between meeting our nation's transportation needs and protecting vital natural resources. These goals, however, do not have to be in conflict. The most successful transportation streamlining provisions have been process oriented and essentially found a path for regulatory requirements to be fulfilled in a smarter and more efficient manner.

Today's hearing focuses on the implementation of the latest round of project delivery reforms under MAP-21. As a champion of many of these project delivery reforms, ARTBA can state first-hand that these reforms have begun, and should continue, to reduce delays in the transportation project delivery process.

According to a report by the U.S. Government Accountability Office prior to the enactment of MAP-21, as many as 200 major steps are involved in developing a transportation project, from the identification of the project need to the start of construction. The same report also shows it typically takes between nine and 19 years to plan, gain approval of, and construct a new major federally-funded highway project. This process involves dozens of overlapping state and federal laws, including: the National Environmental Policy Act (NEPA); state NEPA equivalents; wetland permits; endangered species implementation; and clean air conformity.

Both political parties recognized that this is simply too long to make the public wait for transportation projects that improve mobility and safety. As such, finding meaningful ways to expedite this process has been a congressional priority for more than 15 years.

Reducing Project Delay

Reducing the amount of time it takes to build transportation improvements was first addressed in 1998 with the passage of TEA-21. Efforts to reduce delay in this legislation concentrated on establishing concurrent project reviews by different federal agencies. The concept was that multiple reviews done at the same time, as opposed to one after the other, would reduce the amount of overall time it took to get a project approved. While this improvement was a step in the right direction, it had limited impact, as concurrent reviews were discretionary, rather than mandatory. Thus, it was up to the federal agencies involved in a project whether or not to take advantage of this new benefit.

In 2005, SAFETEA-LU sought to further reform the project delivery process by establishing a wider range of new ways to deliver transportation improvements. Specifically, SAFETEA-LU gave greater authority to the U.S. Department of Transportation (U.S. DOT) as "lead agency" during the delivery process, limited the window during which lawsuits could be filed against projects, and reformed the process for determining impacts on historical sites and wildlife refuges.

SAFETEA-LU represented a far more expansive reforming of the project delivery process, by addressing the schedule for project reviews and also factors outside of the process itself which contribute to delay. SAFETEA-LU also went further than TEA-21 in that some of its reforms, such as the limitation on lawsuits, were mandatory, as opposed to optional.

The clear lesson between the 1998 and 2005 surface transportation bills was that simply giving federal agencies the ability to complete regulatory reviews in a more efficient manner in no way guarantees that authority would be utilized. As such, SAFETEA-LU took more aggressive steps to influence non-transportation agencies into making transportation project reviews a higher priority.

While SAFETEA-LU's environmental streamlining provisions were a significant step forward from those enacted in TEA-21, the transportation project delivery process remained at an unacceptable pace. As such, MAP-21 took project delivery reform even further, with more tools for reducing delay. In addition to building upon the concept of "lead agency" begun in SAFETEA-LU, MAP-21 also included specific deadlines for permitting decisions as well as a scheduling mechanism to ensure environmental impact statements (EISs) do not take longer than four years. As with SAFETEA-LU, however, it is important to note that many of the reforms made in MAP-21 were discretionary. The more state and federal agencies choose to use MAP-21's reforms, the greater the impact will be.

Expansion of the Use of Categorical Exclusions (CEs)

One of the most significant changes to existing law in MAP-21 was an expansion of the use of CEs during the environmental review process. A CE is used when projects create minimal impacts on the environment. The difference between a CE and an EA or EIS is multiple years added on to the amount of time it takes to complete a project review. Under MAP-21, many sorts of routine projects were automatically classified as CEs, these include rehabilitation and repair projects, projects within an existing right-of-way, projects with minimal federal resources and projects undertaken as a result of an emergency situation. Expanding the use of CEs to these additional areas enabled local governments to have more certainty as to when a CE can be used and also allows routine projects to be undertaken without burdensome, unnecessary levels of review.

MAP-21 also called for the development of CE guidelines for projects being constructed in response to an emergency or natural disaster. To qualify for CE status, such a project must be of the same mode/type and in the same right-of-way as the facility it is replacing and started within two years after the emergency/natural disaster. It should be noted that MAP-21 also offers states additional flexibility in emergency situations by allowing the issuance of special permits to

overweight vehicles delivering relief supplies and allows states to use any federal highway program apportionments other than those dedicated for local governments to replace transportation facilities damaged by a national emergency.

Only three months after the emergency/natural disaster CE was promulgated by the U.S. Department of Transportation (U.S. DOT), it was put to use in May 2013 when a truck hit the I-5 Skagit River Bridge in Mount Vernon, Washington. Application of the CE allowed repairs to the bridge to begin swiftly, and correctly recognized that in times of emergency, the focus should be on responding as promptly and effectively as possible. Specifically, in this instance repairs began within 24 hours after the accident and the bridge was re-opened to traffic in just 27 days and fully repaired within 115 days.

MAP-21 also created a CE for projects within an existing right-of-way. This is a logical application of the CE process, as an environmental review would have already had to be completed in order for the right-of-way to be obtained. Thus, requiring a second environmental review for a project within that right of way is duplicative and adds no additional environmental protection. The Texas Department of Transportation (TXDOT) noted a Houston widening project undertaken prior to MAP-21 involving a widening of a four-lane road. Although no additional right-of-way was required, an EA was deemed necessary. The EA took three years and costed $100,000. Under MAP-21, that same project would qualify for a CE and be completed in a fraction of the time and cost.

NEPA was never meant to be a statute enabling delay, but rather a vehicle to promote balance. While the centerpiece of such a balancing is the environmental impacts of a project, other factors must be considered as well, such as the economic, safety, and mobility needs of the affected area and how a project or any identified alternative will affect those needs. Allowing certain types of projects to be classified as CEs is a very effective way of reducing delay in the review and approval process, ensuring that projects with minimal environmental impacts are not put through a needlessly long regulatory process.

Delegation of Environmental Review Responsibilities

Under SAFETEA-LU, a pilot program was established allowing five states (California, Alaska, Ohio, Texas and Oklahoma) to assume the role of the federal government during the NEPA process. MAP-21 expands the opportunity to participate in the program to all states. States choosing to take part would conduct their own environmental reviews, potentially saving time as a result of not having to go through multiple federal agencies.

Of the five states allowed to participate in the delegation pilot program under SAFETEA-LU, only California chose to do so and was approved in 2006. Under MAP-21, Texas was approved to participate in December of 2014. Also, Ohio recently applied to participate in the delegation program in May of 2015, and both Utah and Florida have indicated interest in applying for the program in the near future.

According to an October 30 fact sheet published by the California Department of Transportation, there have been significant reductions in delay preparing environmental review documents. Specifically, when compared to documents prepared prior to the delegation program:

- Draft EAs have seen a median time savings of 10.7 months;
- Final EAs and Findings of No Significant Impact (FONSI) have seen a median time savings of 11.5 months;
- Draft EISs have seen a median time savings of 22.9 months, and;
- Final EISs have seen a median time savings of 130.8 months—nearly 11 years!

While the Texas delegation program has not been in place as long as California's, TXDOT has estimated an average time savings of 25 percent. The Ohio Department of Transportation estimates similar time savings once Ohio's delegation program is established, as well as an estimated cost savings of $45 million.

Additionally, MAP-21 allows states to also assume control of just the CE process as opposed to full environmental reviews. TXDOT has experienced a significant reduction in the time it takes to review CEs through this partial delegation program. Prior to assuming responsibility for CE review, the process took about one year. Under the program, the average time is now less than 45 days. Further, the documentation requirements have been reduced. CEs which used to span more than 100 pages are now two-page checklists. Utah has also assumed control of the CE process under MAP-21 and is now completing CEs in as little as six days for routine projects. Finally, Alaska has also assumed responsibility for CEs and is experiencing favorable results from the program.

While the reason for non-participation thus far by the other states has varied, potential liability and litigation costs were an overriding issue, as the state would also be assuming federal responsibilities for litigation over any project where delegation was used. Still, ARTBA believes delegation of environmental review responsibilities to states could be an important tool to save resources and speed project delivery without sacrificing regulatory safeguards.

Greater Strength for "Lead Agencies"

SAFETEA-LU established DOT as the "lead agency" for the environmental review of transportation projects, including "purpose and need" and "range of alternatives" determinations. MAP-21 expanded upon this authority by allowing DOT, as the lead agency for all transportation projects, to name a single modal administration as the lead agency in the case of multi-modal projects. The secretary of transportation also may, within 30 days of the closing of the comment period for a draft EIS, convene a meeting of the lead agency, participating agencies and project sponsor to set a schedule for meeting project deadlines. This new authority allowed the U.S. DOT to be the focal point of the review process, as opposed to a peer on equal footing with non-transportation agencies.

