

**OPPORTUNITIES TO FREE UP UNNEEDED  
FHWA FUNDS FOR USE IN HURRICANE  
RECOVERY EFFORTS**

*Federal Highway Administration*

*Report Number: MH-2007-037*

*Date Issued: March 6, 2007*



# Memorandum

**U.S. Department of  
Transportation**

Office of the Secretary  
of Transportation  
Office of Inspector General

Subject: ACTION: Opportunities to Free Up Unneeded  
FHWA Funds for Use in Hurricane Recovery Efforts  
Report No. MH-2007-037

Date: March 6, 2007

From: Kurt W. Hyde   
Assistant Inspector General  
for Surface and Maritime Programs

Reply to  
Attn. of: JA-40

To: Federal Highway Administrator

This report presents the results of our audit to identify funds earmarked by Congress that could be freed up and used for hurricane recovery efforts. In August and September of 2005, Hurricanes Katrina and Rita struck the Gulf States of Alabama, Florida, Louisiana, Mississippi, and Texas, causing loss of life, injury, and extensive physical damage. The recovery efforts, including repairs to severely damaged highways and bridges, will cost billions of dollars to complete.

Funds earmarked by Congress to specific highway projects remain available until expended by states or localities unless Congress rescinds the funds. Further, the funds cannot be applied to other projects without express congressional approval. In light of the need to replace damaged or destroyed transportation infrastructure, it is important to identify any Federal funds that could be freed up and redirected to such efforts.

Our audit objective was to assist the Federal Highway Administration (FHWA) and the hurricane-affected states identify earmarked funds that are dedicated to congressionally directed projects but are no longer needed for their original purposes. We limited our audit to all earmarked projects in the five Gulf States, a total of 203, that were designated in legislation on or before October 23, 2000, and had unobligated or unexpended funds remaining as of December 31, 2005. The practice of earmarking has received substantial attention recently. However, it was not within the scope of our audit to second guess or to otherwise assess the justification of any particular congressionally earmarked funds.

We consulted with state, local, and Federal highway officials to determine whether certain funds were no longer needed and could be redirected. We conducted this

performance audit in accordance with Generally Accepted Government Auditing Standards prescribed by the Comptroller General of the United States, and we performed such tests as we considered necessary to detect fraud, waste, and abuse. A detailed description of our scope and methodology is in Exhibit A.

## RESULTS IN BRIEF

Using data provided by FHWA, we identified 203 earmarked highway projects authorized on or before October 23, 2000, in the five Gulf States affected by Hurricanes Katrina and Rita (Alabama, Florida, Louisiana, Mississippi, and Texas). Of those 203 projects, 19 projects retain approximately \$10.7 million<sup>1</sup> in unneeded earmarked funds that could be put to better use by redirecting the funds to hurricane recovery efforts (see Exhibit B).

According to officials in FHWA Division Offices and state departments of transportation, 17 of the 19 projects have been completed but excess funds remain. For example, more than \$500,000 remains from a \$2.3 million earmark for a Florida interchange project that was completed in 2005. In addition, two other projects will not proceed at this time. For example, a \$205,000 earmark to help build an expressway across New Orleans' Ninth Ward is not needed because the area was devastated by Hurricane Katrina. Congressional action is required to withdraw or redirect these unneeded funds.

Further, during our audit we identified two areas in which FHWA could easily assist states in redirecting other idle earmarked funds without congressional action and help Congress identify earmarked highway funds that could be freed up for other purposes. First, section 1603 of the 2005 Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) granted FHWA the authority to allow states to redirect excess or inactive funds for earmarked projects designated in legislation before fiscal year (FY) 1991 without congressional action. However, more than a year after SAFETEA-LU was enacted, FHWA has yet to issue guidance to states on how to implement this provision. At the time of our audit, FHWA was still preparing the guidance. Redirecting the excess or inactive funds would allow states to use the funds for other transportation projects within the states. For example, 3 of the 19 earmarks that we identified in our audit as having unneeded funds appear to be eligible for release without congressional approval under section 1603. Consequently, it is imperative that FHWA move quickly to provide this guidance to states so that they can free up unneeded funds and use them for other pressing highway projects.

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<sup>1</sup> Our estimate of \$10.7 million is based on earmarked funds remaining on these 19 projects as of May 11, 2006. According to FHWA, these projects may undergo final closeout procedures, and the total funds available for redirection may be adjusted.

Second, FHWA could assist in freeing up idle funds by providing Congress with a list of unneeded highway earmarks on a regular basis. In response to a 2004 recommendation of the U.S. Government Accountability Office (GAO), FHWA compiled such a list in 2005 in coordination with its Division Offices and state departments of transportation. However, it has not transmitted the list to Congress. It would be useful if FHWA were to compile such a list regularly, as Congress would benefit as it seeks to identify Federal dollars that could be applied to other pressing needs.

