

**REVIEW OF CONGRESSIONAL EARMARKS  
WITHIN DEPARTMENT OF TRANSPORTATION  
PROGRAMS**

*Department of Transportation*

*Report Number AV-2007-066*

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**U.S. Department of  
Transportation**

Office of the Secretary  
of Transportation

The Inspector General

Office of Inspector General  
Washington, DC 20590

September 7, 2007

The Honorable Tom Coburn  
Ranking Member, Subcommittee on Federal Financial Management,  
Government Information, Federal Services, and International Security  
Committee on Homeland Security and Governmental Affairs  
United States Senate  
Washington, DC 20510

Dear Senator Coburn:

We have enclosed the results of our review of congressional earmarks within Department of Transportation (DOT) programs, which we conducted in response to your request. Specifically, you asked that we conduct an independent analysis of the cost, oversight, and impact of congressional earmarks for the most recent fiscal year.

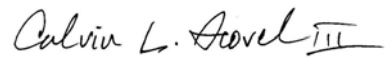
We determined the total number and dollar amount of congressional earmarks within DOT programs for fiscal year 2006, the inclusion of earmarks in DOT's annual planning and evaluation process, and the effects of earmarks on DOT's mission and goals.

This report provides our analysis of selected programs within the Federal Highway Administration, the Federal Transit Administration, and the Federal Aviation Administration; these agencies accounted for 99 percent of the earmarks (both in number and dollar amount) in DOT for fiscal year 2006.

We want to express our appreciation to the Department and the various stakeholder organizations for their cooperation during this review.

If I can answer any questions or be of further service, please contact me at (202) 366-1959 or Todd J. Zinser, Deputy Inspector General, at (202) 366-6767.

Sincerely,

A handwritten signature in cursive script that reads "Calvin L. Scovel III".

Calvin L. Scovel III  
Inspector General

Enclosure (Report AV-2007-066)

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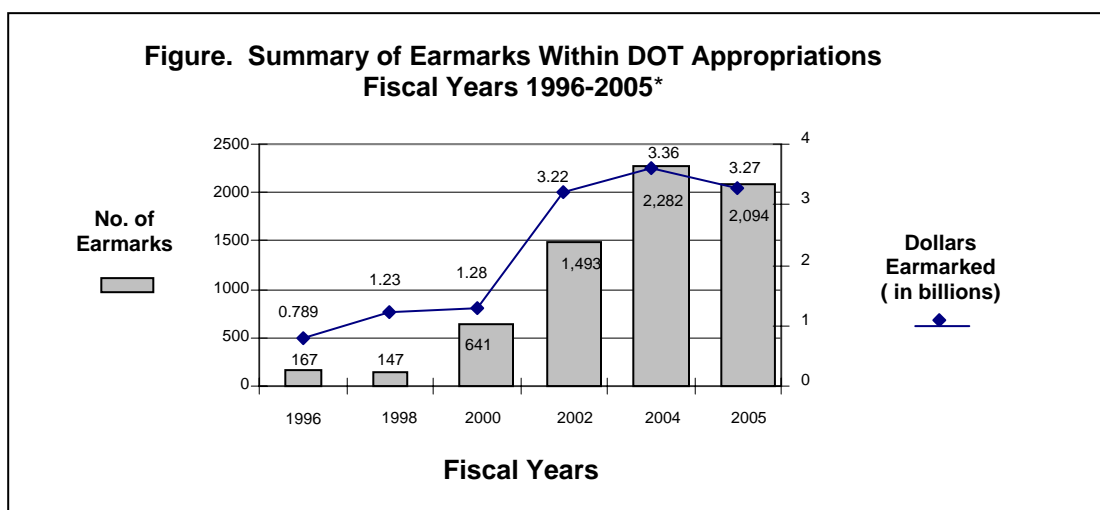
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## INTRODUCTION

Over the past year, there has been considerable interest and debate over congressional earmarks. According to the Government Accountability Office, an earmark is a congressional directive in legislation to a Federal agency to spend a specific amount of its budget for a specific entity, project, or service. Earmarking differs from the general appropriations process where Congress grants a lump sum to an agency to distribute according to the agency's authorized, transparent, statutory criteria and merit-based decision-making processes.<sup>1</sup>

In a memorandum published in January 2006, the Congressional Research Service reported 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 (see figure). Although down in numbers from FY 2005, DOT's FY 2006 appropriations<sup>2</sup> included 1,582 earmarks, of which 1,516 were specifically identified in the conference report<sup>3</sup> accompanying the act.



\*Number and valuation of earmarks do not include earmarks contained in authorization acts for these years.

Source: Congressional Research Service

<sup>1</sup> U.S. Government Accountability Office, Office of the General Counsel, *Principles of Federal Appropriations Law 3rd Edition*, (February 2006), vol. 2.

<sup>2</sup> Transportation, Treasury, and Housing and Urban Development, the Judiciary, District of Columbia, and Independent Agencies Appropriations Act, 2006 Pub. L. No. 109-115.

<sup>3</sup> Conference Report 109-307, dated November 18, 2005. Explanatory statements within conference reports do not have the full force of the law, but they explain the intent of the bill language for the guidance of the executive agencies.

Not only do earmarks originate in the appropriation process, but they also enter the process through program authorizations.<sup>4</sup> 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, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU),<sup>5</sup> accounted for 6,474 (80 percent) of DOT's 8,056 earmarked projects for FY 2006. As with most DOT program authorizations, SAFETEA-LU is a multi-year (5 years—from FY 2005 to FY 2009) authorization with specified percentages of appropriated funds authorized each year for the given agencies, programs, and activities.