The opportunities to reduce the delay caused by inter-agency conflict provided by SAFETEA-LU and MAP-21 in the area of lead agency are significant. However, these reforms are only effective to the degree that the U.S. DOT chooses to take advantage of them. In other words, it is not mandatory that the agency take advantage of any of the benefits of "lead agency" status.

Even as an optional tool, though, "lead agency" status is an important mechanism for improving the project delivery process.

Construction Manager/General Contractor Contracting

MAP-21 also included a provision allowing the use of a "two-phased" contract – more commonly known as construction manager/general contractor (CM/GC) – on federal-aid highway projects. Under such an arrangement, a contracting agency retains a construction firm to serve as an advisor on constructability and other design issues during the first phase, then that firm has the first opportunity to agree on a price and build the project during the second phase. While the Federal Highway Administration (FHWA) had approved such projects on an experimental basis in the past, MAP-21 essentially mainstreamed the CM/GC contracting method so that the FHWA need not give special approval. In fact, as part of its Every Day Counts Program, the FHWA has been actively promoting the use of CM/GC by state DOTs in recent years.

While ARTBA, FHWA and state departments of transportation have conducted an ongoing dialogue about CM/GC-related issues, our association does not have an official policy on the topic, nor are we in a position to endorse its use. We believe that is best left to the individual state departments of transportation in close consultation with the contracting community. It should be noted that ARTBA's contractor member-firms embrace innovation and are always eager to advance the efficiency of transportation improvement projects, whether in terms of cost, time or safety. However, while ARTBA's membership includes firms, agencies and individuals representing all sectors of transportation construction, relatively few of them have first-hand familiarity with the use of CM/GC on highway projects. Accordingly, ARTBA has undertaken a member education effort on this method in recent years.

Earlier this year, the FHWA published a Notice of Proposed Rulemaking as it works to implement the MAP-21 CM/GC provision. ARTBA submitted detailed comments based on the input of our members who do have experience with CM/GC on highway projects. Issues we raised in the comments included transparency and objectivity of the selection process, proper risk allocation, timeliness of decision-making by the public agency, maximizing open competition in the procurement process and recognizing the uniqueness of the heavy-highway construction sector in formulating this new rule.

ARTBA and our members look forward to continued dialogue with the FHWA, state departments of transportation and other groups on the use of CM/GC. We will also be working with our members and chapters to make sure they have the information and material necessary to discuss the issue with their state and local transportation agencies should there be interest in employing CM/GC in their respective markets.

Additional MAP-21 Project Delivery Reforms

MAP-21 also improved project delivery by limiting the time during which lawsuits may be filed against projects. This concept was also part of SAFETEA-LU. SAFETEA-LU set a deadline of 180 days after the issuance of a federal decision on a project for the filing of a lawsuit. MAP-21 shortened this deadline to 150 days. Establishing a firm deadline for lawsuits ensures that any possible litigation is dealt with at the beginning of the delivery process. By addressing conflicts

early, planners then are able to set schedules without fear of litigation after the deadlines have passed. Further, the deadline allows conflicts to be heard and resolved sooner, rather than later.

Under MAP-21, project sponsors were allowed to request the Secretary of Transportation to set an expedited schedule for projects undergoing an EIS for more than two years. This schedule would ensure the project's EIS would be completed within two additional years. MAP-21 also establishes new deadlines for permitting decisions from federal agencies. If these deadlines are not met, the agencies suffer financial penalties. It should be noted, however, that these provisions of MAP-21 have not yet been utilized and it remains to be seen how they would work in practice.

Still More Work to Do

Additionally, many of MAP-21's reforms still need to be implemented through the regulatory process. MAP-21 is somewhat unique in that it provided 22-months of funding, but contained enough new policy in the project delivery arena to warrant multiple years of new regulations. Thus, MAP-21 will continue to be implemented even after, hopefully, the recent enactment of the "Fixing America's Surface Transportation" (FAST) Act.

In some cases, the U.S. DOT has missed deadlines established by MAP-21. An example of this can be found in Section 1503 of the law. Under this section, U.S. DOT is required to make available to the public, via website, annual federal transportation expenditure data on a state by state basis. This tool has the potential to provide a real, tangible connection to taxpayers explaining exactly how the money they send to the federal government is spent on projects in their states and neighborhoods. MAP-21 required U.S. DOT to annually update committees in the House and Senate on these efforts. However, more than a year after the expiration of MAP-21's funding, these efforts have yet to be started.

Unfortunately, a number of the MAP-21's project reforms mentioned do not have many examples upon which to evaluate their success. A major reason for this is the uncertainty over long-term federal funding. Federal funds, on average, support 52 percent of annual state department of transportation capital outlays for highway and bridge projects. Uncertainty surrounding the short and long-term fiscal condition of the Highway Trust Fund continues to have a significant effect on state transportation planning.

Following the expiration of MAP-21 at the end of September 2014, Congress put in place a series of short-term program extensions and temporary Highway Trust Fund revenue patches to keep highway and public transportation funds flowing to the states. This period of uncertainty led DOT officials in 35 states to publicly declare their state programs would be impacted by a shutdown of the federal surface transportation funds. In fact, eight states have delayed or canceled projects valued at $1.90 billion.

The types of projects which require an EIS (and sometimes even an EA) are complex, multi-year projects. Without the assurance of long-term federal funding, states are often reluctant to proceed with such projects. The recent enactment of a five year surface transportation reauthorization bill is a positive sign that this uncertainty may soon be coming to an end. With an assurance that federal investment will be provided through FY 2020, states will hopefully

undertake more long-term transportation construction projects and we will have a better opportunity to witness more of MAP-21's reforms in practice.

Conclusion

The transportation sector has made significant strides in the area of project delivery. Beginning with TEA-21 and continuing through to the FAST Act, members of both parties have worked together to ensure our nation's infrastructure continues to improve at a pace matching the growth of our country. Continuing to streamline the project review and approval process for our nation's infrastructure is essential in assuring the public the government is making every dollar spent of transportation go as far as possible without sacrificing necessary regulatory safeguards.

Subcommittee Chairman Mica, Representative Duckworth, thank you for allowing me to appear before you today to discuss ARTBA's long history of promoting common sense reforms in the transportation project delivery process. We stand ready to assist the subcommittee as it continues to work towards the goal of reforming the project review and approval process for the transportation improvements our nation desperately requires.

I would be happy to answer any questions from you or other members of the subcommittee.

Mr. MICA. Thank you. We will hold questions and we will now hear from Carlos Swonke. He is the director of environmental affairs, Texas Department of Transportation. Thanks for being with us. You are recognized.

STATEMENT OF CARLOS SWONKE

Mr. SWONKE. Thank you. Chairman Mica, Ranking Member Duckworth, my name is Carlos Swonke. I am the Director of the Environmental Affairs Division at the Texas Department of Transportation.

TxDOT appreciates the opportunity to provide testimony to the Subcommittee meeting here today and to provide our experiences with implementing some of MAP–21's environmental streamlining initiatives.

Since the—since its passage and subsequent rulemaking, TxDOT has taken advantage of many of the streamlining provisions. In my testimony, I've also offered comments on program consolidation and total interoperability.

TxDOT environmentally approved over 1,800 projects last year. Our project delivery program involves billions of dollars worth of projects and is highly dependent upon an environmental process that is efficient and predictable. Provisions in MAP–21 helped us to improve our efficiency and the predictability of the environmental process. I'll provide some specific examples here.

Section 1313 of MAP–21 made permanent the Service Transportation Project Delivery program, which allows States to assume environmental approval authority under the National Environmental Policy Act typically reserved for the Federal Highway Administration. In September of 2014, FHWA finalized the rule establishing the program. On December 16 of last year, TxDOT and FHWA executed the Memorandum of Understanding allowing TxDOT to participate in the program.

The general benefits of NEPA assignment come from the removal of a layer of review in the environmental process and the increase in independent decision-making of the State DOT.

Even though we have been in the program for a year, it is difficult at this time to quantify the time savings we've realized. The reason is because larger projects may have an environmental review that extends several years. As such, we have not had the opportunity to start and finish a large project with the NEPA assignment authority. I will say that we are seeing a trend that shows that projects being approved with an environmental assessment of NEPA classification, these projects are taking closer to 2 years as opposed to the average of about 3 years prior to NEPA assignment.

I can also say that smaller projects—time frames for smaller projects that are approved with categorical exclusion determinations are now being measured in days and weeks instead of months or years. I'll talk more about the MAP–21 categorical exclusions in a moment.

I feel confident in saying that TxDOT's transition to and implementation of NEPA assignment has been successful. We are seeing time savings. I can also say that our internal program is more organized and our process more predictable. The success is owed to TxDOT leadership, who have been tremendously supportive, and

TxDOT environmental staff, who are committed to making the program work.

