

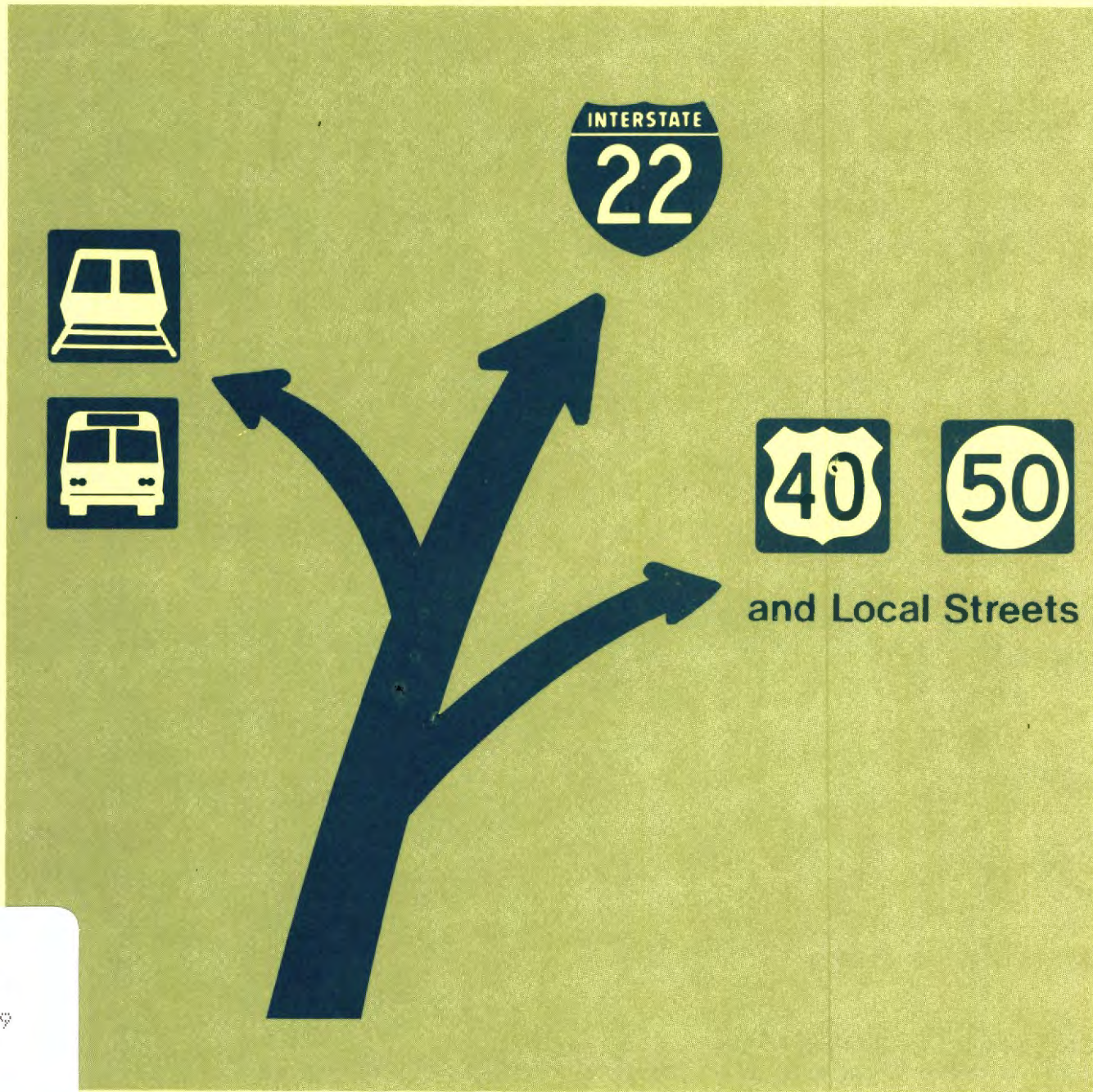


U.S. Department of  
Transportation

# The Interstate Highway Trade-In Process

December 1982

Volume 1: Assessment



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# **The Interstate Highway Trade-In Program Volume 1: Assessment**

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Final Report  
December 1982

Prepared by  
Transportation Training and Research Center  
Polytechnic Institute of New York  
333 Jay Street  
Brooklyn, N.Y. 11201

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## CHAPTER I

### INTRODUCTION AND PURPOSE OF THE STUDY

#### What is Trade-in and Why is it Important?

Since 1973, the Interstate Highway trade-in provision has been part of the federal legislation which governs the Federal-Aid Highway program. Known by such other names as Interstate transfer, turnback, withdrawal-substitution and dedesignation, the trade-in provision gives urban areas the option not to build an Interstate segment, but instead to use an amount equal to the segment's cost for transit and other highway projects. Interstate segments which are eligible under the trade-in provision include those which

- are proposed facilities, approved by U.S. DOT prior to certain dates (i.e., August 1973 for most, May 1976 for others);
- are located within urbanized areas or serve as connections between urbanized areas;
- are not essential to the nationwide Interstate system;
- are not toll bridge or tunnel segments, nor approach segments to these facilities.

The restrictions on the use of trade-in funds are few: basically, substitute projects

- must be eligible under UMTA Section 3 or Federal-aid Highway program funding;
- must be implemented within or in a manner which serves the relevant urbanized area(s);
- must not be used to defer transit operating costs;
- must be undertaken by the fall of 1986 (if sufficient funds are available).

The impact of the Interstate Highway trade-in program has been significant. First, it has injected a massive amount of federal funds into a relatively few urban areas for various transit and highway needs. Nearly \$4.8 billion in federal funds have been obligated to 21 urban areas from fiscal year 1974 through June, 1982. By the time all authorizations are fulfilled, more than twice that amount could be obligated (shared by a somewhat larger number of urban areas). These funds have been and will continue to be an important supplement to other federal, state and local transportation funding sources. As an example, during the same period of time (fiscal year 1974 through June, 1982), Federal-Aid Urban System and UMTA Section 3 programs have

made well over \$15 billion available for urban highway and transit needs. But these funds have been shared by hundreds of urban areas.

Second, the trade-in program has greatly expanded the principle of making traditional highway-oriented programs available for transit purposes. The Federal-Aid Urban System (FAUS) program was the first highway program opened for transit uses, but as of August 1981, only about 5 percent (or \$227 million) of total FAUS funds obligated were used for transit projects. The trade-in experience has been dramatically different. Over 80 percent of obligations made through June, 1982 have been for transit purposes--some \$3.85 billion. And some 40 percent of future obligations are expected to be for transit purposes. The effects have been varied and important: from construction of a major portion of the Washington, D.C. Metro subway system to a CBD transit mall in Denver.

Third, the trade-in program has demonstrated in a major way that a categorical funding program can be made more flexible and yet remain an effective and responsible source of federal financing. Funds have been used for the complete range of eligible projects--from rail transit and freeway construction, to bus fleet and bridge replacement, to transit station and local street rehabilitation. Often there have been delays in generating a list of proposed substitute projects, especially since a diverse set of governments and interests must reach a consensus without the "benefit" of rigid guidelines for using a particular pot of money as set by the federal government. But, on the other hand, there has rarely been any difficulty in generating matching shares for Interstate trade-in projects, indicating the value of the program as viewed by its users. All in all, the trade-in experience speaks well for the potential success of future block grant mechanisms for federal urban transportation financing.

### Origins of Trade-in

Since 1944, Congress has enacted legislation to encourage the construction of an Interstate highway system. From its original authorization that year, to the landmark 1956 legislation, through later acts which added nearly 2000 route miles to the originally planned system, nearly \$200 billion (expressed in 1979 dollars) in combined federal and state funds have been spent on nearly 43,000 miles of Interstate construction, representing two-thirds of total federal highway funding. At the same time, however, anti-highway sentiments were growing within a number of the nation's urban areas, often focusing on proposed urban Interstate links. Increasingly, city and state officials were facing a difficult, no-win decision: either proceed with highway plans in the face of mounting community and political opposition or not build the highway and lose a substantial infusion of federal funds into the area (at a highly favorable 90:10 matching share arrangement). Eventually Congress responded to this dilemma in 1968, passing its first piece of legislation that began to alter the rate of Interstate construction.

Section 103(e)(2), commonly referred to as the Howard-Cramer amendment, was added to Title 23 of the U.S. Code in 1968, to allow Interstate-for-Interstate transfers, giving states the right not to build a particular Interstate highway while permitting an equivalent-cost Interstate to be built elsewhere. The only stipulations were that (a) the withdrawn highway not be essential to a unified and connected Interstate system (as judged by the U.S. Department of Transportation) and (b) a toll road would not be built in its place. The substitute Interstate did not have to be of equivalent length or function as the withdrawn route, but could not receive any more federal funds than the amount allocated for the withdrawn route. During the ten year existence of the Howard-Cramer amendment (it ended in November, 1978), nine states withdrew 16 separate segments in nine separate withdrawal actions.\* But by the early 1970s, it was clear that Howard-Cramer was not an adequate solution. In areas like Boston, Philadelphia and Washington, D.C., with strong anti-highway and pro-transit sentiment, highway-for-highway transfers were an unsatisfactory option.

Out of this dissatisfaction came the 103(e)(4) amendment to U.S. Code Title 23, included in the Federal-Aid Highway Act of 1973. This amendment allowed urbanized areas [upon joint request of the local government(s) and the Governor and approval by U.S. DOT] to withdraw an Interstate segment and use the equivalent funds to finance the same types of transit capital projects which qualify under Section 3 of the Urban Mass Transportation Act (e.g., construction of facilities and vehicle purchases). The amount of funds authorized for these substitute projects was to be equal to the approved estimated cost of building that highway segment, as reported in the 1972 Interstate system cost estimate. The stipulations mentioned above for the Howard-Cramer amendment held for 103(e)(4) trade-ins as well. The trade-in segment also had to be within an urbanized area and to have been approved as an Interstate route prior to August 1973. Substitute projects were to be funded out of general revenues, not the Highway Trust Fund, at an 80:20 matching ratio, equivalent to the UMTA Section 3 matching ratio. Finally, no substitute projects were to be funded after June 30, 1981.

#### Development of Trade-in

Since 1973, the 103(e)(4) trade-in provision has been amended four times, the latest in December, 1979. Additionally, the U.S. Department of Transportation has issued regulations concerning the trade-in process

\* One withdrawal (in San Francisco) actually occurred in 1965 and was made a Howard-Cramer action retroactively, by law, in 1976. In three other cases (Boston, Washington, D.C. and Hartford), Howard-Cramer withdrawals were made simultaneously with the type of trade-in actions described in this report. These joint withdrawals occurred prior to 1976, when trade-in funds could not be used for highway purposes. Thus, the joint withdrawals afforded these areas highway as well as transit substitution uses, although substitute highways had to be on the Interstate system.

twice, in June, 1974 and again in October, 1980 (the latter set of regulations, which replaced the former, was itself amended in a minor way in September, 1981). The history of trade-in's evolution has generally been one of expansion: more segment types eligible for withdrawal; increased valuation of the withdrawn segment; expanded choice of the use of trade-in funds; increased federal matching share for substitute projects, and extension of the date during which withdrawals and substitute projects can be implemented. Tables I.1 and I.2 show the chronological development of the trade-in process through legislative and administrative actions.

