



Background on Release of Earmarked Funds

While not generating increased federal highway investment on top of the investments authorized by the Fixing America's Surface Transportation (FAST) Act, a key provision of the year-end, government-wide FY 2016 appropriations bill (enacted December 2015) will allow states to release \$2 billion or more of previously earmarked—and currently dormant—highway funds and invest those resources in their current highway improvement programs. The provision will allow this reprogramming of funds through FY 2019 and could lead to increased highway construction market activity in certain states.

Congress no longer permits earmarks in multi-year highway authorization acts, nor in the annual transportation appropriations bills—which provide states the authority to spend federal highway and transit funds. The 2005 surface transportation bill and many of its predecessors included lists of specific projects for which Congress designated funding directly, known as “earmarks.” States had no discretion but to use earmarked funds exactly as described in the law. If money were earmarked for a project that never got underway, or if a project changed in way that no longer met the earmark description, or if a project were completed for less than was earmarked; states could not reprogram the earmarked funds for other projects. If congressional earmarks had been in addition to funding for the regular highway program, they would have been a bonus. In most cases, however, earmarks came out of funding for the regular program, consuming both contract authority and obligation limitation from the annual totals provided to each state.

While the practice of earmarks had substantial support in both parties, the result of projects that did not move forward was a dilution of construction activity from what would have occurred if all funds had flowed through the core program. ARTBA previously advocated placing a time certain by which earmarked funds must be utilized to remedy this situation.

The FY 2016 Consolidated Appropriations Act will allow states to release these unusable earmarked funds for other highway projects. The main provisions of this section include:

- Funds can only be released from earmarks that are more than 10 years old. The provision should thus apply to the earmarks in SAFETEA-LU, enacted in August, 2005, as well as earlier laws;
- The provision applies only to projects where no more than 10 percent of the earmarked funds have been obligated and to projects that have been completed and have funds left over. The FHWA is in the process of compiling a list of earmarks that meet these criteria;
- The bill authorizes but doesn't mandate the release of earmarked funds. Although the FHWA will identify eligible projects, each state will decide whether to release funds from eligible earmarks and which earmarks;
- Released funds must be used within 50 miles of the original project;

- Released funds must be obligated within three fiscal years after the current fiscal year. Any released funds not obligated by the end of FY 2019 will lapse; and
- Released funds can be used for any highway or related improvement permitted by the Surface Transportation Block Grant Program.

There are some important things to note about this provision:

- This is not new funding being provided by Congress in addition to the FAST Act investment levels. Instead, the bill simply allows funds that were authorized and appropriated years ago, based on Highway Trust Fund revenues at the time, to finally be obligated for highway improvements. This will add to the total amount of federal-aid highway construction activity during the next few years but it is just money that would have been spent years ago had it not been earmarked.
- States will not all be equally affected. Some states, where the state department of transportation and congressional delegation worked closely in the past to earmark funds for ongoing or priority projects, have probably used most of their earmarked funds and thus have little to reprogram. States likely to have the most opportunities to reprogram funds are those whose members earmarked funds for low priority projects that never went forward.

This is not the first time earmarked funds have been released. In 2012, the Obama Administration authorized the states to release funds earmarked in the transportation appropriations bills for Fiscal Years 2004, 2005 and 2006. Those earmarks were designated in the report language of appropriations bills from those years, not in the laws, and thus were not legally binding. The earmarks being released now were almost all designated in actual sections of previous laws and thus the funds could not be released except through enactment of a new law.