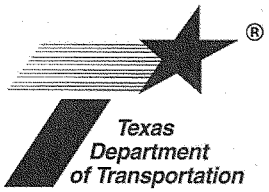
As you probably know, California has been working under full NEPA assignment program since it was authorized as a pilot program 8 years ago. TxDOT is the first to pursue full NEPA assignment under the MAP–21 changes. I know of at least four other states that are pursuing NEPA assignment at this time. They are Ohio, Utah, Florida, and Alaska. The six of our States talk frequently. FHWA has also been helpful in facilitating the conversation between the States on this issue.

Now, I'll transition over to the MAP–21 categorical exclusions and mention one in particular. Section 1316 of MAP–21 created the new categorical exclusion for work done in the operational right-of-way. FHWA finalized the rule for this new categorical exclusion on January 3 of last year. TxDOT has utilized this categorical exclusion about 343 times over the past year. It is sometimes used for routine work where another type of a categorical exclusion may have applied, but we've also used it for larger projects where a more time-consuming environmental assessment would have been necessary without the availability of this categorical exclusion. In these instances, it has been a terrific time-saver. Given all this talk about time savings, you may begin to wonder about compliance or if the environment is being sacrificed in any particular way.

To prepare for NEPA assignment in our program, we made our internal process more rigorous. This was also in part to prepare for the audits by FHWA, as required by the program. I think it's fair to say that our analysis of project impacts and emphasis on regulatory compliance is as strong as it's ever been.

I've mentioned here what I think are the largest MAP–21 game-changers for our environmental program. There are certainly a number of other MAP–21 provisions that we've used and we've found to be beneficial. With the limitation on time, I'll offer up information on these as you see fit or as follow-up, and I'm happy to answer any questions.

[Prepared statement of Mr. Swonke follows:]



Moving Ahead for Progress in the 21st Century (MAP-21) Program Consolidation

Testimony before the US House Oversight Committee

Washington, DC

December 8, 2015

Chairman Mica, Ranking Member Duckworth, members of the subcommittee, my name is Carlos Swonke. I am the Director of the Environmental Affairs Division at the Texas Department of Transportation. Thank you for inviting me to testify on aspects of Moving Ahead for Progress in the 21st Century (MAP-21).

The Moving Ahead for Progress in the 21st Century federal surface transportation authorization bill was passed by the United States Congress on June 29, 2012 and became Public Law 112-141 on July 6, 2012 with President Obama's signature.

For the Texas Department of Transportation (TxDOT), the passage of MAP-21 represented new opportunities to improve and expedite the delivery of projects and services for the public we serve.

MAP-21 included several reforms and changes that greatly enhanced TxDOT's ability to fulfill its mission:

- Expedited project delivery
  Required greater coordination among federal agencies reviewing projects and established firm time limits for federal review of projects. The bill reduced the time limits for filing lawsuits on environmental documents and provided expedited procedures for approval of projects with minimal environmental impact. The bill significantly expanded the number and types of projects that can be categorically excluded from the need to prepare an Environmental Assessment or Environmental Impact Statement, including projects in the operational right of way. Most importantly, MAP-21 made permanent the authority of states seeking to assume responsibility for federal environmental approvals through the Surface Transportation Project Delivery Program.

- Consolidated programs and provided funding flexibility
  Consolidated nearly 60 programs, directing funds to core highway programs. Greater funding flexibility was provided and the Surface Transportation Program (STP) was expanded to include some of the activities of the consolidated programs.

- Strengthened partnerships
  Reserved toll project development decision authority for states/local governments and expanded the ability of states to use federal funds for toll roads for new Interstate capacity. Further, the bill reserved Public-Private Partnership decision authority for states/local governments. The bill also mandated that states determine the toll interoperability protocols, ensuring that drivers can travel from state to state using toll roads with a single universal transponder.

Implementing MAP-21

With the passage of MAP-21, the real work began for TxDOT. We started by identifying opportunities within the legislation to improve project delivery and conserve transportation dollars.

Expedited Project Delivery and Environmental Streamlining

MAP-21's environmental streamlining provisions impacted virtually every project for the department. From major construction projects to minor reconstruction, maintenance and repairs, the legislation created a number of streamlining provisions and expanded opportunities for categorical exclusion that are projected to significantly expedite the environmental review process—saving both time and resources.

My division, the Environmental Affairs Division (ENV) oversees application of the new environmental regulations and policies to the department's projects and programs. To implement the new regulations, we started by coordinating with staff throughout the department to conduct a statewide assessment of environmental review status for current projects to identify those projects that would benefit from the MAP-21 provisions. TxDOT has participated in federal public comment processes related to the promulgation of regulations associated with these provisions, and processes related to federal agencies' reports to Congress. Additionally, TxDOT worked with the Texas Legislature to develop and implement statutory changes required to fully implement various provisions of MAP-21.

TxDOT environmentally approved over 1,800 projects in 2014. The department delivers over $9 billion per year in projects and is highly dependent on an environmental review process that is efficient and predictable. Provisions in MAP-21 helped TxDOT improve efficiency and the predictability of the environmental process. Although we continue to realize significant time savings, compliance and environmental stewardship have not been sacrificed. Our internal approval processes have become more rigorous, meaning analysis and regulatory compliance are as strong as ever.

National Environmental Policy Act Assignment

Section 1313 of MAP-21 made permanent the Surface Transportation Project Delivery Program, which allows states to assume environmental approval authority under the National Environmental Policy Act (NEPA) typically reserved for the Federal Highway Administration (FHWA). In September 2014 FHWA finalized the rule establishing the program. On December 16, 2014, TxDOT and FHWA executed the Memorandum of Understanding allowing TxDOT to participate in the program. The general benefits of the NEPA assignment program come from the removal of a layer of review in the environmental process and the increase in independent decision-making of the State DOT.

Even though we have been in the program for a year, it is difficult at this time to fully quantify the time savings TxDOT has realized. The reason is because larger projects may have an environmental review time that can take several years. As such, we have not had the opportunity to both begin and finish a large project with the NEPA assignment authority. However, we have seen a trend of projects approved with an Environmental Assessment classification taking closer to two years rather than the average of three previous to NEPA assignment.

TxDOT's transition to, and implementation of, NEPA assignment has been successful. We are seeing time savings, our internal program is more organized, and our process more predictable. The success is owed to both TxDOT and FHWA Texas Division leadership who have been tremendously supportive, and TxDOT staff who are committed to making the program work.

Interest continues to grow in the Surface Transportation Project Delivery Program. California has been working under the full NEPA assignment program since it was authorized as a pilot program eight years ago. TxDOT was the first to pursue full NEPA assignment under the MAP- 21 changes. At least four other states, Ohio, Utah, Florida, and Alaska, are pursuing NEPA assignment. TxDOT regularly communicates with those states so they might benefit from our experience.

Categorical Exclusions

In addition to adding categorical exclusions for limited financial assistance and emergency rebuilding, MAP-21 created in section 1316 a new categorical exclusion for work done in the operational right of way. FHWA finalized the rule for the new categorical exclusion on January 13, 2014. TxDOT has used this categorical exclusion 343 times over the past year, sometimes using it for routine work where another type of categorical exclusion may apply. But, more importantly, we have also used it for larger projects, when appropriate, where a more time-consuming Environmental Assessment would have been necessary without the availability of this categorical exclusion. In these instances, it's been a terrific time saver.

Program Consolidation

The bill's consolidation of funding programs eliminated nearly 60 transportation programs, many of which were only applicable to a limited number of states and a tiny fraction of the nation's infrastructure projects. With funds targeted toward core funding programs, TxDOT can now focus our federal dollars on our priority projects. In addition, the legislation's funding flexibility provides our state with the ability to shift resources to accommodate our changing needs and growing population. TxDOT applied MAP-21 revisions to our portfolio of pending and developing projects. The process involved the identification of projects and priorities, the coordination of project readiness and funding availability, the tracking of time limits and restrictions applicable to available sources of funding, and processes related to SAFETEA-LU set-aside programs that were collapsed into larger programs under MAP-21.

Overall, the collapsing and consolidation of many small pots of funds into larger, core pots has been hugely beneficial to TxDOT. By breaking down funding silos, TxDOT and Metropolitan Planning Organizations (MPOs) across Texas can use maximum flexibility in prioritizing projects and shifting funds to where they are needed most.

Under MAP-21, most funding is dedicated to certain core programs, which are outlined below.

The **National Highway Performance Program** (NHPP) encompasses the functions previously included in the Interstate Maintenance, National Highway System, and Highway Bridge programs. MAP-21 expanded this program to include not only the existing National Highway System, but also all principal arterials, the Strategic Highway Network, international border crossings and intermodal connectors. MAP-21 established a performance basis for maintaining and improving the National Highway System. States are required to develop a risk- and performance-based asset management plan for the National Highway System to improve or preserve asset condition and system performance. The Secretary of Transportation is to establish performance measures and states will establish targets for these measures. MAP-21 also requires minimum standards for conditions of Interstate pavements and National Highway System bridges.