In its current form, trade-ins can be enacted for proposed Interstate segments both within urbanized areas and connecting separate urbanized areas within a state. The authorized value of the withdrawn segment is the most recent, Congressionally approved construction cost estimate plus (or minus) the effects of inflation (or deflation) on the highway construction industry. In addition, the unobligated balance of an authorized trade-in continues to be adjusted quarterly for the same inflationary impacts. Obligations are made for a wider range of projects, including not only the types of transit capital projects which are eligible under UMTA Section 3 but highway capital projects also, normally funded from one of many Federal-aid highway funding systems (i.e., Interstate, Primary, Secondary and Urban). The trade-in funds pay 85 percent of any substitute project, with only 15 percent required from the state or local sources. This compares favorably against UMTA Section 3 projects (80 percent) and Federal-aid to Primary, Secondary and Urban systems projects (75 percent). Finally, withdrawals can still be made until September 30, 1983 (even longer if a segment was under injunction against construction as of November 6, 1978), and substitute projects can be initiated through September 30, 1986 (and beyond that date if sufficient funds are not provided by Congress).

At the same time, some restrictions have been added, most prominent among them being the 1979 amendment disallowing the trade-in of proposed reconstruction or lane additions or any type of approved modifications to Interstate segments already open to traffic. Additionally, proposed substitute project concepts must be approved by U.S. DOT by the conclusion of fiscal year 1983 in order to receive future trade-in obligations.

### Purpose of This Study

The goal of this study is to provide a comprehensive assessment of the Interstate Highway trade-in program.<sup>1</sup> It reviews the workings and results of one of the major capital-related urban transportation funding sources provided by the federal government.

Chapter II presents a legal analysis of the trade-in program. The withdrawal and substitute processes are discussed explicitly, indicating local and state requirements, federal responsibilities, deadlines, etc.

Chapter III summarizes the program's utilization, including details on its major components (withdrawals, authorizations, obligations and

TABLE 1.1

HIGHLIGHTS OF TRADE-IN'S EVOLUTION: LEGISLATIVE  
ACTIONS, 1973 - 1979

[Creation of and Revisions to 23 U.S.C. Sec. 103(e)(4)]

Year and Number of Legislation	Withdrawal Process	Authorizations	Substitute Projects	Matching Share	Deadline Dates
1973 Pub. Law 93-87	<ol style="list-style-type: none"> <li>1. Urbanized area segments.</li> <li>2. Segments in Interstate system before 8/73 eligible.</li> <li>3. Approval of local officials and Governor needed.</li> <li>4. Non-essentiality and no toll road substitute.</li> </ol>	<ol style="list-style-type: none"> <li>1. Equal to 1972 construction cost estimate.</li> <li>2. General Fund source.</li> </ol>	<ol style="list-style-type: none"> <li>1. Transit Capital (- UMTA Section 3).</li> </ol>	<ol style="list-style-type: none"> <li>1. 80% federal, 20% state/local.</li> </ol>	<ol style="list-style-type: none"> <li>1. No substitute projects after FY'81 (June 30, 1981).</li> </ol>
1975 Pub. Law 93-643	<ol style="list-style-type: none"> <li>1. U.S. DOT may increase authorizations due to inflation.</li> </ol>				
1976 Pub. Law 94-280	<ol style="list-style-type: none"> <li>1. Inter-urban segments OK (if intra-state).</li> <li>2. Eliminated 8/73 restriction.</li> <li>3. Segments added after 5/76 under 103(e)(2) not eligible</li> </ol>	<ol style="list-style-type: none"> <li>1. Authorizations = latest cost estimate plus inflation.</li> <li>2. Unobligated \$ also adjusted for inflation.</li> </ol>	<ol style="list-style-type: none"> <li>1. Highway projects too (= FAL, FAP, FAS, FAUS).</li> </ol>	<ol style="list-style-type: none"> <li>1. Highway share = FAL, FAP, FAS and FAUS programs.</li> </ol>	<ol style="list-style-type: none"> <li>1. Eliminated FY'81 deadline.</li> </ol>
1978 Pub. Law 95-599	<ol style="list-style-type: none"> <li>1. Eliminated need to reimburse FHWA in most cases for preliminary costs of withdrawn segment.</li> <li>2. Cannot trade-in "essential gap" toll bridges, tunnels &amp; approaches if federal funding advanced.</li> </ol>			<ol style="list-style-type: none"> <li>1. 85% federal, 15% state/local.</li> </ol>	<ol style="list-style-type: none"> <li>1. No withdrawals after FY'83.</li> <li>2. No substitute project approvals after FY'83.</li> <li>3. No substitute project starts after FY'86.</li> <li>4. Exceptions to all deadlines set up.</li> </ol>
1979 Pub. Law 96-144	<ol style="list-style-type: none"> <li>1. Open-to-traffic segments cannot be withdrawn.</li> </ol>				

HIGHLIGHTS OF TRADE-IN'S EVOLUTION:  
ADMINISTRATIVE ACTIONS, 1974-81

(Creation and Revisions to 23 C.F.R. Part 476, Subpart D)

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<u>Year</u>	<u>Withdrawal Process</u>	<u>Authorizations</u>	<u>Substitute Projects</u>
1974	1. Withdrawal concurrence by local officials processed through MPO.		1. UMTA and FHWA review transit substitute projects.
1980	1. Trade-in request requires substantial but not unanimous support among relevant localities.	1. Quarterly composite index chosen for inflation adjustment.	1. Concept program approval by end of FY'83.
1981	1. Restored restriction that segment must be in system before 8/73.		

substitute projects), and assesses the local transportation decision-making impact of the trade-in mechanism as a block grant vs. the more traditional categorical grant for federal transportation funding.

#### Notes for Chapter I

1. An earlier study of six urban areas and their use (or non-use) of trade-in is presented in Robert Burco, The Evolution of Interstate Highway Withdrawals and Substitutions as Urban Transportation Policy Options, Federal Highway Administration, July 1980. Furthermore, the U.S. Conference of Mayors has discussed the trade-in program in considerable detail through two sources: a practitioner's handbook (Interstate Substitutions: A Handbook for Mayors, U.S. Department of Transportation, October, 1980) and a newsletter (Interstate Crossroads, Volumes I and II, June, 1980 through November, 1981).





## CHAPTER II

### LEGAL ANALYSIS OF THE INTERSTATE TRADE-IN PROCESS

This chapter discusses the legal framework of the Interstate trade-in process. The basic legal authority, of course, is the trade-in statute first enacted by Congress in 1973 and amended several times since then.<sup>1</sup> To amplify and implement the trade-in statute, the Federal Highway Administration (FHWA) and the Urban Mass Transportation Administration (UMTA) have promulgated the trade-in regulations.<sup>2</sup> FHWA and UMTA have also made various legal determinations regarding Interstate transfer in informal letters, opinions, and memoranda; these documents are discussed below where applicable. Though they provide important guidance as to the government's policies and practices, they do not themselves have the force of law.

#### The Withdrawal Process

##### Highways Eligible to be Withdrawn

The trade-in statute allows the withdrawal "of any route or portion thereof on the Interstate System which is within an urbanized area or which passes through and connects urbanized areas within a State."<sup>3</sup> Federal highway legislation generally defines "urbanized area" as "an area so designated by the Bureau of the Census, within boundaries to be fixed by responsible State and local officials in cooperation with each other, subject to approval by the Secretary [of Transportation]. Such boundaries shall, as a minimum, encompass the entire urbanized area within a State as designated by the Bureau of the Census."<sup>4</sup> In a January, 1980 notice of proposed rulemaking, FHWA proposed also allowing the withdrawal of a segment which has portions both within and outside an urbanized area but in close proximity to that area.<sup>5</sup> This proposal was not adopted, however, in consideration of comments provided by the House Public Works Committee.<sup>6</sup>

Aside from the above geographic restrictions, highways may not be withdrawn if they fit within any of these criteria:

1. Segments removed from the Interstate System prior to August 13, 1973.<sup>7</sup>
2. Segments added to the Interstate System after August 13, 1973.<sup>8</sup>
3. Segments added to the Interstate System after May 5, 1976, under the provisions of 23 U.S.C. Sec. 103(e)(2), the "Howard-Cramer Amendment," which allowed certain Interstate highways to be withdrawn and other Interstate routes substituted with any additional mileage provided from mileage made available for the routes.<sup>9</sup>
4. Segments designated under 23 U.S.C. Sec. 139, which allows existing Federal primary highways to be redesignated as Interstate highways if they "would be a logical addition or connection to the Interstate System" and meet Interstate standards.<sup>10</sup>

5. Toll bridges, tunnels, or approaches thereto, for which funds were advanced in accordance with 23 U.S.C. Sec. 124(b), which is another section relating to filling essential gaps in the Interstate system.<sup>11</sup>

6. After September 30, 1979, any Interstate segments open to traffic before the date of the proposed withdrawal. This prohibition was added to the trade-in statute by Congress in 1979<sup>12</sup> in reaction to New York's withdrawal of a segment of the Long Island Expressway that was already open to traffic but proposed for "double-decking" (see New York City write-up in Chapter IV). The trade-in regulations further provide that if "only a portion of an Interstate segment (between logical termini) is open to traffic the regulations of this subpart [allowing trade-in] are applicable to the portion not open to traffic. The open to traffic portion will be removed from the Interstate System under 23 U.S.C. 103(f)."<sup>13</sup> The regulations also define "open to traffic" to mean "a segment which has been constructed or has had major improvements with Federal-aid Interstate funds and open to normal interstate traffic; or a segment which was an existing freeway, meeting acceptable interstate geometric standards and recognized as the final location of the route, when incorporated into the System. 'Open to traffic' does not mean a segment of existing highway that is ultimately planned to be replaced by an entirely new facility."<sup>14</sup>

7. Any segment added to the Interstate System by specific legislation unless a comparable statute permitting its withdrawal is enacted.<sup>15</sup> As the FHWA/UMTA preamble to the trade-in regulations explained, "although the Department [of Transportation] may have the legal authority to approve the withdrawal of such segments, it would be highly inappropriate to remove a segment from the Interstate System which Congress, by law, had directed to be added to the System."<sup>16</sup> The Reagan Administration's proposed 1981 highway legislation, sent to Congress on March 17, 1981, would have in effect written this regulation into the trade-in statute as to routes or segments added to the Interstate System by special legislation after March 7, 1978.

8. If the segment is "essential to completion of a unified and connected Interstate System."<sup>17</sup> The preamble to the trade-in regulations explains the criteria applied in determining non-essentiality and makes reference to a 1976 U.S. DOT study identifying gaps in the Interstate System: "Once defense needs are considered, the principal Federal decision in an Interstate withdrawal is the determination that the segment is not essential to a unified and connected Interstate System. This decision is made on the basis of national transportation needs without consideration of a withdrawal's impact on local transportation needs or plans. It is assumed that the effects of the withdrawal upon the local system have been evaluated and any necessary measures will be taken as part of the normal planning process. The primary concern in an essentiality decision is to assure the remaining system continues to retain connections and will continue to provide all necessary links for the reasonable movement of people and goods either through or around the area of the withdrawal... Although the designation of a route segment as an 'essential gap' in the Interstate Gap Study does indicate the route has a high priority for construction, this designation does not of itself preclude its withdrawal if other routes are available which will maintain essential Interstate route connectivity."<sup>18</sup>

## Withdrawal Requests

The trade-in statute requires that withdrawals be "upon the joint request of a State Governor and the local governments concerned." The trade-in regulations have expanded on this requirement in several respects:

1. Form of Request. Withdrawal requests "shall be submitted jointly by the Governor and the local governments concerned. For those segments within urbanized areas, the concurrence of the responsible local officials is also required. The withdrawal request shall be submitted to the Federal Highway Administrator and the Urban Mass Transportation Administrator, through the Federal Highway Administrator."<sup>19</sup> The regulations also provide, "Joint submittal may be accomplished by a single request prepared by the Governor and concurred in by the local governments concerned. This may also be accomplished by a request by the Governor with separate concurrence documentation by the local governments concerned. In either case, for those segments within urbanized areas, the concurrence of responsible local officials is also required."<sup>20</sup> "Concurrence" is defined as "written agreement which is currently binding on the concurring party and which addresses the specific proposal being submitted for approval."<sup>21</sup>

2. Contents of Request. The regulations require withdrawal requests to state that they are filed pursuant to the trade-in statute, give the reasons why the segment is not essential, present the mileage and latest Congressionally-approved cost estimate of the segment, and provide assurance that a toll road will not be built in the traffic corridor which the segment would serve.<sup>22</sup>

3. Request from Governor. The trade-in regulations require the Governor himself to request withdrawal. The Governor may specifically designate some state or local entity to act on trade-in requests, but general delegations of authority by the Governor are insufficient,<sup>23</sup> and the Department of Transportation prefers withdrawal requests to come directly from the Governor and not from delegates.

