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The Federal Funding Accountability and Transparency Act (S. 2590): Overview and Comparison with H.R. 5060

September 11, 2006

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The Federal Funding Accountability and Transparency Act (S. 2590): Overview and Comparison with H.R. 5060

Summary

In an attempt to expand oversight of federal spending, including earmarks, S. 2590 would provide the public with access to an online database containing information about entities that are awarded federal grants, loans, and contracts. According to the bill's sponsors, the database would deter "wasteful and unnecessary" spending, since government officials would be less likely to earmark funds for special projects if they knew the public could identify how much money was awarded to which organizations, and for what purposes. S. 2590 is a companion bill to H.R. 5060, which also calls for the creation of a federal awards database. The bills differ in several respects, however, most notably in that S. 2590 would require information on federal contracts to be made available to the public, but H.R. 5060 would not. Because contracts represent over \$340 billion in federal awards, the scope of the Senate version is significantly broader.

While the intent of S. 2590 is widely lauded — it has been endorsed by leaders of both parties and an array of business, union, and watchdog organizations — there is growing concern among government officials and members of the public that issues surrounding implementation of the proposed database have not been adequately addressed. In particular, many observers question the reliability of information taken from the Federal Assistance Award Data System (FAADS), and the Federal Procurement Data System (FPDS), which are to be the primary sources of information for the public database. They note that information in FAADS and FPDS is often incomplete and inaccurate, and therefore may be of limited utility in identifying earmarks.

This report summarizes S. 2590, compares it to H.R. 5060, and outlines the arguments in favor of the bill and those critical of it. The final section discusses the implications of using FAADS and FPDS to populate the bill's proposed database. This report will be updated as events warrant.

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The Federal Funding Accountability and Transparency Act (S. 2590): Overview and Comparison with H.R. 5060¹

Overview

On April 6, 2006, Senator Tom Coburn along with three cosponsors introduced S. 2590, the Federal Funding Accountability and Transparency Act.² On August 2, 2006, the Senate Committee on Homeland Security and Governmental Affairs unanimously reported S. 2590, with an amendment in the nature of a substitute.³ According to one of the bill's original sponsors, Senator John McCain, S. 2590 is an attempt to reduce "wasteful and unnecessary spending" by the federal government, including spending on funds earmarked for special projects.⁴

The fundamental premise of S. 2590 is that by making the details of federal spending available to the public, government officials will be less likely to earmark funds for projects that might be perceived as wasteful. To that end, the bill calls for the creation of a new database, under the direction of the Office of Management and Budget (OMB), that would provide the public with a comprehensive source of information on all federal awards. As envisioned by the bill's sponsors, a citizen or watchdog group could access the database on the Web, free of charge, and easily determine how much money was given to which organizations, and for what purposes.⁵

Under provisions in the bill, the database would be implemented in two phases. In the first phase, which would have to be operating by January 1, 2008, the database

¹ CRS Information Specialist Merete Gerli provided research assistance in the preparation of this report.

² Original cosponsors included Senators Tom Carper, John McCain, and Barack Obama. By September 7, 2006, there were 40 cosponsors.

³ There was no written report on August 2, but the Senate Committee on Homeland Security and Governmental Affairs published S.Rept. 109-329, to accompany S. 2590, on Sept. 8, 2006.

⁴ For information on other recent earmark reform proposals, see CRS Report RL33397, *Earmark Reform Proposals: Analysis of Latest Versions of S. 2349 and H.R. 4975*, by Sandy Streeter. Testimony of Sen. John McCain, in U.S. Congress, Senate Subcommittee on Federal Financial Management, Government Information, and International Security, *Federal Funding Accountability and Transparency Act*, hearing on S. 2590, 109th Cong., 2nd sess., July 18, 2006, at [http://hsgac.senate.gov/_files/071806McCain.pdf].

⁵ Testimony of Sen. Tom Coburn, *ibid.*

would provide information on entities that are awarded funds directly from the federal government. Entities covered in the first phase of the database would include corporations, associations, partnerships, sole proprietorships, states, and localities. By January 1, 2009, the database would also include information on subgrantees and subcontractors that receive federal funds through a primary award recipient. The bill excludes individual recipients of federal assistance.

