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New York City's Central Business District Tolling Program: Background, Federal Role, and Selected Legal Issues

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, leading to litigation. A U.S. District Court preliminarily enjoined the termination in May 2025 and vacated the termination in March 2026. Tolling under the program has continued uninterrupted.

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.

Between May 2025 and March 2026, FHWA removed multiple web pages and publications related to congestion pricing from its website. FHWA provides or previously provided the following definitions:

- *Tolling* was previously defined as charging drivers a fee for use of a highway, with fees going to building, maintaining, and improving the highway.
- *Congestion pricing* was previously defined as a type of tolling in which toll levels vary by time of day or traffic volume to manage congestion.
- *Zone-based charging* is levying fees for access to or use of a designated road network in or around heavily congested areas or urban centers. *Cordon pricing* and *area pricing* are types of zone-based charging.
- *Value pricing* encompasses “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 has used the terms *value pricing* and *congestion pricing* interchangeably.

Tolling Federal-Aid Highways

In general, federal law prohibits tolling on federal-aid highways (23 U.S.C. §301), but Congress has created some

exceptions to this ban. 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; 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 (P.L. 102-240, §1012(b)). It allows FHWA to enter into agreements with up to 15 state and local governments to establish, maintain, and monitor value pricing programs. Revenue generated must be used for projects eligible under Title 23 (Highways). 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. It ceased to offer grants when Congress decided in 2012 not to authorize further funding for the program. FHWA may still enter into agreements for value pricing projects under the VPPP without a grant.

As of the most recent reporting from FHWA in 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 pricing in Los Angeles, coupled with a build-out of HOV toll lanes.

New York City Tolling Efforts

New York City officials have twice sought to implement a tolling program under the VPPP.

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. Because the UPA did not have its own funding, this project would have been funded through the VPPP, with DOT drawing funding from other competitive grant programs. In 2007, New York City Mayor Michael Bloomberg proposed an area pricing program for New York's demonstration project. The next year, 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 January 2018, an advisory panel appointed by then-New York Governor Andrew Cuomo recommended improvements to New York City's public transportation system and a phased implementation of congestion pricing in the CBD. In April 2019, the New York state legislature passed legislation that authorized and funded New York City's CBD Tolling Program. 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 for 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, 2020. The TBTA developed a plan to vary tolls by time and type of vehicle.

FHWA completed the National Environmental Policy Act (NEPA) analysis in June 2023 and affirmed the original finding of no significant impact in June 2024. 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., \$9 instead of \$15 for a passenger vehicle entering the CBD during the peak period). The new plan increases tolls in three phases from 2025 to 2031. On November 21, 2024, FHWA, the New York State DOT, the TBTA, and the New York City DOT signed a VPPP cooperative agreement. The agreement includes provisions to address effects on low-income drivers, such as a tax credit and a low-income discount plan for frequent drivers.

Tolling went into effect on January 5, 2025. MTA's first evaluation report for the program, covering data from January to October 2025, indicates a reduced number of vehicles entering the CBD. Vehicle speeds increased on tolled and non-tolled routes and for nearby bridges and tunnels. Transit ridership increased for most but not all transit providers serving the CBD. As of November 2025, net revenue was \$518 million, exceeding projections.

Legal Issues

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.

The Secretary acknowledged that Congress did not define *value pricing pilot program* but asserted that the CBD Tolling Program does not qualify for two reasons. First, the Secretary maintained that cordon pricing without non-toll alternatives for motor vehicles is unprecedented under the VPPP or any other statutory exception, and that permitting such pricing would require more explicit authorization than the "vague phrase" used in the VPPP. Second, the Secretary asserted that the calculation of tolls under the VPPP cannot be grounded in concerns other than congestion reduction or other road-related goals, while CBD Tolling Program toll rates were driven primarily by revenue targets for MTA projects. The Secretary acknowledged that VPPP congestion pricing programs necessarily generate revenue, but contended that the consideration of revenue targets in calculating toll rates rendered 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 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 (APA), NEPA, and federal regulations.

On April 21, 2025, the Secretary sent an additional letter to the Governor of New York threatening to halt certain transportation project approvals if New York did not cease toll collection. The Secretary also expanded on his policy concerns with cordon pricing and claimed that these provided an independent basis for his termination of the VPPP agreement. In May 2025, the district court preliminarily enjoined the Secretary and DOT from taking any action to enforce the attempted termination.

In March 2026, the district court determined that the attempted termination of the VPPP agreement violated the APA, and the court vacated the February 19 and April 21 letters. The court held that cordon pricing may be permitted under the VPPP and that the applicable statutes did not limit the consideration of transit funding. It also concluded that the Secretary could not rely on the *post hoc* policy justification in his April 21 letter to support an earlier termination decision, and, in any case, the Secretary lacked authority to rely on policy reasons to terminate the VPPP agreement. The court issued a declaratory judgment "that the Secretary is permitted to terminate the VPPP Agreement only pursuant to the terms expressly stated therein, that the Defendants' termination of the VPPP Agreement was unlawful, and that any attempt to enforce the February 19 Letter or April 21 Letter would be unlawful." While other legal challenges to the CBD Tolling Program are pending, the program remains in place and tolling is ongoing.

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