The **Surface Transportation Program** (STP) includes previous STP functions plus the Off-System Bridge Program. MAP-21 continues the STP and provides flexible funding that may be used to preserve or improve conditions and performance on any Federal-aid highway, bridge projects on any public road, facilities for non-motorized transportation, transit capital projects and public bus terminals and facilities.

MAP-21's **Transportation Alternatives Program** (TAP) includes the functions previously included in the Transportation Enhancement, Safe Routes to Schools, and Recreational Trails programs. Planning, designing, or constructing roadways within the right of way of former Interstate routes or other divided highways is also included as eligible uses of TAP funds. Allowing TxDOT to flex our 50% of TAP funds has meant we can use these limited dollars on core projects.

MAP-21 continued the **Congestion Management and Air Quality Program** (CMAQ), which provides a flexible funding source for transportation projects and programs to address air quality, while adding new performance-based features. The bill directs the Secretary to establish measures for states to assess traffic congestion and on-road mobile source emissions. Metropolitan Planning Organizations with Transportation Management Areas with populations greater than one million representing nonattainment or maintenance areas are required to develop performance plans to for congestion reduction and for air quality.

MAP-21 doubled the size of the **Highway Safety Improvement Program**, and maintained the program's previous structure. However, the program now requires each state to regularly update their existing Strategic Highway Safety Plans with strategies to address key safety problems. States will set targets for the number of serious injuries and fatalities and the number per vehicle miles traveled. While MAP-21 eliminated the requirement that states set aside funds for High Risk Rural Roads, a state is required to obligate funds for this purpose if the fatality rate on such roads increases. The bill retained $220 million annually per year for the Rail-Highway Crossings program.

MAP-21 made numerous changes to the **Metropolitan Planning** process. MPOs and States are required to establish performance targets that address national performance measures established by the Secretary. MPOs are permitted to develop multiple scenarios for consideration in development of the metropolitan transportation plan.

Toll Interoperability

With the current state of transportation funding, many states have turned to tolling as a means to finance infrastructure our growing populations require. Texas is no exception. And, MAP-21 expanded the ability of states to develop tolling programs to be used in conjunction with federal funding. TxDOT staff participate in interstate working groups to ensure timely compliance with MAP-21's provisions requiring implementation of interoperable toll collection programs by October 2016.

TxDOT has taken a leadership role by investing in triple protocol Radio Frequency Identification Readers (RFID). TxDOT has asked its current toll equipment vendor to provide TxDOT a level of effort, both cost and schedule, to modify firmware or hardware in its current RFID toll lane readers to be able to read the three most common RFID protocols. The Texas A&M Transportation Institute (TTI) is currently testing triple protocol RFID readers.

Other states, freight providers, border crossings, and ports use several different RFID protocols that are not currently used by Texas toll agencies. Texas plans to adopt RFID readers that can read the three most common RFID protocols to ensure Texas is the most freight- and trade-friendly state for firms to do business in and with.

TXDOT/FHWA Implementation Working Groups

Early in the implementation process, TxDOT staff formed working groups with staff from Texas FHWA and USDOT to ensure our organizations have a coordinated, collaborative, and focused approach throughout the rulemaking and implementation process. The implementation working groups cooperatively analyzed and evaluated priority initiatives within MAP-21, identified opportunities and addressed challenges to ensure common goals for shared infrastructure investments are met.

These FHWA/TxDOT joint working groups focused their efforts in the areas of environmental streamlining, freight, performance measures, and program consolidation. The groups began meeting in 2012 and have continued to meet throughout the MAP-21 implementation process.

Thank you again for the opportunity to testify, and I am happy to answer any questions you may have.

Mr. MICA. Thank you all. We have about 3 minutes before we are going to have to go vote, and you might want to get a—yes, I was going to say you might need a little bit more time.

I understand also, Mr. Swonke, you may have to leave to catch a plane. Is that true or ——

Mr. SWONKE. No.

Mr. MICA. You are okay?

Mr. SWONKE. I'm okay.

Mr. MICA. Oh, good. You are going to have dinner with us. Thanks.

Okay. Well, we are going to recess in just a minute and I want to pick up with questions. What have we got? So let me think, probably recess for about a half-hour. Yes. Probably recess for about a half-hour. We will probably have two votes. If you could sort of be back around a little after 3:00, we would appreciate it, and then we can get to the questions. So we will stand in recess until that time and appreciate your indulgence. Thank you.

[Recess.]

Mr. MICA. I would like to call the subcommittee hearing back to order.

And, unfortunately, this is going to continue this afternoon for a little while, these interruptions, but we do want to proceed. And I will make sure and we will keep the staff advised as to how much time we consume with questions. But we will go to some questions, and I will start. And then we will afford Ms. Duckworth or the minority as much or more time, whatever they need.

This is sort of a meat-and-potatoes hearing. It is not a flashy one with indictments planned, at least this week. But in any event, the purpose of it is, again, as we pass MAP–21, our intent was there to try to discontinue some programs at the Federal level or consolidate programs. I have a status of MAP–21 consolidation. Do we have copies of this that we can give to the witnesses? Maybe we could. But it says 52 programs identified by DOT has being affected, some 31 programs were allegedly discontinued, and then it says 15 programs consolidated into other programs. Two programs' eligibilities included research programs to program set-aside and one program with many eligibilities contain transportation alternatives and one program continued substantially changed.

Now, we heard Mr. Echikson talk a little bit about what DOT had done. I asked a question as to how—and he described some time setting standards that he basically also testified that basically they had finished most of that setting the standards, if says needed time to set standards, and then you testified it is now completed or it has been completed for the most part, and personnel were used in that process.

So far, we can find only about 20 FTEs that may have been eliminated. Maybe you could tell us where we are now. In your testimony you spoke to, again, some positions being needed to get us to where we are and where we might go. That is a long question but maybe you could respond.

Mr. ECHIKSON. Well, what MAP–21 did, the way I like to think of it is you had a pie, Federal-aid highway pie. It's 40 billion, 41 billion, now 43 and increasing. Before MAP–21 there were 50-odd programs so you have 50 slices of that pie. Now, post-MAP–21,

we've got six or seven slices of the pie but the pie itself is the same size. The types of projects that are being done are the same size. So while the programs were consolidated or sometimes eliminated, all the projects that we're overseeing and all that work in terms of providing stewardship and oversight to the states continues. So it really doesn't affect our FTEs.

Mr. MICA. Some were devolved to California and Texas, for example.

Mr. ECHIKSON. Well, that's correct, under our provision where we assigned NEPA to Texas and to California. The people who were responsible for doing that work, that was some of the work they were responsible for in our field offices. They have now other work that they do to oversee the State program.

In addition, in both California and in Texas, we still are ——

Mr. MICA. Has there been no diminish in personnel needed for Texas and California?

Mr. ECHIKSON. There ——

Mr. MICA. Because they are pretty big states. I mean Texas just testified 1,800 projects. Is that correct?

Mr. SWONKE. Yes, that is correct. Yes, in the past year.

Mr. MICA. Okay. You actually came into play about a year ago ——

Mr. SWONKE. Exactly.

Mr. MICA.—the approval.

Mr. SWONKE. Yes.

Mr. MICA. But that took over 2 years to get the approval, right?

Mr. SWONKE. It was approaching 2 years, yes ——

Mr. MICA. Yes.

Mr. SWONKE.—when you start with our State legislation, too, the MOU, yes.

Mr. ECHIKSON. Right, so we negotiated—I think we had to promulgate the rule. They had to agree to waive sovereign immunity, and then it took about a year with Texas really being the first one we had in the post-MAP–21 where we had one of these MOUs. We're nearly final with Ohio and we just last week received an application from Utah. And so I think with Texas paving the way we've ——

Mr. MICA. Okay. You have answered some questions. I know Florida was trying, when Ananth Prasad was the Secretary, to take over the IJR, interchange justification process report, at the state level, and I think another State had already done that. Has Texas taken over IJRs?

Mr. SWONKE. Texas has not taken over the IJRs yet.

Mr. MICA. Well, and he told me it was just a few months. Now, he has been gone a year, and I asked most recently Florida if that had been taken over, and they said no. What is the story there in trying to get more approvals done? A lot of what we looked at, too, in the permitting, the same requirements were at the state level that were at the Federal level, so we were just going over the same thing at the Federal level, whereas we were trying to get the State to assume that. And then you set the standards. They had some approval process, but it hasn't worked out exactly the way we intended it because we still have almost as many Fed people working on the projects as we had before.

Mr. ECHIKSON. Well, we have devolved in Texas in particular, you know, a lot of the responsibilities. And IJRs, I'm going to need to get back to you. I don't know the specific story as far as ——

Mr. MICA. Do either of these guys know, your ——

Mr. ECHIKSON. That's not really their area ——

Mr. MICA. No? No?

Mr. ECHIKSON.—of responsibility ——

Mr. MICA. Okay. Could you ——

Mr. ECHIKSON.—but we can get back to you.

Mr. MICA. Yes.

Mr. ECHIKSON. Sure.

