



Memorandum

Subject: **ACTION:** Repurposing of Earmarks FY 2016

Date: March 8, 2016

From: //original signed by//
Brian R. Bezio
Chief Financial Officer

In Reply Refer To:
HCF-1

To: Associate Administrators
Division Administrators
Division Directors

The Consolidated Appropriations Act, 2016 allows States and territories to repurpose certain funds originally earmarked for specific projects more than 10 years ago. This memorandum provides the implementing guidance for this provision.

Background

Section 125 of the Department of Transportation Appropriations Act, 2016 (Pub. L. No. 114-113, Division L, Title I, hereinafter “Repurposing Provision”) provides the authority for a State or territory (hereinafter “States”) to repurpose any earmark that was designated on or before September 30, 2005, and is less than 10 percent obligated or final vouchered and closed. The repurposed funds may be obligated on a new or existing project in the State within 50 miles of the earmark designation. The project must be an eligible project under the Surface Transportation Block Grant Program (STBG) (23 U.S.C. 133(b)), or the Territorial and Puerto Rico Highway Program (THP) (23 U.S.C. 165). The Repurposing Provision is available to be applied in FY 2016.

Earmark Eligibility for Repurposing

For an earmark to be eligible for repurposing, it must meet **all** of the following conditions:

- ***Meets the definition of an earmark.*** An earmark is defined as funding in a provision of law or report language directing a specific amount of discretionary budget authority, contract authority, or other spending authority for a project, or other expenditure with or to an entity, or targeted to a specific State, locality or congressional district. This definition includes any discretionary program funding (e.g., Ferry Boat Discretionary, Interstate Maintenance Discretionary, Bridge Discretionary, etc.) that was congressionally designated to a specific project identified in a report accompanying legislation such as appropriations acts.

- ***Authorized or designated on or before September 30, 2005.*** This includes Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users Act (SAFETEA-LU) earmarks which were authorized in FY 2005 but were allocated from FY 2005 through FY 2009. This also includes earmarks identified in Division H of the Consolidated Appropriations Act, 2005 and applicable earmarks for which the description was subsequently revised by Congress.
- ***Administered by FHWA.*** Projects administered by other Federal agencies are not eligible for consideration. However, if the project was completed by another Federal agency and excess funding for the earmark is retained by FHWA, the excess funding may be repurposed.
- ***Less than 10 percent obligated or the project has been completed and closed.*** Except as provided below, the earmark must have less than 10 percent obligated, of the funds made available, as of December 18, 2015. Funds may not be deobligated after that date to meet this threshold.

If a State has obligated 10 percent or more of the funds originally made available for an earmark, all projects that used the earmarked funds must have final voucher of payments processed and closed in the Fiscal Management Information System (FMIS) for the remaining unobligated earmark funds to be eligible for repurposing.

A list of earmarks with unobligated funds that may be eligible for repurposing is available at <http://www.fhwa.dot.gov/cfo/earmarkrepurposing/>. The list may not include the universe of earmarks that will be eligible under the provision. However, it will give States a good idea of the projects that should be considered. States should work with their FHWA division office to ensure all earmarks and allocated funds listed or otherwise identified meet the repurposing eligibility criteria and the amount of funds available. If additional earmarks are identified that are not on the list, the FHWA division office should contact the appropriate program office to determine if they are eligible for repurposing.

Requirements for Obligating Repurposed Funding

The following criteria must be met to obligate funding that has been repurposed from an earmark to one or more new or existing projects:

- ***Type of Project.*** The repurposed funding must be obligated on an STBG (for States) or THP (for Puerto Rico or territories) eligible project.
- ***Location of Project.*** The project(s) receiving the repurposed funding must be within the State that received the original earmark and within 50 miles of the original earmark description. If the earmark was for a geographic area (e.g., city, county, corridor), a project will be considered to meet this location requirement if it is within 50 miles of the area's boundary.
- ***Period of Availability.*** The repurposed earmark funds must be obligated on or before September 30, 2019.

- ***Federal Share.*** The applicable maximum Federal share for obligating the repurposed earmark funds is the same as originally provided for the earmark funds.

Other Requirements

The State must identify the corresponding amount of applicable special or allocated obligation limitation to be transferred with the earmark, if available. Earmarks with insufficient associated limitation available (i.e., excess funds) must use the State's annual formula obligation limitation when obligating those repurposed funds.

The State must identify specific projects (i.e., location and scope of work) for the full unobligated balance of the earmark for repurposing. Repurposed funds may be identified for one or more new or existing projects, or any combination thereof, but must be obligated by the end of FY 2019. The State must identify the specific amount for each project when the request to repurpose is made. Once funds are repurposed for a specific project, the funds may not be changed to a different project at a later date. Cost underruns released from one Federal-aid agreement may be obligated for increased costs only on a different project previously identified at the time of repurposing for the same earmark.