In August 2006, Senator Coburn—then Chairman of the Senate Subcommittee on Federal Financial Management, Government Information, Federal Services, and International Security—requested that we conduct an independent analysis of the cost, oversight, and impact of congressional earmarks. As Senator Coburn requested, we defined an earmark as a provision of law, directive, or an item represented in any table, chart, or text contained within a joint explanatory statement or a report accompanying an appropriations or authorization bill that identifies an entity, a program, project, or service and the amount of assistance the Federal agency is to provide.

Consistent with Senator Coburn's request, we determined (1) the total number and amount of earmarks within DOT for FY 2006, (2) the inclusion of earmarks in DOT's annual planning and project evaluation processes, and (3) the effects of earmarks on DOT's mission and goals.

We focused our analysis on earmarks within DOT's programs administered by the Federal Highway Administration (FHWA), Federal Transit Administration (FTA), and Federal Aviation Administration (FAA), because these three Operating Administrations accounted for 99 percent of the earmarks for FY 2006 (both in number and dollar amount) in DOT. Exhibits A through E provide details on: (A) the total number and dollar amount of earmarks by program with DOT for FY 2006; (B) earmarked projects that bypassed established selection and review processes or planning and programming processes; (C) our analysis of earmarks' impact on agencies' programs; (D) stakeholders interviewed; and (E) our objectives, scope and methodology, and related audits. We conducted this review between December 2006 and August 2007, in accordance with generally accepted Government Auditing Standards as prescribed by the Comptroller General of the United States.

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<sup>4</sup> 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 (see GAO-05-734SP, Budget Glossary, page 19 of 182).

<sup>5</sup> SAFETEA-LU, Pub. L. No. 109-59 (2005).

In February 2007, the President signed a joint resolution<sup>6</sup> passed by Congress that provided appropriations for FY 2007 with a moratorium on earmarks. Section 112 of this joint resolution states that “any language specifying an earmark in a committee report or statements of managers accompanying an appropriations act for FY 2006 shall have no legal effect with respect to funds appropriated” under the joint resolution.

The Office of Management and Budget has taken steps to enforce the joint resolution by requiring that Federal agencies only fund projects or activities that are “specifically identified in statutory text” and “in accordance with authorizing law, using statutory criteria, such as funding formulas, eligibility standards, and merit-based decision-making.”<sup>7</sup>

## **EXECUTIVE OVERVIEW**

Overall, we identified 8,056 earmarked projects within the Department’s programs that received more than \$8.54 billion for FY 2006 (see exhibit A).<sup>8</sup> Of the 8,056 earmarked projects for FY 2006:

- 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.

FHWA, FTA, and FAA accounted for 99 percent of these earmarked projects, both in number (8,011 of the 8,056 projects) and dollar amount (about \$8.49 billion of the more than \$8.54 billion). FHWA had the highest number of earmarked projects at 6,556, and FTA had the highest percentage of its FY 2006 appropriation earmarked at 28 percent.

Generally, before a capital or research project can receive DOT funding, either discretionary or formula, it must be the product of a planning process. Planning for highway, transit, and airport improvement projects takes place at the local, state, or Federal levels. For highway and transit projects, each metropolitan planning organization (MPO), in cooperation with the state and public

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<sup>6</sup> Revised Continuing Appropriations Resolution, 2007, Pub. L. No. 110-5.

<sup>7</sup> Office of Management and Budget Director, memorandum to the heads of departments and agencies, 15 February 2007.

<sup>8</sup> Number and amount of earmarks identified in DOT appropriation and accompanying conference report for FY 2006. Dollar amounts reflect funding levels prior to the Government-wide, 1-percent rescission enacted in DOD Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico and Pandemic Influenza Act, 2006, Pub. L. No. 109-148.

transportation operators, must develop a long-range transportation plan and a short-range transportation program for the urbanized areas within the state. Integral to the planning process is an evaluation of factors such as a project's enhancement of mobility, maximization of safety and security, relief of congestion, financial viability, and protection of the environment. The planning process culminates in a list of projects to be funded within 4 years.

To be eligible for Federal funds, a project must be part of the Transportation Improvement Program (TIP), which is approved by the MPO and the Governor, and the State's Transportation Improvement Program (STIP), which is approved by the Governor, FHWA, and FTA. Subsequent to the planning process, FHWA and FTA select projects to receive discretionary grants based on their merits as reflected in the transportation plans. For formula grants, the states make the selections based on their priorities and in cooperation with the MPOs and local officials.

To be considered for funding under the Airport Improvement Program (AIP), a project would be part of the national Airport Capital Improvement Plan (ACIP), which is formulated by FAA in cooperation with states, planning agencies, and airport sponsors. In all cases, the planning process culminates in a list of priority projects to be funded within a given time frame.

However, our review of 7,760 earmarked projects valued at \$8.05 billion within FHWA, FTA, and FAA programs disclosed that 7,724 of the 7,760 projects (99 percent) either were not subject to the agencies' review and selection processes or bypassed the states' normal planning and programming processes. For example, 125 AIP projects, totaling almost \$201 million, were earmarked for FY 2006. Of the 125 earmarked projects, 72 (about 58 percent),<sup>9</sup> totaling \$132.4 million, were on FAA's list of candidates to receive AIP funds for critical airport planning and development projects—the remaining 53 projects were not. These 53 projects, totaling about \$68.5 million, would not have been considered for funding in FY 2006 if they had not received earmarks.

