United States General Accounting Office

GAO

Report to the Ranking Minority Member, Committee on Commerce, Science, and Transportation, U.S. Senate

December 2002

FEDERAL-AID HIGHWAYS

States Need Guidance on Sales or Leases of Real Property Purchased with Federal Funds

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GAO-03-207

December 2002

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Highlights

Highlights of GAO-03-207, a report to the Ranking Minority Member, Committee on Commerce, Science, and Transportation, United States Senate

FEDERAL-AID HIGHWAYS

States Need Guidance on Sales or Leases of Property Purchased with Federal Funds

Why GAO Did This Study

In 1998, the Transportation Equity Act for the 21st Century (TEA-21), authorized the states to retain the federal share of proceeds from the sale or lease of real property that had been purchased with federal-aid funds. It also required the states to use the federal share on other highway projects eligible for funding under the federal-aid highway program. GAO determined (1) the extent to which states are selling, leasing, or disposing of real property purchased with federal-aid funds and (2) how the proceeds generated from the sale or lease of real property are being used, including whether they are being used in accordance with TEA-21. GAO issued a related legal opinion in September 2002.

What GAO Recommends

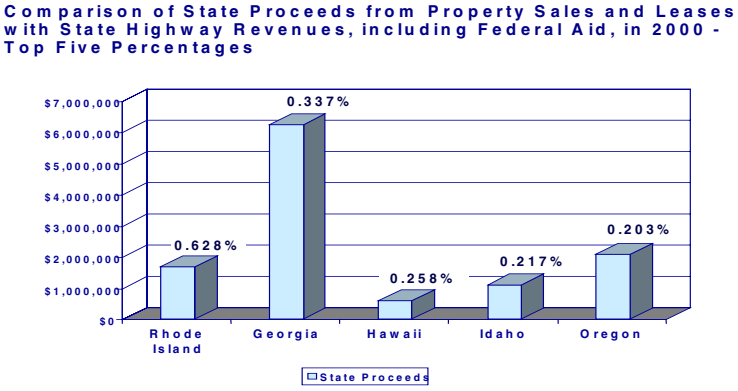
GAO recommends that DOT develop and report on how DOT plans to comply with GAO's legal opinion concerning the statute governing the sale or lease of real property. GAO also recommends that DOT provide additional guidance to the state DOTs that will help ensure states use the proceeds of property sales or leases as required by TEA-21.

www.gao.gov/cgi-bin/getrpt?GAO-03-207.

To view the full report, including the scope and methodology, click on the link above. For more information, contact Kate Siggerud, (202) 512-2834.

What GAO Found

All of the 51 state Departments of Transportation GAO surveyed, including the District of Columbia, reported selling, leasing, or disposing of real property, such as unused land purchased with federal-aid funds. From June 1998 through May 2002, 37 states sold, leased, or disposed of at least 5,636 properties that generated about $148 million in proceeds for the states. States varied on whether they tracked and reported this information to DOT; therefore, GAO did not report this information for the other 14 states. State DOT officials view the policy that allowed them to retain the federal share of the proceeds as being positive because it provided states greater flexibility for financing their transportation programs. However, proceeds generated from the sale or lease of property are not currently a major source of revenue for states' transportation programs. GAO determined that the proceeds generated from the sale, lease, or disposal of real property were less than 1 percent of states' transportation revenue from other sources, including federal aid, in 1999 and 2000.



Source: Developed by GAO from data provided by State DOTs and FHWA.

States reported using the proceeds generated from the sale or lease of property in different ways; and at least 2 states may have used the proceeds in ways that do not comply with the specific statutory requirements to use the proceeds on projects eligible for federal-aid highway funding. Forty-seven states reported using the proceeds to fund other state transportation projects, and at least 4 states use the proceeds as their match for projects receiving federal funds. GAO issued a legal opinion in September 2002, concluding that Congress did not intend for states to use such proceeds as their match. DOT has interpreted TEA-21 as allowing for the use of the federal share as a state's match. GAO also found that 2 states did not have restrictions on how the federal share of the proceeds should be used; therefore, the proceeds may have been used on projects not eligible for federal-aid. DOT issued some guidance but is considering issuing more guidance to states to ensure proceeds are used for eligible projects under the federal-aid highway program.

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Abbreviations

DOT	Department of Transportation
FHWA	Federal Highway Administration
TEA-21	Transportation Equity Act for the 21st Century

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United States General Accounting Office
Washington, D.C. 20548

December 13, 2002

The Honorable John McCain
Ranking Minority Member
Committee on Commerce, Science, and Transportation
United States Senate

Dear Senator McCain:

The Federal Highway Administration (FHWA), within the U.S. Department of Transportation (DOT), is responsible for the federal-aid highway program. This program distributes billions of dollars in federal highway funds to the states. FHWA provides federal assistance to the states from the Highway Trust Fund for several purposes, including the construction and maintenance of highways and related activities. Federal-aid highway projects are typically funded with an 80 percent federal contribution. The nonfederal share of the cost (typically 20 percent) must come from state, local, and/or private funds and is commonly referred to as a match. One of the related activities eligible for federal aid involves the cost of acquiring necessary real property for a highway project. When such property is no longer needed, it can be sold or disposed of by the state. Similarly, land retained by states can be leased to others. The 1998 Transportation Equity Act for the 21st Century (TEA-21), which authorized DOT highway and transit programs from 1998 through 2003, provided the states greater flexibility in connection with selling and leasing real property associated with federal-aid transportation projects. TEA-21 authorized the states to retain the federal share of net proceeds from the sale or lease of real property and to apply the federal share to other projects eligible for funding under title 23, U.S.C., herein known as federal-aid highway and related programs.[1]

FHWA has interpreted the statutory provisions governing the federal share of proceeds from the sale or lease of real property as permitting the states to use the federal share of the net proceeds without having to follow the rules and regulations associated with a federal-aid project. FHWA believes that the federal government's interest in such funds is satisfied as long as the proceeds are used for projects eligible for funding under federal-aid highway and related programs. FHWA has informed the states that they

[1]Such projects may include certain highway, transit, bicycle or pedestrian or other transportation-related projects covered under title 23.

may treat the proceeds from such transactions as state funds that are not subject to restrictions that would apply if the funds were treated as federal highway funds. In a recent legal opinion, we disagreed with FHWA's interpretation (see app. II).

As the authorized period under TEA-21 draws to a close in 2003, Congress will need to make decisions about reauthorizing the surface transportation programs, including requirements related to selling, leasing, and disposing of real property. As agreed with your staff, this report discusses (1) the extent to which states are selling, leasing, or disposing of real property purchased with federal-aid funds and (2) how the proceeds generated from the sale or lease of real property are being used, including whether they are being used in accordance with TEA-21.

To determine the extent to which states are selling, leasing, or disposing of real property purchased with federal-aid highway funds, we obtained information from FHWA officials and surveyed 51 state DOTs, including the District of Columbia. We then compared fiscal years 1999 and 2000 total proceeds reported by each state from the sale or lease of real property with the states' total highway receipts reported by DOT. We obtained information from state DOTs about how they use the proceeds generated from the sale or lease of real property and about any restrictions they placed on the proceeds, and we compared these responses with our legal opinion. We also obtained information from officials of the DOT Inspector General's office regarding their review of Massachusetts' Central Artery Project that had initially raised concerns about FHWA's interpretation of TEA-21 changes related to sales and leases of real property. We conducted our review from June 2002 through December 2002 in accordance with generally accepted government audit standards.

Results in Brief

All of the 51 state DOTs that we surveyed, including the District of Columbia, reported selling, leasing, or disposing of real property such as unused land purchased with federal-aid funds. From June 1998 through May 2002, 37 states sold, leased, or disposed of at least 5,636 properties that generated about $148 million (2001 dollars) in proceeds for the states. However, states varied as to whether they tracked and reported this information to DOT. For example, eight states did not distinguish sold, leased, or disposed of properties originally acquired with federal funds from those properties that were acquired without federal funds and/or did not identify the amount of proceeds generated. States also varied in their policies for retaining the proceeds they receive from the sale or lease of

real property. Out of the 51 states surveyed, 3 states reported that they returned the federal share of the proceeds by crediting an existing federal-aid project within their states. The proceeds generated from the sale or lease of real property do not currently appear to be a major source of revenue for states' transportation programs. On the basis of our comparison of proceeds the states reported they generated from the sale, lease, or disposal of real property with the states' overall revenues available for highway projects, we found that the ratios were less than 1 percent in 1999 and in 2000. Nevertheless, state DOT officials view the current regulations that allow them to retain the federal share of the proceeds as positive because they provide the states greater flexibility for financing their transportation programs.

