

Review of Congressional Earmarks: Department of Transportation

Background:

Dr. Coburn requested an independent review of Congressional earmarks within the Department of Transportation from the department's Inspector General in August 2006. The report ("Review of Congressional Earmarks within Department of Transportation Programs") was completed on September 7, 2007.

Notes:

- a) All earmarks discussed in the report are for the years 2006 *only*.
- b) All emphasis in the analysis below was added.
- c) The report does not include an actual list of the earmarks the Inspector General (IG) reviewed for the report, since, according to the IG's staff, "a single document listing 8,056 earmarks will make up approximately 300 pages of data."
- d) According to the Inspector General, until this report was requested and produced, "There has been no prior audit coverage on congressional earmarks for all the modes within DOT by the Office of Inspector General."

Organization of analysis:

Analysis of the report by the Inspector General of the Department of Transportation follows, organized by findings related to Quantity of Earmarks, Cost of Earmarks, Strategic Value of Earmarks, and Additional Findings.

FINDINGS RELATED TO QUANTITY OF EARMARKS

- **FINDING: Earmarks in DOT have increased in number by 1,150% in 10 years (1996 – 2005), with the value of earmarks in the same timeframe jumping 314%.**

The report notes that during the 10-year period from fiscal year (FY) 1996 to FY 2005, the *number* of earmarks within Department of Transportation (DOT) appropriations acts and accompanying conference reports **increased by more than 1,150 percent**—from 167 earmarks in FY 1996 to 2,094 earmarks in FY 2005. The *amount* of dollars earmarked also **increased by more than 314 percent**—from \$789 million in FY 1996 to about \$3.27 billion in FY 2005. (page 1)

- **FINDING: The IG identified 8,056 earmarked projects within the Department's programs that received more than \$8.54 billion for FY 2006 (page 3).**

**8,056 earmarked projects worth more than \$8.54 billion for FY 2006
(over 13% of DOT's appropriation)***

66 earmarked projects were specified in the text of the appropriation act.

1,516 earmarked projects were specified in the conference report accompanying the appropriation act.

6,474 earmarked projects were identified in the appropriation act's accompanying conference report sections referring to distribution of FY 2006 authorized funding as directed by SAFETEA-LU.

*(Number and amount of earmarks identified in DOT appropriation and accompanying conference report for FY 2006)

- **FINDING: three departments at the Department of Transportation accounted for 99% of the agency’s earmarks in 2006** both in number (8,011 of the 8,056 projects) and dollar amount (about \$8.49 billion of the more than \$8.54 billion):

Federal Highway Administration (FHWA): 6,556 earmarks worth about \$5.7 billion, or 15.49% of that department’s appropriation for FY06. 5,091 of the FHWA earmarks come from the “High Priority Projects” program funds—which, according to IG staff, “refers to highway projects that Congress earmarked as high priority projects (Subtitle G Sections 1701 and 1702 in SAFETEA-LU). It is not a FHWA designation.”

Federal Transit Administration (FTA): 1,252 earmarks worth about \$2.4 billion, or 28% of that department’s appropriation for FY06;

Federal Aviation Administration (FAA): 204 earmarks worth about \$408 million, or \$2.83% of the department’s appropriation for FY06.

All others: 44 earmarks worth \$55.9 million.

FINDINGS RELATED TO THE COST OF EARMARKS

- **FINDING: the *cost* of administering earmarks is hard for the DOT to determine** (because it is not tracked), but program officials agree that “there are additional costs associated with administering earmarked projects, such as the additional staff time needed to review projects that are not normally eligible for Federal funding” (page6).

FINDINGS RELATED TO THE STRATEGIC VALUE OF EARMARKS

- **FINDING: 7,724 out of 7,760 (99%) earmarks were not subject to the agencies’ review and selection processes or bypassed the states’ normal planning and programming processes.**

“Earmarked projects we reviewed, however, either were not subject to the agencies’ expertise and normal authority to select projects for funding after a review and evaluation of a project’s merit, rank, and priority or bypassed the states’ normal planning and programming processes as demonstrated in the following examples” (page 8)

With regard to the *strategic value* of earmarks, the IG reviewed 27 of 54 programs subject to earmarks within the Federal Highway Administration, the Federal Transit Administration, and the Federal Aviation Administration and found that 7,724 of the 7,760 (99 percent) earmarked projects for FY 2006 either were not subject to the agencies’ review and selection processes or bypassed the states’ normal planning and programming processes (page 4).

Of the 7,724 earmarks that were not subject to the agencies’ review and selection processes or bypassed the states’ normal planning and programming processes: 1,615 (valued at more than \$3.8 billion) “were not subject to Federal Highway Administration, the Federal Transit Administration, and the Federal Aviation Administration’s authority to review and select projects based on merit” (page 7). Another 6,109 earmarks (valued at about \$4.2 billion) bypassed the states’ normal planning and programming processes” (page 8).

Strategic Earmarks?

Examples of earmarks that would not have received federal funding, or that bypassed federal or state evaluation or merit processes.