There were earmarked projects we reviewed that were evaluated as "highest" priority projects and would have been fully funded regardless of being earmarked. For example, the New Starts Program is the Federal Government's primary financial resource for supporting locally planned, implemented, and operated transit fixed "guideway" systems.<sup>10</sup> From heavy to light rail, from commuter rail

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<sup>9</sup> Although these projects were on FAA's AIP list of candidates, there is no guarantee that these projects would have been funded had they not been earmarked.

<sup>10</sup> A "fixed guideway" refers to any transit service that uses exclusive or controlled rights-of-way or rails, entirely or in part. The term includes heavy rail, commuter rail, light rail, monorail, trolleybus, aerial tramway, inclined plane, cable car, automated guideway transit, ferryboats, that portion of motor bus service operated on exclusive or controlled rights-of-way, and high-occupancy-vehicle (HOV) lanes.



to bus rapid transit systems, these projects have improved the mobility of millions of Americans; helped to improve air quality; and fostered the development of more viable, safe, and livable communities.

However, earmarks may not be the most effective or efficient use of funds on programs within FHWA, FTA, and FAA. Many earmarked projects considered by the agencies as low priority are being funded over higher priority, non-earmarked projects. For example, for FY 2006, FAA 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 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.

Some earmarks are providing funds for projects that would otherwise be ineligible. For example, for FY 2006, 16 of 65 earmarked projects, totaling more than \$14 million, in FHWA'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<sup>11</sup> that allows funding for earmarks that do not meet the statutory requirements of the program.

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<sup>11</sup> Transportation, Treasury, and Housing and Urban Development, the Judiciary, District of Columbia, and Independent Agencies Appropriations Act, Pub. L. No. 109-115 § 113.

## RESULTS

### Total Number and Dollar Amount of Earmarks Within DOT Programs for FY 2006

For FY 2006, there were 8,056 earmarks within DOT programs with a total amount of more than \$8.54 billion, or over 13 percent of DOT's appropriation. As shown in table 1, FHWA, FTA, and FAA accounted for 99 percent of these earmarks both in number (8,012 of the 8,056) and dollar amount (about \$8.49 billion of the more than \$8.54 billion). The percentage of budgets earmarked ranged from a high of 28 percent at FTA to a low of 2.83 percent at FAA.

**Table 1. Number and Amount of Earmarks Within DOT for FY 2006**

Operating Administration <sup>a</sup>	Total Number of Earmarks	Total Amount of Earmarks	Total FY 2006 Appropriation	Percentage of FY 2006 Appropriation Earmarked
FHWA	6,556	\$5,675,100,200	\$36,648,886,903	15.49%
FTA	1,252	\$2,405,673,150	\$8,590,365,000	28.00%
FAA	204	\$408,340,000	\$14,414,000,000	2.83%
<b>Sub-total</b>	<b>8,012</b>	<b>\$8,489,113,350</b>	<b>\$59,653,251,903</b>	<b>14.23%</b>
All Others	44	\$55,890,000	\$3,795,558,000	1.47%
<b>Total</b>	<b>8,056</b>	<b>\$8,545,003,350</b>	<b>\$63,448,809,903</b>	<b>13.47%</b>

<sup>a</sup> Exhibit A details the number and amount of earmarks within FHWA, FTA, and FAA programs for FY 2006.

Source: DOT-OIG

The cost of administering earmarks is not included in table 1. We were unable to quantify such costs because the Operating Administrations do not separately track the cost of administering earmarked projects. However, program officials we spoke with in FHWA, FTA, FAA, and the Office of the Secretary all agreed 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.

### Earmarks and the Planning and Evaluation Processes

We reviewed 27 of 54 programs subject to earmarks within FHWA, FTA, and FAA and found that 7,724 of the 7,760 (99 percent) earmarked projects for FY 2006 bypassed the agencies' review and selection processes or states' planning and programming processes (see table 2).

**Table 2. Number of Earmarked Projects Bypassing Agencies' Review and Selection Processes or States' Planning and Programming Processes**

OA	No. of Programs Reviewed <sup>a</sup>	No. of Earmarks Reviewed	Amount of Earmarks Reviewed	No. of Earmarks Not Subject to the Agencies' Authority To Review and Select Projects Based on Merit
FHWA	7	260	\$1,176,278,000	260
FTA	3	1,209	\$2,357,688,150	1,175
FAA	12	182	\$311,690,000	180
<b>Subtotal</b>	<b>22</b>	<b>1,651</b>	<b>\$3,845,656,150</b>	<b>1,615</b>
				<b>No. of Earmarks That Bypassed the States' Normal Planning and Programming Processes</b>
FHWA	5	6,109	\$4,202,447,200	6,109
<b>Grand Total</b>	<b>27</b>	<b>7,760</b>	<b>\$8,048,103,350</b>	<b>7,724</b>

<sup>a</sup> Exhibit B details by program earmarked projects that were either not subject to FHWA, FTA and FAA's statutory authority to award capital and research grants based on merit or bypassed the states' normal planning and programming processes.

Source: DOT-OIG

To illustrate:

- 1,615 of the 7,724 of the earmarks, valued at more than \$3.8 billion, were not subject to FHWA, FTA, and FAA's authority to review and select projects based on merit.