To address these issues, we are recommending that FHWA:

- Coordinate with the five Gulf State departments of transportation to promptly identify how the earmarked funds in the 19 projects we identified in our audit could best be redirected for use in hurricane recovery efforts. FHWA should also formally alert Congress that approximately \$10.7 million in earmarked funds are available for redirection to hurricane recovery efforts within these same states. If necessary, FHWA should also coordinate with Congress regarding the legislative requirements of each earmark in order to identify the best method for redirecting these funds.
- Promptly issue guidance on Section 1603 of SAFETEA-LU to allow the states to redirect, without congressional action, certain eligible, unneeded highway earmarked funds to other transportation projects in their states.
- Continue to regularly compile a list of earmarked highway funds that states no longer need and transmit that list to Congress for legislative consideration.

Our recommendations and a summary of FHWA's comments and the OIG response can be found beginning on page 9 of this report.

## **BACKGROUND**

An earmark is a congressional directive in legislation to spend a specific amount of money (or up to a maximum level) for a specific project in a specific location (a state or locality). Many highway earmarks originate in the Department of Transportation's (DOT) multi-year surface transportation program reauthorization bills, but others may have their inception in appropriations bills or accompanying conference reports.<sup>2</sup> In highway legislation, earmarked projects are usually designated as "demonstration projects" or "high priority projects." The term "earmark" does not usually appear in legislation, even though it is commonly used.

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<sup>2</sup> Explanatory statements within conference reports do not have the force of law, but they explain the intent of the bill language for the guidance of executive agencies.

Unlike most Federal-aid funds that are available for obligation for four fiscal years, congressionally directed earmarked funds generally remain available until expended and can be used only for the specifically designated project. Congressional action is required to release any unneeded earmarked funds—through either a rescission (withdrawal of funds) or a redirection (a change in the purpose of funds). The legislative nature of each earmark may differ, which will affect how Congress can act on unneeded earmarked funds. For example, most transportation earmarks are funded by the Federal Highway Trust Fund, but some are funded from other sources such as the Federal Government’s General Fund. In addition, some earmarked projects are subject to obligation limitations. Accordingly, FHWA and Congress will have to determine if any unneeded earmarked funds are limited as a result.

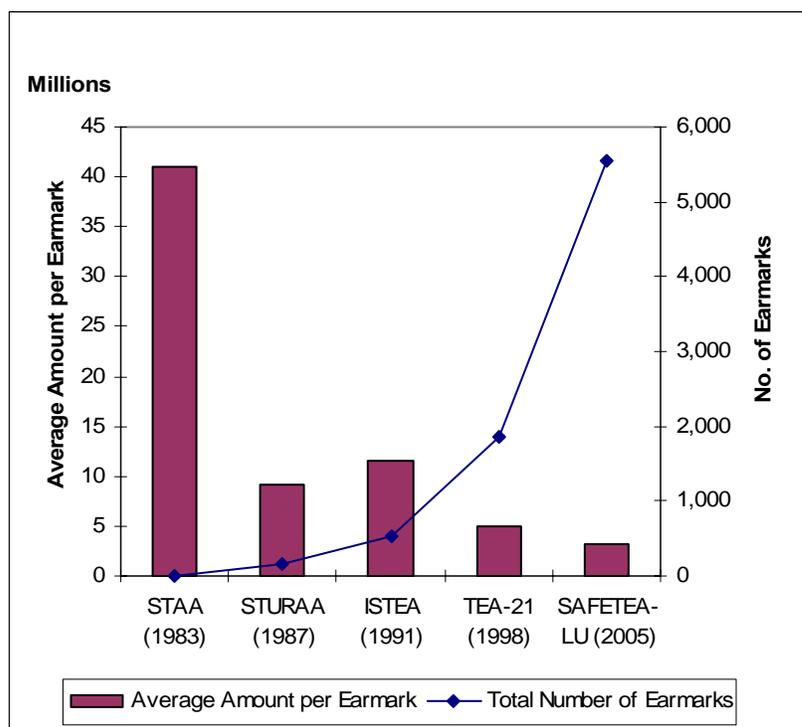
In the past 25 years, the number and total amount of congressional earmarks for highway projects designated in the last five transportation reauthorization bills have risen dramatically. The number increased from 10 “demonstration projects” in the Surface Transportation Assistance Act of 1982 (STAA) to more than 5,500 “high priority projects” and “transportation improvement projects” in SAFETEA-LU, which was enacted in 2005. The total amount of highway earmarks also rose—from \$410 million, or less than 1 percent of all Title I Federal-aid highway funds authorized in 1983, to \$17.4 billion,<sup>3</sup> or nearly 9 percent of all highway funds authorized in 2005.

At the same time that the number and total amount of highway earmarks rose, the average amount earmarked for each project decreased. As Figure 1 shows, projects authorized in 1983 by STAA received an average of \$41 million each. This amount fell in the 1987 and 1991 reauthorization bills to between \$9 million and \$12 million. In the 1998 Transportation Equity Act for the 21st Century (TEA-21), the average amount for each project dropped to \$5 million, and in SAFETEA-LU, with more than 5,500 projects, the average earmark fell to about \$3 million.

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<sup>3</sup> The dollar figures identified for each reauthorization bill have not been adjusted for inflation.

**Figure 1. Average Amount per Earmark Declines as Total Number of Earmarks Increases, by Authorizing Legislation**



Source: Authorizing legislation and FHWA documents.

Additional information on the highway earmark trends is available in Exhibit C.