Consistent with the objective of providing comprehensive information on federal financial assistance to the public, virtually all categories of awards would ultimately be covered by the database, including grants, contracts, subgrants, subcontracts, loans, cooperative agreements, and purchase orders. Two special provisions address particular types of transactions: individual transactions of less than \$25,000 would be exempt, and credit card transactions would not be included until October 1, 2008.

To achieve greater transparency, the bill would require the database to provide the following information about each federal award:

- Name of entity receiving award
- Amount of award
- Type of award (e.g., grant, loan, contract)
- Agency funding award
- A North American Industry Classification System (NAICS) code of the recipient or a Catalog of Federal Domestic Assistance (CFDA) number (where applicable)⁶
- Program source
- Award title that describes the purpose of the funding
- Location of recipient
- City, state, congressional district, and country in which award performance primarily takes place
- Unique identifier for entity receiving award and of the parent entity of recipient, if one exists
- Any other information specified by OMB

The bill's sponsors, mindful of the criticism that government databases are often difficult for non-experts to use, included language that would require OMB to ensure the database is accessible through a "single, searchable website." This means the website would permit a search of federal funding by any of the data elements listed above. It also means that a user, searching from just one site, would be able to determine the total amount of federal funding awarded to an entity by fiscal year. In addition, the data would have to be in a downloadable format, and new information

⁶ The Census Bureau assigns an NAICS code to each business establishment for the purposes of collecting and analyzing statistical data on the U.S. economy. NAICS codes are two to six digits long, with each digit representing information about the economic sector in which the establishment conducts the largest portion of its business. CFDA numbers are assigned by the General Services Administration (GSA) to all federal domestic assistance programs. A CFDA number usually has five digits, where the first two digits represent the federal agency and the last three digits indicate the specific program for which the agency is providing funding.

would be posted to the website within 30 days of an award being made. The site would be required to allow the public the opportunity to provide input on the site and recommend improvements.

Three major financial assistance databases are identified in the bill as likely sources of information for the new website — the Federal Procurement Data System (FPDS), the Federal Assistance Award Data System (FAADS), and Grants.gov.⁷ According to the provisions in S. 2590, however, a user must be able to access information from all three databases in a single search. The bill is explicit on this point; it would not be acceptable merely to provide links to these or other databases, because that would force users to search each database separately.

As previously noted, information on subcontractors and subgrantees would not be included in the database until January 1, 2009. The delay reflects the fact that data on subrecipients are not currently collected consistently across federal agencies and programs. To address existing gaps in the data on subawards, the bill would charge OMB with the responsibility for implementing a pilot program to test the feasibility of having primary recipients provide information on their subgrantees and subcontractors. Sensitive to arguments about unfunded mandates, the bill provides a mechanism for reimbursing federal award recipients and subrecipients for the costs associated with collecting and reporting the required data. It also specifies that any requirements for collecting data on subawards made by state and local governments under block and formula grants be cost-effective. The Congressional Budget Office (CBO) has estimated that S. 2590 would cost \$15 million to implement between 2007 and 2011.⁸ CBO has also determined that no unfunded mandate would be placed on recipients or subrecipients for complying with the bill's provisions.⁹

S. 2590 would require OMB, in addition to implementing the pilot program, to submit an annual report to the Senate Committee on Homeland Security and Governmental Affairs and the House Committee on Government Reform. The report would have to include data on public usage of the website, an assessment of the reporting burden on federal award and subaward recipients, and an explanation of any extension of the subaward reporting deadline. A copy of the report would also be posted on the Web.

⁷ The Federal Procurement Data System is a database of federal contracts maintained by GSA, and the Federal Assistance Award Data System is a database of federal grants maintained by the Census Bureau. Grants.gov is part of the E-Government initiative, and it permits grant seekers to find, apply for, and manage federal grants through a single Web portal. All entities that apply for federal assistance through Grants.gov are assigned a unique identifier known as a Data Universal Numbering System (DUNS) number. Complex entities, such as state or local governments, may have multiple DUNS numbers, making it difficult, at times, to link subunits to the parent entity.