Under Federal statute, FHWA, FTA, and FAA have the authority to award grants for capital and research projects using *discretionary* funds. Normally, these DOT agencies would award a grant only after the project had been through planning and evaluation at the local, state, or Federal levels. For example, a candidate for a highway or transit capital grant would be the product of the metropolitan and state-wide planning process and part of the TIP and the STIP. A candidate for an AIP grant would be part of the national ACIP, which is formulated by FAA in cooperation with states, planning agencies, and airport sponsors. In all cases, the planning process culminates in a list of priority projects to be funded within a given time frame. Subsequent to planning, FHWA, FTA, and FAA would select a project to receive a grant after a review and evaluation of criteria established to identify and rank the most meritorious projects.

Planning for research takes place within each of the three agencies in dialogue with transportation leaders and university researchers and in accordance with

## Results

the agencies' strategic goals and objectives. The preferred method for selecting research projects is through open competition and an evaluation by peers.

- 6,109 of the 7,724 of the earmarks, valued at about \$4.2 billion, bypassed the states' normal planning and programming processes.

In addition to discretionary funds, FHWA, FTA, and FAA apportion funds to states and their subdivisions based on formulas prescribed by law (often referred to as formula funds). For example, FHWA apportions funds for the Surface Transportation Program based on total lane miles of Federal-aid highways (25 percent), total vehicle miles traveled on Federal-aid highways (40 percent), and estimated tax payments attributable to highway users paid into the Highway Account of the Highway Trust Fund (35 percent).

In order for the funds to be eligible for use by the states, projects must undergo the states' normal planning and programming processes and be included in the STIP. Agencies provide the formula funds to the states, and the decision on how to spend formula funds are made at the state and local level,<sup>12</sup> not by the agencies, although those decisions are subject to their review.

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.

- ***FHWA's National Corridor Infrastructure Improvement Program:*** This program was established under SAFETEA-LU to provide funds for construction of highway projects in corridors of national significance to promote economic growth and international or interregional trade. For FY 2006, all 33 of the program's earmarked projects, totaling about \$389.6 million, bypassed the Agency's review, approval, or merit-based selection processes. While projects were not selected based on merit, the states were still required to submit an application to FHWA identifying the project's purpose, eligibility, scope of work, proposed schedule, cost estimates, and all funding sources in order to receive the earmarked funds.
- ***FHWA's Public Lands Highways Discretionary Program:*** This program was established to improve access to and within the Nation's Federal lands. For FY 2006, all 77 of the program's earmarked projects, totaling about \$95.2 million, bypassed the Agency's review, approval, or selection processes.

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<sup>12</sup> 23 U.S.C. 145 states that the authorization of the appropriation of Federal funds . . . under this chapter shall in no way infringe on the sovereign rights of the states to determine which projects shall be federally financed.

Again, while these projects were not selected based on merit, the states were still required to submit an application to FHWA identifying the project's proposed work, purpose and benefits, schedule, and amount of Federal funds requested in order to use these earmarked funds.

- ***FTA's National Research Program:*** FTA's research delivers solutions to improve public transportation. 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. For FY 2006, \$40.8 million (74 percent) of the Program's funding was earmarked to 46 projects. These 46 projects, however, 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. As part of the open competition, proposals are submitted to FTA where they are evaluated by in-house experts to ensure the project (1) fills a need, (2) is not being carried out by other projects or organizations, and (3) supports the attainment of FTA's strategic research goals.
- ***FTA's Bus and Bus Facilities Program:*** This program makes funds available to public transit providers to replace, rehabilitate, and purchase buses and related equipment and to construct bus-related projects. 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. For FY 2006, Congress earmarked \$813.9 million of the \$847.5 million appropriated (96 percent) for 1,097 projects. According to FTA, because Congress has been earmarking bus funds for many years and the Administration's reauthorization proposal included the formularization of the bus program, FTA no longer had a mechanism in place to select bus and bus facility projects. 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.
- ***FAA's Airport Improvement Program:*** This program provides funds for projects that plan for and develop a safe and efficient national airport system. For FY 2006, 125 AIP projects were earmarked totaling almost \$201 million. We found that of 125 earmarked projects, 72 (about 58 percent), totaling about \$132.4 million, were on FAA's AIP list of candidates to receive funding for critical airport planning and development projects—the remaining 53 were not.

These 53 projects, totaling about \$68.5 million, would not have been considered for funding if they had not received earmarks.

## Effects of Earmarks on DOT's Mission and Goals

The Department's mission states:

The national objectives of general welfare, economic growth and stability, and the security of the United States require the development of transportation policies and programs that contribute to providing fast, safe, efficient, and convenient transportation at the lowest cost consistent with those and other national objectives, including the efficient use and conservation of the resources of the United States.

The Department has established five strategic goals for achieving its mission:

- **Safety:** Enhance public health and safety by working toward the elimination of transportation-related deaths and injuries.
- **Reduced Congestion:** Reduce congestion and other impediments to using the Nation's transportation system.
- **Global Connectivity:** Facilitate an international transportation system that promotes economic growth and development.
- **Environmental Stewardship:** Promote transportation solutions that enhance communities and protect the natural and built environment.
- **Security, Preparedness, and Response:** Balance transportation security requirements with the safety, mobility, and economic needs of the Nation and be prepared to respond to emergencies that affect the viability of the transportation sector.