## FINDINGS

### 19 Projects With About \$10.7 Million in Idle Earmarked Highway Funds Could be Redirected

Using data provided by FHWA, we initially developed a list of 203 earmarked highway projects in the five states that were authorized on or before October 23, 2000. Of the 203 projects, we identified 19 earmarks with approximately \$10.7 million in unneeded funds in the five Gulf States affected by Hurricanes Rita and Katrina. Key state transportation officials from the five states agreed that those funds were no longer needed for their original purpose and could be released and redirected toward hurricane recovery efforts in their respective states. FHWA officials concurred with their decisions. (See Exhibit B for a list and description of the 19 projects.)

Of the 19 earmarks with unneeded funds, 3 are located in Alabama, 7 in Florida, 6 in Louisiana, 1 in Mississippi, and 2 in Texas. Although about half of the earmarks were enacted in the 1998 reauthorization bill (TEA-21), six date back to

the 1987 and 1991 reauthorization bills and the remaining earmarks were authorized in various highway appropriations bills from 1990 through 2001.

State transportation officials indicated that 17 of the 19 projects in our review have been completed but excess funds remain because the project costs were less than expected. For example, a \$2.3 million earmark that Florida received in 1991 to help construct an interchange in Sarasota had approximately \$517,000 in excess funds when it was completed in 2005. In Texas, a \$1.4 million earmark authorized in 1998 to construct a road extension in Nacogdoches had about \$16,000 remaining when it was completed in 2003. Finally, a \$10 million earmark for improvements on U.S. 84 in Franklin and Lincoln Counties in Mississippi was completed in June 2006, leaving about \$848,000 in excess funds.

State officials told us that 2 of the 19 projects—1 in Alabama and 1 in Louisiana—are not moving ahead because of insufficient funding or because they were overcome by events. Specifically, Alabama officials decided to release the full amount of a \$5 million earmark received in 2000 to relocate railway tracks and improve highway rail crossings in two towns because the rail company and local towns were not able to come up with the unusually high amount of matching funds (\$3.7 million) required to begin the project. In another example, Louisiana officials also agreed that a 1998 earmark for \$205,000 to help build a \$600 million expressway across the Ninth Ward in New Orleans was no longer needed because the project was cancelled after Hurricane Katrina inflicted heavy damage in the area.

In Louisiana, state officials originally agreed to release approximately \$5 million from a 1998 earmark because a feasibility study showed that the cost (about \$18 million) to connect two highways through an existing 4-lane tunnel under the New Orleans International Airport far exceeded the available earmarked funds. Moreover, the highways were already linked by a nearby interchange. Louisiana transportation officials recently decided that these funds were still needed after all to complete a project similar to the one described in the legislation that provided the earmark. FHWA Division staff told us they have reviewed the proposed project and determined it is a proper use of the earmarked funds and that the project has just been added to the state's transportation improvement plan. These funds are no longer available for redirection. Accordingly, our estimate of funds available for redirection was revised from about \$15.7 million (20 projects) to about \$10.7 million (19 projects).

According to FHWA and state officials, earmarked funds have remained idle for several years because of the absence of a process within states to identify unneeded earmarked funds and the time and effort required to get funds released through legislative action. For example, state transportation officials in Louisiana and Texas said they have no procedures to systematically identify projects that

have been completed but still have earmarked funds remaining. Currently, earmarked funds that are no longer needed have to be rescinded or redirected for other purposes through congressional action. This contrasts with unneeded funds associated with regular Federal-aid grants, which a state can release by deobligating<sup>4</sup> them and making them available for active transportation projects elsewhere within that state.

### **FHWA Can Take Additional Steps to Help Congress and States Free Up Idle Earmarked Highway Funds**

We have identified two areas in which FHWA could easily take action to assist states in redirecting unneeded earmarked funds without congressional action and help Congress identify idle earmarked funds that could be freed up for other purposes. First, a provision of SAFETEA-LU granted the Secretary of Transportation the authority to allow states to redirect highway earmarks authorized before FY 1991 without congressional action, but more than a year after the law was enacted, FHWA has yet to issue guidance to states on how to implement this provision. Second, in response to a 2004 recommendation made by GAO, FHWA in 2005 compiled a list of earmarked funds that states no longer needed, but it has not made this list available to Congress.

Section 1603 of SAFETEA-LU allows the states to request FHWA to redirect excess or inactive earmarked funds designated in legislation before FY 1991 to any project eligible under the Surface Transportation Program. FHWA, however, must issue guidance on how this provision will be implemented before states can make use of it.<sup>5</sup> Section 1603 also requires the states to certify that any inactive funds they want to keep are still necessary for their original purpose. The certification must include a project status report and an estimated date of completion.

Although congressional action will be required to withdraw or redirect the unneeded balances for most of the 19 earmarked projects in our audit, 3 projects, with a combined balance of about \$190,000, appear to fall under Section 1603 of SAFETEA-LU. One example is an \$11 million earmark that Florida received in 1987 to construct an interchange on Interstate 4 and State Route 46 in Sanford. The project now has \$165,649 in excess funds that could be redirected easily when FHWA issues guidance to the states.