4. Requests from Local Governments. The concerned local governments which must submit withdrawal requests are those "local units of general purpose government under State law within whose jurisdiction the Interstate segment lies, or is to be withdrawn."<sup>24</sup> For segments in urbanized areas, concurrence is also required by "responsible local officials,"<sup>25</sup> which means "principal elected officials of general purpose local governments." In urbanized areas only (as defined above), these officials act through the official metropolitan planning organization.<sup>26</sup> The trade-in regulations leave it to local law to determine who speaks for these governments; the Department of Transportation looks for an action that is binding on the particular governments involved. As the preamble states, "Unless there are reasons to believe otherwise, it is assumed that the individual group that has taken a concurrence action on behalf of the local government concerned has the authority to do so."<sup>27</sup> Furthermore, the regulations do not require that all the local officials agree: "While unanimous local action is not

required, the withdrawal request is expected to have substantial support."<sup>28</sup>

### Approval of Withdrawals

After withdrawal requests are submitted, it is up to the U.S. Department of Transportation to take action on them. Although the trade-in statute gives approval power to the Secretary of Transportation, this power has been delegated to the Administrators of FHWA and UMTA.<sup>29</sup> These two officials may approve withdrawals provided the request complies with all the requirements described above for requests, if it is determined that the segment is not essential to the completion of a unified and connected Interstate System.<sup>30</sup> There does not appear to be any legal requirement that FHWA and UMTA approve all complying requests.

The trade-in statute requires that all withdrawal requests must be approved, if at all, by September 30, 1983, except for any highway that was "under judicial injunction prohibiting its construction" on the date the Federal-Aid Highway Act of 1978 was enacted--November 6, 1978. For such enjoined projects, the withdrawal approval deadline is September 30, 1986.<sup>31</sup> The mere pendency of litigation in 1978 against a highway is not enough to trigger this extension; an injunction must have been in force.

### Substitute Projects

#### Eligible Projects

The trade-in statute allows as substitute projects "public mass transit projects involving the construction of fixed rail facilities or the purchase of passenger equipment including rolling stock, for any mode of mass transit, or both, or projects authorized under any highway assistance program under Section 103 of this title."<sup>32</sup>

UMTA has interpreted this language to mean that "any transit capital project eligible for Federal financial assistance under the Section 3 program is an eligible transit project under the Interstate transfer program. Operating assistance projects are not eligible for funding under this program."<sup>33</sup> The "Section 3" program refers to Section 3 of the Urban Mass Transportation Act of 1964, as amended,<sup>34</sup> which allows Federal aid for a broad range of construction, reconstruction, and rehabilitation projects.<sup>35</sup>

Eligible highway projects are those which fall under any of the four Federal-aid systems -- primary, secondary, urban, and Interstate. The work may include "any undertaking for highway construction, which may encompass phases of work including preliminary engineering, right-of-way, and actual construction," as well as "the construction of exclusive or preferential bus lanes, high occupancy vehicle lanes, highway traffic control devices, bus passenger loading areas and facilities (including shelters), and fringe and corridor parking facilities to serve bus and other public mass transportation passengers," and also numerous carpool - and vanpool-related projects.<sup>36</sup>

Both UMTA and FHWA have ruled that system level planning activities, such as preparation of transportation improvement programs, are not eligible for trade-in funds. UMTA's rationale for the disallowance was that such planning must precede submission of substitute projects.<sup>37</sup>

Geographically, the trade-in statute requires all substitute projects to "serve the urbanized area and the connecting nonurbanized area corridor from which the Interstate route or portion thereof was withdrawn."<sup>38</sup> (The definition of "urbanized area" was discussed earlier.) A substitute project may even "be located outside the urbanized area if it can be demonstrated that the project serves the urbanized area."<sup>39</sup> The statute, as interpreted by FHWA and UMTA, "does not require substitute projects to be located along the right-of-way of the withdrawn route nor does it even require the projects to be located within the same corridor. However, the total package of projects should serve the needs of the area which would have been served by the withdrawn route."<sup>40</sup>

### Concept Programs

An innovation of the 1980 trade-in regulations was the requirement that states which have withdrawn Interstates must submit "concept programs."<sup>41</sup> These programs must identify the portion of trade-in funds which will go to transit and highway projects, respectively; describe the proposed substitute projects; and summarize anticipated annual funding levels.

The concept programs must be endorsed by the Governor and MPO, and must be submitted to FHWA and UMTA, and be approved by those agencies by September 30, 1983, which is the deadline set by the statute for the approval of trade-in projects. Concept program approval satisfies this requirement. Municipalities considering withdrawals in the time remaining before the 1983 deadline should attempt to devise concept programs well in advance, so that they can be submitted to FHWA and UMTA as long before the deadline as possible.

A concept approval has considerably different significance before and after September 30, 1983. Before that date, project concepts included in the program submission are chiefly to assist the agencies in preparing accurate budget proposals. "Funding requests for individual projects may be submitted and approved without previously being approved...as part of a concept program," the preamble to the regulations states. After that date, however, "concept approval becomes a prerequisite to individual project approvals."<sup>42</sup> The only exception is for withdrawals of highways that on November 6, 1978 were under judicial injunctions prohibiting their construction: for those, project concepts must be approved by September 30, 1986.

### Project Approvals

The regulations require four steps beyond the concept program submission in determining which substitute projects will receive trade-in funds: development, selection, submission and approval.

1. Development. Mass transit projects are to be developed by or in consultation with local transit officials. Highway projects are to be developed in accordance with the same policies and procedures established for the Federal highway system of which they will be a part.<sup>43</sup>

2. Selection. In accordance with the trade-in statute, selection of substitute projects is by the "responsible local officials" of the area where the projects are to be located, and, in some cases, by officials of neighboring localities served by the projects. The metropolitan planning organization is generally to participate in the selection process.<sup>44</sup>

3. Submission. Project applications are submitted by the Governor to UMTA for mass transit projects, and to FHWA for highway projects.<sup>45</sup> Proposals for substitute projects may be combined with applications for other Federal aid, such as UMTA Section 3 grants.<sup>46</sup>

4. Approval. Each project must finally be approved by the Administrator of UMTA or FHWA, as the case may be, who is to determine that the application meets all legal requirements. (FHWA Administrators have delegated approval power to FHWA field offices.) Approval may be given only if there is authority to obligate the funds for the particular project -- that is, sufficient funds have been appropriated by Congress to allow the project to be funded.<sup>47</sup>

#### Other Approvals

As is the case for all transportation projects being proposed for Federal funding in an urbanized area, substitute projects must be developed as part of and in accordance with the joint FHWA/UMTA urban transportation planning process.<sup>48</sup> As part of this process, they must be included in the pertinent annual element of the transportation improvement program (TIP) before they are finally approved, though they need not be in the TIP when they are included in concept program submissions.<sup>49</sup>

The initial urban transportation planning regulations<sup>50</sup> were published in the Federal Register on September 17, 1975.<sup>51</sup> Proposed amendments were published for notice and comment on October 30, 1980,<sup>52</sup> and final amendments (with a request for additional comments) appeared on January 19, 1981.<sup>53</sup> These regulations, however, were revoked before they took effect.<sup>54</sup> On August 6, 1981, "interim final regulations" were published, effective on the date they were issued -- July 30, 1981.<sup>55</sup> Public comments were not invited on these new regulations, so it appears they will be in effect for the foreseeable future. The new regulations are shorter and less complex than the old ones. None of the revisions appears to pertain specifically to the Interstate transfer process.

Highway and mass transit projects funded with trade-in dollars are subject to the same environmental reviews and restrictions as any other such projects which receive Federal aid. Perhaps the most significant of these is the National Environmental Policy Act of 1969 (NEPA),<sup>56</sup> which requires the preparation of an environmental impact statement

(EIS) on "major Federal actions significantly affecting the quality of the human environment." The applicability and requirements of NEPA have been litigated in hundreds (if not thousands) of lawsuits, and are the subject of detailed regulations of the President's Council on Environmental Quality,<sup>57</sup> and joint regulations of FHWA and UMTA.<sup>58</sup> These FHWA/UMTA regulations under NEPA were issued on October 30, 1980,<sup>59</sup> and provided that concept programs for trade-ins do not require an EIS,<sup>60</sup> because concept approvals by FHWA and UMTA do not imply a commitment to funding a substitute project; EIS's for the project included in the concept programs may be prepared, where necessary, later in the process. FHWA and UMTA have also entertained the possibility of considering multiple projects together as part of an umbrella EIS. The Reagan Administration has announced that it is reviewing the UMTA/FHWA NEPA regulations, as well as many other regulations issued by FHWA and UMTA, with a view toward further relaxing the regulatory requirements.<sup>61</sup>

The only reported judicial decision on NEPA which discusses trade-in found that, in the particular circumstances of a highway controversy in Iowa, the possibility of trade-in was so speculative that it did not have to be considered in the EIS on the proposed project as an alternative.<sup>62</sup>

Among the other environmental laws which are particularly likely to pertain to substitute highway and mass transit projects are the Clean Air Act,<sup>63</sup> the Noise Control Act,<sup>64</sup> Section 4(f) of the Department of Transportation Act (relating to construction through parks),<sup>65</sup> and the National Historic Preservation Act.<sup>66</sup>

#### Deadlines

The trade-in statute, as previously noted, places a September 30, 1983 deadline on withdrawals of Interstate highways (except those under injunction on November 6, 1978). The trade-in regulations give that same date as the deadline for approval of project concepts, though "adjustments and refinements to the previously approved project concepts may be permitted" later.<sup>67</sup> After that 1983 date, FHWA and UMTA will not accept applications for substitute projects which had not previously received concept approval.<sup>68</sup> September 30, 1983 is also the deadline for the submission of EIS's for projects on unbuilt Interstate segments.<sup>69</sup>

Congress has imposed a September 30, 1986 deadline for contracting or commencing construction of substitute projects "for which the Secretary finds that sufficient Federal funds are available." After that, "the Secretary shall withdraw approval and no funds shall be appropriated" under the trade-in statute for substitute projects which were not contracted for or commenced, but for which funds were available.<sup>70</sup>

The regulations define the statutory language, "under construction or under contract for construction," to mean "funds for physical construction have been obligated (for highway projects) or have been

included in an approved grant (for transit projects) which would commit the final development of the ultimate project in both length and scope. When projects do not involve physical construction, 'under construction or under contract for construction' means the obligation of funds (for highway projects) or grant approval (for transit projects) has occurred."<sup>71</sup> The regulations also clarify that the 1986 deadline even applies to substitute projects related to withdrawn Interstate segments which were under court injunction on November 6, 1978.<sup>72</sup>

### Funding Substitute Projects

#### Trade-in Value

The trade-in value of an Interstate highway -- that is, the amount of Federal funds made available for substitute projects -- is set by the trade-in statute at "a sum equal to the Federal share of the cost to complete the withdrawn route or portion thereof, as that cost is included in the latest Interstate System cost estimate approved by Congress... and in accordance with the design of the route or portion thereof that is the basis of the latest cost estimate." (The sum is adjusted for inflation, as discussed below.) The cost estimates approved by Congress are in the form of reports submitted by FHWA and issued by Congressional committees and ratified by the full Congress.<sup>73</sup> The estimates give the total cost to complete any uncompleted Interstate segments in each of the states. No breakdowns within states are generally presented. Instead, Congress relies upon detailed cost estimate books submitted by the states to FHWA, and by FHWA to Congress. The estimates in these books are adjusted by FHWA to include only costs which have been approved as eligible for Interstate funding, and Congress may in turn adjust the estimates itself; the finally-adjusted estimates for each highway are totalled to reach each state's Congressionally-approved cost estimate, and form the basis of the trade-in value.