Mr. MICA. But, again, trying to devolve as much as we can to the states, we don't have to eliminate positions but through attrition we can absorb some of the positions. But somehow, it doesn't seem like our original intent to consolidate, to eliminate as much of the Federal role. And again, you have got a couple big states now taking that over. Ohio is a good-sized State, maybe Florida, Utah. But at some point the rules have been set. We don't need all of those rule-setting people.

Is it correct that there are only about 20 positions that have been eliminated?

Mr. ECHIKSON. Well, I would not tie any elimination of positions to MAP–21. We have in fact reduced our FTEs ——

Mr. MICA. That is not good news.

Mr. ECHIKSON. As I explained, the purpose of MAP–21—or we see it as there was a reduction in the number of programs, but our responsibility is to oversee the Federal-aid Highway Program remained. And it still requires—we've got fewer people now overseeing a larger program.

Mr. MICA. Well, only larger the last week?

Mr. ECHIKSON. Well, $42 billion program and ——

Mr. MICA. And that should be overseeing at a smaller level because you have two big states which now have more responsibility at the local and State level than they do at the Federal.

Mr. ECHIKSON. They have responsibility to do their NEPA work, their environmental work, and we no longer in California and to some extent in Texas—there's a transition period because we're still carrying on some projects. Those people's responsibilities have been—we no longer have people doing that. They're exercising other responsibilities to oversee the program.

I'd also point out in Texas and California and in any other State border projects, projects that cross state borders or international borders, remain the responsibility of FHWA.

Mr. MICA. You can see that, but again, I don't know, maybe we need to get an inspector general to look at what is going on. Maybe we need sort of an analysis of what can be done as effectively at the local level with some Federal check-offs. Or, again, you testified you had set standards and that work is now complete, and you don't see any possibility of reducing the personnel?

Mr. ECHIKSON. I wouldn't tie it to that. I think a lot of the work we've done to implement the project—I mean, we've implemented rules, issued guidance, particularly those that had statutory deadlines ——

Mr. MICA. And that is done.

Mr. ECHIKSON.—to expedite delivery of projects and ——

Mr. MICA. That is done. Now, you would audit—it would be more of an audit or from time to time modifying those rules, but it doesn't seem like you need the full-court press of Federal bureaucrats doing that.

Maybe Mr. Swonke—I am telling you it was very difficult to get anybody to come and testify. They are all terrified of DOT. And now, with authority for 5 years, they are afraid you all are going to hammer them if you come and say something. I don't like that at all. If I have to put bags on their head and subpoena them and bring them in here, we are going to find out what we can do more efficiently getting information from people who were seeing it.

But I go back to the district, in Florida, I go around the country, and I am hearing the same thing. The Feds still have our—they are just moving the red tape around, and the intent and purpose of MAP–21 wasn't just to do that. So I don't know if you want to comment and risk all of your Federal funding, Mr. Swonke. Go right ahead. What are you seeing?

And actually, this is a good news story because they have taken it—and a tangential question, have you all sent out anything to the State DOTs saying that we now have completed the rules, we now have these things, standards in place, and that you can do such-and-such?

Mr. ECHIKSON. Well, we ——

Mr. MICA. Has there been such a communication?

Mr. ECHIKSON. We have been in constant—we're constantly in communication. We have an office in every State that works very closely ——

Mr. MICA. But if you have a letter ——

Mr. ECHIKSON.—with the State DOTs ——

Mr. MICA.—that has gone out to them, I would like to see that as part of the record, okay?

Mr. ECHIKSON. Yes, Sir.

Mr. MICA. If I you haven't, well, maybe the staff—we can ask Secretary Foxx to get something out because it does take a while to get the rules of the game in place. The rules are in place, and now, we want folks to know what the opportunities are, relieving some of your responsibility. You could probably do great things in Washington, and again, we could also eliminate some of the red tape.

But back to Mr. Swonke, tell us your experience and where you have been. You have seen the process and then what do you see is the potential?

Mr. SWONKE. Yes. I think, first off, getting into the program, the NEPA assignment program, you know, there is that time frame, but I think Tom did explain well that we started into or towards pursing the program prior to the final rulemaking. And that was, you know, with the approval and the working relationship with Federal highways that we had, moving towards that, saying we'll work with you to apply—to get your application going despite the rules not being finalized yet. And so we very much appreciated that working relationship.

And so that, combined with our internal process, reworking and waiting for the final rule to come out and then getting our MOU

executed, I think, you know, that should—is probably not the typical time frame for the—to gauge what it takes to get entry into the program because we were first and we were started before the final rule was in place.

Working with our FHWA should be a division office and headquarters as well. They were very supportive in getting us into the NEPA assignment program. And so the—you know, especially from the headquarters level, their cooperation and their understanding of getting us ready, I think, is something that we would describe as a partnership. So I would say that that has been a—that was a positive experience.

Mr. MICA. Okay. And do you see the potential for this—well, for your role in taking on more responsibilities, is that possible? Do you think you will need additional legislation to accomplish that? And is there anything in the new legislation you think that will help you move forward even faster?

Mr. SWONKE. I think the way it is laid out that now the application process in the MOU is very workable in the states that I mentioned earlier that are pursuing it now, have moved along fairly quickly. You know, the MOU that we negotiate or worked with Federal highways with has been used as a template moving forward and ——

Mr. MICA. Okay. Is that the same that California is using? Are they both—other than the names, but are they basically the same?

Mr. ECHIKSON. There are some differences because California was in a pilot program before MAP–21, and we're actually in the process of renewing California's assignment and ——

Mr. MICA. And you have one MOU that would be available for the states that want to sign up?

Mr. ECHIKSON. It is absolutely—I think what we'll see in Ohio is very, very close. There's a ——

Mr. MICA. And how long would the ——

Mr. ECHIKSON.—distinction ——

Mr. MICA.—Ohio approval process—you said about a year for ——

Mr. ECHIKSON. For our process?

Mr. MICA. Yes, to do the MOU and ——

Mr. ECHIKSON. Well, the MOU itself was probably close to a year, maybe 10 months or so. But again, there were some exceptional issues with that.

Mr. MICA. Okay.

Mr. ECHIKSON. So Ohio, I believe we received the formal application in April, and we're—it should be done by the end of this year. So that's a shorter period of time, and I anticipate with the recent application from Utah that we will move promptly.

There is a process that has to go through. There's a public input ——

Mr. MICA. Right.

Mr. ECHIKSON.—that needs to be sought and so on, but I think the process has reduced. And everybody sort of understands, as Carlos explained, the states are in contact. They know what we're looking for and what's expected of them. And we also assist them. We provide training on certain steps that they need to take respon-

sibility for, how to do legal sufficiency reviews, how to do, you know—and we train them in how to do the work well.

Mr. MICA. Mr. Zachry, what have you seen from the road builders' standpoint? How is MAP–21 doing? Maybe you have seen some experience now in Texas and California. Are you seeing—now, some of you did testify that, let's see, California has sped up the process. I don't know how much. Texas, you said, about 25 percent of the time was whacked off?

Mr. SWONKE. That's what we're looking at. Again, we're still looking at that data but it looks like we can—we're—we should be able to achieve 25 percent. And that's essentially what California has documented for their reduction in time is about 25 percent.

Mr. MICA. And what are you hearing from your contractors and road builders, Mr. Zachry?

Mr. ZACHRY. Mr. Chairman, we—what we hear is—and what we see, and speaking as a contractor in Texas, not in the capacity as the chairman of ARTBA, what we see is, frankly, more projects coming to bid, coming out to be executed. Again, speaking on my own personal behalf, I don't know exactly which of those projects a categorical exclusion was used on, but they tended to be smaller projects for which that would be an appropriate usage, and there've been—the number of projects has increased quite a bit ——

Mr. MICA. Yes.

Mr. ZACHRY.—in the last 12 to 18 months.

Mr. MICA. But the expedited categorical is—well, that is expedited also and handled under your MOU, right, and California's. But in general, we have also allowed for an expedited categorical exclusion for the Department, right? What are you seeing there, Mr. Echikson?

Mr. ECHIKSON. Well, we have completed all the rulemakings and issued new categorical exclusions. We have programmatic ——

Mr. MICA. When this ——

Mr. ECHIKSON.—agreements with the states where ——

Mr. MICA. How long has that been in place?

Mr. ECHIKSON. I'd have to get back to you, but I believe the rule was—the final rule was issued about a year ago ——

Mr. MICA. So that took about 2 ——

Mr. ECHIKSON.—but I can ——

Mr. MICA.—years to get that in place. And maybe again, staff, we can ask either inspector general or GAO to look at—probably want to try to get a year snapshot and see what improvements have taken place again. And our intent was to try to eliminate red tape, to try to speed up the process.

We base some of this, you know, on that—was that Highway 35, the bridge collapsed, and I stood on the bridge with Members. We, Mr. Oberstar and I stood on the Floor right after the bridge collapsed and said we would work together to expedite the replacement of that link in the interstate. And I think 435 days later I stood with about a dozen Members of Congress on the bridge, and that was how many days it took to replace that bridge, to finish the project through permitting, through construction.