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<sup>4</sup> When the Federal Government obligates funds, it makes a legal commitment to pay or reimburse the states for the Federal share of a project's eligible costs. Deobligation of funds removes the legal commitment to the state. For instance, if the actual cost of a project turns out to be less than the estimated cost for that project, states can request that FHWA deobligate funds that are not needed for payment and make them available for new projects.

<sup>5</sup> Specifically, the new provision allows the Secretary of Transportation, at the request of a state, to obligate or deobligate and reobligate any excess or inactive funds authorized in a public law or accompanying report for a specific transportation project or activity that was allocated before FY 1991. Projects authorized after FY 1991 do not fall under this provision.

According to FHWA, if Section 1603 is implemented promptly, funds remaining from most old highway earmarks (pre-1991) could be redirected to projects eligible under the Surface Transportation Program. Yet, FHWA officials, after nearly 18 months, are still in the process of preparing guidance to assist the states in determining which projects are eligible under Section 1603. The guidance must describe what states must do to redirect excess or unneeded funds to other transportation projects or to certify that funds are still necessary for their original purpose, as called for in this provision. FHWA officials indicated that they hoped to have the guidance in place by February 28, 2007 and on March 5, 2007 stated that issuance was imminent. It is imperative that FHWA provide this guidance to states as soon as possible because, according to SAFETEA-LU, funds that the states choose to redirect will be available for obligation only until the end of FY 2008.

In conjunction with this provision of SAFETEA-LU legislation, FHWA is required to submit an annual report to Congress on actions taken under Section 1603. The first report was due not later than 1 year after the passage of SAFETEA-LU, which was signed into law on August 10, 2005. FHWA officials are finalizing the first report but according to officials, the report will not contain any information on states' activities regarding Section 1603 because FHWA has not finalized and issued the guidance to the states.

A second area where FHWA could assist in freeing up idle funds is to provide Congress with a list of unneeded highway earmarks. FHWA compiled such a list in 2005 in response to a GAO recommendation and plans to compile another one. However, FHWA has not transmitted the 2005 list to Congress. GAO has issued three reports that identified unneeded highway funds associated with congressional earmarks authorized in legislation enacted between 1976 and 2000.<sup>6</sup> In its 2004 report, GAO recommended that FHWA regularly compile a list of highway projects that have unneeded, unobligated balances that were available for rescission. GAO concluded that submission of this information to Congress could result in more timely rescissions of unobligated balances that the states no longer need, freeing up funds for other purposes. As a result of that recommendation, FHWA officials compiled its first list of earmarked projects with funds that the states indicated they no longer needed in 2005. Although FHWA agreed to compile a list annually, FHWA did not compile a second list in FY 2006 although it does plan to compile one this year.

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<sup>6</sup> U.S. General Accounting Office, "Highway Projects: Extent of Unobligated Balances for Demonstration Projects," (GAO-01-985R, Aug. 17, 2001); U.S. General Accounting Office, "Highway Projects: Extent of Unobligated Balances for Demonstration Projects as of March 31, 2002" (GAO-02-721R, June 5, 2002); and U.S. Government Accountability Office, "Highway Projects—Extent of Unobligated Balances for Demonstration Projects as of April 30, 2004," (GAO-04-935R, Aug. 18, 2004). The agency changed its name to U.S. Government Accountability Office in July 2004.

In March 2006, GAO again requested information from FHWA on unneeded earmarked funds. FHWA used the list of projects it had prepared in 2005 to help prepare its response, in which it estimated that \$12.2 million was available nationwide for rescission. According to FHWA officials, they plan to compile another list of earmarked projects with unneeded funds in the near future, but they do not plan to forward the list directly to Congress. Instead, they anticipate that FHWA will use the list during its annual budget preparation process. FHWA is to be commended for compiling this list, and it should continue to do so regularly to identify unneeded earmarked funds. Nevertheless, the list is of minimal use unless it is provided to Congress so that appropriate legislative action can be taken. The list would be beneficial to Congress as it seeks to identify Federal dollars that could be applied to other pressing needs.

## **RECOMMENDATIONS**

We recommend that FHWA:

1. Coordinate with the five Gulf State departments of transportation to promptly identify how the earmarked funds in the 19 projects we identified in our audit could best be redirected for use on hurricane recovery efforts. FHWA should also formally alert Congress that approximately \$10.7 million in earmarked funds are available for redirection to hurricane recovery efforts within these same states. If necessary, FHWA should also coordinate with Congress regarding the legislative requirements of each earmark in order to identify the best method for redirecting these funds.
2. Promptly issue guidance on Section 1603 of SAFETEA-LU to allow the states to redirect, without congressional action, certain eligible, unneeded highway earmarked funds to other transportation projects in their states.
3. Continue to regularly compile a list of earmarked highway funds that states no longer need and transmit that list to Congress for legislative consideration.

## **AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE**

A draft of this report was provided to the FHWA Administrator on December 15, 2006 for comment. On February 9, 2007, FHWA provided us with its formal response, which is contained in its entirety in the Appendix. Although FHWA generally concurred with our recommendations, in its response to recommendation 1, it stated that it should coordinate with the five Gulf States before notifying Congress of available funds. Also, from its response, it is unclear how FHWA will implement recommendation 3. Therefore, we request that FHWA provide us

within 30 calendar days, additional information on how it will meet the intent of recommendations 1 and 3.