With more than 8,000 projects earmarked for FY 2006, it would not have been practical for us to determine the effect of each earmark on DOT's mission and goals. Instead, we limited our review to selected earmarked projects in the 27 programs and identified in the following manner the effects that earmarks have on DOT's mission and goals:

- There were earmarked projects reviewed that were evaluated as "highest" priority projects and would have been fully funded regardless of being earmarked.

For example, the New Starts Program is the Federal Government's primary financial resource for supporting locally planned, implemented, and operated transit fixed "guideway" systems. From heavy to light rail, from commuter rail to bus rapid transit systems, these projects aim to improve the mobility of

## Results

millions of Americans; help to improve air quality; and foster the development of more viable, safe, and livable communities. Except for a small portion, (32 of the 66 projects representing \$130.5 million of the \$1.5 billion in earmarks for FY 2006), New Starts projects have been through a rigorous planning and evaluation process.

- At the same time, other earmarked projects would have been considered necessary although not high priority and would have been fully or partially funded even if they had not been earmarked.

For example, for FY 2006, Congress earmarked more than 1,000 bus and bus facility projects totaling almost \$814 million. According to FTA program officials, more than 90 percent of these projects are necessary and arise out of the local planning process. At an operational level, communities always need to purchase buses to support transit service. Because formula money is never enough to meet transit needs, communities need an infusion of additional funds to fulfill this role.

- However, we have identified at least five ways in which earmarks impact programs within FHWA, FTA, and FAA (see exhibit C for the types of impact that earmarked projects have on FHWA, FTA, and FAA programs).

**First, earmarks can reduce funding for the states' core transportation programs.** For example, according to FHWA officials, funding for three earmarked programs (High Priority Projects, Highway Priority Projects, and Surface Transportation Projects) reduced apportionments to the states for core transportation programs. 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, FHWA officials believed many of these projects would not have been high priority candidates for funding under the states' formula programs. However, FHWA was required to fund the projects because they were earmarked thereby reducing states' apportionments by \$3.5 billion.

**Second, earmarks do not always coincide with DOT strategic research goals.** For example, FTA has five research goals to support its research mission to deliver solutions to improve public transportation. These goals include (1) providing transit research leadership, (2) increasing transit ridership, (3) improving capital and operating efficiencies, (4) improving safety and emergency preparedness, and (5) protecting the environment and promoting energy independence. For FY 2006, we found that all 46 earmarked projects, valued at about \$40.8 million, in FTA's National Research Program did not address the first goal and only partially addressed goals 2 through 4.

**Third, many low priority, earmarked projects are being funded over higher priority, non-earmarked projects.** For example, for FY 2006, FAA 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 low priority projects that would not have received funding without the earmark. These new projects have added to the already substantial backlog of replacement projects from earmarks in prior fiscal years and have caused FAA to delay the planning of its higher priority replacement projects by at least 3 years.

Earmarks for FAA's 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. Of the 15 ILS earmarks, 8 were for new projects and 7 were for projects receiving earmarks in prior years. According to FAA officials, 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, such as the requirement that a project's benefits are equal to or greater than its costs.

In another example, 36 of 77 earmarked projects for FY 2006 in FHWA's Public Lands Highways Discretionary program, totaling \$37.6 million, would not have been given high priority funding because the projects were not in 1 of the 11 states containing at least 3 percent of the total public land area in the United States in accordance with requirements found in Title 23 of the United States Code. Funding preference is generally given to those 11 states that contain at least 3 percent of the total public lands in the United States.

**Fourth, earmarks provide funds for projects that would otherwise be ineligible.** For example, for FY 2006, 16 of 65 earmarked projects in FHWA's Interstate Maintenance Discretionary Program, totaling more than \$14 million, did not meet statutory program criteria and would not have received funding if not for Section 113 of DOT's appropriations law<sup>13</sup> that allows funding for earmarks that do not meet the statutory requirements of a program.

Also, for FY 2006, 4 of 25 earmarked projects totaling \$28 million in FHWA's Projects of National and Regional Significance Program did not meet statutory criteria. Typically, project costs must exceed \$500 million or be 75 percent of the amount of Federal Highway funds apportioned to the state in which the project is located for the most recently completed fiscal year. None of the four

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<sup>13</sup> Section 113 of Pub. L. No. 109-115 states that "notwithstanding any other provision of law, projects and activities described in the statement of managers . . . under the headings 'Federal-Aid Highways' and 'Federal Transit Administration' shall be eligible for fiscal year 2006 funds made available for the project for which each project or activity is so designated."



projects met these criteria. However, a provision in SAFETEA-LU for this program directs that funds be allocated for these projects notwithstanding the program criteria set forth elsewhere in the statute for the program.

Other examples of ineligible projects that received earmarks are in FTA's Bus and Bus Facilities Program. To be eligible, a bus or bus facility project must be for transit purposes. Nevertheless, projects without a transit connection received earmarks for one of two reasons: the earmark was either written specifically into legislation or into the Conference Report, and the Section 113 eligibility provision was applied. For example:

- Bus category transit funds were earmarked to fund two intermodal facilities that do not have a transit connection. In the first case, project documentation indicates that the funds were for a "general purpose container dock, rail facilities, and necessary rolling stock and storage area...providing for the operation of a fully integrated container handling facility." In the second case, documentation indicates that the funds were intended to restore the exterior of a former railway depot to its original configuration and refurbish the interior to house a historical museum and office facilities. FTA was compelled to fund the first project because of the Section 113 eligibility provision and the second project because it was written into law.
- FTA declined to fund an FY 2005 earmark for a park-and-ride facility that Congress intended for use as a parking garage at a local hospital, an ineligible use of Federal transit funds. 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.