And that was the beginning of a working relationship with Ms. Boxer and other—California has some of the toughest environmental laws and regulations in the country. But we said if you

could do it there, you should be able to do it anywhere. And what we did is we replaced an unsafe bridge with a safe bridge. The bridge that was built many decades ago was not built with any considerations like we have today for the environment. So we stopped dumping polluted water and runoff into the Mississippi River. We actually improved the quality of the natural waters, a safer bridge, and we did it in record time, which also saves a record amount of money because a lot of the—instead of building structures, you are paying for red tape and process. So that was one of our models.

And then California was a great example because California has been hit with natural phenomena of earthquakes, and in fact, they have had to rebuild things. And they do it in the best fashion, environmentally sensitive attention, and also in rapid fire, which is what we are trying to speed up.

I have more questions but I have been rejoined by our ranking member. I am only 14 minutes over. Is that—so you have got plenty of time just to—I will let her ask some questions and we will try to keep it moving.

Ms. DUCKWORTH. Thank you, Mr. Chairman. I apologize for my late return. I was under the impression we were going to do another vote right away so I was sitting there and they say, oh, no, no, no, 10 minutes so they will probably interrupt us.

But I would like to discuss the need for significant investment. MAP–21 was important legislation, and now that it has been replaced by the new long-term reauthorization, the FAST Act, I sort of want to be sure to continue the spirit of investment.

In the Chicagoland area, we have 200 bridges that have been deemed—and I probably am not getting the technical terms correct, but unsafe but okay to be used or substandard but okay to be used. And I wonder what that means, and I would like to know where those are so that I don't drive over them or have my baby over them.

But, Mr. Echikson, can you explain, you know, why the 5-year legislation with consistent funding is important to enabling states to move forward with transportation projects, especially when you have something like 200 bridges? You can't really—you know, my understanding, you can't really replace them all, but to sort of look at the long-term effect of the importance of this type of funding for State and municipalities in terms of infrastructure projects.

Mr. ECHIKSON. Well, having a long-term bill provides stability, certainty so that states and localities can do their planning. And even on particularly larger projects, they know the money is going to be there.

I would agree with you that FAST is a start. We—there's a 2013 Status of the Nation's Highways and Bridges Transit Conditions and Performance Report that was submitted to Congress, and as of 2010, the backlog of unmet highway and bridge needs has grown to—had grown to about $800 billion. Addressing that backlog would require about $145 billion per year. We as a nation spend about $100 billion per year. So we're not even keeping up with that need.

FAST is absolutely a great start. It provides that certainty. But I would agree more funding, as we had proposed in the GROW AMERICA Act, is needed.

Ms. DUCKWORTH. Mr. Zachry, with the capability that we have, if we were to, you know, be able to fund as much as we want with the capacity for bridge builders and road builders, how long is it going to take us to actually invest and actually do the work if we were to go after, you know, all of the infrastructure, the bridges and the roads in this nation? I mean I would think that the sheer volume of what needs to be done, even if we threw a ton of money at it, it is going to take a while.

Mr. ZACHRY. It would take a while. I have actually never even in my wildest dreams thought about that scenario if there was so much money to do it. You know, you've got issues of workforce development and the skills to actually go out and execute the work, the public entities, the DOTs. FHWA has to administer it and track it. You've got all of the permitting processes that have to go through. If you had an unlimited amount of money to go and try to address it, it would likely still—it would still take you a decade to—or something—I'm making up a number.

Ms. DUCKWORTH. Right. Right.

Mr. ZACHRY. It would take many years. And remember that every time you put a road or any transportation system, an airport, anything in service, it immediately starts to degrade. And so you've also got maintenance costs as the system gets expanded. You have an ongoing maintenance requirement that in a lot of states is as significant as a capacity expansion requirement or greater. And so it's—just because we're spending more money doesn't mean we're not going to have to continue to spend more money.

Ms. DUCKWORTH. Can you compare where we are to other nations that we would be competing against? You know, we have talked extensively about the fact that the lack of investment in our infrastructure is something that is actually hurting our economy where we are not able to—it is costing us money, it is costing commuters money, it is costing businesses money. But, you know, in your position as head of your organization, can you talk a little bit about what is happening internationally and where do we stand in competition with countries that are, you know, our economic partners but are also our competitors, places like, you know, Europe and Asia.

Mr. ZACHRY. I don't have that information in front of me but I'd be happy to get that for you.

Ms. DUCKWORTH. Okay. Does somebody else ——

Mr. ZACHRY. I know the general discussion is that in certain countries, emerging countries, in China and others, that they spend a greater percentage of their GDP on infrastructure than we do in the U.S.

Ms. DUCKWORTH. Okay. Thank you. Mr. Echikson, can you address that a little bit and maybe describe briefly the master performance goals established by MAP–21 for the Federal highway programs as well?

Mr. ECHIKSON. I would need to get back to you on how our expenditures compare with other nations, but I'm sure we have that information and we'll get it to you.

The national performance measures is—well, we've done a series of rulemakings. We have proposed all the rules save one. We're hoping to get that out in the first—so there's six total rules. The

last one hopefully will be in the first quarter of 2016. We're moving to finalize the first Performance Management Rule, which deals with safety. And the second Performance Management Rule should also be some time in at least the first 6 months of 2016. And then there's associated rules. There's an update to the Highway Safety ——

Mr. STEPHANOS. Improvement.

Mr. ECHIKSON.—Improvement Program, thank you. And also our Planning Rule ——

Ms. DUCKWORTH. So ——

Mr. ECHIKSON.—an Asset Management Rule, excuse me.

Ms. DUCKWORTH. So once you have completed your part on the rules, how long do the states have to establish the—I mean how long do you have after you have established performance measures for the states to implement their targets?

Mr. ECHIKSON. I'm going to turn this one over to Mr. Stephanos, who could probably answer that more accurately than I could.

Mr. STEPHANOS. They have one year from the effective date of the final rules to establish targets.

Ms. DUCKWORTH. To establish targets. And ——

Mr. STEPHANOS. And ——

Ms. DUCKWORTH.—do you have, as part of the rules or how long—how far out they can make those targets?

Mr. STEPHANOS. We've proposed that the two—there's three rulemakings that propose the measures. Two of them have been issued as proposals. So for the safety rule it's one year, so they're setting safety targets for the end of the next calendar year. And then for our pavements and bridges, they're setting targets looking out two and four years. But in both cases those targets need to be incremental steps that lead towards longer-term expectations that would be documented in their long-range plan or asset management plan.

Ms. DUCKWORTH. So you will set the maximum measure for the target, right, the time period that they can take. Is that what you would consider the baseline or is that just the maximum? I guess my question is do you establish a baseline and then say, okay, here is the baseline for this particular target but you can take longer but we prefer this to be the baseline? And once the targets are set, can you modify them?

Mr. STEPHANOS. Yes, I'm sorry. I may have misunderstood your ——

Ms. DUCKWORTH. Okay.

Mr. STEPHANOS.—question about timing. When I was referring to the time frame, it's the time horizon that they're setting the target to so ——

Ms. DUCKWORTH. Right.

Mr. STEPHANOS.—for example, they want to reduce fatalities by a certain number by the end of the next calendar year. The base that—we aren't through rulemaking establishing any minimum standards of what that target shall be. The baseline that they base the target on is documented—is proposed in the rulemaking, what they already use and where that data is to come from. It would be the most recent data that they would have had available and that we have available in the national data source.

And then they do—to answer your second question about adjusting that target, for the safety target for 1 year we're proposing that they don't have an opportunity to adjust that. They set it and they're held accountable to it. But for the payment bridge targets, the four year target that they would be setting at the two year point they have an opportunity to adjust those targets. How they adjust them and why they adjust them would be documented on a website so there's transparency. And then this would recur every two years after that point.

Ms. DUCKWORTH. Okay.

Mr. ECHIKSON. If I could just add, it's—just to be clear is we set the measure so ——

Ms. DUCKWORTH. Okay.

Mr. ECHIKSON.—fatalities, rate of fatalities, the number of fatalities, it is the State's responsibility to set the target in the manner that Mr. Stephanos just described.

Ms. DUCKWORTH. If that happens and they fail to meet the target, what happens? What are the consequences of a State meeting a target that they themselves set to try to meet your measure? What are the consequences?

Mr. ECHIKSON. It depends on the target, but for the safety target, if they fail to make significant progress towards that, they would have to invest certain amount of money to improve their performance there.

On some of the other targets, pavement, bridges, and some of the performance management 3, the congestion and freight and air quality, they may have some reporting requirements, so additional reporting requirements. And under the FAST Act, which we're just trying to get a handle on, there's a new—if they fail to meet the freight target, they need to provide a report explaining how they're going to achieve that target in future years.