States reported using the proceeds generated from the sale or lease of real property in several ways; and at least two states may have used the proceeds in ways that do not comply with specific statutory requirements to only use the proceeds on projects eligible for funding under federal-aid highway and related programs. This use of the proceeds conflicts with FHWA's interpretation of the statute. For the states we surveyed and visited, 47 states use the proceeds generated from the sale or lease of real property to fund other state transportation projects eligible for federal aid, and at least four states use the proceeds as their match for projects receiving federal contributions. In our legal opinion, we concluded that Congress did not intend for states to use such proceeds as their match. Under FHWA's interpretation of the statute, however, states would be allowed to use the federal share as the state's match. For the 51 states we surveyed, the restrictions on the use of the proceeds varied. Forty-two states reported that they deposit the proceeds in accounts used for road projects, and 47 states reported that they restrict the use of these proceeds to projects eligible for federal aid. However, at least two states did not have similar restrictions; and in these cases, the proceeds of property sales could be used for projects that are not eligible for funding under federal-aid highway and related programs, contrary to the specific requirements of the statute and FHWA's interpretation. FHWA officials told us, that at meetings with state officials, they told the states that "as a practical matter" they should take steps to demonstrate that the federal share of proceeds from property sales are being allocated to projects eligible for federal aid. FHWA officials were not aware of the potential noncompliance that we identified but said they may issue guidance on tracking the use of proceeds from property sales in 2003.

We are making recommendations to (1) clarify how FHWA plans to comply with our legal opinion about the eligible uses of these funds and (2) improve the agency's guidance for complying with TEA-21 language regarding property sales and leases.

DOT officials commented on a draft of this report and generally agreed with the facts regarding states' sales and leases of property originally purchased with federal funds. Because DOT is still considering how to respond to GAO's legal opinion, the officials did not comment on the first recommendation and said that DOT would consider our second recommendation when the review of GAO's legal opinion is completed.

Background

In our recent legal opinion, we reviewed the statutory provisions governing the disposition of the proceeds from the sale or lease of real property acquired with federal highway grant funds and FHWA's interpretation of that provision. FHWA issued regulations in 1999 implementing real property management policies in conjunction with the federal-aid highway program, which we reviewed. We disagreed with FHWA's interpretation of the law. We concluded that Congress did not intend for states to convert federal money to state money by buying and selling property and/or use the federal share of recaptured funds to reduce or avoid their obligation to provide matching funds.

DOT's Inspector General raised similar concerns about FHWA's interpretation of the federal law governing the proceeds from the sale or lease of real property in its report[2] regarding the finance plan for the Central Artery Tunnel Project[3] in Massachusetts. In its report, the DOT Inspector General questioned whether the proceeds derived from the sale of excess properties purchased with federal-aid highway funds should be counted against the $8.549 billion cap imposed by Congress on federal

[2]*October 2001 Finance Plan for the Central Artery/Tunnel Project, Federal Highway Administration, DOT Inspector General* (March 11, 2002).

[3]The Central Artery Tunnel Project is the largest federally funded public works project in recent history, involving the reconstruction of Interstate 93 (the Central Artery) and the extension of Interstate 90 (the Ted Williams Tunnel). Interstate 93 reconstruction includes a new eight-lane highway beneath the existing elevated Central Artery through downtown Boston. Interstate 90 extension involves placement of a four-lane immersed tube tunnel beneath Boston Harbor. The Central Artery Tunnel Project is approximately 7.5 miles long and includes approximately 160 lane-miles of new and reconstructed highway.

contributions to the Central Artery Tunnel Project.[4] Further, the DOT Inspector General found that Massachusetts intended to sell land, originally purchased with federal aid, on which it had temporarily located its project headquarters, reinvesting the money in the project as "state funds." The sale of the project headquarters is expected to generate about $100 million.

All States Report Selling, Leasing, or Disposing of Real Property

All 51 of the state DOTs we surveyed, including the District of Columbia, reported selling, leasing, or disposing of real property purchased with federal-aid funds (see app. IV for responses from state DOTs). We found that from June 1998 through May 2002, 37 states reported they sold, leased, or disposed of at least 5,636 properties that generated about $148 million (2001 dollars)[5] in revenue for the states. We excluded eight states[6] from our calculations of the total number of properties sold, leased, or disposed of because these states either did not distinguish sold, leased, or disposed of properties originally acquired with federal funds from those properties that were acquired without federal funds and/or identify the amount of proceeds generated. We excluded another six states from our calculations for various reasons.[7] In all, we excluded 14 states from our calculations because of these variances. For example, California has an agreement with

[4]Our legal opinion did not address whether Massachusetts' actions would cause the cap on federal contributions to be exceeded (see app. II).

[5]We converted nominal dollars into constant 2001 dollars; we used price indexes for gross domestic product based on federal fiscal years that were constructed from data from the U.S. Department of Commerce's Bureau of Economic Analysis.

[6]California, Illinois, Kansas, Louisiana, Maryland, Nevada, Oklahoma, and Wisconsin were excluded from our calculations. California, Illinois, Louisiana, Maryland, Nevada, and Wisconsin could not distinguish sold, leased, or disposed of properties originally acquired with federal funds or identify the amount of proceeds generated. State officials in Kansas and Oklahoma could not distinguish sold, leased, or disposed of properties originally acquired with federal funds but were able to provide the amount of proceeds generated from sales or leases.

[7]The District of Columbia, Florida, Minnesota, New Hampshire, Texas, and Virginia were excluded from our calculations. The District of Columbia officials reported they disposed of excess property by transferring one property to the National Park Service. This transfer did not generate proceeds. Florida, Minnesota, and Virginia officials reported that they could "sometimes" identify properties originally acquired with federal funds. New Hampshire only provided averages. Texas officials identified the number of properties originally acquired with federal funds and the amount of proceeds, but they return the federal share by crediting an ongoing federal-aid project within the state.

FHWA that recognizes that the amount of revenue generated from the sales or leases of land purchased with federal-aid funds is substantially less than the state's expenditures on highways; therefore, the state is not required to track and report the proceeds from the sales. Also, Louisiana state officials reported that they do not track and report federal dollars because their real estate property management database is not designed to distinguish sales of property acquired with federal-aid funds. Nevertheless, these states reported that they sold, leased, or disposed of some real properties originally purchased with federal funds.

States also vary in their policies for retaining the net proceeds they receive from the sale or lease of real property because they have different views of the federal requirements. Most states that we surveyed deposit the proceeds into state transportation accounts to be used at a later date. However, three states reported that they do not follow that procedure but credit an existing federal-aid project within the state. For example, Maryland DOT officials told us that they credit an ongoing federal-aid project within their state. In their opinion, retaining the federal share would require the state to establish special tracking accounts to trace each dollar of revenue from affected property sales or leases from its receipt to its expenditure on a specific eligible federal-aid project which would not be cost effective. The cost to establish these accounts would exceed its current annual state revenue from these properties. Nevada and Texas DOTs also credit existing federal-aid projects within their states because, in their view, it is more efficient not to track the federal share of the proceeds. FHWA officials told us that, in their view, when states credit the federal share of the net proceeds to an existing federal-aid project, they lose the opportunity provided by TEA-21 to use the proceeds for other state highway projects.

For states that retain the federal share of the net proceeds, five state officials[8] that we contacted said they view the current regulations that allow them to retain the federal share of the proceeds generated from the sale or lease of real property as positive because it gives the states greater flexibility to sell or lease real property to support the states' transportation programs. For example, officials in California and Virginia told us that selling or leasing surplus property and retaining the proceeds provide additional funds to complete more state highway projects. State DOTs and FHWA officials in Illinois, Virginia, and California also told us that the

[8]California, Georgia, Illinois, Texas, and Virginia.

current regulations eliminate the administrative burden of tracking and returning the federal share of the funds to the federal government.

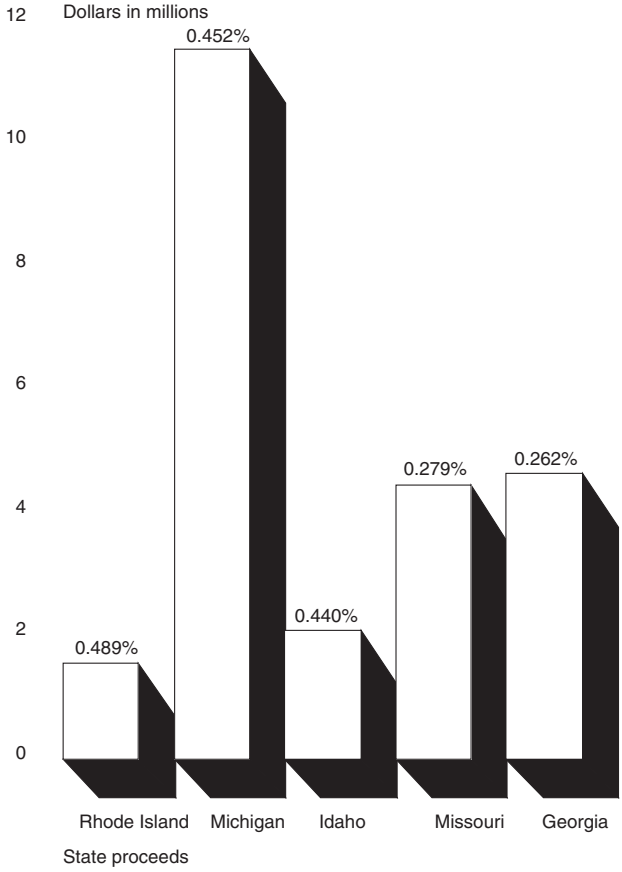
Proceeds from Property Sales and Leases Are Not a Major Source of Revenue

The proceeds generated from the state DOTs' sales or leases of real property do not currently appear to be a major source of revenue for the states' transportation programs. We compared the proceeds generated, as reported to us in our survey, with the states' revenues[9] available for highway projects. The ratio between the proceeds generated by the states and the states' receipts represented less than 1 percent of the states' revenues in 1999 and 2000[10] (see apps. V and VI). Figures 1 and 2 show the states with the highest ratio between the proceeds from property sales or leases with the states' revenues for 1999 and 2000, respectively. We calculated that in 1999, the total ratio of the federal share of proceeds from property sales and leases in comparison with the state revenues was 0.075 percent. Of the 35 states for which we calculated ratios, 8 states had ratios that were greater than or equal to 0.1 percent, and 27 states had ratios that were less than 0.1 percent.