**Fifth, earmarks can disrupt the agency's ability to fund programs as designated when authorized funding amounts are exceeded by over-earmarking.** In SAFETEA-LU, earmarks actually exceeded the authorized funding levels for three of the five FHWA research programs for FY 2006, resulting in across-the-board program cuts to stay within authorized funding levels for each of the three programs.

- The Surface Transportation Research, Development, and Deployment Program (STRDD) was earmarked at \$234 million but only authorized funding of \$196.4 million for FY 2006. This resulted in a 16.36-percent cut in all STRDD programs without a prescribed method to make the cuts.

- The University Transportation Research Program included \$76.4 million in earmarks with an authorized funding level of \$69.7 million for FY 2006. This resulted in an 8.77-percent cut in the University Transportation Research Program without a prescribed method to make the cuts.
- The Training and Education program had \$27.65 million in earmarks but was authorized only \$26.7 million for FY 2006. This resulted in a 3.44-percent cut in the Training and Education program without a prescribed method to make the cuts.

We are not making any recommendations in this report as the nature of this review was to conduct an independent analysis of the cost, oversight, and impact of congressional earmarks for the most recent fiscal year. On August 16, 2007, a copy of this report was provided to officials from the Department and the Operating Administrations for comment. Their comments were considered in finalizing our report.

## EXHIBIT A. TOTAL NUMBER AND DOLLAR AMOUNT OF EARMARKS BY PROGRAM WITHIN DOT FOR FY 2006

Operating Administration	Total Number of Earmarks	Total Amount of Earmarks
<b>FHWA Programs</b>		
Projects of National and Regional Significance	25	\$355,800,000
National Corridor Infrastructure Improvement	33	\$389,600,000
Freight Intermodal Distribution Pilot Grant	6	\$6,000,000
High Priority Projects	5,091	\$2,966,400,000
Transportation Improvement Projects	466	\$511,047,200
Stand Alone Projects	12	\$43,950,000
Bridge Set-Asides	9	\$100,000,000
Surface Transportation Research, Development, and Deployment (STRDD) <sup>1</sup>	43	\$234,803,000
Highway Priority Projects	24	\$25,000,000
Surface Transportation Projects	519	\$600,000,000
Interstate Maintenance Discretionary Program	65	\$100,000,000
Public Lands Highways Discretionary	77	\$95,200,000
Ferry Boats Discretionary	26	\$35,000,000
Training and Education <sup>2</sup>	7	\$27,650,000
University Transportation Research <sup>3</sup>	52	\$76,400,000
Intelligent Transportation Systems	3	\$13,000,000
Bureau of Transportation Statistics	1	\$500,000
Transportation and Community and System Preservation	94	\$61,250,000
Appalachian Development Highway System	1	\$20,000,000
Other Transportation Projects	2	\$13,500,000
Subtotal	6,556	\$5,675,100,200
<b>FTA Programs</b>		
Bus and Bus Facilities	1097	\$813,903,150
New Starts	66	\$1,503,000,000
National Research	46	\$40,785,000
University Transportation Centers	8	\$7,000,000
National Transit Institute	1	\$4,300,000
Alternative Analysis	18	\$18,900,000
Clean Fuels	16	\$17,785,000
Subtotal	1,252	\$2,405,673,150
<b>FAA Accounts</b>		
Operations	13	\$28,995,000
Facilities & Equipment (F&E)	52	\$169,200,000
Grants-In-Aid for Airports	125	\$200,900,000
Research, Engineering, and Development	14	\$9,245,000
Subtotal	204	\$408,340,000
<b>Other OA Program Subtotals</b>		
	44	\$55,890,000
<b>Grand Total</b>	<b>8,056</b>	<b>\$8,545,003,350</b>

<sup>1</sup> STRDD designations in SAFETEA-LU exceeded the authorized funding level of \$196.4 million for FY 2006 through FY 2009 (in FY 2006 by \$38.4 million, requiring a 16.355-percent cut in all STRDD programs).

<sup>2</sup> The T&E program also had \$27.65 million in "earmarks" but was authorized at only \$26.7 million, requiring a 3.436-percent cut in all T&E programs.

<sup>3</sup> University Transportation Research program included \$76.4 million in "earmarks" but was authorized at only \$69.7 million, requiring an 8.770-percent cut in all University Transportation Research programs.

Source: DOT-OIG

**EXHIBIT B. NUMBER OF FY 2006 EARMARKED PROJECTS  
THAT BYPASSED ESTABLISHED REVIEW AND SELECTION  
PROCESSES OR PLANNING AND PROGRAMMING PROCESSES**