⁸ U.S. Congressional Budget Office, *S. 2590: Federal Funding Accountability and Transparency Act of 2006*, Aug. 9, 2006, at [<http://www.cbo.gov/showdoc.cfm?index=7483&sequence=0>].

⁹ Ibid.

Comparison of S. 2590 with H.R. 5060

On March 30, 2006, Representative Roy Blunt introduced H.R. 5060, to amend the Federal Financial Assistance Management Improvement Act of 1999. On June 21, 2006, the House passed H.R. 5060, as amended, by voice vote.¹⁰ According to Representative Blunt, the bill is intended to “increase accountability and transparency in the federal awards process” by establishing a public database with information on award recipients.¹¹ While both S. 2590 and H.R. 5060 have similar objectives, the bills differ in important ways. **Table 1** highlights three of the most important differences.

Table 1. Comparison of Selected Features in S. 2590 and H.R. 5060

Feature	S. 2590	H.R. 5060
<i>Contents of public database</i>	Includes grants, loans and contracts	Includes grants and loans, but excludes contracts
<i>Reimbursement for costs of new reporting requirements</i>	Recipients and subrecipients of federal assistance can recover costs associated with collecting and reporting data on subrecipients	No reimbursement provided to recipients and subrecipients to cover costs associated with collecting and reporting data on subrecipients
<i>Subaward pilot program</i>	Authorizes 18-month pilot program to evaluate options for government-wide subaward reporting policy	No pilot program authorized to evaluate options for subaward reporting policy

Most notably, contracts are exempt from the public database under the House bill, but are covered in the Senate bill. Since contracts are the second-largest category of federal domestic assistance — \$340 billion in FY2004 compared to \$460 billion for grants and \$260 billion for loans — their exclusion would significantly reduce the comprehensiveness of the database.¹² Critics of the House bill argue that a database without information on federal contracts would fail to provide sufficient

¹⁰ Rep. Tom Davis, et al., “Amending Federal Financial Assistance Management Improvement Act of 1999,” remarks in the House, *Congressional Record*, daily edition, vol. 151 (June 21, 2006), pp. H4335-H4338.

¹¹ Rep. Roy Blunt, “Blunt-Davis Bill to Reform Federal Grants Process Passes House,” press release, June 21, 2006, at [<http://www.blunt.house.gov/Read.aspx/ID=653>].

¹² David Nather, “Members Back Government Spending ‘Google’,” *CQ Today*, July 26, 2006, at [<http://www.cq.com/display.do?dockey=/cqonline/prod/data/docs/html/news/109/news109-000002348447.html@allnews&metapub=CQ-NEWS&searchIndex=0&seqNum=4>].

transparency and accountability.¹³ Supporters of H.R. 5060 maintain that a database primarily covering grants would still be a valuable tool, and that a grants database could be made available to the public more quickly than one with information on both grants and contracts.¹⁴

Both S. 2590 and H.R. 5060 would require the public database to include information on subrecipients, but only the Senate bill would provide funding to cover the costs associated with collecting and reporting that information. Currently, data on subgrantees and subcontractors is not gathered uniformly across the government. Some experts believe that recipients of federal financial assistance — particularly states and local governments — would incur substantial costs as they began to collect and report information on their subrecipients.¹⁵ Under S. 2590, recipients and subrecipients of federal assistance could receive reimbursement for the costs associated with new reporting requirements by incorporating those costs into their indirect cost rates; H.R. 5060 has no similar feature.¹⁶

Because no uniform method of collecting information on subcontractors and subgrantees presently exists, S. 2590 would direct OMB to conduct a pilot program to test alternatives for implementing a government-wide subaward reporting process. The pilot program is intended to help the government find ways to minimize the cost and administrative burden of any new reporting requirements. H.R. 5060 does not contain provisions for a pilot program.