[9]State receipts (or "revenues") include highway-user revenue and all other receipts that are expended for highway purposes, regardless of source, including state highway user tax revenues, road and crossing tolls, general funds, miscellaneous income, bond proceeds, and payments from federal and local government.

[10]Information on state highway receipts for 2001 and 2002 are not available; therefore, states' proceeds for fiscal years 2001 and 2002 were not compared with state highway receipts. We did not use the data obtained from states for 1998 and 2002 because the data from these years does not reflect the entire calendar year.

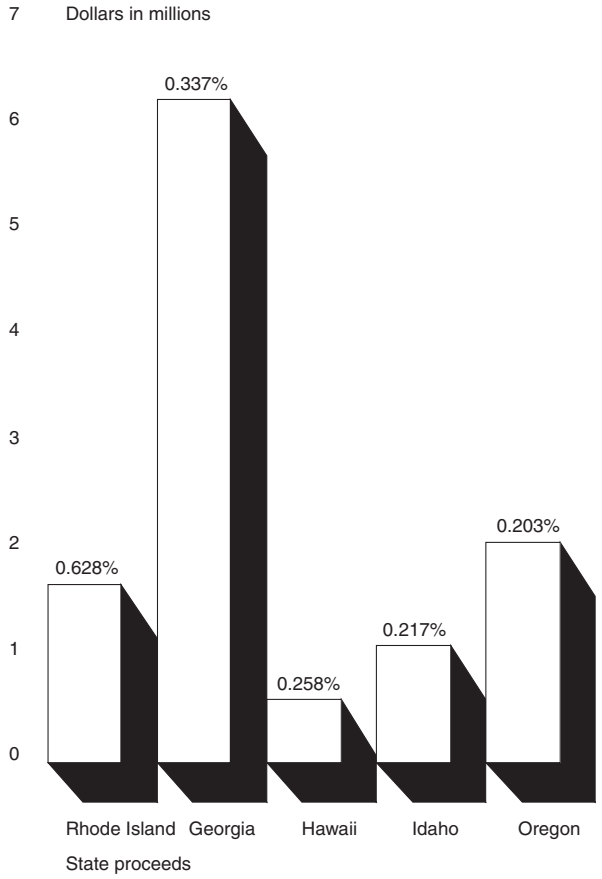
Figure 1: Comparison of State Proceeds from Property Sales and Leases with State Highway Receipts, Including Federal Aid, in 1999–Top Five Ratios



Source: Developed by GAO from data provided by State DOTs and FHWA.

We calculated that in 2000, the total ratio of the federal share of proceeds from property sales and leases in comparison with the state revenues was 0.069 percent. Of the 35 states for which we calculated ratios, 10 states had ratios that were greater than or equal to 0.1 percent, and 25 states had ratios that were less than 0.1 percent.

Figure 2: Comparison of State Proceeds from Property Sales and Leases with State Highway Receipts, Including Federal Aid, in 2000—Top Five Ratios



Source: Developed by GAO from data provided by State DOTs and FHWA.

We noted no particular trend in the amount of proceeds from these types of property sales or leases over the period of our survey. Therefore, it is possible that the proceeds from property sales or leases could increase or decrease in the future. One likely sale of property in the near future by the Massachusetts Highway Department would have a large effect on the total proceeds from the sale or lease of properties purchased using federal highway aid in that state. The Department used federal aid to purchase a substantial amount of property for rights-of-way associated with the Central Artery Tunnel Project. Sale or lease of property associated with this project has already generated nearly $9 million in revenue for the state

during the period of our survey (see app. IV for state responses). In addition, the state plans to sell the project's headquarters building. The federal government contributed 90 percent of the original cost to acquire the building, and federal officials estimate that the sale of the building will generate about $100 million for the state's transportation program. In 2000, Massachusetts received about $490 million in federal highway aid.

States' Use of Proceeds Vary and Sometimes May Not Comply with the Statutory Requirements on the Use of the Proceeds

States reported using the proceeds generated from the sale or lease of real property in different ways; and their survey responses indicated that some uses of the proceeds may not comply with specific statutory requirements of only using the proceeds on projects eligible for funding under federal-aid highway and related programs. This use of the proceeds conflicts with FHWA's interpretation of the statute. For the 51 states we surveyed, 42 states reported that they deposited the proceeds from sales of property originally purchased with federal funds in accounts established to fund state highway projects. Officials from 47 state DOTs reported using the proceeds to fund other state transportation projects eligible for federal aid, and at least four states use the proceeds as their match for projects receiving federal contributions. For example, state DOT officials in Illinois, Louisiana, Nebraska, and North Carolina told us, in our visits or through their survey responses, that they use the proceeds generated from the sale or lease of property for matching purposes. Our legal opinion concluded that the states could not use the proceeds to match contributions, stating that the intent of Congress was not to allow states to "use the proceeds of such transactions to reduce or avoid their matching fund obligations." FHWA has interpreted the statute as allowing for such use. In eight states, we could not determine from the survey responses how the states were using the proceeds because they do not (1) track property purchased with federal-aid funds separately from other property or (2) separate federal and state proceeds generated from the sale and lease of real property. In these cases, the federal share is commingled with state funds and cannot be accounted for separately.

TEA-21 stated that proceeds must be used for projects eligible for federal aid; and, according to their survey responses, most states have placed such restrictions on the accounts into which the proceeds were placed. FHWA officials said that, in their view, states would be in compliance with TEA-21 if they placed proceeds in accounts restricted for use on projects eligible for funding under federal-aid highway and related programs. However, officials in two states told us that their accounts do not have this type of restriction. Therefore, in at least two cases, it is possible that states have

used the proceeds on projects that are not eligible for federal aid. For example, a state DOT official in Indiana[11] told us that the state uses the proceeds to fund state highway projects but does not track whether these projects are eligible federal-aid projects. New Mexico DOT officials[12] reported that the proceeds are not restricted to funding eligible federal-aid projects; therefore, the funds could be used for other transportation projects not eligible for federal aid.

FHWA May Issue Additional Guidance on the Federal Share of Property Sales and Leases

FHWA officials said that they may issue additional guidance in 2003 to clarify how states should implement the TEA-21 language regarding property sales and FHWA's subsequent regulations. They acknowledged that they were not aware of (1) the possibility that states were not complying with the explicit statutory requirements that the federal share of proceeds from property sales or leases be used only on projects eligible for funding under federal-aid highway and related programs and (2) the amount of variation in how states tracked these types of property transactions and the federal share of the proceeds. They also said that FHWA has issued some guidance[13] to the states regarding the proceeds generated from the disposal of properties purchased with federal aid. For example, in meetings with state officials, FHWA officials explained that as a practical matter states should have an accounting system in place that documents (1) the amount of the federal share of the proceeds deposited in the state transportation fund during the fiscal year and (2) the amount of the federal share of net proceeds expended on eligible federal-aid projects during the fiscal year. However, they also noted that TEA-21 does not require states to track and report the federal share. FHWA officials told us they are considering additional guidance to help ensure that states are using the federal share of these proceeds only on projects eligible for

[11]A DOT official in Indiana reported that the state sold 74 properties that generated $15,724 in 1998; $76,993 in 1999; $94,867 in 2000; $91,282 in 2001; and $56,497 in 2002.

[12]DOT officials in New Mexico reported that the state sold 58 properties that generated $50,739 in 1998; $106,440 in 1999; $64,770 in 2000; $212,327 in 2001; and $77,161 in 2002.

[13]Questions and answers for the regulation at 23 Code of Federal Regulation, part 710 available on FHWA's Web site; FHWA *Right of Way Program Administration* booklet; and FHWA *Project Development Guide*, chapter 12.

funding under federal-aid highway and related programs.[14] As of October 2002, FHWA had not decided on the details of what material to include in the guidance or when to issue it. FHWA officials told us it is likely to focus on how states can demonstrate that they are ensuring that the applicable federal share of proceeds from property sales or leases is being allocated to eligible federal-aid projects.

Conclusions

Most states have taken advantage of the greater flexibility for managing and disposing of real property provided under TEA-21 because it streamlines the process for their highway programs. However, in accordance with our recent legal opinion, those states that used the proceeds from these property sales or leases to match federal-aid highway projects were not complying with the statute governing the sale or lease of real property. In addition, two states did not restrict the use of the proceeds to projects eligible for funding under federal-aid highway and related programs, as explicitly required by the statute. FHWA has an excellent opportunity to clarify its interpretation of TEA-21; and, after considering all relevant factors, provide additional guidance to states regarding how they should cost-effectively treat the proceeds from sales or leases of property originally purchased with federal aid.