Ms. DUCKWORTH. Would their funding be affected? Because here is the thing that I am worried about, right: Illinois is a State that is on the verge of bankruptcy. We are in deep financial trouble. So you could have a State like Illinois that has set a target but finds that it is not meeting—does not have the funds to meet that target. But then can the Federal funding then be cut as a result of them not meeting their targets, which puts them further in the hole?

Mr. ECHIKSON. No, their funding is set by statute. They will get the same amount of money.

With respect to the safety provisions, if they fail to meet their safety targets, they'll have to just spend more of that money to address those safety issues.

Ms. DUCKWORTH. So that is how you would enforce the State targets is the statute has that mechanism in it?

Mr. ECHIKSON. Correct.

Ms. DUCKWORTH. Okay. Is there any incentive for states to exceed their targets? What if they do really well, or to encourage them to pursue more ambitious targets?

Mr. ECHIKSON. We think—and again, I might have Pete expand upon this, but we—you know, we're trying to be as transparent about this as possible and so we're setting—I think the plan and idea is that a lot of this information is going to be out there in the public. So if a State fails to set an adequate target or sets a very

easy target, that information is going to be available to the entire public. So I think there's an incentive for the states just based on that—you know, having all of this information be transparent to try to set targets both that are realistic that they can achieve but that are ambitious as well.

Ms. DUCKWORTH. Do you feel that the—and anyone on the panel can answer. Do you feel that the deadlines set in the legislation in the MAP–21 were too ambitious?

Mr. ECHIKSON. Well, I think, as the GAO reported, some of the rulemaking, particularly in the performance management area, were very ambitious. It was developing a whole new program, new standards, new methods, new data. We're moving through that, and as I said, I expect at least within the next 6 months we will have two of those three performance management rules final, and we'll have the other one proposed. So, yes, they were very ambitious. We're working as expeditiously as we can to complete them.

Ms. DUCKWORTH. Well, I am encouraged to hear about the progress that is being made with the rulemaking. I think it is important to balance a need to have rules promulgated in a timely manner, as well as the need to ensure that the rules are actually carefully vetted and stakeholders are given the opportunity to express their views. So I thank you for the hard work that you are doing.

I yield back, Mr. Chairman.

Mr. MICA. Well, thank you. You know, I was reading the letter that you all sent us September 22 and looking at the projects, and then you had listed projects—I mean not projects but programs that you had consolidated or eliminated. I count 12 programs that say not continued under MAP–21 program is spending down prior balances. So I count 12 that would be eliminated at the federal level. Is that right, Mr. Echikson?

Mr. ECHIKSON. That's correct. The states are responsible—that money is still available for the states to spend, and they—you know, we're encouraging them and working with them to ——

Mr. MICA. Would we say after that this could result in some reduction in positions at the Federal level?

Mr. ECHIKSON. Again, with all due respect, the size of the Federal-aid Highway Program hasn't changed. The eligibilities for these different programs are now captured under, say, the Surface Transportation, the STP program, a lot more flexibility for the states to focus those expenditures as they deem appropriate.

Mr. MICA. But it doesn't require the same Federal oversight? All of these—maybe you could send us, too, a list of who was involved in those positions previously, and then where they have been absorbed to.

Mr. ECHIKSON. I can see what we can get you, but we're not organized by program. We're organized by function. So we have people ——

Mr. MICA. Okay. Well, function, the Appalachian Development Highway System, it says not continued under MAP–21. So was there somebody in charge of that before? I can get your old directory and look these people up.

Mr. ECHIKSON. There may have been somebody in charge of that program but ——

Mr. MICA. Do you guys know, the two—was there somebody in charge of that before, people in an office? Was there an office?

Mr. BEZIO. That was a function within an office. There was a person that—one of their collateral duties was to oversee the Appalachian Development Highway System ——

Mr. ECHIKSON. Yes.

Mr. BEZIO.—and they still do so. Those balances are out there for states that—balances are available until expended, so those balances will spend down over many more years going forward. So it's one of their many collateral duties in their office ——

Mr. MICA. So you can't really get rid of a program per se?

Mr. BEZIO. You—it—eventually, it'll be eliminated ——

Mr. MICA. Yes, that is what I am saying ——

Mr. BEZIO. It eventually will be ——

Mr. MICA.—but that was 3 years ago. This is, last time I checked, 2015, 3 years.

Mr. BEZIO. Right.

Mr. MICA. I am not sure if we took care of this in new legislation. I am sure we didn't. But I have got at least a dozen here you reported to me on that situation, not to mention—consolidation I can see, consolidated with another one. But this says spending down prior balances and how long they would go. We don't do earmarks anymore, so I have got to find out from the Transportation Committee your progress in spending these balances down.

Now, I could have probably—Mr. Echikson, I could have probably given a better case than you did on what you have done. If you go back and look at what you sent me—I should put this in the record and I will for you.

Mr. MICA. In 2003 you had 2,366 FTEs. We were administering $30 billion, 31. It was 30.8. In 2012 you had $40 billion and you had 2,302, which is fewer people than in 2003. See, I would have touted that. Tell Foxx that you guys need to tout yourself on that kind of stuff. But then in 2014 that is where we went down to 2,281. Now, what I would like to do is to either have GAO or the IG come back and tell us—you are telling us how many projects you work on, and I think we need to look at those. This is dollars. What are you going up to in this program under MAP–21 for the next year, do you know, Echikson?

Mr. ECHIKSON. I believe it's around $43 billion.

Mr. MICA. So it is going up $3 billion. But I want to go back and look at anecdotally and chronologically the number of projects that were involved. So let's get that from either them or the IG or GAO when we do this little report. So we will see how many actual projects you were doing. You have $3 billion more. Well, it is only $1 billion more because it is 42 currently. And then we will look at these dozen programs and how long the spending down of prior balances is expected to continue. Maybe we can get the prior balances for all of those programs. So those are some of the things we would like to see.

Now, I have a couple of other questions. In the bill we opened the door for—and here you go, Echikson. Again, this gave you some new responsibilities under public-private partnerships. I am familiar with the one we have in central Florida, which in record time was open. I hope it wasn't just because I was Chairman. But we

are doing a $2.4 billion adding tolls to the center median. We kept free lanes free. As the federal Government, my philosophy is the Federal taxpayers already paid for them so we shouldn't be charging for them again. But we said the right-of-way inside medians, some of those assets could be converted as long as they were adding capacity.

Now, we had the $2.4 million central Florida project. Maybe Zachry or Echikson, some of you guys might know how many others have taken advantage of a similar expansion of capacity through a public-private partnership. And that would be—Echikson, here is where you pipe in and you say, well, we have new responsibilities like your new road in central Florida, Mr. Mica. We add that in. Any idea, Zachry?

Mr. ZACHRY. I don't have a number, Mr. Chairman ——

Mr. MICA. If you do, maybe you could check that, get it back to ——

Mr. ZACHRY. Yes, sir. Absolutely.

Mr. MICA. I would like to see did that have an impact. I know it did in my community. I have heard of several others looking at that option.

Echikson, do you know anything about it?

Mr. ECHIKSON. Well, our TIFIA office works very closely with—and has helped in ——

Mr. MICA. You raised TIFIA and I did a billion in TIFIA, didn't we? And I think it went down by 60 percent. Can you tell us what ——

Mr. BEZIO. I believe it's $287 million in the FAST.

Mr. ECHIKSON. Yes.

Mr. STEPHANOS. Yes.

Mr. MICA. Yes. So it has actually gone down. Did we spend out the billion in TIFIA?

Mr. BEZIO. It is not fully spent down but I ——

Mr. MICA. That is one of those ——

Mr. BEZIO.—have information in front of me.

Mr. MICA. But obviously, there isn't as much money available. I am not happy about that. That was a real screw up they did ——

Ms. DUCKWORTH. Yes.

Mr. MICA.—transportation infrastructure financing.

Ms. DUCKWORTH. They are not spending it.

Mr. MICA. Well, and that is another good question for these guys is finding out how many TIFIA programs they had, how many people were involved, and how much was spent down and how much was unspent. They may have done that in taking the money down. I don't know if that was a reason. At one time I heard there were four or five times the dollar number of requests that we had or even more, but now we have lessened that. Do you know anything about that, Zachry?

Mr. ZACHRY. Well, sir, I've heard that same general statistic that you had. I saw something recently about the percentage of TIFIA funding that was utilized by each State. And I think the largest was actually Texas that had availed itself of 20 percent of the total program dollars from TIFIA. But again, I don't know how many specific projects were tied up with either TIFIA or on a P3 basis.

Mr. MICA. Okay. Well, and does anyone know anything more about the public-private partnerships, any information on that?

Mr. ECHIKSON. I have a little more information ——

Mr. MICA. Yes, go ahead.

Mr. ECHIKSON.—which is you mentioned the I–4 project.

Mr. MICA. Yes.