<b>OA Program or Account Name</b>	<b>No. of Earmarks Reviewed</b>	<b>Amount of Earmarks Reviewed</b>	<b>No. of Earmarks That Bypassed the Agencies' Authority To Review and Select Projects Based on Merit</b>	<b>No. of Earmarks That Bypassed the States' Normal Planning and Programming Processes</b>
<b>FHWA Programs</b>				
Projects of National and Regional Significance	25	\$355,800,000	25	
National Corridor Infrastructure Improvement	33	\$389,600,000	33	
Freight Intermodal Distribution Pilot Grant	6	\$6,000,000	6	
Interstate Maintenance Discretionary Program	65	\$100,000,000	65	
Public Lands Highways Discretionary	77	\$95,200,000	77	
Ferry Boats Discretionary Program	26	\$35,000,000	26	
Surface Transportation Research, Development, and Deployment	28	\$194,678,000	28	
Highway Priority Projects	24	\$25,000,000		24
Surface Transportation Projects	519	\$600,000,000		519
High Priority Projects	5,091	\$2,966,400,000		5,091
Transportation Improvement Projects	466	\$511,047,200		466
Bridge Set-Asides	9	\$100,000,000		9
Subtotal	6,369	\$5,378,725,200	260	6,109
<b>FTA Programs</b>				
Bus and Bus Facilities	1,097	\$813,903,150	1,097	
New Starts	66	\$1,503,000,000	32	
National Research	46	\$40,785,000	46	
Subtotal	1,209	\$2,357,688,150	1,175	
<b>FAA Accounts</b>				
Operations	13	\$28,995,000	12	
Facilities & Equipment (F&E)	30	\$72,550,000	29	
Grants-In-Aid for Airports	125	\$200,900,000	125	
Research, Engineering, and Development	14	\$9,245,000	14	
Subtotal	182	\$311,690,000	180	
<b>Grand Total</b>	<b>7,760</b>	<b>\$8,048,103,350</b>	<b>1,615</b>	<b>6,109</b>

Source: DOT OIG

**Exhibit B. Number of FY 2006 Earmarked Projects That Bypassed Established Review and Selection Processes or Planning and Programming Processes**

## EXHIBIT C. OIG ANALYSIS OF IMPACT OF EARMARKS ON AGENCIES' PROGRAMS

OA Program Names	Earmarks Reduce Funding for the States' Core Transportation Programs	Earmarks Coincide With OA's Strategic Research Goals	Many Low Priority Earmarked Projects Are Being Funded Over Higher Priority Projects	Some Earmark Projects Are Being Funded That Would Otherwise Be Ineligible <sup>d</sup>
<b>FHWA</b>				
Projects of National and Regional Significance	No		Unknown <sup>c</sup>	Yes
National Corridor Infrastructure Improvement	No		Unknown	Unknown
Freight Intermodal Distribution Pilot Grant	No		Unknown	Unknown
High Priority Projects	Yes <sup>a</sup>		Yes <sup>e</sup>	Yes
Transportation Improvements	No		Yes <sup>e</sup>	Yes
Bridge Set-Asides <sup>b</sup>	No			
Surface Transportation Research, Development, and Deployment	No	Yes	Yes	No
Highway Priority Projects	Yes		Yes <sup>e</sup>	Yes
Surface Transportation Projects	Yes		Yes <sup>e</sup>	Yes
Interstate Maintenance Discretionary Program	No		Yes <sup>e</sup>	Yes
Public Lands Highways Discretionary	No		Yes <sup>e</sup>	Yes
Ferry Boats & Ferry Terminal Facilities	No		Yes <sup>e</sup>	Yes
<b>FTA</b>				
Bus and Bus Facilities			Unknown	Yes
New Starts			Yes	Yes
National Research	No	No	Yes	Yes
<b>FAA</b>				
Operations			No	No
Facilities & Equipment (F&E)			Yes	No
Grants-In-Aid for Airports	No		Yes	No
Research, Engineering, and Development		Yes	Yes	No

**Shaded areas = not applicable**

<sup>a</sup> The amount of High Priority Projects (HPP) funding a state receives is considered in the calculation of the state's equity bonus apportionment. For most states, the receipt of HPP funds reduces the amount of its equity bonus funding.

<sup>b</sup> According to FHWA officials, there are no eligibility requirements for this program. Rather, the statute expressly designates projects.

<sup>c</sup> Unknown = Unknown to agency officials.

<sup>d</sup> Some projects may not meet eligibility requirements of the specific program from which funding is available or they may not meet other Title 23 eligibility requirements.

<sup>e</sup> Based on agency officials' understanding of state priorities for surface transportation funding.

Source: DOT-OIG

## **EXHIBIT D. LIST OF STAKEHOLDERS INTERVIEWED**

### **U.S. Department of Transportation Agencies**

Office of the Secretary (OST)

Federal Aviation Administration (FAA)

Federal Highway Administration (FHWA)

Federal Motor Carrier Safety Administration (FMCSA)

Federal Railway Administration (FRA)

Federal Transit Administration (FTA)

Maritime Administration (MARAD)

National Highway Traffic Safety Administration (NHTSA)

Office of Inspector General (OIG)

Pipeline and Hazardous Materials Safety Administration (PHMSA)

Research and Innovative Technology Administration (RITA)

Saint Lawrence Seaway Development Corporation (SLSDC)

Surface Transportation Board (STB)

### **Other Stakeholders Interviewed**

American Association of State Highway and Transportation Officials (AASHTO)

Association of Metropolitan Planning Organizations (AMPO)

Air Transport Association (ATA)

American Trucking Association (ATA)

Aircraft Owners and Pilots Association (AOPA)

American Association of Airport Executives (AAAE)

Airports Council International – North America (ACI-NA)

American Public Transportation Association (APTA)

## **EXHIBIT E. OBJECTIVES, SCOPE AND METHODOLOGY, AND RELATED AUDIT COVERAGE**

### **Objectives**

In August 2006, Senator Coburn—then Chairman of the Senate Subcommittee on Federal Financial Management, Government Information, and International Security—requested that we conduct an independent analysis of the cost, oversight, and impact of congressional earmarks.