Recommendations for Executive Action

To help ensure that states act in accordance with TEA-21 in disposing of real property originally purchased with federal aid, we are recommending that the Secretary of Transportation direct the FHWA Administrator to

- develop and report on a strategy regarding how FHWA plans to comply with GAO's legal opinion concerning the statute governing the sale or lease of real property; and
- provide additional guidance to the state DOTs that will help ensure that states use the proceeds of property sales or leases as required by TEA-21, including the types of documentation or tracking that would be cost effective and appropriate to demonstrate compliance.

[14]FHWA officials also agreed that their lack of knowledge about state practices might be due to the low priority placed on oversight of property management and disposal of real property.

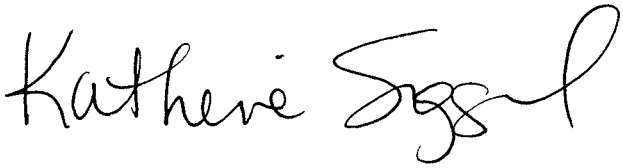
Agency Comments and Our Evaluation

We obtained comments on a draft of this report from DOT officials, including the FHWA Director of the Office of Program Administration and the Division Administrator, FHWA Massachusetts Division Office. They agreed with the facts presented in the draft report regarding states' sale, lease, and disposal of real property originally purchased with federal funds and with the states' use of the proceeds. The DOT's General Counsel is considering GAO's legal opinion on how the federal share of the proceeds should be used, so the officials did not comment on those sections of the draft report. For the same reason, the officials did not comment on our recommendation that the DOT develop and report on a strategy regarding how it plans to comply with GAO's legal opinion. The FHWA commented that the report should recognize first, that FHWA's interpretation of the relevant provisions of TEA-21 was based on a regulation issued in 1999 and secondly, that FHWA has provided extensive guidance on the implementation of these provisions. We made several changes to the report based on these comments. However, we continue to believe that the potential noncompliance with TEA-21 we observed in two states, which FHWA acknowledges conflicts with its interpretation of the statute, and the varying practices we observed in other states suggest the need for clarifying existing guidance or issuing additional guidance, as indicated in our recommendations. Regarding the recommendation to issue additional guidance to help ensure that states use the proceeds from the sale or lease of real property originally purchased with federal funds as required by TEA-21, FHWA officials said they would consider providing additional guidance pending the outcome of the Department's review of GAO's legal opinion. The FHWA officials also provided technical comments, which we have incorporated into this report as appropriate.

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days after the date of this letter. At that time, we will send copies of this report to the cognizant congressional committees, the Secretary of Transportation, and the Administrator, Federal Highway Administration. In addition, this report will also be available on GAO's Web site for no charge at http://www.gao.gov.

If you or your staff have any questions about this report, please call me at (202) 512-2834. Key contributors to this report were Sally Gilley, Octavia Parks, and Jobenia Odum.

Sincerely yours,



Katherine Siggerud
Acting Director, Physical Infrastructure Team

Objectives, Scope, and Methodology

The Committee on Commerce, Science, and Transportation requested that we determine (1) the extent to which states are selling, leasing, or disposing of real property purchased with federal-aid funds and (2) how the proceeds generated from the sale or lease of real property are being used in accordance with the intent of TEA-21. We drew from our legal opinion regarding FHWA's interpretation of the federal law governing the sale or lease of real property.

To determine the extent to which the states are selling, leasing, or disposing of real property purchased with federal-aid funds, we obtained information from FHWA officials and surveyed 51 state DOTs, including the District of Columbia, to identify the number of properties and value of real properties that were sold, leased, or otherwise disposed of from June 1998 to May 2002. Before we submitted the survey to the 51 state DOTs, we obtained input from FHWA officials in developing our survey because they recently attempted to collect the same type of information from the state DOTs. We pretested the survey with Georgia DOT. We obtained and analyzed responses from all 51 states, including the District of Columbia, and conducted follow-up interviews as necessary. We compared each state's 1999 and 2000 total proceeds generated from the sale or lease of real property with the states' total receipts obtained for highway projects reported by DOT. We did not independently verify the data provided by the state DOTs or assess the reliability of the data reported by DOT. We obtained preliminary data regarding real property sales and leases from FHWA and selected five states (California, Georgia, Illinois, Texas, and Virginia), based primarily on—among other reasons—high property sales and leases and how these states' were dispersed throughout the United States. We selected California and Texas because they had the highest income from property sales; Illinois was selected because of its geographic location, and it was one of the states that had a high number of property sales and income. Georgia was selected because FHWA's preliminary data of states property sales indicated that Georgia had not taken advantage of the provisions of title 23, section 156 of U.S.C. Finally, Virginia was selected because FHWA's preliminary data indicated total income from property sales or leases, but the number of properties was not reported. We interviewed state and federal officials at these states, regarding their opinions about the benefits of the current regulations relative to the states' transportation programs among other reasons.

To determine how the proceeds generated from the sale or lease of real property are used, we contacted states DOT officials responsible for the right-of-way programs and obtained information regarding (1) how they use proceeds generated from the sale or lease of real property, (2) any restrictions on the use of the proceeds, and (3) the states' sources for matching federal contributions. We also obtained and reviewed state right-of-way disposal procedures and other documentation related to the sale or lease of real property. We obtained and reviewed documentation regarding FHWA's division office and headquarters oversight roles related to the sale or lease of real property. We also interviewed officials of the U.S. DOT Inspector General's office and reviewed documentation regarding their review of the Massachusetts' Central Artery Tunnel Project that had initially raised concerns about FHWA's interpretation of TEA-21 changes related to sales and leases of real property.

GAO Legal Opinion

United States General Accounting Office
Washington, DC 20548

B-290744
September 13, 2002

The Honorable John McCain
Ranking Minority Member
Committee on Commerce, Science and Transportation
United States Senate

Subject: Use of Proceeds from the Sale of Real Property Purchased with Federal Highway Funds

Dear Senator McCain:

This is in response to your letter dated April 3, 2002, requesting our views regarding the Federal Highway Administration's (FHWA) interpretation of 23 U.S.C. § 156 (2000). As explained below, § 156 authorizes states to use the proceeds from sales of real property purchased with federal funds for other eligible projects. Your letter asks whether the proceeds from real property sales retain their character as federal funds under § 156; you also ask questions about how the states have applied § 156. This opinion addresses the proper interpretation of § 156. The remaining issues you raise will be addressed in a separate GAO report.

Under § 156, and in particular, § 156(c), states disposing of excess property acquired with Federal Highway Trust (title 23) funds are authorized to reapply the federal share of the proceeds to other eligible title 23 projects. The FHWA construes § 156 as allowing states to treat the proceeds of excess property sales as state funds. FHWA believes that the federal government retains no residual interest in those proceeds. It has informed the states that projects funded through proceeds from such transactions are not subject to restrictions that would otherwise apply if such funds were treated as federal funds.

As your letter points out, the Department of Transportation's (DOT's) Office of Inspector General (DOT-IG) questioned FHWA's interpretation of §156 in its report, *October 2001 Finance Plan for the Central Artery/Tunnel Project,* IN-2002-086, March 11, 2002. You ask us to examine the issues raised in the DOT-IG's report and determine whether FHWA's interpretation is correct. In this regard, you would also like us to consider whether states (1) can convert federal money to state money by buying and selling property, (2) can use such means to reduce or avoid their obligation to provide matching funds, and (3) can thus avoid normal safeguards on the use of federal funds.

As explained below, we disagree with FHWA's interpretation of § 156. Section 156 permits states to apply the federal share of proceeds of excess property dispositions to other title 23 projects *in lieu* of returning those funds to the Highway Trust Fund. The federal interest in such funds is not extinguished. Consequently, states may not convert federal money to state money by buying and selling property or use the federal share of recaptured funds to reduce or avoid their obligation to provide matching funds.

Background

Prior to 1998, if a state sold real property purchased with federal highway funds, it had to return the federal share of the net proceeds of the sale to FHWA. In 1998, Congress adopted the Transportation Equity Act for the 21st Century (TEA-21), Pub. L. No. 105-178, title I, § 1303(a), 112 Stat. 227 (1998), which authorized states to reapply the federal share to other projects. As amended by TEA-21, 23 U.S.C. § 156 reads as follows:

"(a) Minimum charge.–... a State shall charge, at a minimum, fair market value for the sale, use, lease, or lease renewal (other than for utility use and occupancy or for a transportation project eligible for assistance under this title) of real property acquired with Federal assistance made available from the Highway Trust Fund....

(b) Exceptions.–The Secretary may grant an exception to the requirement of subsection (a) for a social, environmental, or economic purpose.

"(c) Use of Federal share of income.–The Federal share of net income from the revenues obtained by a State under subsection (a) shall be used by the State for projects eligible under this title."