AIRPORT EARMARKS:

53 out of 125 Federal Aviation Administration’s Airport Improvement Program (provides funds for projects that plan for and develop a safe and efficient national airport system) earmarks would not have received federal funding “if they had not received earmarks.” These projects were not on FAA’s list of candidates for critical airport planning and development projects) (page 4; see also page 9).

HIGHWAY EARMARKS:

100% of the Federal Highway Administration’s National Corridor Infrastructure Improvement Program (established to provide funds for construction of highway projects in corridors of national significance) earmarks, totaling about \$389.6 million, “bypassed the Agency’s review, approval, or merit-based selection processes” (page 8).

PUBLIC LANDS EARMARKS: 100% of the Federal Highway Administration’s Public Lands Highways Discretionary Program (established to improve access to and within the Nation’s Federal lands) earmarks, worth about \$95.2 million “bypassed the Agency’s review, approval, or selection processes” (meaning “these projects were not selected based on merit”) (page 8).

TRANSIT RESEARCH EARMARKS: 46 earmarks in the Federal Transit Administration’s National Research Program (worth \$40.8 million, or 74% of the program’s funding) were not evaluated, were not selected in open competition, and did not go through peer review.

“FTA’s National Research Program is one program over the last 10 years in which the majority of projects have been earmarked, thereby bypassing the established planning and evaluation process put in place by FTA.” 46 earmarks in 2006 “did not have to go through the planning and evaluation process by meeting eligibility criteria; being selected through an open competition; and, finally, being evaluated by peers” (page 9).

BUS & BUS FACILITIES EARMARKS: Regarding 1,097 earmarks in the Federal Highway Administration’s Bus and Bus Facilities Program, the department reported it doesn’t even have a systematic mechanism to rank and rate \$813.9 million in earmarks (96 percent of the total program budget appropriated in 2006).

“Congress has earmarked the program for more than 10 years (since 1995). As a result, FTA did not have the opportunity to select bus and bus facility projects based on merit...However, program officials commented that FTA would establish a systematic mechanism to rank and rate projects if the Agency had this responsibility. As a result of a joint resolution passed by Congress that provided appropriations for FY 2007 with a moratorium on earmarks, FTA implemented criteria to rank bus and bus facility projects because congressional earmarks covered only a little more than half of the \$882 million available for the program” (page 9).

INTERSTATE MAINTENANCE EARMARKS: 16 of 65 earmarked projects (totaling more than \$14 million), in the Federal Highway Administration’s Interstate Maintenance Discretionary Program did not meet statutory program criteria and would not have received funding were it not for a section in DOT’s appropriations law that allows funding for earmarks that do not meet the statutory requirements of the program” (page 5).

AIR TRAFFIC CONTROL FACILITIES EARMARKS: “Many earmarked projects considered by the agencies as low priority are being funded over higher priority, non-earmarked projects.” For 2006, the Federal Aviation Administration considered 9 of 10 earmarked projects (worth \$31.5 million) in its Tower/Terminal Air Traffic Control Facility Replacement Program to be low priority projects that would not have received funding without the earmarks. “Funding these new low priority projects in FY 2006 added to the already substantial backlog of replacement projects from earmarks in prior fiscal years and caused FAA to delay the planning of its higher priority replacement projects by at least 3 years” (page 5).

EARMARKS FOR “PROJECTS OF NATIONAL AND REGIONAL SIGNIFICANCE”: 4 of 25 earmarked projects (totaling \$28 million) in the Federal Highway Administration’s Projects of National and Regional Significance Program did not meet statutory criteria (pages 12 – 13).

- **FINDING: “Earmarks may not be the most effective or efficient use of funds.”** The IG report identifies five ways in which earmarks impact programs in the Federal Highway Administration, the Federal Transit Administration, and the Federal Aviation Administration, as follows (see pages 11 – 14):

- 1) Earmarks can reduce funding for the states’ core transportation programs.
- 2) Earmarks do not always coincide with DOT strategic research goals.
- 3) Many low priority, earmarked projects are being funded over higher priority, non-earmarked projects.
- 4) Earmarks provide funds for projects that would otherwise be ineligible.
- 5) Earmarks can disrupt the agency’s ability to fund programs as designated when authorized funding amounts are exceeded by “overearmarking.”