Support and Criticism

S. 2590 has extensive bipartisan support in the Senate. The bill was unanimously voted out of the Senate Committee on Homeland Security and Governmental Affairs, and the number of cosponsors has grown from three to 40, including Senate Majority Leader Bill Frist and Minority Leader Harry Reid. The bill's broad appeal is explained in part by its non-controversial objective: to increase accountability and reduce wasteful spending by making government operations more

¹³ Testimony of Gary Bass, President of OMB Watch, *Federal Funding Accountability and Transparency Act*, hearing on S. 2590, July 18, 2006.

¹⁴ Aimee Curl, "Transparency bill subjected to secrecy," *Federal Times*, Aug. 14, 2006, p. 4.

¹⁵ Telephone conversation between the author and Jerry Keffer, Chief of the Federal Programs Branch at the U.S. Census Bureau, Aug. 17, 2006. Letter from R. Thomas Wagner, Jr., President of National Association of State Auditors, Comptrollers, and Treasurers (NASACT), to Sen. Tom Coburn, July 5, 2006, at [http://www.nasact.org/techupdates/downloads/CRC/LOC/07_06-NASACT_coburn.pdf].

¹⁶ An indirect cost rate is a percentage, negotiated between a recipient of federal funds (a grantee or a contractor) and a federal agency, which is used to calculate the amount the recipient may be reimbursed for the indirect costs associated with administering the federal award. For example, if a grantee expended \$100,000 in direct costs administering a federal grant program, and it had an indirect cost rate of 10%, then the grantee could request reimbursement from the federal awarding agency for \$110,000 (the total direct costs plus an additional 10%).

transparent. Support for S. 2590 was believed to be so widespread that on August 2, 2006, the committee's chair, Senator Susan Collins, and its ranking member, Senator Joseph Lieberman, requested the bill be brought to the floor for a unanimous consent vote before the August recess commenced. This motion was blocked by an unnamed Senator, which delayed action on the bill until after the recess.¹⁷ On September 7, all holds were lifted and the Senate passed the bill by unanimous consent.¹⁸ House action is anticipated the week of September 11.¹⁹

According to the original sponsor of S. 2590, Senator Tom Coburn, over 150 organizations with a wide range of political leanings have endorsed the bill.²⁰ The Senator's list of supporters includes representatives of private enterprise, such as the U.S. Chamber of Commerce; unions, like the American Federation of State, County, and Municipal Employees; media groups, such as the American Society of Newspaper Editors; and government watchdog organizations, like OMB Watch. As evidence of the unusual alliance in support of S. 2590, the list indicated that both People for the Ethical Treatment of Animals (PETA) and Gun Owners of America support the bill, as do both the National Gay and Lesbian Task Force and the Traditional Values Coalition.

The White House has not issued a Statement of Administrative Policy on S. 2590, but Rob Portman, OMB Director, issued a statement supporting the bill, as passed by the Senate.²¹

While support for the *intent* of S. 2590 is widespread, concerns about its implementation have been raised in several quarters. In a letter to Senator Coburn, the National Association of State Auditors, Comptrollers, and Treasurers (NASACT) initially expressed strong reservations about the potential financial and administrative burden that the bill's reporting requirements would impose on state and local

¹⁷ According to *Congressional Quarterly*, Senators Byrd and Stevens had both placed holds on the bill at different times. See Martin Kady II, "Frist Mobilizes Blogs to Muscle Two of Senate's Old Bulls on Database Bill," *CQ Today*, Sept. 6, 2006, at [<http://www.cq.com/display.do?fL=3&docid=2365650&productId=4>].

¹⁸ Sen. Bill Frist, et al., "Federal Funding Accountability and Transparency Act of 2006," remarks in the Senate, *Congressional Record*, daily edition, vol. 151 (Sept. 8, 2006), pp. S9209-S9211.

¹⁹ Martin Kady II, "House Considers 'Follow the Money' Federal Spending Database Legislation," *CQ Today*, Sept. 8, 2006, at [<http://www.cq.com/displayalertresult.do?matchId=28532010>].