**Recommendation 1:** FHWA partially concurred and stated it will coordinate with the five Gulf State departments of transportation by February 28, 2007 to identify how earmarked funds identified in this audit could best be directed to hurricane recovery efforts. However, FHWA deferred a decision on further action to formally alert Congress that approximately \$10.7 million in earmarked funds are available for redirection until after FHWA completes its coordination with the five Gulf States.

**OIG Response:** Although FHWA didn't complete the action by the February 28, 2007 milestone, its planned action to complete coordination with the five Gulf States meets with the intent of this portion of our recommendation. However, it is unclear whether FHWA intends to formally alert Congress that approximately \$10.7 million is available for redirection to hurricane recovery efforts. As stated in our report, most of the unneeded earmarked funds identified in our audit cannot be redirected to hurricane recovery efforts without legislative action by Congress. In addition, to identify projects with funds available for redirection, we conferred with appropriate state and local transportation officials and FHWA Divisions to reach a consensus that these funds were available for redirection. Furthermore, 17 of the 19 projects we identified as having unneeded earmarked funds were completed, some years ago. Accordingly, we request that FHWA reconsider its plan of action and alert Congress that about \$10.7 million in earmarked funds is available for redirection to hurricane recovery efforts within the five Gulf States.

**Recommendation 2:** FHWA concurred with this recommendation and stated that the target date for issuing guidance to state departments of transportation on Section 1603 of SAFETEA-LU was February 28, 2007.

**OIG Response:** FHWA's planned action meets the intent of our recommendation. Although the guidance was not issued by February 28, 2007, FHWA indicated that issuance was imminent.

**Recommendation 3:** FHWA agreed with this recommendation and stated that it would monitor the use of earmarked highway funds that states no longer need and periodically alert Congress that certain funds are no longer needed for their statutorily intended purpose.

**OIG Response:** FHWA's response generally meets the intent of our recommendation. However, FHWA's use of the term "periodic" is unclear. The intent of our recommendation was that FHWA provide an annual list to Congress of earmarked highway funds states no longer need. In response to a GAO request, FHWA already has agreed to compile an annual list. We agree with GAO's report

that the value of such a list is in providing Congress with information that will allow it to make more timely rescissions of funds that states no longer need. Therefore, we request FHWA to reconsider its response and clarify how often it intends to alert Congress that certain unneeded funds are available.

## **ACTIONS REQUIRED**

In accordance with DOT Order 8000.1C, we request that FHWA provide us with additional information, within 30 calendar days from the date of this final report, on how it will meet the intent of recommendations 1 and 3. FHWA's response should identify FHWA's plan of action and set a timetable for alerting Congress that about \$10.7 million in earmarked funds is available for redirection to hurricane recovery efforts in the five Gulf States. The response should also clarify how often FHWA intends to alert Congress that certain unneeded funds are available.

We appreciate the courtesies and cooperation of Federal Highway Administration representatives during this audit. If you have any questions concerning this report, please call me at (202) 366-5630 or Tom Yatsco, Program Director, at (202) 366-1302.

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cc: Assistant Secretary for Budget and Programs and  
Chief Financial Officer  
Martin Gertel, OST Audit Liaison  
Frederick G. Wright, Jr., FHWA Executive Director  
King W. Gee, FHWA Associate Administrator for Infrastructure  
Dwight A. Horne, FHWA Director Office of Program Administration  
Albert T. Park, FHWA Chief Financial Officer

## **EXHIBIT A. SCOPE AND METHODOLOGY**

To identify earmarked funds, in five Gulf States affected by Hurricanes Katrina and Rita, that are no longer needed for their original purpose and to determine the amount of funds that could be freed up and redirected with congressional approval, we reviewed laws, regulations, reports, authorizing legislation, and annual appropriations acts. We also examined FHWA's processes, guidance, fiscal management data, and other relevant information to get an understanding of Federal and state requirements for the use of earmarked funds.

We conducted audit work at FHWA Headquarters and Division Offices and at state departments of transportation in the five Gulf States of Alabama, Florida, Louisiana, Mississippi, and Texas. We interviewed FHWA and state officials on issues related to congressional earmarking, state and Federal roles and responsibilities, requirements, and compliance. We also interviewed representatives of local area metropolitan planning organizations.

Our audit focused on unobligated and unexpended balances for earmarked transportation projects in the five Gulf States that were designated in legislation enacted on or before October 23, 2000, the date when the FY 2001 appropriations bill (Pub. L. No. 106-346) was signed into law. We requested that FHWA provide us with a report from its Fiscal Management Information System (FMIS) listing all demonstration and high priority projects for the five states meeting these criteria. Specific data fields included Demo ID number,<sup>7</sup> description, program code, public law, Federal funds allocated, obligated amount, unobligated amount, total expenditures, unexpended balance, and dates of last obligation and expenditure as of September 30, 2005. We excluded earmarked projects that had no unobligated and unexpended balances, which reduced the number of projects in our universe from 278 to 205. In addition, we excluded earmarked projects that previously had been rescinded but that were still listed in FMIS as being active. Our final universe was 203 projects. We reviewed all 203 projects. These 203 projects received a total of \$2.2 billion in allocated earmarked funds that were within the scope of our review. As of December 31, 2005, about \$1.8 billion had been obligated by the states.

