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# Termination by the U.S. Department of Transportation of New York City's Central Business District Tolling Program

Congress has prohibited tolling of [federal-aid highways](#) and passed a series of exceptions to the prohibition. One such exception is the Value Pricing Pilot Program (VPPP). On November 21, 2024, the Federal Highway Administration (FHWA) and multiple New York transportation agencies signed a VPPP [cooperative agreement](#) to allow value pricing on federal-aid highways in New York City. On January 5, 2025, New York City [launched](#) its Central Business District (CBD) Tolling Program. On February 19, 2025, Secretary of Transportation Sean Duffy announced the [termination](#) of the cooperative agreement, though tolling under the program is ongoing.

## Background

### Definitions

A range of terms have been used to describe the CBD Tolling Program. New York City's Metropolitan Transportation Authority (MTA) refers to it as a [congestion relief program](#). The state authorizing act refers to it as a [tolling program](#). FHWA has described it as a [congestion pricing or cordon congestion pricing toll zone](#).

Title 23 of the *U.S. Code*, which covers highways, does not define tolling, value pricing, congestion pricing, or cordon pricing. The following are definitions according to FHWA's Office of Operations:

- [Tolling](#) is charging drivers a fee for use of a highway.
- [Congestion pricing](#) is a type of tolling in which toll levels are varied by time of day or traffic volume in order to manage congestion.
- [Cordon pricing](#) is a type of zone-based congestion pricing that involves charging a fee to enter or drive within a congested area, usually a city center. [Area pricing](#) is another type of zone-based congestion pricing.

In the most recent VPPP [solicitation](#) in the *Federal Register* (October 19, 2010), FHWA defined *value pricing* as encompassing “a variety of strategies to manage congestion on highways, including tolling of highway facilities through congestion pricing, as well as other strategies that do not involve tolls, such as mileage-based car insurance and parking pricing.” In some publications, FHWA uses the terms value pricing and congestion pricing [interchangeably](#).

### Tolling Federal-Aid Highways

In general, federal law prohibits tolling on federal-aid highways, but Congress has created some exceptions to this ban ([23 U.S.C. §301](#)). Exceptions include tolling on newly

constructed lanes or highways and tolling of existing highways, bridges, and tunnels after reconstruction or replacement ([23 U.S.C. §129\(a\)\(1\)](#)); tolling of vehicles that do not otherwise meet the occupancy requirement for a high occupancy vehicle (HOV) lane ([23 U.S.C. §166\(b\)\(4\)](#)); the [Congestion Relief Program](#), which allows for tolling on Interstate highways in up to 10 states; and the VPPP.

### Value Pricing Pilot Program

The VPPP ([23 U.S.C. §149 note](#)) is a continuation of the Congestion Pricing Pilot Program, initially established in FY1992 as part of the Intermodal Surface Transportation Efficiency Act (ISTEA; P.L. 102-240, §1012(b)). The VPPP allows FHWA to enter into cooperative agreements with up to 15 state and local governments to establish, maintain, and monitor value pricing programs. Any profit generated by a program funded through the VPPP must be used for projects eligible under Title 23. Every two years, FHWA must report to Congress on how the authorized programs have affected driver behavior, traffic volume, transit ridership, air quality, and transportation funding.

The VPPP [originally](#) provided grants to cooperative agreement holders. The grant funding covered a project's development and implementation costs for up to three years or until the project began generating sufficient revenue to cover its operating expenses, whichever came first. In the Moving Ahead for Progress in the 21<sup>st</sup> Century Act (MAP-21; P.L. 112-141), which passed in FY2012, Congress did not authorize further funding for the VPPP, and the program subsequently ceased to offer grants. FHWA may still enter into cooperative agreements for value pricing projects under the VPPP but [encourages](#) use of the other exceptions to the tolling ban when possible.

As of [May 2022](#), FHWA had 13 active cooperative agreements for VPPP programs in 7 states: California, Florida, Maryland, Minnesota, Texas, Virginia, and Washington. Through the VPPP, FHWA has authorized a [variety](#) of value pricing strategies, including tolling of HOV lanes, variable pricing of new express lanes, variable pricing of existing toll highways, road user fees, mileage-based vehicle leases, and mileage-based car insurance.

Prior to approval of New York City's CBD Tolling Program, the VPPP had not authorized a cordon pricing program. The VPPP previously funded two studies related to cordon pricing. The [first study](#) considered the establishment of a “charging area” and parking pricing program in downtown San Francisco. The [second study](#) examined the potential for cordon or area-wide pricing in Los Angeles, coupled with a build-out of HOV toll lanes.