In one instance (see the New York City write-up in Volume 2) Congress passed a special statute to reduce the trade-in value below the latest Congressionally-approved cost estimate.<sup>74</sup>

#### Matching Share

Until 1978, substitute mass transit projects had to be matched with local funds on an 80/20 basis, and most substitute highway projects had to be matched on a 70/30 basis. The Surface Transportation Act of 1978 made the matching ratio 85/15 for both types of projects. The matching ratio for Interstate highways remains 90/10.<sup>75</sup>

It is a matter of state law, rather than Federal law, who pays the matching share. Federal money from other programs cannot (with a few exceptions) be used to match Interstate transfer money.

#### Effect on Highway Apportionments

The trade-in statute states, "Unobligated apportionments for the Interstate System in any State where a withdrawal is approved...shall,



on the date of such approval, be reduced in the proportion that the Federal share of the cost of the withdrawn route or portion thereof bears to the Federal share of the total cost of all Interstate routes in that State as reflected in the latest cost estimate approved by the Congress."<sup>76</sup>

The "apportionments" are the sums making up the total remaining unobligated balance of Interstate funds apportioned to the state. The total cost for each state determines the share which that state will get of all money apportioned from the Highway Trust Fund for Interstate highway construction each year. This complicated procedure can best be explained through a hypothetical example. Suppose that State X has \$1 billion worth of uncompleted Interstate highways, after deducting previously apportioned funds, and that nationwide there are \$30 billion worth of uncompleted Interstates, again after deducting previously apportioned funds. Thus State X has 1/30 of the amount needed to complete all uncompleted Interstates in the country, and would be entitled to 1/30 of all funds to be apportioned from the Highway Trust Fund in a year for building Interstate highways. If State X then traded in an Interstate highway worth \$500 million, or half the value of its uncompleted Interstates, its remaining unobligated balance of Interstate apportionments would be reduced by one half. The next cost estimate would, of course, not include that route. By this mechanism, the trade-in statute ensures that states give up a proportional reduction to the amount in Interstate highway funds when a route is withdrawn.

#### Inflation Adjustments

Inflation is relevant to the trade-in program before and after withdrawal. Before withdrawal, adjustments are made to the official cost estimate of the highway to be withdrawn. Every two years Congress approves official cost estimates for all uncompleted Interstate segments. These estimates go up (or rarely, down) due to changes in local construction costs, as well as to changes in design and other factors. This is not technically an inflation adjustment, but rather an attempt to reach a best current estimate of the cost to build the segment. When the segment is withdrawn, the latest official cost estimate forms the base from which the trade-in value is calculated. This pre-withdrawal inflation factor was first mandated by the Federal-Aid Highway Amendments of 1974.

After withdrawal, national construction cost indices take over. Though inflation adjustments are dictated by the trade-in statute, the cost index to be used is not. The statute provides that a withdrawn segment's trade-in value is the segment's latest official cost estimate "subject to increase or decrease, as determined by the Secretary based on changes in construction costs of the withdrawn route or portion thereof as of the date of enactment of the Federal-Aid Highway Act of 1976 or the date of approval of each substitute project under this paragraph, whichever is later."<sup>77</sup>

The trade-in regulations specify that the inflation factor is applied to the "base cost year" for the latest Congressionally-approved cost

estimate.<sup>78</sup> The "base cost year" is defined as "the calendar year specified in the Interstate Cost Estimate Manual for that estimate."<sup>79</sup> [The Manual referred to is the "Instructional Manual for the Preparation and Submission of the (Year) Estimate of the Cost of Completing the Interstate System in Accordance with Section 104(b)(5) of Title 23, U.S.C., Highways," published by the FHWA.]

The regulations also specify that the inflation factor used will be the Composite Index shown in the FHWA's quarterly publication, "Price Trends for Federal-Aid Highway Construction,"<sup>80</sup> which is based on prices bid for highway projects. Before deciding to use this Composite Index, which is based on national average costs, the FHWA considered several other possible indices, including some reflecting both national price changes and changes in bid prices in the particular state where the withdrawal occurred. FHWA abandoned these mixed indices in favor of the national index when it determined the mixed indices would result in too-rapid fluctuations, might be based on a sample of data too small to be statistically significant and might be influenced by differences in bid procedures and specifications for non-Federal highway projects.<sup>81</sup> FHWA also considered using a three-quarter moving index, but rejected this alternative to reflect more closely the trade-in statute's requirement to make the adjustment "as of the date of approval of each substitute project."<sup>82</sup>

The cost escalation to the date of substitute project approval was added by the 1976 Federal-Aid Highway Act.<sup>83</sup> UMTA has adopted the practice of defining "substitute project" to mean portions of the annual cost of each overall endeavor. The Washington METRO, for instance, which has been largely built with trade-in funds, is not considered just one "substitute project"; if it were, the inflation adjustment would have stopped years ago when the overall METRO was approved. Instead, METRO has been broken down into three element -- construction, project management and engineering, and insurance -- and each element is submitted on an annual basis. Each annual program of each element is considered a separate "substitute project," so that the trade-in value may continue to escalate.

#### Substitution for Other Funds

Some cities considering trade-in have worried that their UMTA Section 3 grants would be reduced if they received an infusion of trade-in funds. Such a reduction is prohibited by the trade-in statute, which states, "Funds available for expenditure to carry out the purpose of this paragraph shall be supplementary to and not in substitution for funds authorized and available for obligation pursuant to the Urban Mass Transportation Act of 1964, as amended."<sup>83</sup>

However, the amount of Section 3 grants allocated to each city is discretionary with UMTA, and the allocations to each city vary so widely from year to year that it would be difficult (though not necessarily impossible) to prove that a reduction in its Section 3 grants was attributable to an unlawful substitution of trade-in funds.

## Allocation of Appropriated Funds

Under current law, all substitute projects -- whether mass transit or highway -- are paid for out of the general fund of the United States Treasury, from an annual Congressional appropriation. In some years Congress has earmarked some of the appropriation for particular projects, or has designated the portion of the appropriation to go for highways and the portion to go to transit. In other years Congress has just appropriated a lump sum, and the split between highways and transit was negotiated between FHWA and UMTA, based on their respective estimates of demands for substitute project funding in the coming year.

The Reagan Administration and others have proposed to pay for substitute highway projects from the Highway Trust Fund, while mass transit projects would continue to be funded from general revenues. This would necessitate an annual Congressional determination of the amount of funds to go to each of the two categories of projects.

Authorizations (as opposed to appropriations) for funds for substitute projects are contained both in the trade-in statute and in the Urban Mass Transportation Act.<sup>84</sup>

## Requirement That Congress appropriate Funds

All substitute projects rely on funds appropriated by Congress. It is not a simple question whether the states would have any legal (as opposed to political) recourse should Congress fail to appropriate sufficient funds to pay for substitute projects up to the trade-in value of the withdrawn highways.

The trade-in statute provides, "Approval by the Secretary of the plan, specifications, and estimates for a substitute project shall be deemed to be a contractual obligation of the Federal Government." Similarly, the trade-in regulations provide, "Approval of a substitute project or phase thereof obligates the United States to pay its proportional share of the cost of the project or phase thereof out of the general funds in the Treasury."<sup>85</sup> This approval of plans, specifications and estimates ("PS&E") comes at the end of the project approval process, typically shortly before the actual work begins. If FHWA or UMTA refused to pay for a project which had received PS&E approval on the grounds that Congressional appropriations were insufficient, the State might have a good claim against the United States in the Court of Claims or otherwise.<sup>86</sup> To protect against this possibility, the trade-in regulations dictate, "Approval of substitute projects can be given only to the extent that authority to obligate the funds is available."<sup>87</sup> Due to this safeguard, the problem of too-low appropriations is unlikely to arise after PS&E approval has been granted.

The problem is much more likely to arise where FHWA and UMTA are unable to approve substitute projects in the first place if funds are not appropriated. The affected state would have to argue that it gave up something of value when it requested that an Interstate highway be

withdrawn, in the expectation that it should receive substitute funding as a result, and that the Federal government must keep its end of the bargain by providing this expected substitute funding. This could provide an instance of the contract law doctrine of promissory estoppel: "A promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee or a third person and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise."<sup>88</sup> Very difficult unresolved questions of constitutional law would be raised in asking a court to find that withdrawal of a highway created this kind of a contract, and to then somehow order Congress to appropriate the funds.

FHWA/UMTA approval of a project concept would not add significantly to a state's argument. In numerous cases courts have held that FHWA approval of a highway project (short of PS&E approval) did not require FHWA to pay its ordinary share of the project, even if the state had already built the highway and incurred the expenses.<sup>89</sup> The FHWA stated in the preamble to the draft trade-in regulations, "Since concept approval does not imply a commitment to funding a substitute project, environmental and other requirements . . . for these projects will be met in the normal course of development of the individual project."<sup>90</sup>

A state challenging Congress's failure to appropriate enough money for substitute projects would have an even more difficult time because the Federal government could argue that the funds will eventually be forthcoming, and that the state must merely wait a few more years to get the full amount. Whatever implied contract may be read into the withdrawal application and approval does not contain any particular terms regarding the rate at which the substitute funds will be provided. On the other hand, if Congress decided to end the trade-in program entirely and cut off appropriations while leaving some states with trade-in accounts that had not yet been fully funded, the states would have a stronger argument, because it would then be clear they would never get the money to which they claim to be entitled.

#### Payback of Advanced Funds

In many instances a highway is withdrawn after significant amounts of Federal funds have already been spent in connection with the highway. After several years of controversy over whether states which had traded-in highways would have to pay any of these funds back to the Federal government, Congress in 1978 enacted a detailed scheme resolving the question.<sup>91</sup> Shortly after this enactment, FHWA published its own regulations on this issue.<sup>92</sup> In November, 1980, FHWA published proposed revisions to these regulations, to reflect more accurately the 1978 Congressional amendments.<sup>93</sup> As of October, 1982, FHWA had not made these proposed amendments final or taken other formal action on the issue.

Under the scheme adopted by Congress in 1978, states with withdrawn highways do not ever have to pay back "intangible costs," such as preliminary engineering and overhead. As for tangible costs, such

as materials and rights-of-way, the requirements depend on when the highway was withdrawn and when the costs were incurred. If the highway was withdrawn before the date of enactment of the 1978 Congressional amendments (November 6, 1978), the tangible costs would not have to be repaid if the items are being applied, or within the next ten years will be (as certified by the state or locality) applied, to a Federal transportation project, "to a public conservation or public recreation purpose," or to another public purpose determined by the Secretary of Transportation "to be in the public interest."