Consistent with Senator Coburn’s request, we determined (1) the total number and cost of earmarks within DOT for FY 2006, (2) the inclusion of earmarks included in DOT’s annual planning and project evaluation processes, and (3) the overall effects of earmarks on DOT’s mission and goals.

### **Scope and Methodology**

Audit work for this report was conducted between December 2006 and July 2007 and was conducted in accordance with generally accepted Government Auditing Standards as prescribed by the Comptroller General of the United States.

We initially surveyed the Office of the Secretary, Surface Transportation Board, the Office of Inspector General, and the 10 Operating Administrations within DOT to identify the total number and cost of the earmarks for FY 2006. Subsequently, we reduced the scope of our audit and focused our analysis on congressional earmarks within DOT programs administered by FHWA, FTA, and FAA because these three Operating Administrations accounted for 99 percent of the earmarks both in number and in dollar amount in FY 2006.

During the audit, we interviewed officials at FHWA, FTA, and FAA Headquarters in Washington, DC. Respective to each Operating Administration, we obtained computer-generated earmark data and relied on these to determine the total number and cost of the earmarks. The earmark data were verified from our review of the authorization and appropriation laws and corresponding congressional reports. The figures used in our review reflect funding provided in the DOT appropriations for 2006 and are prior to the Government-wide, 1-percent rescission enacted in the Department of Defense Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act of 2006, Public Law Number 109-148.

We interviewed program managers and officials representing FTA, FHWA, and FAA to better understand the program planning and project evaluation processes. We also obtained and reviewed available annual processing plans and guidance criteria relative to the programs of the Operating Administrations to determine

whether the earmarked projects bypassed the planning and evaluation processes. We also interviewed stakeholders from eight associations that represented their respective mode of transportation to get their perspective on how earmarks affect their lines of business or organizations (see exhibit D).

To identify the universe of congressional earmarks within DOT, we examined earmarks from different sources, including authorization and appropriation laws and accompanying conference reports; DOT's Operating Administrations' programs, projects, or activities reports; and interviews with Operating Administrations' program managers, counsel, and policy officials.

To determine the effects of congressional earmarks on DOT's mission and goals, we interviewed the program managers and officials of FHWA, FTA, and FAA on any existing impacts that the congressional earmarks may have on FY 2006 projects within their programs.

We also obtained and reviewed FHWA, FTA and FAA's FY 2006 Presidential Budget Submission and Estimates and its subsequent budget and funding schedules as determined from the FY 2006 Appropriations Act to (1) compare the earmarks against the funding level of the projects that each Operating Administration requested funding for and the actual amounts that Congress appropriated; (2) determine whether funding for planned and high priority projects or programs was affected because of earmarks; (3) identify any shortfalls in funding or scheduling delays for any projects and; (4) examine earmarks' effect, if any, on the current projects' baseline costs.

### **Related Audit Coverage**

There has been no prior audit coverage on congressional earmarks for all the modes within DOT by the Office of Inspector General. However, the Office of Inspector General reported in the Department of Transportation's "Top Ten Management Challenges"<sup>14</sup> that FTA oversight funds would soon be insufficient for all the large-dollar projects and numerous earmarked projects. The report discusses that earmarking of appropriated funds could reduce the Department's and grantees' flexibility to fund other important projects and to provide adequate funding to complete projects.

On March 6, 2007, our report, "Opportunities To Free Up Unneeded FHWA Funds for Use in Hurricane Recovery Efforts" (MH-2007-037), stated that there were opportunities for FHWA to free up unneeded funds on highway projects in five states affected by Hurricanes Katrina and Rita (Alabama, Florida, Louisiana, Mississippi, and Texas). With congressional approval, these earmarked funds could be freed up and re-deployed to reduce the cost of hurricane recovery efforts.

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<sup>14</sup> OIG Report Number PT-2001-017, "Top Ten Management Challenges," January 18, 2001.

### **Exhibit E. Objectives, Scope and Methodology, and Related Audit Coverage**



Because states often need several years to develop a project before beginning construction, we limited our audit to projects directed in legislation enacted on or before October 23, 2000. We identified 19 projects with \$10.7 million in unneeded funds that could be re-directed to hurricane recovery efforts. We recommended that FHWA: (1) coordinate with state transportation officials to promptly identify how earmarked funds in the 19 projects we identified could best be re-directed for use on hurricane recovery efforts and formally alert Congress of the available funds; (2) complete implementation of legislation allowing states to identify pre-1991 unneeded, earmarked funds and use them on other transportation projects in the state without specific congressional action; and (3) provide Congress with a list of all unneeded earmarked funds on a regular basis. FHWA agreed with our recommendations.

On August 2, 2006, the Transportation Research Board sent a review on DOT's 5-year strategic plan for Federal transportation research, development, and technology (RD&T) to then Acting Department Secretary, Maria Cino. The review was based on the contents and findings of a 15-member committee of experts in transportation engineering, economics, system operations and administration, environmental policy, and research that was convened under the auspices of the Transportation Research Board. The review states that the DOT faces constraints to strategic RD&T planning and investment especially because of earmarking. The review also conveys to the Secretary that there was an increase in legislation specifying that research centers, projects, or studies be located at particular institutions and notes that even when RD&T funds are not earmarked in this manner, authorizing legislation and appropriations language often contain instructions designating the specific topics of RD&T, thus reducing DOT's and its Operating Administrations' flexibility to allocate resources across strategic RD&T priorities.