“EARMARKS MAY NOT BE THE MOST EFFECTIVE OR EFFICIENT USE OF FUNDS”
<p>EXAMPLE 1: “Earmarks can reduce funding for the states’ core transportation programs”</p> <p>“According to Federal Highway Administration (FHWA) officials, funding for three earmarked programs (High Priority Projects, Highway Priority Projects, and Surface Transportation Projects) <u>reduced apportionments to the states for core transportation programs.</u></p> <p>For FY 2006, Congress earmarked over 5,600 projects valued at over \$3.5 billion in these 3 programs—almost 10 percent of FHWA’s annual budget. Based on discussions with state officials, <u>FHWA officials believed many of these projects would not have been high priority candidates for funding under the states’ formula programs.</u> However, FHWA was required to fund the projects because they were earmarked thereby <u>reducing states’ apportionments by \$3.5 billion</u>” (page 11).</p>
<p>EXAMPLE 2: “earmarks do not always coincide with DOT strategic research goals.”</p> <p>“The Federal Transit Administration (FTA) has five research goals to support its research mission to deliver solutions to improve public transportation...For FY 2006, we found that <i>all 46 earmarked projects</i>, valued at about \$40.8 million, in FTA’s National Research Program <u>did not address the first goal and only partially addressed goals 2 through 4</u>” (page 11).</p>
<p>EXAMPLE 3: “many low priority, earmarked projects are being funded over higher priority, non-earmarked projects.”</p> <p>1) For FY 2006, the Federal Aviation Administration considered 9 of the 10 new earmarked projects, totaling \$31.5 million, in its Tower/Terminal Air Traffic Control Facility Replacement Program within the Facilities and Equipment account to be <u>low priority projects that would not have received funding</u> without the earmarks. Funding these new low priority projects in FY 2006 added to the already substantial backlog of replacement projects from earmarks in prior fiscal years and <u>caused FAA to delay the planning of its higher priority replacement projects by at least 3 years</u> (page 12).</p> <p>2) “Earmarks for Federal Aviation Administration Instrument Landing Systems (ILS) Program within the Facilities and Equipment account represent another example of low, rather than high, priority projects receiving funds. For FY 2006, Congress earmarked almost \$11.7 million for 15 ILS projects... According to FAA officials, <u>the Agency would not have selected any of the 15 earmarks to receive funds because none of the earmarked projects would have met FAA’s requirements for selecting a project</u>, such as the requirement that a project’s benefits are equal to or greater than its costs” (page 12).</p> <p>3) In another example, <u>36 of 77 earmarked projects for FY 2006 in Federal Highway Administration’s Public Lands Highways Discretionary program, totaling \$37.6 million, would not have been given high priority funding</u> (because they violated requirements in the United States Code) (page 12).</p>

EXAMPLE 4: “earmarks provide funds for projects that would otherwise be ineligible.”

1) 16 of 65 earmarked projects (totaling more than \$14 million), in the Federal Highway Administration’s Interstate Maintenance Discretionary Program did not meet statutory program criteria and would not have received funding were it not for a section in DOT’s appropriations law that allows funding for earmarks that do not meet the statutory requirements of the program” (page 12).

2) 4 of 25 earmarked projects (totaling \$28 million) in the Federal Highway Administration’s Projects of National and Regional Significance Program did not meet statutory criteria (page 12).

3) Ineligible “Bus Facilities” earmarks: Two “bus category transit funds” earmarks were used to fund two facilities that did not have a “transit connection.” The first was used for a storage area/handling facility. The second was used to “restore the exterior of a former railway depot to its original configuration and refurbish the interior to house a historical museum” (page 13)

4) Ineligible “park-and-ride” facility—funds for a park-and-ride facility built a garage instead: In 2005, Congress appropriated funds for a “park-and-ride” facility that turned out to be really intended for the use of a parking garage at a local hospital, and the Federal Transportation Administration (FTA) “declined to fund the earmark.” The, in the FY 2006 Department of Transportation Appropriation Act, “Congress directed that funds originally available for the park-and-ride facility be made available to the hospital for the parking garage. A transit connection does not exist, but FTA funded the earmark because it was written into law” (page 13).

EXAMPLE 5: “earmarks can disrupt the agency’s ability to fund programs as designated when authorized funding amounts are exceeded by “overearmarking.”

In the current DOT authorization for surface transportation (the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, SAFETEA-LU), earmarks actually exceeded the authorized funding levels for three of the five Federal Highway Administration research programs for FY 2006, resulting in across-the-board program cuts to stay within authorized funding levels for each of the three programs.

ADDITIONAL FINDINGS

- **FINDING: Earmarks are increasing in number in *authorization* bills.** This is an important point since the Congressional Research Service (the “research arm” of Congress) does not compile *any* research on earmarks at the present time, but when it did, it only compiled data on earmarks in *appropriations bills* (spending bills), and not *authorizing* legislation (policy bills).

In compiling the report, the IG looked not only at earmarks in appropriations legislation (the spending bills that must be passed annually by Congress) and the conference reports to these bills, but also scrutinized earmarks in authorizing bills passed by Congress (according to the report, “authorizing legislation directs the enactment of appropriations of specific amounts for specific programs and activities to be provided in appropriation acts. Normally, an authorization of appropriation legislation is a prerequisite for making appropriations for the given program or agency”).

The report finds that “Recent DOT re-authorizations have included a significant number of specific projects with associated funding directed to specific state and local agencies or locations. For example, the current DOT authorization for surface transportation (SAFETEA-LU, Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users), accounted for 6,474 (80 percent) of DOT’s 8,056 earmarked projects for FY 2006.” (page 2)