The predecessor to § 156 of title 23, U.S.C., applied only to the sale, use, lease or lease renewals of "right-of-way airspace," as opposed to the broader coverage of "real property" under TEA-21. It provided:

"... States shall charge, as a minimum, fair market value, with exceptions granted at the discretion of the Secretary for social, environmental, and economic mitigation purposes, for the sale, use, lease, or lease renewals (other than for utility use and occupancy or for transportation projects eligible for assistance under this title) *of right-of-way airspace* acquired as a result of a project funded in whole or in part with Federal assistance made available from the Highway Trust Fund.... The Federal share of net income from the revenues obtained by the State for sales, uses, or leases (including lease renewals) under this section shall be used by the State for projects eligible under this title." (Emphasis added.)

FHWA correctly interprets the TEA-21 amendment as expanding the scope of § 156 to allow reapplication of the proceeds from all real property dispositions, including the disposition of excess real property. It goes on, however, to apply its interpretation of air rights dispositions under the pre-TEA-21 statute to excess property dispositions. Under the prior statute, FHWA treated air rights receipts as being in the nature of project income that it believes the states had the right to use as they saw fit. Indeed, until the current regulations were adopted in 1999, FHWA's regulations stated that "Disposition of income received from the authorized use of airspace shall be the [state highway department's] responsibility and credit to Federal funds is not

required."[1] Starting from this vantage point, FHWA now reads the current language of § 156 as extinguishing the federal share in all proceeds from the disposition of any kind of real property, allowing the states to treat all proceeds as state funds. It reads its regulation, 23 C.F.R. § 710.403(e), added by 64 Fed. Reg. 71290 (Dec. 21, 1999), similarly. That regulation provides

"The Federal share of net income from the sale or lease of excess real property shall be used by the STD for activities eligible for funding under title 23 of the United States Code. Where project income derived from the sale or lease of excess property is used for subsequent title 23 projects, use of the income does not create a Federal-aid project."

As noted, FHWA's views regarding the proceeds from the sale of excess property were questioned by the DOT-IG in its recent report concerning the October 2001 finance plan for the Boston Central Artery/Tunnel Project (CA/T Project). The CA/T Project was unique in that Congress capped the total amount of federal funds for the project at $ 8.549 billion. Department of Transportation and Related Agencies Appropriations Act, Pub. L. No. 106-346, § 340(d), 114 Stat 1356 (2000). The DOT-IG found that this amount was fully identified in the CA/T Project Finance Plan but that Massachusetts intended to sell land on which it had temporarily located its project headquarters, reinvesting that money in the project as "state funds." Pointing out that the federal government had contributed a significant portion of the monies the state would realize, the DOT-IG questioned reclassification of that money as state funds and concluded that the CA/T cap would be exceeded if that money was counted as part of the federal share.

In rejecting FHWA's position that a sale or other disposition of excess property extinguishes the federal share, the DOT-IG stated that in its opinion the better view is that in TEA-21 Congress intended merely to streamline the process for reapplying the federal share of real estate proceeds to other federal-aid projects but did not intend to extinguish the federal share of the money. In support of this view, the DOT-IG observed that § 156(c) specifically refers to the "federal share" of the net income from the proceeds obtained by a state from the sale or lease of excess property. The DOT-IG also pointed out that consequences of FHWA's position might include allowing states: (1) to convert federal to state money by buying and selling property, (2) to use such transactions to reduce or avoid their obligation to make matching contributions, and (3) to avoid the safeguards that govern the expenditure of federal funds. The DOT-IG stated that the better view of the statute was that the federal share of real property remains federal money but that the states should be permitted to reapply the money to other eligible projects.

In reviewing the DOT-IG report, we focused on the general issue of how the proceeds from excess property sales should be treated under § 156. We did not review matters

[1] 23 C.F.R. § 713.204(v), adopted, 39 Fed. Reg. 34651 (Sept. 27, 1974), repealed by adoption of 23 C.F.R. § 710.403(e) in 1999. *See* 64 Fed. Reg. 71284 (Dec. 21, 1999).

that were not raised by your request (*e.g.,* the nature of the credit for recaptured property and the CA/T cap).

FHWA's Comments

As did the DOT-IG, we requested that FHWA provide us with a written explanation of its interpretation. According to FHWA, the TEA-21 amendment of § 156 was proposed by the executive branch in order to combine the rules governing disposal of excess real property by sale or lease with the rules governing the disposition of air rights. FHWA says this was done to reduce administrative overhead by eliminating different sets of rules and by simplifying those rules. It points out that in drafting TEA-21 the Senate Committee on Environment and Public Works embraced its rationale, stating that the purpose of the change was to simplify property management practices by applying the same standard to all real property interests acquired with Federal-aid highway funds. S. Rep. No. 105-95, at 28-39 (1997). The Senate provision was adopted in the Conference Report, H.R. Conf. Rep. No. 105-550, at 424-425 (1998).

In addressing this matter in its comments to the DOT-IG and our office, FHWA maintains that nothing in § 156 either after amendment by TEA-21 or before, or the legislative history of either provision, could be construed to require that § 156 proceeds be treated as federal funds or be returned to the Treasury, to the Highway Trust Fund, or to the apportionment category from which they were derived. In its analysis, FHWA acknowledged the government-wide common rule[2] governing grants to states and local governments, under which the federal government retains a percentage interest in the proceeds from real property sales. However, with little explanation, it dismissed this retained federal interest as "superceded by" § 156, as amended, and by its regulation.

In its submission to our office, FHWA asserts that the income resulting from real property sales should be treated in the same manner as were air rights receipts, namely as project income that the states should have the right to use as they see fit. To support its view that the disposition of income received from the authorized use of airspace should be left to the state highway department and that no credit to federal funds was required, it cites our decision at 41 Comp. Gen. 653 (1962) in which we addressed the way states handle airspace-use revenue.

Analysis

We agree with the DOT-IG's view that Congress, by adding the disposition of excess property to the authority granted by § 156, intended merely to streamline the process for reapplying the federal share of real estate proceeds to other federal-aid projects.

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[2] *See Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,* 49 C.F.R. pt. 18, adopted originally at 53 Fed. Reg. 8034, 8086 8087 (March 11, 1988), the objective of which was to create insofar as possible a single, common set of requirements for administering federal government grants and cooperative agreements with state and local government.

The statute says nothing about the federal share losing its identity. To the contrary, § 156 refers to a "federal share" in the proceeds of a real property disposition. The statute states simply that any *federal share in the net proceeds*,[3] which a state receives as a result of the sale, use, lease or lease renewal of such property, is to be applied to other eligible title 23 projects. Logically, the use of the term "federal share" indicates that the federal share retains its character as federal funds. Furthermore, by providing in § 156(a) that states must dispose of real property at fair market value, unless the *Secretary* grants an exception for a social, environmental, or economic purpose, the statutory text evidences a strong and on-going federal interest in any revenues generated from such disposal.[4] In our view, this is a clear indication that the federal share of these proceeds should continue to be treated as federal rather than state funds.

Congress's continuing interest in the federal share of air rights and recaptured excess property sales proceeds is illuminated by examining the historical background leading to enactment of § 156. As FHWA notes, that history begins with our 1962 decision, 41 Comp. Gen. 653. There the Bureau of Public Roads had proposed to recapture the federal share of funds in air rights disposals by requiring that the federal share be applied (1) to other interstate system projects or (2) to finance other (non-Federal-aid) highway projects. 41 Comp. Gen. at 655. Our decision pointed out that Congress had not considered that issue and hence provided no specific direction concerning the disposition of receipts from the use of air space. 41 Comp. Gen. at 657. Accordingly, absent statutory language authorizing the Bureau to require that the proceeds derived from air rights be used as proposed, we found that the state was free to retain the proceeds. That said, we recognized the significance of the federal contribution in Federal-aid projects and suggested that the Assistant Secretary recommend that Congress consider an amendment providing an appropriate credit to the United States from any profits derived by a state from the use of air rights. 41 Comp. Gen. at 657-658.[5]

Subsequently, Congress adopted the language that is now § 156(c) in the Surface Transportation and Uniform Relocation Assistance Act of 1987, Pub.L. 100-17, title I, § 126(a), 101 Stat. 167 (1987). The original text of § 156 dealt only with the disposal of

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[3] The term "net income" is not defined in the act. It could be interpreted as referring to a federal share in the profits of a sale, but it appears more likely in context and in view of the usage of "net proceeds" in the common rule that the intent was to address the use of proceeds remaining after the costs associated with the real property disposition were deducted.

[4] The importance of this is emphasized by the Conference Report on TEA-21, which indicates that the House agreed to the changes to § 156 as adopted by the Senate after the Senate agreed to include an exception to allow the states *with the Secretary's approval* to dispose of property in some instances at less than fair market value. H. Rep. No. 105-550, at 424-425 (1998).

[5] FHWA told us that to comport with our opinion it adopted its 1974 regulation stating that state highway departments could dispose of airspace income without making any credit to federal funds. See footnote 1 for citations.

air rights and tracks the Bureau's 1962 proposals discussed in 41 Comp. Gen. at 655. In other words, in 1987, Congress asserted an interest in the federal share of the proceeds resulting from the disposition of air rights. The fact that § 156 allows states to use the federal share of net income from such proceeds for title 23 projects does not detract from, and indeed is entirely consistent with, the proposition that Congress had addressed what it perceived as the federal interest in such proceeds.