Our examination of 203 projects identified 19 projects with approximately \$10.7 million in excess earmarked funds that could be redirected to hurricane recovery efforts in the Gulf States. We also identified three additional projects that had a total of less than \$10 remaining. Because of materiality, these three projects are not identified in this report; however, we have provided information regarding them to FHWA. During our audit, FHWA and Gulf State officials

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<sup>7</sup> FHWA assigns a Demo ID number to certain earmarked projects in order to identify the funds as being designated by Congress for use on a specific project, and track the obligation and expenditure of those funds in FMIS.

provided evidence that the remaining 181 of 203 projects were proceeding and the earmarked funds would be required to complete these projects. Therefore, our report does not address those projects.

Most of the earmarked highway projects within the scope of our audit originated in two reauthorization bills enacted in the 1990s (see Table 1 below), the Intermodal Surface Transportation Efficiency Act of 1991 and TEA-21. Another 10 projects were initially earmarked in two reauthorization bills passed in the 1980s, STAA and the Surface Transportation and Uniform Relocation Assistance Act of 1987. The remaining 22 projects originated in annual or supplemental transportation appropriations bills. Although Table 1 reflects only the initial earmark provided for a highway project, it is important to note that some of the 203 projects included in our audit sample received additional earmarked funds in subsequent legislation.

**Table 1. Number of Demonstration and High Priority Projects Included in Our Audit, by Initial Authorizing or Appropriating Legislation**

<b>Initial Legislation</b>	<b>Public Law</b>	<b>Date Enacted</b>	<b>No. of Projects</b>
Surface Transportation Assistance Act of 1982 (STAA)	97-424	1/6/1983	2
Department of Transportation and Related Agencies Appropriations Act, 1987	99-591	10/30/1986	1
Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURAA)	100-17	4/2/1987	8
Department of Transportation and Related Agencies Appropriations Act, 1989	100-457	9/30/1988	2
Department of Transportation and Related Agencies Appropriations Act, 1991	101-516	11/5/1990	6
Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA)	102-240	12/18/1991	36
Making supplemental appropriations, transfers, and rescissions for the fiscal year ending September 30, 1992, and for other purposes	102-368	9/23/1992	5
Department of Transportation and Related Agencies Appropriations Act, 1993	102-388	10/6/1992	1
Department of Transportation and Related Agencies Appropriations Act, 1994	103-122	10/27/1993	1
Department of Transportation and Related Agencies Appropriations Act, 1995	103-331	9/30/1994	2
Transportation Equity Act for the 21st Century, 1998	105-178	6/9/1998	135
Department of Transportation and Related Agencies Appropriations Act, 2001	106-346	10/23/2000	4
<b>Total</b>			<b>203</b>

## **Exhibit A. Scope and Methodology**

We did not review highway earmarks from any appropriations bills enacted after FY 2000 nor from SAFETEA-LU, which provides for highway, transit, and safety programs through 2009.

Based on the findings of a prior Office of Inspector General (OIG) audit,<sup>8</sup> we did not conduct reliability testing for FMIS. The prior audit concluded that although significant general and security weaknesses exist in FMIS, the accuracy of the data could be substantiated by comparing FMIS data with that maintained by the states. During our site visits, we verified the data FHWA provided to us with data its Divisions maintained and with project records the states kept. The approximate \$10.7 million that was identified as unneeded funds available for redirection was based upon the FMIS data and verified by the states as of December 31, 2005. We updated the figures on May 11, 2006, using FMIS records.

We examined legislation to verify legislative requirements for earmarks within the scope of our review and to gain general knowledge about certain transportation earmarks identified in SAFETEA-LU. We considered the review criteria, states' comments, and the number of years a project had Federal funds remaining unobligated or unexpended on each project in order to make a preliminary assessment of whether these funds were still needed by the states or were available for redirection.

We conducted this performance audit from November 2005 through December 2006 in accordance with Generally Accepted Government Auditing Standards prescribed by the Comptroller General of the United States, and we performed such tests as we considered necessary to detect fraud, waste, and abuse.

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<sup>8</sup> OIG Report FI-2004-039, "Inactive Obligations, Federal Highway Administration," March 31, 2004. OIG reports can be found on our website: [www.oig.dot.gov](http://www.oig.dot.gov).