If a highway is withdrawn after November 6, 1978, tangible costs do not have to be repaid if three conditions are met: (1) the items are or will be applied to the uses specified for pre-1978 withdrawals; (2) the items were acquired before November 6, 1978; and (3) no EIS for the withdrawn Interstate had been approved by the date of withdrawal. If any of these conditions is not met, and if the state is applying the right-of-way or materials to a Federal transportation project, then the state will have to repay the Federal government "the difference between the amount received for such items, materials and rights-of-way and the amount which would be received in accordance with the current Federal share applicable to the transportation project to which such items, materials, and rights-of-way were or are to be applied."

#### Summary

The preceding discussion went into considerable detail on many of the legal issues involved in the Interstate transfer process. At this point, it may be useful to provide a brief overview of the major steps in the process, as they would be faced by a city and state wishing to withdraw an Interstate highway:

1. The first step is for the Governor and the local governments, with the concurrence of the MPO, to submit to FHWA and UMTA (through FHWA) a request to withdraw a particular Interstate segment. The request must show that the segment is eligible to be withdrawn.

2. After receiving the request, FHWA and UMTA would consider it and decide whether it meets the criteria for withdrawals. The Federal decision to approve a withdrawal request must ordinarily come before September 30, 1983.

3. The Governor and the local governments, typically after receiving approval of the withdrawal request, would submit "concept programs" to FHWA and UMTA spelling out, in a general way, how they propose to utilize the trade-in funds. Once again, Federal approval of the concept programs must ordinarily come before September 30, 1983.

4. The state and local officials then develop the substitute projects in greater detail, and decide which projects to submit to the Federal government for funding. The project applications are submitted by the Governor -- to UMTA, in the case of transit projects, and to FHWA, in the case of highway projects. The projects must also go through the TIP process, environmental impact statements must be

prepared where necessary and whatever other similar approvals are required must be obtained.

5. The detailed project applications are approved by UMTA and the field offices of FHWA, as the case may be. The applications will only be approved if sufficient funds are available to pay for them.

6. Construction of the substitute projects must be begun or at least contracted for by September 30, 1986, if Federal funds are available for them.

## Notes for Chapter II

1. 23 U.S.C. Sec. 103(e) (4). (References to "U.S.C." refer to the United States Code, the official compilation of Federal statutes. The same numbering system is used by the two commercial compilations of the Code, which also contain extensive annotations --the United States Code Annotated and the United States Code Service.)
2. 23 C.F.R. Part 476, Subpart D. (References to "C.F.R." refer to the Code of Federal Regulations. Before regulations appear in C.F.R., they are first published in the daily Federal Register. The trade-in regulations now in effect were published in the Federal Register of October 20, 1980, pp. 69390-69400.)
3. 23 U.S.C. Sec. 103(e)(4). Similarly, 23 C.F.R. Sec. 476.302(a).
4. 23 U.S.C. Sec. 101(a).
5. Federal Register, January 10, 1980, p. 2296, proposed 23 C.F.R. Sec. 476.302 (a) (2).
6. Federal Register, October 20, 1980, p. 69392.
7. 23 C.F.R. Sec. 476.302(b) (1).
8. 23 C.F.R. Sec. 476.302(b) (7), Federal Register, September 14, 1981, p. 45602.
9. 23 C.F.R. Sec. 476.302(b) (2).
10. 23 C.F.R. Sec. 476.302(b) (3); Pub. Law 96-106, Sec. 1.
11. 23 C.F.R. Sec. 476.302(b) (4).
12. Pub. Law 96-144.
13. 23 C.F.R. Sec. 476.302(b) (5).
14. 23 C.F.R. Sec. 476.2 (b) (6).
15. 23 C.F.R. Sec. 476.302(b) (6).

16. Federal Register, October 20, 1980, p. 69392.
17. 23 U.S.C. Sec. 103(e) (4); similarly, 23 C.F.R. Sec. 476.306 (a) (2).
18. Federal Register, October 20, 1980, p. 69394.
19. 23 C.F.R. Sec. 476.304(a).
20. 23 C.F.R. Sec. 476.304(b).
21. 23 C.F.R. Sec. 476.2(b) (2).
22. 23 C.F.R. Sec. 476.304(c).
23. 23 C.F.R. Sec. 476.2(b) (3); Federal Register, October 20, 1981, p. 69391.
24. 23 C.F.R. Sec. 476.2(b) (5).
25. 23 C.F.R. Sec. 476.304(a).
26. 23 C.F.R. Sec. 476.2(b) (7).
27. Federal Register, October 20, 1980, p. 69393.
28. 23 C.F.R. Sec. 476.304(b). See also Federal Register, October 20, 1980, p. 69393; Federal Register, January 10, 1980, p. 2299.
29. 49 C.F.R. Secs. 1.48(b) (2), 1.51(f) (1).
30. 23 C.F.R. Sec. 476.306(a).
31. 23 C.F.R. Sec. 476.302(c).
32. 23 U.S.C. Sec. 103(e)(4).
33. UMTA Notice No. 9010.1, "Use of Interstate Transfer Funds for Mass Transit Projects," March 3, 1980, p.4.
34. 49 U.S.C. Sec. 1602.
35. See also the broad definition of "construction" in the UMTA Act, 49 U.S.C. Sec. 1608(c) (1).
36. 23 C.F.R. Sec. 476.2(b) (8). See also the broad definition of "construction" in 23 U.S.C. Sec. 101(a).
37. Memorandum, Theodore A. Munter, Assistant Chief Counsel, UMTA, to Charles H. Graves, Director, Office of Planning Assistance, "Use of Interstate Substitution Monies to Fund System-Wide and/or Corridor Planning Activities," August 6, 1980. Similarly, Memorandum, John S. Hassell, Jr., Deputy Federal Highway Administrator, to Regional Federal Highway Administrator, Portland, Oregon, April 11, 1979.

38. 23 U.S.C. Sec. 103(e) (4). Similarly, 23 C.F.R. Secs. 476.310 (a), 476.314(a) (1).
39. Federal Register, October 20, 1980, p. 69395.
40. Ibid.
41. 23 C.F.R. Sec. 476.308.
42. Federal Register, October 20, 1980, p. 69391. See also 23 C.F.R. Sec. 476.310(f).
43. 23 C.F.R. Sec. 476.310(d).
44. 23 C.F.R. Secs. 476.310(b), (c).
45. 23 C.F.R. Sec. 476.310(e).
46. 23 C.F.R. Sec. 476.312.
47. 23 C.F.R. Sec. 476.314.
48. 23 C.F.R. Secs. 476.2(b) (9), 476.310(b).
49. Federal Register, October 20, 1980, p. 69394.
50. 23 C.F.R. Part 450.
51. Federal Register, September 17, 1975, p. 42976.
52. Federal Register, October 30, 1980, p. 71990.
53. Federal Register, January 19, 1981, p. 5702.
54. Federal Register, February 4, 1981, p. 10706.
55. Federal Register, August 6, 1981, p. 40170.
56. 42 U.S.C. Secs. 4331 et seq.
57. 40 C.F.R. Part 1500.
58. 23 C.F.R. Part 771.
59. Federal Register, October 30, 1980, p. 71968.
60. 23 C.F.R. Sec. 771.115(b) (5); similarly, 23 C.F.R. Sec. 476.308 (b) (2). See Federal Register, January 10, 1980, p. 2301.
61. Federal Register, April 13, 1981, p. 21620.
62. Farmland Preservation Association v. Goldschmidt, 611 F.2d 233 (8th Cir. 1979).



63. 42 U.S.C. Secs. 7401 et seq.; see also the FHWA's Air Quality Guidelines for Use in Federal-Aid Highway Programs, 23 C.F.R. Part 770.
64. 42 U.S.C. Secs. 4901 et seq.; see also the FHWA's Procedures for Abatement of Highway Traffic Noise and Construction Noise, 23 C.F.R. Part 772.
65. 49 U.S.C. Sec. 1653(f); see also 23 C.F.R. Sec. 771.135.
66. 16 U.S.C. Sec. 470.
67. 23 C.F.R. Sec. 476.308(b) (1).
68. 23 C.F.R. Sec. 476.310(f).
69. Pub. Law 95-599, Sec. 107(d).
70. Pub. Law 95-599, Sec. 107(e).
71. 23 C.F.R. Sec. 476.2(b) (10).
72. 23 C.F.R. Sec. 476.310(g).
73. See, e.g., Public Law 94-280, Sec. 103.
74. Pub. Law 96-144, Sec. 3.
75. 23 U.S.C. Sec. 120(c).
76. Similarly, see 23 C.F.R. Sec. 476.306(d).
77. 23 U.S.C. Sec. 103(e)(4).
78. 23 C.F.R. Sec. 476.306(b).
79. 23 C.F.R. Sec. 476.2(b) (1).
80. 23 C.F.R. Sec. 476.306(b).
81. Memorandum, Deputy Under Secretary for Budget and Program Review to Secretary of Transportation, "Departmental Treatment of Cost Escalation Factors," June 9, 1976.
82. Federal Register, October 20, 1980, p. 69394.
83. 23 U.S.C. Sec. 103(e)(4).
84. 49 U.S.C. Sec. 1603(g).
85. 23 C.F.R. Sec. 476.314(e).
86. Sec 28 U.S.C. Secs. 1491 et seq.

87. 23 C.F.R. Sec. 476.314(b).
88. Restatement of Contracts -- Second, Sec. 90(1).
89. People of the State of California v. United States, 547 F.2d 1388 (9th Cir. 1977), cert. den. 434 U.S. 824; People of the State of California v. United States, 551 F.2d 843 (Ct. Cl. 1977), cert. den. 434 U.S. 857; Commonwealth of Massachusetts v. Connor, 248 F. Suppl. 656 (D. Mass.), aff'd 366 F.2d 778 (1st Cir. 1966)
90. Federal Register, January 10, 1980, p. 2300-2301.
91. 23 U.S.C. Secs. 103(e)(5), 103(e)(6), 103(e)(7).
92. 23 C.F.R. Part 480; Federal Register, November 17, 1978, p. 54077.
93. Federal Register, November 20, 1980, p. 76705.

## CHAPTER III

### OVERALL ASSESSMENT OF THE TRADE-IN PROGRAM

#### Highway Withdrawals

Twenty-four urban areas have withdrawn a total of 41 Interstate highway segments in 36 separate trade-in actions through August, 1982.\* Nearly 200 miles of Interstate segments were involved in these actions, with the longest being a 26.3 mile circumferential highway in the Denver urban area, while both Pittsburgh and the Washington, D.C. area share in withdrawing the shortest links, 0.4 mile segments from their respective CBDs. All but two of the 39 segments withdrawn were proposed (unbuilt) facilities. Although the practice was subsequently forbidden by statute, in 1979 both New York City and the New Jersey portion of the New York City urban area withdrew open-to-the-public Interstate facilities, which were proposed to be expanded.

The history of Interstate withdrawals is summarized in Table III.1 and Figure III.1. Table III.1 indicates that six urban areas have enacted multiple trade-ins. In the case of Chicago, two segments of the same Interstate were withdrawn in 1977 and 1979. In Hartford, three separate links were withdrawn in two different actions, although each was part of a proposed beltway surrounding the Hartford-New Britain urban area. In Philadelphia, Portland and the New Jersey portion of the New York City area, separate trade-in actions involved unrelated Interstate links. Clearly, the Washington, D.C. area has been the most prolific user of the trade-in program; between 1975 and 1982, it withdrew 11 segments, totaling 17.9 miles, in eight separate actions.

Figure III.1 suggests that key legislative changes to the trade-in program influenced its greater use by urban areas within the last several years. Prior to the May 1976 amendments, which both allowed highway substitute projects and introduced quarterly inflation adjustments, only five urban areas had withdrawn Interstate segments during the two years in which the program existed. Following the 1976 amendments and prior to the November 1978 amendments, seven urban areas enacted nine withdrawals. In the years following the 1978 law, which reduced state/local matching shares to 15 percent for both highway and transit substitute projects, 18 urban areas have enacted 21 withdrawal actions (through August, 1982).