Under the common grant rules, air right proceeds, unlike proceeds from the sale of excess property, were (and are still) treated as program income. Such proceeds are to be handled as a deduction, reducing total allowable project costs (federal and state share) by the total amount. 49 C.F.R. § 18.25(g)(1). The DOT implementation of the common rule, adopted just after enactment of the 1987 act, expressly refers to § 156, stating that the statute requires that all such proceeds be applied to title 23 eligible projects. 49 C.F.R. § 18.25(g)(7). Thus, the common rule as applied to air rights also recognizes a substantial federal interest in those proceeds.

The common rule governing the sale of excess property clearly articulates the federal government's interest, as well, in controlling the proceeds of sale. The regulations at 49 C.F.R. § 18.31 then provided (and still provide) that a grantee state, upon determining that real property is no longer needed for the originally authorized purpose, must request disposition instructions from the awarding (grantor) agency, which may include retention or transfer of title, or sale of the property. 49 C.F.R. § 18.31(c). The grantor agency is compensated if the property is retained for use for other purposes, or sold. *Id.* The amount due the awarding agency is calculated by applying the awarding agency's percentage of participation in the cost of the original purchase to the fair market value or proceeds of the sale after deducting actual and reasonable associated expenses. 49 C.F.R. § 18.31(c)(2). Thus, under the common rule, a state would be required to return to FHWA the federal share of the net proceeds resulting from the disposal of real property acquired with federal grant funds.

It is in this light that we consider FHWA's argument that the absence of specific language in the statute or its legislative history indicating that any part of the proceeds be returned to FHWA or credited to federal funds supports its construction of the statute. In our view, FHWA has the argument precisely backwards. As applied to the sale of excess property, the common rule protected the federal government's interest in its share of the proceeds. Absent specific legislative direction to the contrary, the natural presumption is that by enacting § 156 Congress meant only to authorize states to apply the recaptured federal share to other eligible projects, rather than return such amounts to FHWA. There is nothing in this legislative action that is inconsistent with the proceeds retaining their character as federal funds.

The common rule, of which Congress was presumably aware when it adopted TEA-21, has not been amended in response to the adoption of TEA-21. This is appropriate, we believe, because properly understood the common rule and § 156 are entirely consistent when read together. In § 156, Congress said nothing explicitly or implicitly that would alter the federal character of these funds, which is so clearly articulated in

the common rule. TEA-21 sought to enhance administrative effectiveness by allowing recovered funds to be transferred for use in other title 23 projects but reflects Congress's continuing interest in grant funds provided by the federal government. Viewed from this perspective, it is not reasonable to interpret the § 156(c) language as indicative of any intent by Congress to negate the federal character of proceeds captured upon the sale of excess property.

We recognize that the DOT-IG's report, after questioning FHWA's interpretation of § 156, states that in view of FHWA's administrative role it will defer to FHWA's interpretation provided DOT's Office of General Counsel would formally concur with FHWA's position. The DOT-IG also required that the appropriate congressional committees be notified of that concurrence.

As a general proposition, an agency's interpretation of a statute it is charged with administrating is entitled to deference. *Chevron U.S.A. Inc. v. Natural Resources Defense Council Inc.,* 467 U.S. 837, 842-843 (1984); *United States v. Mead Corp.*, 533 U.S. 218 (2001); *Skidmore v. Swift & Co.,* 323 U.S. 134 (1944). This discretion, however, is not without limits. The agency's interpretation must be reasonable and must be based on a permissible construction of the statute. See, e.g., *Chevron U.S.A. Inc. v. Natural Resources Defense Council Inc.,* 467 U.S. at 844. For the reasons discussed we do not view FHWA's position as a reasonable construction of the statute.

Based on the above, we do not agree with FHWA's interpretation of § 156. Buying and selling real property does not extinguish the federal character of these funds. Consequently, we do not believe states can convert federal money to state money by buying and selling property or use the proceeds of such transactions to reduce or avoid their matching fund obligations or to avoid normal safeguards on the use of federal funds.

Sincerely yours,

Anthony H. Gamboa
General Counsel

GAO Letter and Survey to State DOTs

United States General Accounting Office
Wshington, DC 20548

June 2002

(Name of State DOT Representative)
(Address)

Dear (name of Representative):

The U.S. General Accounting Office (GAO), an agency of Congress, has been asked to examine the provisions of Title 23, section 156—proceeds from the sale or lease of real property purchased with federal-aid highway funds. As part of our study, GAO is surveying all fifty state departments of transportation. Results from this survey will help GAO to inform the Congress on the extent and use of revenues generated from the sale or lease of property purchased with federal-aid funds. In order for us to provide the Congress with an accurate assessment, we also intend to interview select state officials.

Your name was given to us as the representative responsible for right-of-way information. We ask that you ensure that the following questions are answered and e-mailed back to us by July 10, 2002. Microsoft Word software should be used to complete the questionnaire. If you do not have Microsoft word, please call or e-mail the following GAO employees: Sally Gilley, (404)679-1959 gilleys@gao.gov or Octavia Parks, (404)679-1818 parkso@gao.gov. Also, please forward all responses to this GAO employee. Please do not change the wording of the questionnaire. We ask that question 7 be used for any comments.

Thank you in advance for taking the time to respond. Your participation is very important in providing Congress with complete and accurate information. If you have questions, please contact Sally Gilley at (404)679-1959 or Octavia Parks at (404)679-1818.

Sincerely yours,

Attachment

PLEASE USE MICROSOFT WORD TO COMPLETE THE QUESTIONAIRE. IF YOU DO NOT HAVE MICROSOFT WORD, PLEASE CALL THE GAO EMPLOYEES IDENTIFIED IN THE COVER LETTER.

PLEASE DO NOT CHANGE THE WORDING OF THE QUESTIONAIRE.

PLEASE USE QUESTION 7 FOR COMMENTS.

1. Are you able to identify those properties that were sold, leased, or otherwise disposed of during the period of June 1998 to May 31, 2002 that were originally acquired with federal funds from those properties that were acquired without any federal aid funds? *(Check one)*

   - ❑ Yes (continue)
   - ❑ No (thank you for your time; please return by e-mail)
   - ❑ Sometimes (explain)

2. Has your state sold, leased, or otherwise disposed of property purchased with federal aid funds during the period of June 1998 to May 31, 2002? *(Check one)*

   - ❑ Yes (continue)
   - ❑ No (go to question 5)

3. For those sold, leased, or otherwise disposed of properties purchased with federal aid funds, what is the number of properties disposed of during the period of June 1998 to May 31, 2002? Please show the number of properties by year.

4. For those sold, leased, or otherwise disposed of properties purchased with federal aid funds, what is the total amount realized during the period of June 1998 to May 31, 2002? Please show total dollar amount by year.

5. Are all proceeds from the disposal of properties purchased with federal aid funds accounted for in the same manner?

   - ❑ Yes (continue)
   - ❑ No (thank you for your time; please return by e-mail)

6. Please identify the account(s) in which proceeds realized during the period of June 1998 to May 31, 2002 were placed. Please also indicate any restrictions on the use of funds in these accounts

Account name	Restrictions on account's use

7. Please provide comments you may have concerning our questions or the data you provided.

Thank you.

Survey Responses of State DOTs' Sales or Leases of Real Property

Table 1: State DOTs that Sold, Leased, or Disposed of Real Property Purchased with Federal-Aid Funds, June 1998 - May 2002

State	Are you able to identify properties that were sold, leased, or disposed?[a]			Has your state sold, leased, or disposed of property purchased with federal-aid funds?[b]		
	Yes	No[c]	Sometimes[d]	Yes	No	Sometimes
Alabama	✔			✔		
Alaska	✔			✔		
Arizona	✔			✔		
Arkansas	✔			✔		
California		✔		✔		
Colorado	✔			✔		
Connecticut	✔			✔		
Delaware	✔			✔		
District of Columbia	✔			✔		
Florida			✔	✔		
Georgia	✔			✔		
Hawaii	✔			✔		
Idaho	✔			✔		
Illinois		✔		✔		
Indiana	✔			✔		
Iowa	✔			✔		
Kansas		✔		✔		
Kentucky	✔			✔		
Louisiana		✔		✔		
Maine	✔			✔		
Maryland[e]		✔		✔		
Massachusetts	✔			✔		
Michigan	✔			✔		
Minnesota			✔	✔		
Mississippi	✔			✔		
Missouri	✔			✔		
Montana	✔			✔		
Nebraska	✔			✔		
Nevada[e]		✔		✔		

(Continued From Previous Page)

State	Are you able to identify properties that were sold, leased, or disposed?[a]			Has your state sold, leased, or disposed of property purchased with federal-aid funds?[b]		
	Yes	No[c]	Sometimes[d]	Yes	No	Sometimes
New Hampshire		✔		✔		
New Jersey	✔			✔		
New Mexico	✔			✔		
New York	✔			✔		
North Carolina	✔			✔		
North Dakota	✔			✔		
Ohio	✔			✔		
Oklahoma	✔			✔		
Oregon	✔			✔		
Pennsylvania	✔			✔		
Rhode Island	✔			✔		
South Carolina	✔			✔		
South Dakota	✔			✔		
Tennessee	✔			✔		
Texas[e]	✔			✔		
Utah	✔			✔		
Vermont	✔			✔		
Virginia			✔	✔		
Washington	✔			✔		
West Virginia	✔			✔		
Wisconsin		✔		✔		
Wyoming	✔			✔		

[a]Column totals: "Yes" (40), "No" (8), "Sometimes" (3).