## EXHIBIT B. 19 PROJECTS WITH UNNEEDED FUNDS THAT ARE AVAILABLE FOR REDIRECTION

Demo ID	Project Description	Total Allocated	Public Law, Section, Related Report, and Date of Enactment	Total Amount to Release	Reason for Releasing Funds	Amount Eligible for Section 1603, SAFETEA-LU
AL004	Alabama Highway Bypass Demo: relocate U.S. 78 Jasper Bypass	\$34,172,889	Pub. L. No. 102-143 (1991)	\$218	Completed with excess funds	\$0
			Pub. L. No. 102-388 (1992)	\$99,934		
AL026	Construct East Foley Corridor Project from Baldwin County Highway 20 to State Highway 59 in Alabama	\$7,175,697	Pub. L. No. 105-178 (1998) Section 1602 Numbers 857, 1501, 1833	\$175,778	Completed but additional expenses may be identified	\$0
AL043	Capital costs associated with track relocation, construction and rehab highway-rail separation activities, including ROW acquisition and utility relocation, and signal improvements in Muscle Shoals, Tuscumbia, and Sheffield, Alabama	\$4,989,000	Pub. L. No. 106-346 (2000) Section 375	\$4,989,000	Project will not proceed because matching funds are not available	\$0
FL004	Sanford: SR 46/I-4 interchange	\$11,169,197	Pub. L. No. 100-017 (1987) Section 149 (A)(12)	\$165,649	Completed with excess funds	\$165,649
FL006	Bridge Improvement Demo: Blount Island (Florida)	\$17,288,000	Pub. L. No. 101-164 (1989)	\$640	Completed with excess funds	\$640
FL018	Sarasota: To construct a bridge interchange at U.S. 301 and University Parkway	\$2,341,029	Pub. L. No. 102-240 (1991) Section 1106 (b)42	\$517,122	Completed with excess funds	\$0
FL022	Brevard County: Design and engineer improvements for SR-3 between SR 520 and SR 528	\$156,069	Pub. L. No. 102-240 (1991) Section 1106 (a)55	\$12,232	Completed with excess funds	\$0
FL037	Purchase and install I-275 traffic management system in Pinellas County, Florida	\$768,825	Pub. L. No. 105-178 (1998) Section 1602 Number 518	\$7,955	Completed with excess funds	\$0
FL044	Construct County Road 470 interchange with Florida Turnpike	\$6,150,596	Pub. L. No. 105-178 (1998) Section 1602 Number 706	\$223,686	Completed with excess funds	\$0
FL049	Widen Gunn Highway between Erlich Road and South Mobley Road in Hillsborough County	\$1,537,649	Pub. L. No. 105-178 (1998) Section 1602 Number 888	\$170,967	Completed with excess funds	\$0

### Exhibit B. 19 Projects With Unneeded Funds That Are Available For Redirection

<b>Demo ID</b>	<b>Project Description</b>	<b>Total Allocated</b>	<b>Public Law, Section, Related Report, and Date of Enactment</b>	<b>Total Amount to Release</b>	<b>Reason for Releasing Funds</b>	<b>Amount Eligible for Section 1603, SAFETEA-LU</b>
LA008	Southeast Baton Rouge Reconstruct Siegen Lane	\$4,148,559	Pub. L. No. 100-017 (1987) Section 149 (A)(88)	\$11,625	Completed with excess funds	\$23,229
			Pub. L. No. 100-017 (1987) Section 149 (A)(88)	\$11,604		
LA014	Bossier City: study grade separations along Kansas City railroad along U.S. 71	\$156,069	Pub. L. No. 102-240 (1991) 1106 A(74)	\$48,413	Completed with excess funds	\$0
LA020	New Orleans, I-10/I-610 intersection	\$10,000,000	Pub. L. No. 103-331 (1994)	\$2,925	Completed with excess funds	\$0
LA021	Replace Ferry in Plaquemine Parish	\$1,652,973	Pub. L. No. 105-178 (1998) Section 1602 Number 21	\$189,497	Completed with excess funds	\$0
LA035	Florida Avenue Expressway St. Bernard/Orleans parishes.	\$205,020	Pub. L. No. 105-178 (1998) Section 1602 Numbers 750 and 1589	\$205,020	Project will not proceed due to hurricane damage	\$0
LA049	Tchopitoulas Corridor, New Orleans	\$4,612,948	Pub. L. No. 105-178 (1998) Section 1602 Number 1597	\$2,988,206	Completed with excess funds	\$0
MS010	Franklin/Lincoln Counties: Improvements on Highway 84	\$9,971,328	Pub. L. No. 102-240 (1991) Section 1106 (A) 24	\$847,586	Completed with excess funds	\$0
TX059	Conduct feasibility study on upgrading SH 16 in South Texas.	\$192,206	Pub. L. No. 105-178 (1998) Section 1602 Number 694	\$448	Completed with excess funds	\$0
TX083	Construct extension of West Austin Street (FM 2609) between Old Tyler Road and Loop 224, Nacogdoches	\$1,383,885	Pub. L. No. 105-178 (1998) Section 1602 Number 1467	\$15,630	Completed with excess funds	\$0
<b>Total</b>		<b>\$118,071,939</b>		<b>\$10,684,135</b>		<b>\$189,518</b>

**Exhibit B. 19 Projects With Unneeded Funds That Are Available For Redirection**

## EXHIBIT C. HIGHWAY EARMARK TRENDS

### Recent Trends in Highway Earmarks

During the last 25 years, the number and total amounts of congressional earmarks for highway projects designated in the last five transportation reauthorization bills have increased. Table 2 below shows this growth, as well as the change in the percentage of earmarked funds relative to Federal-aid highway spending provided in the last five reauthorization bills.