#### Monetary Value of Withdrawals

The most recent Congressionally approved Interstate cost estimate for all highway segments before they were withdrawn shows an esti-

\* Since August, 1982, one additional withdrawal has been approved (I-895 in Fall River, Massachusetts) and another is still under review (I-895 in Providence, Rhode Island) as of November 1, 1982. These are not discussed in this report.

TABLE III.1

## CHRONOLOGICAL REVIEW OF THE TRADE-IN PROGRAM, 1974-AUGUST, 1982

<u>Year</u>	<u>Urban Area</u>	<u># of Segments</u>	<u>Total Miles</u>	<u>Authorized Trade-in \$</u>
1974	Boston, MA	2	23.3	\$ 603 million
	Philadelphia, PA	1	7.8	148 million
		<u>3</u>	<u>31.1</u>	<u>\$ 751 million</u>
1975	Washington, DC*	3	7.2	\$ 382 million
	Hartford, CT	2	13.5	189 million
		<u>5</u>	<u>20.7</u>	<u>\$ 571 million</u>
1976	Portland, OR	1	5.1	\$ 146 million
		<u>1</u>	<u>5.1</u>	<u>\$ 146 million</u>
1977	Washington, DC	2	2.5	\$ 424 million
	Tucson, AZ	1	3.2	41 million
	Salem, OR	1	3.3	35 million
	Chicago, IL	1	6.3	480 million
	Denver, CO	1	26.3	162 million
		<u>6</u>	<u>40.6</u>	<u>\$ 1.1 billion</u>
1978	Albany, NY	1	3.6	\$ 51 million
	Minneapolis, MN	1	2.7	103 million
	Washington, DC*	3	5.1	637 million
		<u>5</u>	<u>11.4</u>	<u>\$ 791 million</u>
1979	New York City, NY	1	4.7	\$ 230 million
	New York City Area, NJ	1	2.1	58 million
	Chicago, IL	1	13.6	1800 million
	Cleveland, OH	1	7.9	256 million
	Pittsburgh, PA	1	0.4	64 million
	Portland, OR	1	3.2	160 million
	Omaha, NE	1	1.9	77 million
		<u>7</u>	<u>33.8</u>	<u>\$ 2.6 billion</u>
1980	Sacramento, CA	1	5.1	\$ 97 million
	Hartford, CT**	1	8.2	133 million
	Washington, DC	1	1.7	376 million
	Philadelphia, PA	1	2.1	134 million
	Philadelphia Area, NJ	1	4.3	116 million
		<u>5</u>	<u>21.4</u>	<u>\$ 856 million</u>
1981	San Francisco, CA	1	1.9	\$ 87 million
	Memphis, TN	1	3.8	275 million
	New York City Area, NJ	1	9.7	117 million
	Duluth, MN	1	4.1	72 million
	Indianapolis, IN	1	2.7	83 million
	Baltimore, MD	1	3.3	204 million
	Waterloo, IA	1	7.3	297 million
		<u>7</u>	<u>32.8</u>	<u>\$ 1.1 billion</u>
1982	Washington, DC*	2	1.4	\$ 137 million
		<u>2</u>	<u>1.4</u>	<u>\$ 137 million</u>
TOTAL		<u>41 segments</u>	<u>198.3 miles</u>	<u>\$ 8.0 billion</u>

\* Washington, D.C. trade-ins include Maryland (1975) and Virginia (1978, 1982) environs also.

\*\* Hartford trade-in in 1980 includes New Britain area too.

Source: Federal Highway Administration and original calculations to estimate authorized trade-in dollars.

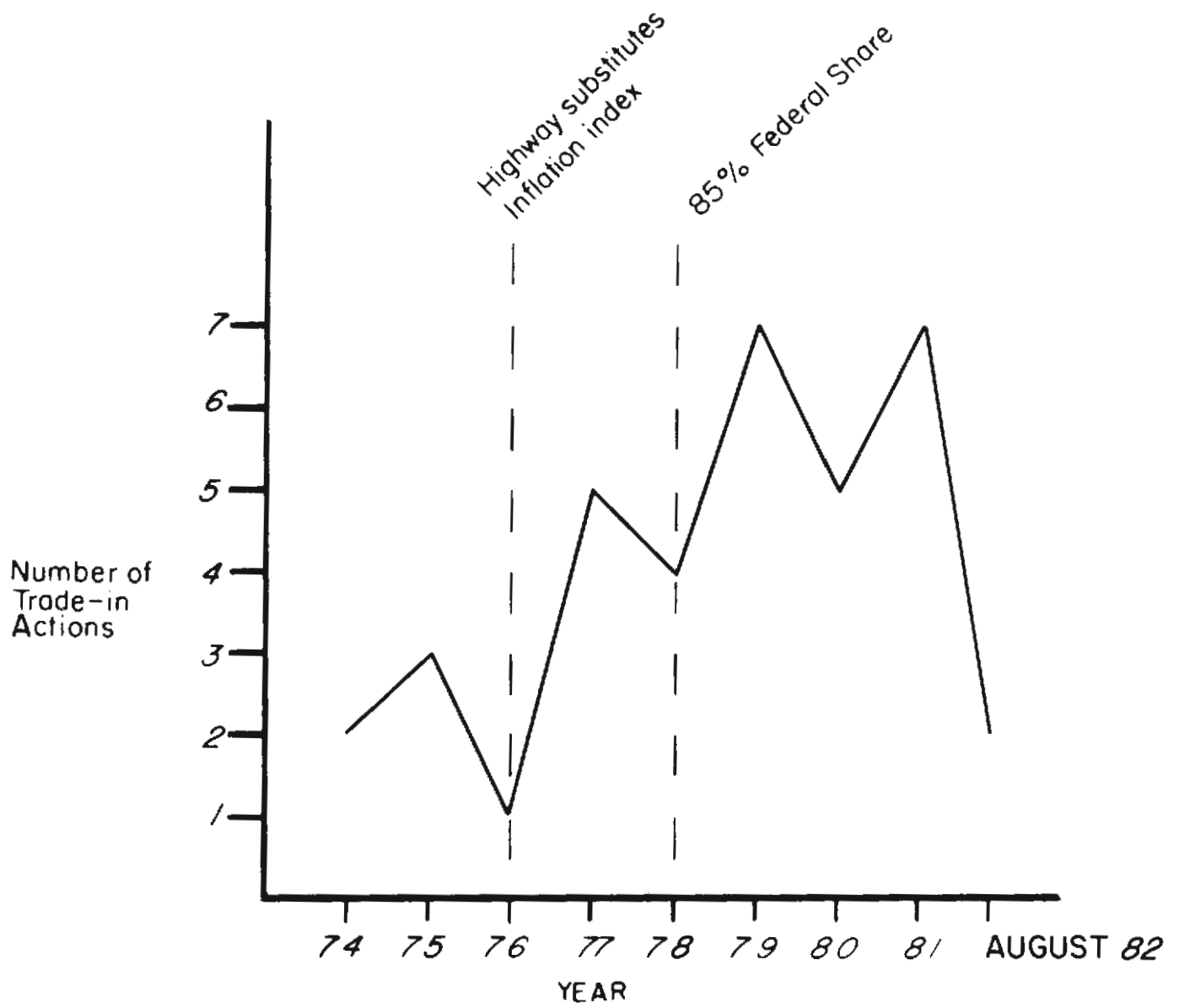


FIGURE III.1  
 A SUMMARY OF TRADE-IN ACTIONS, 1974-AUGUST, 1982

mated construction cost for all 41 segments of over \$5.8 billion.\* But as Table III.1 indicates, at the time these segments were withdrawn their value had inflated to a total of \$8 billion. In over two-thirds of the withdrawal actions occurring since 1977 (when inflation adjustments were begun), the authorized trade-in value was over 50 percent greater than the highway's base construction cost. This reflects the period of high inflation that the nation in general has experienced since the mid-1970s and specifically the inflation which has occurred in the area of federal-aid highway construction. The composite index for federal-aid highway construction price trends, which is used to adjust the base cost of withdrawn segments, has risen from a 1977 base value of 100 to 119 in 1978, 143 in 1979, 163 in 1980, only to have declined more recently in September, 1982 to 148, due to a lessening of inflation.

### Obligations

As of the end of June, 1982, \$4.78 billion in trade-in funds had actually been obligated by the U.S. Department of Transportation to various urban areas. The pattern of annual obligations is shown in Figure III.2.

Over 86 percent of total obligations have been given to just four urban areas. Washington, D.C. has received nearly \$2 billion, or 42 percent of obligated funds. Boston has received \$1.2 billion, or 26 percent of obligations. Chicago and Philadelphia have received \$567 million and \$380 million each, or a 12 and 8 percent share, respectively. Seventeen other urban areas have received a total of \$615 million. Three urban areas, each of which made recent withdrawals (the New Jersey portion of the Philadelphia urban area, Duluth and Waterloo), have received no obligations as of July, 1982.

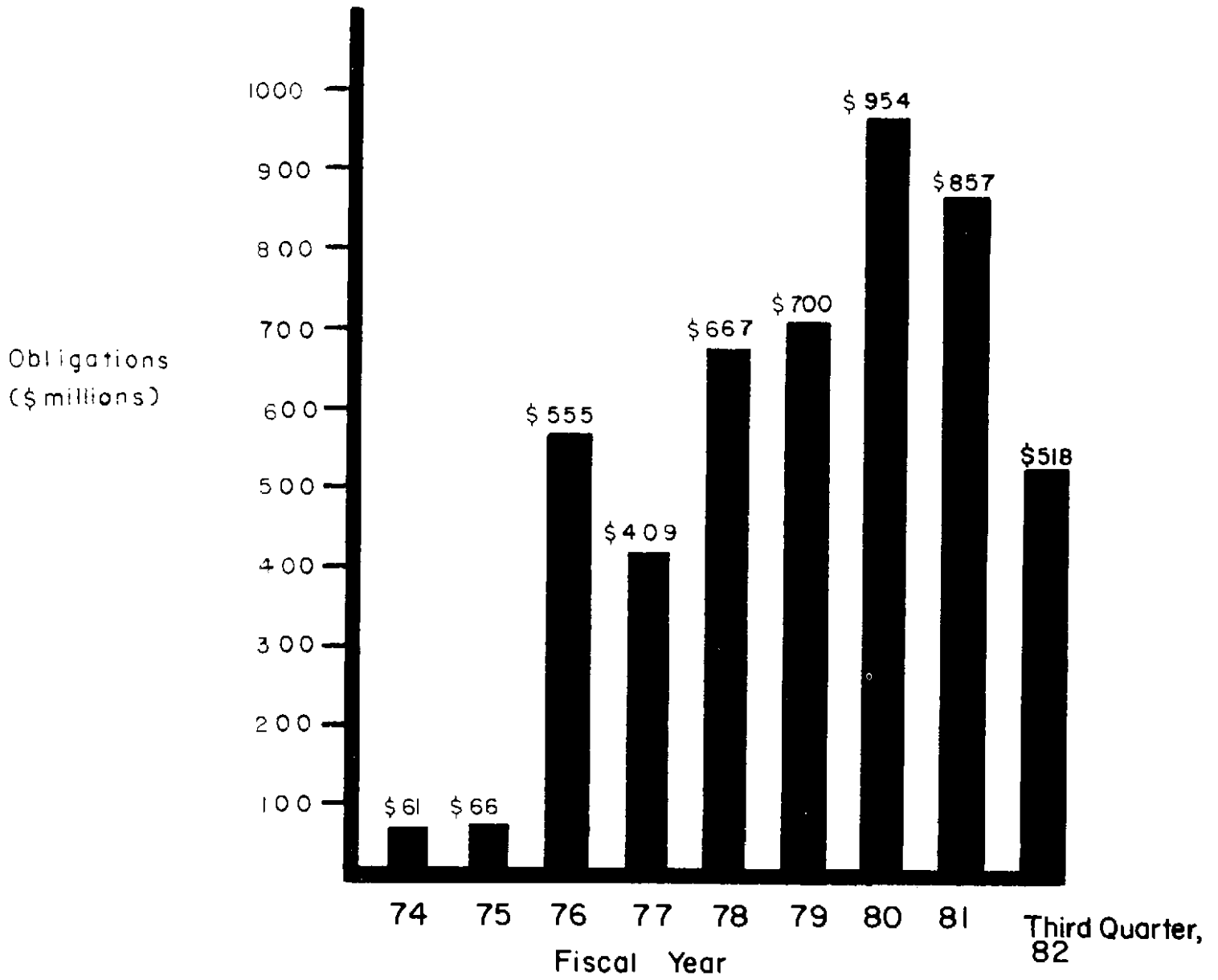
Since the May 1976 amendments, whatever authorized funds have remained unobligated have been subject to the same quarterly inflation adjustments as have new withdrawals with respect to their base construction costs. As of June 30, 1982, \$5.0 billion is still authorized to be appropriated to all 24 urban areas. This amount will be subject to future change, as (a) further obligations are made, (b) the composite price trend index will vary upward or downward in future quarters, and (c) new withdrawals may be approved.