[b]Column totals: "Yes" (51), "No" (0), "Sometimes" (0).

[c]"No"– State officials could not readily distinguish properties originally acquired with federal funds.

[d]"Sometimes" – State officials could sometimes distinguish properties originally acquired with federal funds.

[e]State officials reported federal funds are returned by crediting an ongoing federal-aid project.

Source: Developed by GAO from data provided by State DOTs.

Table 2: Number of Properties Originally Purchased with Federal-Aid Funds for Which States Retained Proceeds Upon the Properties Sale or Lease, June 1998 – May 2002

State	FY 1998 (Partial)[a]	FY 1999[a]	FY 2000[a]	FY 2001[a]	FY 2002 (Partial)[a]	Total
Alabama	79	63	119	67	40	**368**
Alaska	2	3	3	1	1	**10**
Arizona	29	23	24	34	28	**138**
Arkansas	35	13	11	9	3	**71**
California	State officials could not readily distinguish properties originally acquired with federal funds.					
Colorado	22	35	41	54	56	**208**
Connecticut	2	3	2	7	6	**20**
Delaware	N/R	N/R	N/R	N/R	1	**1**
District of Columbia	State officials reported one transfer of jurisdiction from Washington, D.C. to National Park Service.					
Florida[b]	3	11	12	9	0	**Not calculated**
Georgia	48	112	107	61	0	**328**
Hawaii	N/R	44	51	55	57	**207**
Idaho	N/R	67	77	70	50	**264**
Illinois	State officials could not readily distinguish properties originally acquired with federal funds.					
Indiana	12	22	17	12	11	**74**
Iowa	9	68	58	65	50	**250**
Kansas	State officials could not readily distinguish properties originally acquired with federal funds.					
Kentucky	N/R	39	41	33	41	**154**
Louisiana	State officials could not readily distinguish properties originally acquired with federal funds					
Maine	7	11	11	6	6	**41**
Maryland	State officials could not readily distinguish properties originally acquired with federal funds. Also, state officials reported federal funds are returned by crediting an ongoing federal-aid project.					
Massachusetts	21	4	10	20	N/R	**55**
Michigan	50	65	25	28	9	**177**
Minnesota[b]	6	6	4	5	3	**Not calculated**
Mississippi	N/R	12	9	5	13	**39**
Missouri	9	13	13	14	12	**61**
Montana	N/R	12	16	17	18	**63**
Nebraska	N/R	10	21	8	10	**49**
Nevada	State officials could not readily distinguish properties originally acquired with federal funds. Also, state officials reported federal funds are returned by crediting an ongoing federal-aid project.					
New Hampshire	State officials only reported averages.					
New Jersey	0	7	10	7	7	**31**
New Mexico	0	2	0	2	54	**58**

(Continued From Previous Page)

State	FY 1998 (Partial)[a]	FY 1999[a]	FY 2000[a]	FY 2001[a]	FY 2002 (Partial)[a]	Total
New York	N/R	5	8	2	6	**21**
North Carolina	6	14	11	10	1	**42**
North Dakota	2	4	2	2	0	**10**
Ohio	N/R	112	137	98	206	**553**
Oklahoma	State officials could not readily distinguish properties originally acquired with federal funds.					
Oregon	51	69	57	62	53	**292**
Pennsylvania	7	17	21	18	7	**70**
Rhode Island	N/R	124	123	117	90	**454**
South Carolina	3	5	7	18	13	**46**
South Dakota	N/R	N/R	2	N/R	1	**3**
Tennessee	13	25	27	27	16	**108**
Texas	State officials reported the number of properties purchased with federal aid funds but also reported federal funds are returned by crediting an ongoing federal-aid project; therefore, we excluded these numbers from our total.					
Utah	5	6	12	5	0	**28**
Vermont	1	4	6	2	5	**18**
Virginia[b]	N/R	N/R	N/R	21	9	**Not calculated**
Washington	N/R	308	310	321	302	**1,241**
West Virginia	15	15	0	48	12	**75**
Wisconsin	State officials could not readily distinguish properties originally acquired with federal funds.					
Wyoming	1	2	4	2	N/R	**9**
Total	429	**1,338**	**1,393**	**1,307**	**1,184**	**5,636**

Notes:

We obtained information from June 1998 to May 2002.

We grouped the total properties sold and leased for each state.

N/R indicates Not Reported.

[a]We recognize that some states have different starting and ending months for their fiscal years than the federal government. We believe that any discrepancy due to these differences would be minimal. Information we obtained for 1998 begins with the month of June, and 2002 ends with the month of May.

[b]State officials from Florida, Minnesota, and Virginia reported they were able to "sometimes" identify those properties that were sold, leased, or otherwise disposed of that were originally acquired with federal funds. This may indicate that these numbers are estimates; therefore, we excluded these numbers from our total.

Source: Developed by GAO from data provided by State DOTs.

Table 3: States' Total Proceeds from the Sale, Lease, or Disposal of Real Property Purchased with Federal-Aid Funds, June 1998 – May 2002

State	FY 1998 (Partial)[a]	FY 1999[a]	FY 2000[a]	FY 2001[a]	FY 2002 (Partial)[a]
Alabama	$604,235	$260,577	$542,178	$438,473	$89,458
Alaska	154,848	199,241	79,892	51,159	19,769
Arizona	479,301	198,883	1,317,343	7,005,086	507,228
Arkansas	54,057	76,896	38,441	12,791	18,542
California	State officials could not readily distinguish properties originally acquired with federal funds.				
Colorado[d]	1,099,475	1,290,467	1,295,209	2,477,512	Estimate
Connecticut	23,572	1,068,000	52,201	796,363	697,101
Delaware	N/R	N/R	N/R	N/R	129,000
District of Columbia	State officials reported the transfer of one jurisdiction from Washington, DC to National Park Service in which no proceeds were generated.				
Florida[b]	N/R	404,671	233,605	1,030,495	1,842,686
Georgia	3,320,000	4,642,572	6,237,800	5,135,129	N/R
Hawaii	528,331	584,484	621,684	680,584	N/R
Idaho	N/R	2,083,429	1,095,484	512,961	192,148
Illinois	State officials could not readily distinguish properties originally acquired with federal funds.				
Indiana	15,724	76,993	94,867	91,282	56,497
Iowa	225	748,649	29,553	105,504	17,061
Kansas[c]	N/R	267,705	907,980	245,408	868,701
Kentucky	N/R	655,025	885,958	259,990	258,610
Louisiana	State officials could not readily distinguish properties originally acquired with federal funds.				
Maine	63,300	18,000	82,000	40,750	26,360
Maryland	State officials could not readily distinguish properties originally acquired with federal funds. Also, state officials reported federal funds are returned by crediting an ongoing federal-aid project.				
Massachusetts[d]	2,109,218	990,610	4,387,582	5,312,053	Estimate
Michigan	2,508,481	11,539,450	5,476,251	5,686,225	2,624,650
Minnesota[b]	389,765	775,252	163,571	170,299	285,571
Mississippi	N/R	584,791	58,765	48,325	423,825
Missouri	101,356	4,436,584	73,000	77,768	334,895
Montana	N/R	449,958	693,346	677,102	816,429
Nebraska	59,121	245,342	1,065,344	454,414	113,184
Nevada	State officials could not readily distinguish properties originally acquired with federal funds. Also, state officials reported federal funds are returned by crediting an ongoing federal-aid project.				
New Hampshire	State officials only reported averages.				
New Jersey	0	1,027,612	4,203,700	525,906	121,000
New Mexico	50,739	106,440	64,770	212,327	77,161

(Continued From Previous Page)

State	FY 1998 (Partial)[a]	FY 1999[a]	FY 2000[a]	FY 2001[a]	FY 2002 (Partial)[a]
New York	N/R	698,625	585,955	651,675	442,869
North Carolina	129,875	603,590	339,184	255,530	18,400
North Dakota	251,000	168,794	2,901	9,510	0
Ohio	N/R	121,281	133,792	179,126	1,189,711
Oklahoma[c]	39,742	221,282	384,379	233,696	68,647
Oregon	314,105	1,780,532	2,077,468	1,710,214	594,769
Pennsylvania	114,000	2,162,256	2,598,190	701,000	1,137,789
Rhode Island	N/R	1,566,057	1,679,374	2,830,303	994,526
South Carolina	31,639	83,147	204,363	1,981,969	332,142
South Dakota	N/R	N/R	11,060	N/R	66,920
Tennessee	111,218	448,709	336,580	303,453	52,053
Texas	State officials reported the proceeds from the sale or lease of property acquired with federal funds but also reported federal funds are returned by crediting an ongoing federal-aid project; therefore, we excluded these numbers from our total.				
Utah	92,778	89,810	1,061,239	119,670	0
Vermont	850	79,101	53,600	3,001	6,850
Virginia[b]	N/R	2,114,020	881,149	1,287,344	608,136
Washington	N/R	599,299	1,041,852	480,053	218,202
West Virginia	269,807	152,470	0	1,472,338	92,231
Wisconsin	State officials could not readily distinguish properties originally acquired with federal funds.				
Wyoming	8,100	86,292	57,912	522,431	N/R

Notes:

We obtained information from June 1998 to May 2002.