**Table 2. Number and Total Amount of Earmarks and Their Percentage of Federal-Aid Highway Program, by Recent Reauthorizing Legislation**

Reauthorizing Legislation	Authorization Period (in years)	Number of Demonstration and High Priority Projects*	Total Amount of Demonstration and High Priority Projects*	Percent of Total Federal-Aid Highway Program
Surface Transportation Assistance Act of 1982 (STAA)	4	10	\$410,200,000	0.9
Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURAA)	5	154	\$1,418,510,130	2.1
Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA)	6	538	\$6,228,640,000	5.2
Transportation Equity Act for the 21st Century (TEA-21), 1998	6	1,850	\$9,359,850,000	5.5
Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), 2005	6	5,557	\$17,387,236,000	8.7

\* The earmarked projects included in the table are those to which FHWA has assigned a Demo ID number and, consequently, can be tracked in FMIS. These projects are identified in the legislation as follows: STAA, Section 131; STURAA, Section 149; ISTEA, Sections 1103 through 1108; TEA-21, Section 1601; and SAFETEA-LU, Sections 1702 and 1934. The dollars have not been adjusted for inflation.

**EXHIBIT D. MAJOR CONTRIBUTORS TO THIS REPORT****THE FOLLOWING INDIVIDUALS CONTRIBUTED TO THIS REPORT.**

<b><u>Name</u></b>	<b><u>Title</u></b>
Kurt W. Hyde	Assistant Inspector General for Surface and Maritime Programs
Tom Yatsco	Program Director
Michael Ralph	Program Director
Joan Becker	Project Manager
Nancy Benco	Senior Analyst
Scott Williams	Analyst
Harriet Lambert	Writer-Editor



# Memorandum

Subject: **INFORMATION:** Federal Highway Administration  
Response to Office of Inspector General (OIG) Draft  
Report, "Opportunities to Free Up Unneeded FHWA  
Funds for Use in Hurricane Recovery Efforts"

Date February 9, 2007

From: J. Richard Capka  
Administrator

Reply to  
Attn. of: HIPA-10

To: Calvin L. Scovel III  
Inspector General (JA-40)

Thank you for the opportunity to review and comment on the OIG Draft Report, "Opportunities to Free Up Unneeded FHWA Funds for Use in Hurricane Recovery Efforts." This audit focuses on unobligated and unexpended balances for earmarked transportation projects in the five Gulf States that were designated in legislation. This funding was authorized by Congress for specific highway projects or activities in authorization acts, as well as in annual transportation appropriation acts. In addition, the legislation usually provides that the funds are available until expended.

Since these projects have been designated in legislation for a specific project or activity, and the funds authorized for these projects cannot be utilized for any other purpose unless the authorizing legislation is amended, there are balances of unobligated and/or unexpended obligations that remain after they are no longer needed. There is currently no enacted statute that directs the Secretary to provide this information to Congress. However, as a matter of comity, the information is provided upon request from Congress.

Taking into consideration the points mentioned above, the following are our comments and planned actions on the specific audit report recommendations.

**Recommendation 1(a):** "Coordinate with the five Gulf State departments of transportation to promptly identify how the earmarked funds in the 19 projects we identified in our audit could best be redirected for use on hurricane recovery efforts."

**Response:** The FHWA concurs in this recommendation. The target date for completion is February 28, 2007.

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**Recommendation 1(b):** “FHWA should also formally alert Congress that \$10.7 million in earmarked funds are available for redirection to hurricane recovery efforts within these same states. If necessary, FHWA should also coordinate with Congress regarding the legislative requirements of each earmark in order to identify the best method for redirecting these funds.”

**Response:** The FHWA believes that we should await the completion of our coordination with the five Gulf States before determining our next step.

**Recommendation 2:** “Promptly issue guidance on Section 1603 of SAFETEA-LU to allow the states to redirect, without congressional action, certain eligible, unneeded highway earmarked funds to other transportation projects in their states.”

**Response:** The FHWA concurs in this recommendation. The target date for completion is February 28, 2007.

**Recommendation 3:** “Continue to regularly compile a list of earmarked highway funds that states no longer need and transmit that list to Congress for legislative consideration.”

**Response:** The FHWA agrees that it should monitor the use of earmarked highway funds to identify funds that States no longer need. The FHWA will alert Congress periodically that certain funds are not needed for their statutorily intended purpose.

The efforts of the OIG auditors are greatly appreciated. If you have any questions or comments regarding this response, please contact Mr. Joseph Taylor, at (202) 366-1654.

The following page contains a textual version of the graph found in this document. This page was not in the original document but has been added here to assist screen readers.

Figure 1. Average Amount per Earmark Declines as Total Number of Earmarks Increases, by Authorizing Legislation

Authorizing Legislation	Average Amount Per Earmark	Number of Demonstration and High Priority Projects
STAA (1983)	\$41,020,000	10
STURAA (1987)	\$9,211,105	154
ISTEA (1991)	\$11,577,398	538
TEA-21 (1998)	\$5,059,378	1,850
SAFETEA-LU (2005)	\$3,128,889	5,557

Source: Authorizing legislation and FHWA documents.