Of the \$5.0 billion authorized but as yet not appropriated as of June 30, 1982, Chicago has \$1.7 billion, or 34 percent of this amount. Of the other 23 urban areas, no area has over 9 percent of the remaining \$3.3 billion, with Hartford having the most (\$456 million) and Salem the least (\$28 million).

### Substitute Projects

Transit substitute projects have received \$3.9 billion, or 81 percent of all obligations. Over \$3.2 billion has gone to just two areas: Washington, D.C., which has used its \$2 billion almost exclusively to

\* All monetary values are in current dollars, reflecting the years in which withdrawals were made (1974-1982).



Source: Federal Highway Administration

FIGURE III.2  
 TRADE-IN OBLIGATIONS THROUGH THE FIRST THREE QUARTERS  
 OF FISCAL YEAR 1982

build and equip its new subway system, and Boston, which has spent over \$1.2 billion on its existing rapid transit system. The remaining \$700 has been distributed among 15 other urban areas, primarily to Philadelphia (\$338 million) Chicago (\$80 million) and New York City (\$66 million).

Highway substitute projects have received nearly \$909 million, or 19 percent of all obligations. Chicago has received over half of this amount and Portland almost 13 percent. The rest, \$312 million, was distributed among 16 other urban areas.

Table III.2 shows how each urban area allocated its trade-in obligations between mass transit and highway projects. Although over four-fifths of total obligations have been for transit projects, 11 of the 21 areas receiving obligations used an overwhelming majority of their funds for highway projects. The broad spectrum of substitute projects has so far been funded is briefly described below.

### Transit

1. New Rail Facilities - The major projects include construction of the Metro heavy rail system in Washington, D.C. and the extension of the Red Line and relocation of the Orange Line (both heavy rail lines) in Boston. In addition, Baltimore has devoted \$6.9 million toward construction of its new heavy rail system. Finally, both Portland and Sacramento have funded planning studies for new light rail lines, while Portland has actually purchased necessary right-of-way using substitute funds.

2. New Rail Equipment - Philadelphia has purchased new vehicles for heavy and light rail systems. As part of their major construction projects, both Washington, D.C. and Boston have also purchased new vehicles.

3. Rail Reconstruction and Rehabilitation - New York City, Philadelphia and the New Jersey portion of the New York City area have funded extensive track and station rehabilitation projects in their subway and commuter rail systems. Hartford has begun renovation of a CBD inter-city rail station. San Francisco has undertaken planning studies for improving a commuter rail line.

4. Bus Purchases - Albany, Hartford, Philadelphia and Tucson have all purchased new buses for existing transit systems.

5. Other - Denver is building a CBD transit mall. Albany, Chicago and Philadelphia have built, reconstructed or rehabilitated transit vehicle storage and repair facilities. Denver has instituted a ridesharing program.

### Highway

1. Replacement Facility - Omaha has begun construction of an expressway facility situated in the same corridor as its withdrawn



TABLE III.2

OBLIGATIONS FOR TRANSIT AND  
HIGHWAY PROJECTS THROUGH JUNE, 1982

Urban Area	Obligations through June, 1982 (\$ Millions)	% Used for	
		Transit	Highway
Albany	15.5	34	66
Baltimore	7.6	91	9
Boston	1220.7	100	0
Chicago	567.8	14	86
Cleveland	27.2	0	100
Denver	72.4	25	75
Duluth	0	-	-
Hartford	47.2	15	85
Indianapolis	1.5	0	100
Memphis	2.9	90	10
Minneapolis	24.6	8	92
New York City	117.1	56	44
New York City-NJ Area	65.4	96	4
Omaha	24.7	8	92
Philadelphia	380.1	89	11
Philadelphia-NJ Area	0	-	-
Pittsburgh	0.4	0	100
Portland	191.2	40	60
Sacramento	0.5	100	0
Salem	23.6	0	100
San Francisco	0.8	100	0
Tucson	7.8	14	86
Washington, D.C.	1,982.6	99	1
Waterloo	0	-	-
TOTAL	\$4,781.5	81%	19%

Source: Federal Highway Administration

Interstate. Salem has purchased right-of-way and performed preliminary engineering on an arterial to replace the withdrawn Interstate.

2. Other New Expressway or Arterial Construction - Omaha and Philadelphia have begun construction of expressway or arterial facilities elsewhere in the urban area. Pittsburgh and San Francisco have undertaken planning efforts toward this same end. Tucson has added lanes to an existing Interstate facility.

3. Reconstruction or Widening of Collectors and Local Streets - A number of urban areas have funded these types of substitute projects, including Chicago, Denver, Hartford, Portland and Salem.

4. Rehabilitation or Reconstruction of Bridges - Many urban areas have also funded these projects, primarily focussing on small-scale but crucial central city bridges. The urban areas include Chicago, Cleveland, New York City, the New Jersey portion of New York City, Portland and Salem.

#### Future Substitute Projects: Current Estimate

The urban areas involved have not definitively specified how the current \$5.0 billion in authorized but unobligated trade-in funds are to be utilized. By September 30, 1983, most areas will have to submit concept programs to U.S. DOT which will indicate the proposed funding allocation between transit and highway projects, and describe in general terms each particular project. Baltimore and Memphis are exempt from the 1983 deadline due to judicial injunctions prior to Interstate withdrawal. (For more information on concept program requirements, see Chapter II). Currently, only tentative estimates can be made, based on (a) preliminary, but not binding, concept programs submitted by some urban areas (e.g., Cleveland, Minneapolis, San Francisco), (b) 5-year areawide transportation improvement plans and (c) statements made by various urban area transportation officials. Table III.3 indicates the resulting projections of the funding distribution between transit and highway projects as culled from these sources.

Urban areas would like to spend a majority of their remaining trade-in funds on highway projects. Seventeen urban areas estimate that they will spend between 51 and 100 percent of available funding on highway projects. Only six areas would choose to spend a majority on transit projects. Of the \$5.0 billion currently available, approximately 60 percent would be used for highway projects.\* The types of substitute projects proposed in these areas are described below.

#### Transit

1. New Rail Facilities - Boston and Washington, D.C. will continue funding their new heavy rail projects. Other areas which anticipate building new rail facilities are Baltimore and Chicago (heavy rail transit);

\* A survey conducted by the U.S. Conference of Mayors in April, 1981 reached a similar conclusion: 58 percent for highway, 40 percent for transit, 2 percent undecided.<sup>1</sup>

TABLE III.3

ESTIMATED SPLIT OF AVAILABLE TRADE-IN  
FUNDS BETWEEN TRANSIT AND HIGHWAY PROJECTS

Urban Area	% Funds for	
	Transit Projects	Highway Projects
Albany*	15	80
Baltimore	53	47
Boston	100	0
Chicago	50	50
Cleveland	20	80
Denver	<50	>50
Duluth	30	70
Hartford	<50	>50
Indianapolis	10	90
Memphis	12	88
Minneapolis	18	82
New York City	20	80
New York City Area, NJ	40	60
Omaha	0	100
Philadelphia	10	90
Philadelphia Area, NJ	70	30
Pittsburgh	0	100
Portland**	41	55
Sacramento	100	0
Salem	0	100
San Francisco	74	26
Tucson	2	98
Washington, D.C.	85	15
Waterloo	<50	>50
TOTAL	40%	60%

\* Five percent of Albany funds toward bicycle projects.

\*\* Four percent of Portland funds toward transit or highway cost overruns.

Source: Original data, collected in 1981-82.

the New Jersey portion of the Philadelphia area (commuter rail extension); and Portland, Sacramento and San Francisco (light rail).

2. New Rail Equipment - The New Jersey portion of the New York City area will purchase new commuter rail vehicles.

3. Rail Reconstruction and Rehabilitation - Both Philadelphia and New York City will continue existing projects.

4. Bus Purchases - These will be the main focus for Duluth, Indianapolis, Memphis and Minneapolis.

5. Other - CBD transit malls will be built by Baltimore, Indianapolis and Minneapolis. Bus garage or maintenance facilities will be built in Indianapolis and the New Jersey portion of the Philadelphia area. Park and ride facilities will be built in Indianapolis and San Francisco.

### Highway

1. Replacement Facility - Omaha and Salem will continue current projects. Denver and Waterloo will build new facilities in the withdrawn Interstate corridors. New York City will make improvements to the Long Island Expressway, the open-to-the-public I-495 segment withdrawn.

2. Other New Expressway or Arterial Construction - Many areas intend to fund these projects, including Albany, Baltimore, Hartford, Indianapolis, Memphis, Minneapolis, Omaha, Philadelphia, Pittsburgh, Portland, San Francisco and Tucson.

3. Reconstruction or Widening of Collectors and Local Streets - Projects of these kind will be implemented by Baltimore, Cleveland, Chicago, Denver, Duluth, Minneapolis, the New Jersey portion of the New York City area, Portland and Washington, D.C.

4. Rehabilitation or Reconstruction of Bridges - This will be a major emphasis in Baltimore, Cleveland, Memphis, Minneapolis and New York City. Other areas which will implement such projects include Albany, Chicago, the New Jersey portions of both the New York City and Philadelphia areas, Portland and Washington, D.C.

### Future Withdrawals

States and urban areas are faced with a double-edged deadline concerning unbuilt Interstate segments. September 30, 1983 is not only the final date for withdrawal and concept program approval but is also the date by which environmental impact statements (EIS) must be submitted for segments for which construction is intended. If neither a trade-in is approved nor an EIS is submitted by that date, the segment will be dropped from the Interstate system, and no remunerative payment will be made to a state or urban area. Thus, unless future legislation extends one or both of these deadlines (not currently envisioned), debates concerning the worthiness of a segment's

completion vs. its trade-in value will be concluded and decided within a relatively short time.