Mr. ECHIKSON. I think that was what you were referring to. We've used P3 projects on the Goethals Bridge, the Portsmouth Bypass in Ohio, and SH–22 is now—or 288, excuse me, is taking advantage of the P3 process. On TIFIA we have 59 TIFIA loans that we've closed. So it has been a very effective project.

Mr. MICA. Yes.

Mr. ECHIKSON. We're fully supportive of public-private partnerships.

Mr. MICA. Well, see, and, Echikson, next time you come in and say, oh, Mr. Chairman, because of your great work on MAP–21 and you put more into TIFIA, we did 59 projects that required more personnel because of what you did on the public-private partnerships. You have got yours in Orlando and then you just named the others, make sure to get a list of those because I want to use that. But that does take more personnel, too.

I don't mind giving DOT additional personnel, but also our intent was to try to devolve as much as we could of the red tape that Mr. Swonke talked about that I can't get the others to come and testify on that you are still imposing because some of those folks have stayed in DOT even though we have tried to devolve some activities, as many as possible to the local level, and they have a new role justifying their existence. And that is what concerns me. Do you see my point?

Mr. ECHIKSON. I do but I would say we're fully supportive of the devolution of certain requirements. The CEs, the states are responsible for all these CEs. They have to report to us but there's not much—there's limited oversight by FHWA except when they tried to create a new CE. But on the CEs that were developed in the statute ——

Mr. MICA. And then ——

Mr. ECHIKSON.—that you referred to ——

Mr. MICA. And then, again, you could come in and say that we have gone from whatever it was, more back in 2003 with less money, and I am sure it would be less projects and doing more. So I am trying to make your case for you for DOT. I will help you out with the testimony next time.

Mr. ECHIKSON. Thank you.

Mr. MICA. All right. But I think it would be very helpful if we look at this, where our success is, where we can get you out of the red tape business, where we can devolve to the states, where they could get more money back quicker to the states because they turn the projects around quickly.

You told me you went to 1,800. What was like your previous record?

Mr. SWONKE. We were—that's about what we've done in the past couple of years, but before that, it was more below 1,500, more like in the 12 to 1,400 range.

Mr. MICA. You are talking actually what you testified to about 25 percent more efficiency out of it. When we did the road show for the MAP–21, we took the committee across the country, and we just heard one place after another cut the red tape, there are things that we can do locally, less in Washington, more State and local, and we could get the money out faster, get the projects done and approved faster. And sometimes you don't want to degrade the environment in any event, but sometimes there are very similar—and in fact, I think California and some of the states have even tougher environmental requirements than the Federal Government. Is that not the case, Mr. Zachry, Mr. Echikson?

Mr. ZACHRY. At least our perspective, yes, sir, that California has very rigorous environmental standards that as a general rule exceed Federal ——

Mr. MICA. Yes.

Mr. ZACHRY.—requirements.

Mr. MICA. And we negotiated MAP–21. Of course, Ms. Boxer is still the ranking person there, but she was chair and she wasn't going to give one inch on any issue regarding the environment that she felt wasn't being protected by actions and MAP–21.

Well, I think this hearing is really just to sort of take the temperature of what we have done with the last bill, the new bill is coming in. If we have to, we can do some technical adjustments with Chairman Shuster and others, but what we want to do is get the biggest bang for the buck. If you need more personnel and we have programs at the Federal level that warrant them, we want to make certain that you have adequate resources and personnel.

I think it would be very good, and I will talk to the Secretary and we will ask the Secretary to see if he can send out a letter now saying that some of these standards have been set to the states and that we have maybe even a model of MOU and see if there is more interest in devolving. That is our intent, Congress' intent. Nobody has to do it, but letting the states know that it is there. We have hammered out some of the details to get us there and here is an example. I think that would be most helpful.

Mr. Zachry, you know, you guys are building them and we want to get the maximum for the money. We need to know from you where there are any opportunities for moving this whole process forward faster, can be realized. And a lot it can be the administration. We have got new legislation in place but we can work with Secretary and others to get these things done.

And I really appreciate Mr. Swonke risking his entire transportation program and his relationship with DOT to risk coming here today. You are the only one I could find in the entire country. The others ran like scalded rabbits.

Mr. SWONKE. My pleasure.

Mr. MICA. Mr. DeSaulnier, do you have any questions? Welcome, sir.

Mr. DESAULNIER. Since I walked in and you were talking about California environmental rules and Senator Boxer, I just had a question to the FHWA. In California we did get, when I was still in the Legislature, a lot of input from our contractors in Caltrans about water permits and I wonder without, from my perspective—pardon the expression—diluting the protection either in the Cali-

fornia Environmental Quality Act or NEPA. Do you look at those kind of things in terms of effectiveness and maybe making it—if there are obstacles to getting done efficiently? Because we get a lot of that from the contractors.

Mr. ECHIKSON. We absolutely have taken several steps to expedite those and coordinate those reviews. Just recently, we, along with the Corps of Engineers, reissued the Red Book, which is all about aligning environmental reviews. We're supporting, at least on the federal side, the use of a single environmental document that all the different federal agencies can and should rely upon. So we take several steps to try to coordinate that and expedite that. We have a permitting dashboard that's up for certain projects. We have an eNEPA project where all the environmental documents can be shared electronically instead of by hand with copies being sent around. It's all to try to expedite and reduce the time it takes to permit and proceed with a project.

Mr. DESAULNIER. And do you measure those outcomes over time to see if they are still getting the environmental outcomes you want to but help facilitating getting the projects up and done?

Mr. ECHIKSON. I don't know that we've had it in place all those efforts long enough to make that sort of evaluation, but that's something we're always looking at to ensure that what we're doing is protective of the environment.

Mr. DESAULNIER. And then just on a different subject matter but somewhat similar, I read on, I believe, your website or DOT's website about performance standards in general and that a lot of states are taking leadership. I think Washington, Minnesota, Massachusetts come to mind. So just watching what they are doing when it comes to performance standards for the future, both what you have in the act but potentially new ones, do you continue to engage with the State agencies when it comes to performance standards?

Mr. ECHIKSON. I'm not quite sure what you're referring to, but in terms of our Performance Management Program, we—one of the important things, because it is a completely new program with a lot of new requirements for the states and localities, is we've engaged with our stakeholders extensively to ensure we get their input and to ensure that whatever we ultimately finalize is—sort of minimizes the administrative burden that's being placed on them.

Mr. DESAULNIER. So it would be twofold, and one would be just project delivery on the new capital side and then the maintenance and operations. So, for instance, Washington has something called a Gray Book where they actually every quarter they measure both investments in the corridor, capital investments, improvements and maintenance and operations, and then they tell the public what the results have been in terms of congestion. So do we do things just to make sure that we are mindful that, these as the expression goes, the states are the laboratories and we are keeping up with them or at least being apprised of it on both sides, project delivery and then maintenance and operations of the system?

Mr. ECHIKSON. I think I'd have to get back to you. I'm not quite sure. I mean in terms of our Performance Management Program, we're absolutely building off of what states are doing. We're trying

to build a national program. In terms of project delivery, we work—obviously, the states are the laboratories of democracy, and if they've got great ideas, we've got a whole program called Every Day Counts that works very closely with the states and, you know, pushes forward new and innovative ideas so that we can expedite project delivery, one that Mr. Mica mentioned before about the bridge.

We've got a whole new sort of bridge program where we install these bridges promptly. They're sort of precast prebuilt bridges that are dropped into place. That was all the result of our Every Day Counts program. So we're trying to do different things, working with the states to expedite project delivery, as well as ensure protection of the environment.

Mr. DESAULNIER. Appreciate that. I appreciate that, Mr. Chairman. And if you can get me any material, I would be delighted to look at it.

Mr. ECHIKSON. Yes, sir.

Mr. MICA. Any additional questions, Ms. Duckworth?

[Nonverbal response.]

Mr. MICA. Well, I want to thank you for participating today. We made some progress. We are also finding some new ways to develop projects. I attended a conference with Bobby Scott down in Orlando, assimilation conference, and one of the technologies we saw there that was developed for assimilation was training bridge inspectors. It is hard to replicate some of the training and also have bridges that are defective and going out. It is very costly, time-consuming. But I was quite impressed with some of the advances for training personnel, see what is out there, what is safe, some of the monitoring now we have of the bridges. And some of those are new programs. And you have got to put this stuff in your next testimony of new things you are doing.

But there is a lot of good news. We always try to strive to do better, and you have given us some information today. We are going to ask you for additional questions, fill-in-the-blank. So we are going to leave the record open.

I have the testimony of Michael P. Melaniphy, and he is the president and CEO of American Public Transportation, APTA. We will put that in the record. Without objection, so ordered.

Mr. MICA. He is not with us but has a wealth of suggestions and recommendations, observations.

Then, there being no further business, again, I want to thank our witnesses and, too, their participants for being with us today. And we will adjourn this hearing. Thank you.

[Whereupon, at 4:12 p.m., the subcommittee was adjourned.]

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