Once funds are repurposed under the Repurposing Provision, they may not be again repurposed because the funds no longer meet the requirements for repurposing since they have been moved off of the original Congressionally designated earmark.

Process for Requesting and Approving Repurposing

The State, FHWA division office, and the Office of the Chief Financial Officer (OCFO) will process earmark repurposing requests as provided in the attached procedures using a modified transfer request form (FHWA-1575 (ERP)). The Division Administrator's review and approval of a State's repurposing request constitutes FHWA's concurrence that (1) the repurposed earmark request meets the criteria for repurposing, and (2) any new proposed projects are STBG (or THP) eligible, within 50 miles of the earmark description, and within the State.

The State may submit a request to repurpose at any time prior to the submission deadlines. The submission deadlines will ensure State requests are processed prior to the end of this fiscal year. Each FHWA division office should work with its respective State to ensure the division office has adequate time to review, approve, and submit all modified transfer forms prior to the submission deadlines:

- If the State intends to obligate the repurposed funds before the end of the fiscal year, the FHWA division office must submit the completed request for repurposing to the OCFO by August 29, 2016.
- If the State does not intend to obligate the repurposed funds before the end of the fiscal year, the FHWA division office must submit the completed request for repurposing to the OCFO by September 12, 2016.

If the funds to be repurposed are not currently available in FMIS, the State must notify their FHWA division office in writing of their intent to repurpose such funds at least 30 days before the above deadlines. The division office must contact the appropriate FHWA program

office to allocate the funds and applicable obligation limitation in FMIS, if available, following normal procedures, noting that the purpose is for repurposing the earmark. Once the funds are allocated in FMIS, the State may then submit the request to repurpose the funds on the modified transfer form to the division office.

FHWA will not consider repurposed funding requests that are not in conformance with this guidance or not received by the submission deadline.

Required Congressional Quarterly Reports on Repurposed Earmarks

After the funds are repurposed, the States must provide quarterly reports to FHWA on the identified projects. To meet this requirement, FHWA will provide States a compiled list of projects submitted during the quarter. The State will provide the FHWA division office a letter certifying that the list of projects is accurate and will be obligated in accordance with the Repurposing Provision with the project list attached. The FHWA will provide the States the quarterly lists by July 15 and October 15, 2016. State certification letters should be received by FHWA's OCFO by July 31 and October 31, 2016.

Additional Information

We will provide FAQs on FHWA's Repurposing website. If you have specific questions, please direct them to the "Repurposed Earmarks" mailbox found in MS Outlook.

cc: Chief Counsel
Directors of Field Services

Attachments:

Attachment 1 – FY 2016 Earmark Repurposing Process
Attachment 2 – Modified Transfer Request Form (FHWA-1575(ERP))

FY 2016 Earmark Repurposing Process

This guidance defines the steps necessary to implement the statutory requirements to request earmarks to be repurposed. The address for FHWA's Earmark Repurposing website is <http://www.fhwa.dot.gov/cfo/earmarkrepurposing/>. Question should be submitted to the "Repurposed Earmarks" mailbox found in MS Outlook.

REPURPOSING PROCESS

1. If the funds are not allocated in the Fiscal Management Information System (FMIS), then a written request must first be made by the State to the FHWA division office. The FHWA division office will send the request to the appropriate FHWA program office to allocate the funds following the normal process. The request should note that the funds will be used for repurposing. This process may take 30 days which should be included in the timeline to meet the September 12, 2016 deadline.

Once the funds are allocated in FMIS, the State may continue to step 2 of this process.

2. The State submits a request to repurpose eligible earmarks to the FHWA division office for concurrence utilizing the modified transfer form (FHWA-1575(ERP)). An example form is attached. The left side of the form contains the information on the earmark to be repurposed. The right side of the form provides the information needed to identify the new project(s) and the amount of funds for each project.