The dollar amounts represented in this table are expressed in nominal values.

We grouped the total properties sold and leased for each state.

N/R indicates Not Reported.

[a]We recognize that some states have different starting and ending months for their fiscal years than the federal government. However, given the relatively low and steady rate of change in the price level of the economy since 1998, we believe that any discrepancy due to these differences would be minimal. Information we obtained for 1998 begins with the month of June, and 2002 ends with the month of May.

[b]State officials from Florida, Minnesota, and Virginia reported they were able to "sometimes" identify the proceeds from the sale or lease of property acquired with federal funds, which may indicate that these numbers are estimates; therefore, these states were excluded from the total.

[c]State officials from Oklahoma and Kansas were able to report the proceeds from the sale or lease of property acquired with federal funds but were unable to report the number of properties sold or leased. This may indicate that these numbers are estimates; therefore, we excluded these numbers from our total.

[d]State officials reported estimates for 2002 totals; therefore, we excluded these numbers from our report.

Source: Developed by GAO from data provided by State DOTs.

Fiscal Year 1999 Proceeds Information

To analyze the significance of the proceeds from the sale or lease of real property purchased with federal-aid funds with other states' revenues available for highway purposes, we compared states' property proceeds with states' total receipts. Table 4 shows the result of our analysis.

Table 4: Comparisons of States' Property Proceeds with States' Total Receipts, Fiscal Year 1999

State[a, b, c, d]	States' proceeds from the sale or lease of real property purchased with federal-aid funds	Total receipts including federal contributions	Ratio of proceeds and highway receipts
Alabama	$260,577	$1,149,923,000	0.023%
Alaska	199,241	415,566,000	0.048
Arizona	198,883	1,789,631,000	0.011
Arkansas	76,896	781,194,000	0.010
Colorado	1,290,467	1,400,358,000	0.092
Connecticut	1,068,000	1,194,190,000	0.089
Georgia	4,642,572	1,769,962,000	0.262
Hawaii	528,331	321,264,000	0.164
Idaho	2,083,429	473,902,000	0.440
Indiana	76,993	1,675,527,000	0.005
Iowa	748,649	1,274,354,000	0.059
Kentucky	655,025	1,452,514,000	0.045
Maine	18,000	413,718,000	0.004
Massachusetts	990,610	4,035,797,000	0.025
Michigan	11,539,450	2,553,633,000	0.452
Mississippi	584,791	1,152,532,000	0.051
Missouri	4,436,584	1,587,419,000	0.279
Montana	449,958	435,175,000	0.103
Nebraska	245,342	649,580,000	0.038
New Jersey	1,027,612	3,021,151,000	0.034
New Mexico	106,440	974,423,000	0.011
New York	698,625	5,148,005,000	0.014
North Carolina	603,590	2,433,617,000	0.025
North Dakota	168,794	413,951,000	0.041
Ohio	121,281	3,377,774,000	0.004
Oregon	1,780,532	1,007,122,000	0.177
Pennsylvania	2,162,256	4,660,704,000	0.046
Rhode Island	1,566,057	320,431,000	0.489

(Continued From Previous Page)

State[a, b, c, d]	States' proceeds from the sale or lease of real property purchased with federal-aid funds	Total receipts including federal contributions	Ratio of proceeds and highway receipts
South Carolina	83,147	1,007,385,000	0.008
Tennessee	448,709	1,475,245,000	0.030
Utah	89,810	869,845,000	0.010
Vermont	79,101	254,560,000	0.031
Washington	599,299	1,859,009,000	0.032
West Virginia	152,470	1,089,541,000	0.014
Wyoming	86,292	393,043,000	0.022
Total	**$39,867,813**	**$53,313,565,000**	**0.075%**

[a]California, Illinois, Louisiana, Maryland, Nevada and Wisconsin could not provide the proceeds from sales, leases, or otherwise disposed of properties; therefore, these states were not included. Delaware and South Dakota did not provide data for 1999. District of Columbia reported that it did not have sales or leases but did transfer one jurisdiction to the National Park Service, which did not generate proceeds. New Hampshire only provided averages for its proceeds.

[b]State officials from Florida, Minnesota, and Virginia reported they were able to "sometimes" identify the proceeds from the sale or lease of property acquired with federal funds, which may indicate these numbers are estimates; therefore, these states were excluded from the total.

[c]State officials from Oklahoma and Kansas were able to report the proceeds from the sale or lease of property acquired with federal funds but were unable to report the number of properties sold or leased, which may indicate these numbers are estimates; therefore, these states were excluded from the total.

[d]State officials from Texas reported the proceeds from the sale or lease of property acquired with federal funds but also reported federal funds are returned by crediting an ongoing federal-aid project; therefore, we excluded these numbers from our total.

Source: Developed by GAO from data provided by State DOTs and FHWA.

Fiscal Year 2000 Proceeds Information

To analyze the significance of the proceeds from the sale or lease of real property purchased with federal-aid funds with other states' revenues available for highway purposes, we compared states' property proceeds with states' total receipts. Table 5 shows the result of our analysis.

Table 5: Comparisons of States' Property Proceeds with States' Total Receipts, Fiscal Year 2000

State[a,b,c,d]	States' proceeds from the sale or lease of real property purchased with federal-aid funds	Total receipts including federal contributions	Ratio of proceeds and highway receipts
Alabama	$542,178	$1,262,239,000	0.043%
Alaska	79,892	501,359,000	0.016
Arizona	1,317,343	2,113,820,000	0.062
Arkansas	38,441	1,037,247,000	0.004
Colorado	1,295,209	1,958,473,000	0.066
Connecticut	52,201	1,269,463,000	0.004
Georgia	6,237,800	1,852,170,000	0.337
Hawaii	584,484	226,138,000	0.258
Idaho	1,095,484	504,630,000	0.217
Indiana	94,867	1,959,235,000	0.005
Iowa	29,553	1,410,210,000	0.002
Kentucky	885,958	1,670,428,000	0.053
Maine	82,000	751,571,000	0.011
Massachusetts	4,387,582	3,468,038,000	0.127
Michigan	5,476,251	2,815,272,000	0.195
Mississippi	58,765	926,906,000	0.006
Missouri	73,000	2,038,239,000	0.004
Montana	693,346	484,248,000	0.143
Nebraska	1,065,344	718,604,000	0.148
New Jersey	4,203,700	5,102,359,000	0.082
New Mexico	64,770	1,108,855,000	0.006
New York	585,955	5,117,702,000	0.011
North Carolina	339,184	2,619,172,000	0.013
North Dakota	2,901	395,485,000	0.001
Ohio	133,792	3,125,999,000	0.004
Oregon	2,077,468	1,023,632,000	0.203
Pennsylvania	2,598,190	4,026,523,000	0.065

(Continued From Previous Page)

State[a,b,c,d]	States' proceeds from the sale or lease of real property purchased with federal-aid funds	Total receipts including federal contributions	Ratio of proceeds and highway receipts
Rhode Island	1,679,374	267,353,000	0.628
South Carolina	204,363	872,060,000	0.023
South Dakota	11,060	411,768,000	0.003
Tennessee	336,580	1,439,811,000	0.023
Utah	1,061,239	922,769,000	0.115
Vermont	53,600	272,088,000	0.020
Washington	1,041,852	1,680,148,000	0.062
Wyoming	57,912	385,358,000	0.015
Total	**$38,541,637**	**$55,739,372,000**	**0.069%**

[a]California, Illinois, Louisiana, Maryland, Nevada, and Wisconsin could not provide the proceeds from sales, leases, or otherwise disposed of properties; therefore, these states were not included. Delaware did not provide data for 2000. West Virginia did not generate proceeds from the sale or lease of excess property for 2000. District of Columbia reported that it did not have sales or leases but did transfer one jurisdiction to the National Park Service, which did not generate proceeds. New Hampshire only provided averages for its proceeds.

[b]State officials from Florida, Minnesota, and Virginia reported they were able to "sometimes" identify the proceeds from the sale or lease of property acquired with federal funds, which may indicate these numbers are estimates; therefore, these states were excluded from the total.

[c]State officials from Oklahoma and Kansas were able to report the proceeds from the sale or lease of property acquired with federal funds but were unable to report the number of properties sold or leased, which may indicate these numbers are estimates; therefore, these states were excluded from the total.

[d]State officials from Texas reported the proceeds from the sale or lease of property acquired with federal funds but also reported federal funds are returned by crediting an ongoing federal-aid project; therefore, we excluded these numbers from our total.

Source: Developed by GAO from data provided by State DOTs and FHWA.

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