



# WASHINGTON UPDATE

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## April 6, 2021

This WSP Washington Update focuses exclusively on the subject of congressional earmarks as a follow-up to the earmark discussion in the March 8 and March 25 Updates.

Note - there are two critical dates coming up very quickly regarding earmarks – April 16 (for House FAST Act authorization projects) and April 30 (for House FY'22 transportation annual appropriations projects) – see more details below.

Following years of rumors that project earmarks were coming back (they were banned in 2011 by the Republican House majority), they actually are! While Senate leaders have not made any announcements about bringing back earmarks, the House Democratic chairs of both the House Appropriations Committee and the House Transportation & Infrastructure Committee have announced that they plan to include earmarks in the upcoming FY'22 annual funding bills and the anticipated multi-year FAST Act surface transportation authorization bill. Most recently, the House Republican Conference voted in a secret ballot to lift their ban on earmarks.

These bills and earmark procedures are not related to the Biden “American Jobs Plan” (AJP) \$2 trillion infrastructure proposal. It is unclear at this point if there will be project earmarks included in the AJP legislation.

## Appropriations Bills

House Appropriations Chair Rosa DeLauro (D-CT) announced new guidelines for an earmarking process, now referred to as “Community Project Funding,” for the annual appropriations bills for fiscal year 2022 (which begins on October 1, 2021).

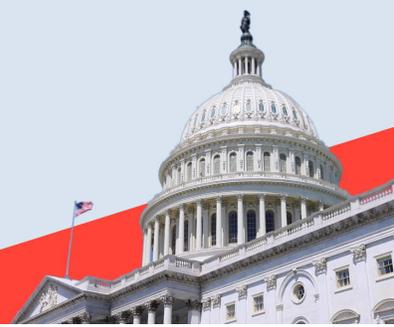
It is important to note that each appropriations subcommittee will release its own additional guidance regarding which accounts and programs will be eligible for Community Project Funding requests and the criteria necessary for consideration as well as due dates.

The House Transportation, Housing and Urban Development, and Related Agencies (THUD) Appropriations Subcommittee has announced it will accept earmark requests from Members of Congress through April 30. All projects must be capital projects or project-specific planning/design for a capital project, supported by a state or local government, and administered by public entities. Each Member of Congress may only



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submit up to 10 community projects across all 12 Appropriations subcommittees. Click here to view [THUD's guidelines for Local Transportation Priorities](#).

The full list of guidelines for all Appropriations subcommittees can be found [here](#) and are summarized below.

- Cap on Overall Funding: The Committee will limit Community Project Funding to no more than 1 percent of discretionary spending. (Of note, the Committee did not specify its definition of "discretionary spending.")
- Member Requests Capped: The Committee will accept a maximum of 10 community project requests from each member across all 12 federal agency FY'22 funding bills, though only a handful may actually be funded.
- Demonstrations of Community Engagement: Members must provide evidence of community support that were compelling factors in their decision to select the requested projects.
- Early Public Disclosure: The Committee will release a list of projects funded the same day as the Subcommittee markup, or 24 hours before full committee consideration if there was no Subcommittee markup.
- All Requests Online: Members are required to post every Community Project Funding request online simultaneously with their submission to the Committee.
- No Financial Interest: Members must certify to the Committee that they, their spouse, and their immediate family have no financial interest in the projects they request.
- Ban on For-Profit Recipients: There is a ban on directing Community Project Funding to for-profit grantees. Members may request funding for State or local governmental grantees and for eligible non-profits.

## Authorization Bills

The Democratic leadership of the House Transportation & Infrastructure Committee announced a new process for House members to request funding for "Congressionally Designated Projects" in upcoming authorization bills such as the FAST Act which expires September 30, 2021. Here is a [link](#) to Chairman DeFazio's press statement on project earmarks.

From the T&I Committee - Members seeking to submit requests for highway and transit project designations should utilize the resources below to assist in preparation of project requests and the documentation required. Only Members and approved staff of the U.S. House of Representatives will be allowed access to the secure website to transmit requests to the Committee for consideration. Stakeholder groups with inquiries regarding this



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process should meet with the Member whose district is home to the project in question.

Hyperlinks for download:

1. [Dear Colleague sent 3/3/2021](#)
2. [Follow Up Dear Colleague](#) sent 3/23/21
3. [Member Designated Project Instruction Booklet](#)

Key Dates - Member submissions will be accepted through 6:00pm EDT on Friday, April 16, 2021.

Important Note – The Committee is not limiting the number of projects a Member may request. However, Members will be asked to rank their top five project priorities.

The Committee will require all Member submissions to include the following information for each project requested:

- Documentation of whether the project is on the State, Tribal, or territorial transportation improvement program (STIP); and on the metropolitan transportation improvement program (TIP), if applicable.
- Sources of funding for the full share of the cost of the project beyond the amount requested.
- Letter(s) of support from the State department of transportation, or local government, transit agency, or other non-Federal sponsor.
- A description of the process that has been or will be followed to provide an opportunity for public comment on the project.
- Project phase (e.g. Planning, Final Design, Construction).
- NEPA category of action (e.g. Categorical Exclusion, Environmental Assessment, Environmental Impact Statement).
- Status of environmental review.
- Whether the project has received Federal funding previously, and if so the source and amount.
- Certification that the Member, their spouse, and other immediate family members do not have a financial interest in the project.

The Committee does not anticipate earmarking passenger rail projects, even though the FAST Act includes a rail title, since most rail projects are funded with General Funds, not through the Highway Trust Fund (and therefore do not have Contract Authority) and would still need to go to the Appropriations Committee each year to obtain the actual money. However, some rail projects which are eligible for funding under title 23 (highway/rail grade crossings) and chapter 53 of title 49 (commuter rail projects) may possibly be earmarked.



The Committee will also hold a Member Day hearing April 14, 2021, to receive testimony from Members of Congress about their policy priorities (policies only, not project earmarks).

## Earmarking Unknowns

Despite the information released by the committees, there are still a lot of unknowns, such as:

How will the Senate decide to proceed with project earmarks – no announcements have been made by Senate appropriators or authorizers.

How will congressional earmarking intersect with the existing US DOT competitive grant programs (i.e. INFRA, BUILD, CRISI)? The US DOT discretionary programs were created in response to the ban on earmarks in 2011.

Which pots of money will be identified for earmarking, how much money will be made available for those pots, how will projects funded with Highway Trust Fund dollars (highways/bridges) be treated versus projects funded with General Funds (transit CIG).

## Project Sponsor Considerations

While some specifics about the congressional earmarking process are still unclear, project sponsors should consider the following:

- Brief their Member of Congress and Senators on their project – determine if they serve on the appropriations or authorization committees, make sure they are familiar with the project and supportive and willing to request an earmark. Keep in mind that, in the past, the earmarking process was not based so much on project merits as it was on politics – is the member in the majority, in senior leadership, on the right committee, someone whose vote was needed, etc.
- Do the necessary homework at the local level – has non-federal funding been identified and locked in, is the project where it needs to be in the planning and NEPA process, is there community and local political support, does the project emphasize Administration/congressional priorities such as combating climate change, equity, innovative technology, etc.