The submission must contain sufficient information to demonstrate that each requested earmark is eligible for repurposing and each new project meets the requirements. Below are specific requirements for completing the modified transfer form:

- a. The left side of the modified transfer form must include information concerning the original earmark, including:
 - i. The name as provided in the applicable legislation or report or as provided in FMIS Demo ID information;
 - ii. Identify the specific legislation or report if not identified in FMIS;
 - iii. Fiscal year of the original authorization of earmark (i.e., the fiscal year the legislation was passed);
 - iv. The program code of the funding to be repurposed;
 - v. The Demo ID, if applicable; and
 - vi. The amount to be transferred from the earmark. This should be the full unobligated balance for the earmark.
- b. The right side of the modified transfer form must include the new project descriptions that comply with the statutory requirement, including:
 - i. The item number from the applicable earmark on the left side of the form;
 - ii. The location and scope of work. It should demonstrate that the funding will be obligated for an eligible STBG (for States) or THP (for territories)

- project. It may be necessary to provide more detail in the comments box or an attachment;
- iii. The amount of funds being repurposed for this project description. The total amount must match the unobligated balance of the earmark; and
 - iv. Repurposed program codes will be selected based on the original program code for the earmark funds (see Program Code Crosswalk on the repurposing website).
- c. Include the following in the “Comments” box of the modified transfer form:
- i. By left side line item number, describe how the project qualifies if 10 percent or more of the funds have been previously obligated.
 - ii. FHWA will presume that the maximum amount of applicable obligation limitation available for the funds will be repurposed and transferred with the funds. If it is desired to transfer less obligation limitation, record those requirements by right side line item number. **Funds subject to limitation in excess of the amount available will require the use of annual formula obligation limitation at the time of obligation.**
- d. The State must certify the earmark is eligible for repurposing and will be obligated for the identified purposes by marking the “YES” in the certification box. The State will sign the form and submit it to the FHWA division office. The State must submit a text readable (e.g., MS Excel) version of the form.
3. The Division Administrator (DA), or the Assistant Division Administrator (ADA) if designated, will either approve the transfer request form and submit it to the “FHWA Transfers” mailbox or reject the transfer request form and notify the State. The DA may delegate this authority only to the ADA. The DA’s approval represents the FHWA’s concurrence on eligibility of each earmark requested for repurposing and the requirements for project selection. The DA is responsible for confirming the following:
- a. The earmark is less than 10 percent obligated or all related projects that used the earmarked funds are final vouchered and closed.
 - b. The new project is an eligible STBG or THP project and located within 50 miles of the earmark description in the same State.
 - c. Obligation limitation available is properly identified, if applicable.

The FHWA division office is also responsible for verifying the amount of funds available for repurposing. The total unobligated balance of applicable funds must be checked. The balance can be checked in FMIS on either the M58A or W10A report. The N25A is another resource but may show a “demo” project (a type of earmark in the system) with an unobligated balance of funds but those funds may have been used on another demo, causing a negative unobligated balance on the other demo. Only the net balance of the projects is available. If funds have not been allocated in FMIS, the repurposing request cannot be submitted.

4. OCFO will evaluate the request and verify the amount of funds and obligation limitation, if applicable, available to transfer with the applicable earmark, dependent on its original obligation limitation. The demo description will be revised in FMIS to reflect “Repurposing” and one or more program codes will be used to re-allocate the funds for the new description.

A new demo number will be provided if the funds were not previously assigned a demo number. This will typically be necessary for discretionary programs such as the Ferry Boat Discretionary and Interstate Maintenance Discretionary programs.

Repurpose requests received by the OCFO by the 5th of the month will be completed by the 25th of the same month. The OCFO will notify the FHWA division office official mailbox and submitter that the transfer is processed and the funds may be obligated to the projects.

QUARTERLY REPORTS

FHWA will facilitate the quarterly reporting required by the States in the Repurposing Provision. The FHWA OCFO will consolidate the list of repurposed projects received during the quarter. The list of projects will be provided to the FHWA division offices to be provided to the States by July 15 and October 15, 2016.

The State will provide a letter to the FHWA division office confirming the list of projects and certifying that the earmarks were eligible for repurposing and the projects identified are within 50 miles of the earmark location within the State and will be obligated for eligible purposes as required in the Repurposing Provision. The State will attach the list of projects to the letter. The FHWA division office will provide the State’s certification to the “Repurposed Earmarks” mailbox by July 31 and October 31, 2016.

OCFO will consolidate the reports for the required quarterly report to Congress.

OBLIGATIONS

The State will obligate the funds in FMIS for the eligible projects as identified on the modified transfer form. The State has until the end of FY 2019 to establish project agreements and make the obligations. The funds may not be used for other projects. The project title and description need to clearly reflect the purpose of the project as identified on the modified transfer form.

If transfers to Federal Lands or other agencies are desired, the repurpose transfer process should be followed first. Then, a request to transfer the repurposed funding to Federal Lands or another agency should be submitted following the normal process after the funds are repurposed.

When the funds are obligated on a project agreement in FMIS, the FHWA division office must ensure the project description clearly reflects the use of the funds for the new project and is consistent with the repurpose request on the modified transfer form. The project must use the associated demo ID.

If an obligated project is completed and excess funds are deobligated, the unobligated funds may be used only on another project from the same earmark identified on the modified transfer request form submitted before September 12, 2016.