



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))