How many future trade-ins can be expected? The U.S. Conference of Mayors estimated back in April, 1981 that new trade-ins could amount to almost \$3 billion in eventual obligations (through fiscal year 1986).<sup>2</sup> But it is actually infeasible to make a reliable projection of the number of future trade-ins. There are a number of factors which will affect the eventual total. Chief among these is the availability of trade-in funding, or to be more accurate, the perceived availability on the part of states and urban areas of such funds. For example, in the case of Westway, a highly controversial and expensive (\$1.4 billion in its latest cost estimate) Interstate link in New York City, one of the many issues involved in the debate over construction vs. trade-in is whether all authorized funds would actually be received.

Under current appropriation levels and disbursement procedures, urban areas may be discouraged to propose new trade-ins if they suspect that obligations may not be forthcoming until some distant date, or even that authorizations may be reduced by future legislation. On the other hand, if the Highway Trust Fund is to be tapped for highway substitute projects and higher appropriation levels are set then this may have a stimulative effect on additional trade-ins.

Other legislative changes could affect the number of future trade-ins. Stimulative changes include allowing trade-ins to occur in rural areas and allowing U.S. DOT to initiate trade-ins.<sup>3</sup> On the other hand, such proposals as ending the inflation adjustment and truncating the unbuilt Interstate system could have the opposite effect.<sup>4</sup> These proposals are discussed in greater depth in Volume 3.

### The Trade-in Program as a Block Grant

The trade-in option converts funds which are provided to build a particular highway segment into funds that can be used for a diversity of transit and highway purposes, anywhere in an urbanized area, according to a programming schedule established by the funding recipients. In other words, funds previously available under a categorical grant program (i.e., Federal-Aid Interstate), where the end use is strictly controlled by a previously approved design proposal and by Interstate Highway standards and procedures, are now available under a format very much resembling a block grant (i.e., the trade-in program). Although never openly declared a block grant, the main objective of establishing and later expanding the trade-in program has always been to give state and local governments greater control over the use of a particular funding source, while reducing federal control, which is essentially the meaning of a block grant.

Since there is significant interest currently in the block grant format as a federal funding mechanism, it is useful to examine the performance of the trade-in program within this context. Three issues are addressed here: (1) the effect on the federal/state/local government relationship; (2) the diversity of substitute projects; and (3) the limitations of block grant concepts.

## Government Relationship

Under the normal categorical grant structure of federal transportation funding, the federal government has a clearly defined relationship with state and local government. Essentially, FHWA deals with the state when it comes to Federal-Aid Highway programs and with the urban area when it comes to UMTA Section 3 grants. The regional metropolitan planning organization (MPO) becomes involved through the various mandates of Federal Urban Transportation Planning Guidelines.

But in the trade-in program the channels are less defined. Trade-in requests must be approved by the Governor and local officials, but may be initiated by any of the parties. Requests to the federal government for substitute project funding must be submitted by the Governor, but may be developed by any of the parties (although project development and programming is subject to the same Urban Transportation Planning Guidelines as other highway and transit projects are). The result has been that among the 24 urban areas that have enacted trade-ins, the levels of government that assume leading planning and implementation roles vary greatly. States have played the primary roles in Boston, Denver, Hartford, Omaha and New Jersey trade-ins. Local governments have been more important in Duluth, Memphis, New York City, Pittsburgh, Portland, Salem and Tucson. In Albany, Cleveland, Minneapolis and Washington, D.C., the MPO was the most prominent level of government. In seven other areas, the trade-in request and/or substitute project development responsibilities were shared in some manner by local, state and regional bodies.

The particular level of government which assumes the lead position in the trade-in process is a function of various factors, among them the importance of an Interstate link to a state or regional highway plan, the relative prominence of state and local DOTs in urban transportation planning and financing, the general powers invested in the MPO, and the relative political clout wielded by the Governor, Mayor(s), city or county legislatures, State DOTs, etc. The relative importance of these factors is highly specific to the given urban area. The absence of a federal structure assigning lead and secondary responsibilities have contributed to delays in both the withdrawal request and substitute project development processes (e.g., Chicago, Hartford, Memphis). It almost certainly has resulted in a considerable amount of negotiation and compromise among the various parties involved (e.g., Cleveland, Minneapolis, Portland). But these are not necessarily bad things, and in fact may have resulted in a more representative local consensus on transportation needs and remedies than typically is achieved through the formal structure of other FHWA and UMTA funding programs.

Another aspect of the state-local government relationship involves matching share. Under the Interstate program, the federal government provides 90 percent of the costs, while the local matching share is 10 percent. Over the years, this ten percent matching share has almost always been provided by the State government. A system of state highway revenue generation and disbursement to urban areas to cover expenses under the Interstate program (and other Federal-Aid programs)

has been in place for some time, with changes having occurred incrementally, primarily after FHWA created or deleted new categorical grant programs or program criteria.

The trade-in program created a radically new situation. With the 85 percent/15 percent setup, a previously authorized sum of money suddenly necessitated 5 percent more matching share (and before 1978, 10 percent more for transit projects and 20 percent more for highway projects). Corridor-directed funding suddenly became urban area-directed funding, potentially affecting overall disbursement formulae. Finally, transit projects were now eligible to be funded, a drastic change from the point of view of the states, since some were restricted by law or longstanding policy from providing matching shares for transit projects.

Despite these inherent difficulties, providing the matching shares for trade-in substitute projects has not turned out to be a significant problem. In some cases, the state is still providing the complete matching share, whether for highway or transit purposes (e.g., Chicago, Indianapolis, New Jersey). Various arrangements have been worked out in other areas, such as in Baltimore (State pays all transit share and highway share outside City limits; City of Baltimore picks up the share on its own municipal highway substitute projects), Duluth (where the localities will assume the share, but will also receive some renumerative support from the State), Memphis (transit funded 50 percent each by State and City), and Portland (where the State will pay transit share in return for Portland giving up FAUS funding). The MPOs in some areas have helped bring about firm matching share commitments from relevant municipalities and counties (e.g., Albany, Cleveland and Minneapolis). One conclusion that can be reached is that if the federal source of funds is viewed as particularly beneficial (i.e., substantial sum, high federal share and continual), then matching share arrangements for block grants are not difficult to achieve (despite a co-existing, highly formalized system of matching share arrangements for other FHWA and UMTA programs).

#### Substitute Project Diversity

Trade-in funds have been (1) used for various purposes, (2) used to fund various size projects, (3) distributed either within the original highway corridor or throughout the urban area or both, and (4) either combined with other federal or state/local funding sources or segregated from them. This diversity reflects considerable variation in the planning preferences and transportation needs of urban areas.

During discussions with state and local transportation officials in the 24 urban areas, a common fear expressed was that detrimental effects would occur from a wholesale conversion of the federal funding structure into one or a few block grants. Among the prominent concerns was that large and publicly visible construction projects would eat up such a large portion of the funds available to an urban area that vital but less visible reconstruction and rehabilitation projects would always be underfunded. Indeed, it was much to the relief of many of these officials that a highly structured categorical grant program

existed, funding important smaller projects through such programs as FAUS, Bridge Rehabilitation and Reconstruction, etc.

Results of the trade-in program indicate, however, that open-ended funding sources are utilized for a variety of purposes. As the program developed, urban areas even showed a greater proclivity to fund a variety of smaller bridge, highway and transit reconstruction and rehabilitation projects rather than the major construction efforts undertaken by Boston and Washington, D.C. Obviously this reflects, in large part, a growing tendency among urban areas to repair existing infrastructure to best meet current needs rather than to expand infrastructure and/or services to satisfy new or latent travel demand. What is also apparent is the relative ease in which a block grant-type funding source can be utilized even as local transportation priorities shift dramatically.

#### Limitations of the Block Grant Concept

The formal structure of the trade-in program makes it appear much like that of a block grant. However, the informal process of federal funding restricts the full block grant potential of trade-in. Although withdrawal approval means formal authorization of funds to an urban area for substitute projects, obligations can only be made if Congress has appropriated sufficient funds for a given fiscal year. Congressional appropriations for the trade-in program have risen from \$61 million in fiscal year 1974, to \$954 million in fiscal year 1980, to the current fiscal year 1982 level of \$828 million. Despite the increase in appropriation amounts to approximately \$800-\$900 million over the last few years, U.S. DOT could obligate more than \$1 billion for substitute projects over the next several years if given the budgetary approval. A survey conducted by the Chicago Area Transportation Study in March, 1981 found that among only 16 of the currently qualifying 24 urban areas, substitute projects proposed for fiscal year 1982 amounted to between \$1.1 billion and \$1.2 billion.<sup>5</sup>

The constraints imposed by low trade-in appropriation levels may cause some urban areas to postpone (or find alternative funding sources for) some substitute projects, either because they require large upfront funding which may not be available, or a steady flow of funds over several years which cannot be guaranteed. In recent years Congress not only has specified a level of appropriations but also how much is to be spent on transit vs. highway, and how much is to be distributed to each of the various urban areas. The fiscal year 1982 appropriation is shown in Table III.4, indicating that the only discretionary power left to U.S. DOT is the division of \$60 million for highway projects between Portland and Salem. This apportionment has resulted in at least two changes in the choice and scheduling of substitute projects, and probably more. Cleveland has prepared a \$50 million package of highway projects ready to be implemented in 1982. With no funds made available, next year's plan will represent an amalgam of projects left over from 1982 and those ready for implementation in fiscal year 1983. In Philadelphia, where it was intended to spend 100 percent of 1-895 trade-in funds on highway projects, some \$6 million will be diverted to



TABLE III.4

CONGRESSIONALLY EARMARKED  
TRADE-IN FUNDS FOR FISCAL YEAR 1982

	Appropriations for:	
	Transit Projects (\$ millions)	Highway Projects (\$ millions)
Total Appropriation	\$540	\$288
Amount Earmarked for:		
Albany	0	0
Baltimore	7	2
Boston	123	0
Chicago	25	125
Cleveland	0	0
Denver	0	8
Duluth	1	1
Hartford	0	10
Indianapolis	0	8
Memphis	0	13
Minneapolis	1	8*
New York City	15	6
New York City-NJ Area	25	7
Omaha	0	2
Philadelphia	9	22
Philadelphia-NJ Area	0	0
Pittsburgh	0	0
Portland	44	**
Sacramento	2	0
Salem	0	**
San Francisco	3	0
Tucson	0	8
Washington, D.C.	285	7
Waterloo	0	0

\* May only be obligated to Hennepin County, a suburban county in the Minneapolis urban area.

\*\* A \$60 million highway allocation to the State of Oregon was left undivided by Congress between Portland and Salem.

Source: Federal Highway Administration and Urban Mass Transportation Administration

commuter rail improvements to take advantage of a transit allocation in the overall apportionment to that area.

The results of these appropriation constraints are that (1) urban areas lose flexibility in the types of projects they can choose (i.e., especially the mode and size of the project), (2) federal control over funding program direction is once more restored (although control has shifted from DOT to Congress), and (3) if funding constraints continue or worsen, trade-in may become a less reliable federal source of funding and one which is therefore taken less seriously by urban areas. The net effect can be a diminution or actual loss of the block grant characteristics created by the trade-in program.

### Notes for Chapter III

1. U.S. Conference of Mayors, Interstate Crossroads, Vol. 2, No. 2, Washington, D.C., September, 1981.
2. Same as Note 1.
3. Rural trade-ins are proposed in the current Senate bill S.2574, dated May 26, 1982. Trade-ins initiated by U.S. DOT were proposed (but not enacted) in 1981 by the Reagan administration.
4. Terminating the inflation adjustment is proposed in House bill H.R. 6211, dated April 29, 1982. Truncation of the Interstate system is studied, in various forms, in: Congressional Budget Office, The Interstate Highway System: Issues and Options, Washington, D.C., June, 1982.
5. Chicago Area Transportation Study, National Interstate Transfer Comparison, Chicago, March, 1981.