## New York City Tolling Efforts

### First UPA/VPPP Proposal

In 2007, the U.S. Department of Transportation (DOT) selected five states, including New York, to participate in congestion demonstration projects through the [Urban Partnership Agreements \(UPA\) initiative](#). The then New York City Mayor Michael Bloomberg [proposed](#) an area pricing program. Because the UPA did not have its own funding, this [project](#) would have been funded through the VPPP, with DOT drawing funding from multiple other competitive grant programs. In 2008, the New York City council voted in favor of the project, but the project never received a vote in the New York state legislature and [did not move forward](#).

### Second VPPP Proposal and Tolling Program

In October 2017, then New York Governor Andrew Cuomo appointed an [advisory panel](#) to consider how to ease congestion in New York City and provide a dedicated funding stream for public transportation. In January 2018, the panel [recommended](#) improvements to New York City's public transportation system, coupled with a phased implementation of congestion pricing in the CBD. In April 2019, the New York state legislature passed [legislation](#) that authorized and funded the CBD Tolling Program. Among other provisions, the legislation required that (1) New York City enter into a memorandum of understanding with the Triborough Bridge and Tunnel Authority (TBTA) to plan and operate the tolling program; (2) tolls be set at a high enough rate to cover the program's operating costs and "provide sufficient revenues ... to fund fifteen billion dollars for capital projects for the 2020 to 2024 MTA capital program"; and (3) tolling begin no earlier than December 31, 2021. The TBTA developed a [plan](#) to vary tolls by time and type of vehicle.

Political and procedural issues impacted the timeline for implementation of the CBD Tolling Program. For example, it took about [two years](#) for FHWA to determine the [appropriate](#) National Environmental Policy Act (NEPA) review process for the program and another two years to complete the [review](#). Shortly before tolling was scheduled to go into effect on June 30, 2024, New York Governor Kathy Hochul temporarily [halted](#) the program. In early November 2024, Governor Hochul [revived](#) the program, and the TBTA lowered the initial toll prices (e.g., the toll for a passenger vehicle entering the CBD during the peak period was lowered from \$15 to \$9). The [new plan](#) included three phases spanning 2025-2031, with tolls increasing in each phase.

On November 21, 2024, FHWA, the New York state department of transportation, the TBTA, and the New York City department of transportation signed a [VPPP cooperative agreement](#). The agreement describes the project's purpose: "to reduce traffic congestion in the [CBD] in a manner that will generate revenue for future transportation improvements." It outlines provisions to address effects on low-income drivers, including a tax credit and a low-income discount plan for frequent drivers.

Tolling [went into effect](#) on January 5, 2025. [Initial data](#) indicated that the program reduced traffic and trip times on most routes within the CBD while increasing traffic and trip times on some non-tolled routes. According to [MTA](#), by January 29, buses across the Hudson and East River crossings were traveling faster and were more reliable. MTA also reported an increase in bus, subway, and train ridership compared with the same days the previous year.

On February 19, 2025, FHWA [terminated](#) approval for the CBD Tolling Program under the VPPP. In a [letter](#) to the governor of New York, the Secretary of Transportation concluded that FHWA lacked statutory authority to approve the CBD Tolling Program as a pilot project under the VPPP because the program is not an eligible "value pricing pilot program." According to the Secretary, the long-standing prohibition on tolling of federal-aid highways requires that exceptions such as the VPPP be narrowly construed. As of February 26, 2025, New York [represented](#) that tolling remains in effect under the program.

### Legal Issues

The Secretary of Transportation [acknowledged](#) that Congress did not define *value pricing pilot program* but [asserted](#) that the CBD Tolling Program does not qualify for two reasons. The Secretary [maintained](#) that cordon pricing without non-toll alternatives for motor vehicles is unprecedented under the VPPP or any other statutory exception, and permitting such pricing would require more explicit authorization than the "[vague phrase](#)" used in the VPPP. The Secretary [noted](#) similar claims raised by a New York town in [litigation](#) opposing the CBD Tolling Program.

The Secretary also [asserted](#) that the calculation of tolls under the VPPP cannot be grounded in concerns other than congestion reduction or other road-related goals, but tolls under the CBD Tolling Program have been calculated primarily to generate specific revenues for MTA projects. While acknowledging that VPPP programs may generate revenue and the CBD Tolling Program's tolls may in fact reduce congestion, the Secretary [contended](#) that the consideration of revenue targets in calculating these tolls renders the program ineligible for the VPPP. The Secretary [rescinded](#) FHWA's approval of the CBD Tolling Program and terminated the November 2024 agreement.

Within hours of the release of the Secretary's letter, MTA and the TBTA filed a [lawsuit](#) in the U.S. District Court for the Southern District of New York challenging the Secretary's attempt to terminate the VPPP cooperative agreement. The transportation agencies [argued](#) that termination is not permitted by any law and would be contrary to the [Due Process Clause of the Fifth Amendment](#), the [Administrative Procedure Act](#), [NEPA](#), and [federal regulations](#). They [asked](#) the court for a declaratory judgment that the purported termination of the VPPP agreement is null and void and for an order vacating the purported termination.

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