²⁰ Senator Coburn's office provided CRS with the list of supporters. Over 80 leaders of supporting groups signed "An Open Letter to Majority Leader Frist: Bring S. 2590 to the Floor for a Vote!", dated Sept. 6, 2006. See [<http://www.cq.com/flatfiles/editorialFiles/budgetTracker/reference/docs/20060706database-ltr.pdf>].

²¹ U.S. Office of Management and Budget, "OMB Director Portman Praises Senate for Supporting Increased Transparency In Federal Spending," Sept. 8, 2006, at [<http://www.whitehouse.gov/omb/pubpress/2006/2006-44.pdf>].

governments.²² In particular, NASACT noted that collecting data on subgrantees would be “very, very costly” for state and local governments, since federal grant funds are often passed down multiple levels (e.g., a state receiving federal assistance gives a subgrant to organization A, which in turn gives a subgrant to organization B). Additional costs could be incurred under the bill, NASACT said, if state and local grant recipients were required to modify their financial systems to collect and report any other new information. After S. 2590 was amended to include the pilot program for collecting information on subgrantees, NASACT sent a letter to Senator Coburn’s office indicating that they felt their concerns had been addressed and that they supported the amended bill.²³

The reliability of data provided at present by FPDS and FAADS has also been questioned. In a 2005 report, GAO noted that users lacked confidence in the data provided by FPDS, largely because there was no rigorous system in place to ensure the data were accurate and complete.²⁴ This problem has not been resolved.²⁵ A panel of procurement experts recently attempted to use FPDS in their evaluation of federal contracting operations, but reportedly found so many errors in the data that the chairman declared that, “FPDS is not a reliable database.”²⁶ One reason the data are inaccurate is human error; contract information may be incorrectly entered into FPDS by inexperienced users who have received minimal training.²⁷ FPDS data are also notoriously incomplete. For example, the Department of Defense — which accounts for 60% of all federal contract actions — is only beginning to feed information on its contracts into FPDS.²⁸ Moreover, agencies vary in the degree to which they fill out the fields in the database, resulting in data of uneven quality.²⁹ In a recent example, FPDS users reported that the database failed to consistently identify contracts related to Hurricane Katrina recovery efforts that were awarded without competition.³⁰ Finally, information on subcontracts is not currently captured at all by FPDS, but instead is contained in an entirely separate database, the Electronic Subcontracting Reporting System.

²² Letter from R. Thomas Wagner, Jr., President of NASACT, to Sen. Tom Coburn, July 5, 2006, at [http://www.nasact.org/techupdates/downloads/CRC/LOC/07_06-NASACT_coburn.pdf].

²³ Letter from Jan I. Sylvis, President of NASACT, to Sen Tom Coburn, Sept. 5, 2006.

²⁴ U.S. Government Accountability Office, *Improvements Needed to the Federal Procurement Data System-Next Generation*, GAO-05-960R, Sept. 27, 2005, pp. 1-2.

²⁵ In an e-mail between the author and Rod Lantier, Director of FDPS at GSA, August 22, 2006, Mr. Lantier wrote that there is no ongoing data verification, only an annual “confirmation” from the 24 Chief Financial Officers Act agencies that they entered the data as accurately as possible.

²⁶ Chris Gosier, “Contracts database short on info, long on problems,” *Federal Times*, July 31, 2006, p. 5.

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ Testimony of Gary Bass, President of OMB Watch, *Federal Funding Accountability and Transparency Act*, hearing on S. 2590, 109th Cong., 2nd sess., July 18, 2006.

³⁰ Chris Gosier, “Contracts database short on info, long on problems,” p. 5.

Similar problems affect FAADS, the government's primary source of grant award information. In a recent review of 86 federally funded grant programs, GAO determined that in the majority of cases, the administering agencies provided no data, incomplete data, or inaccurate data to FAADS over a three-year period.³¹ The report concluded that these problems occurred because (1) the Census Bureau lacked the resources to ensure agencies were submitting accurate and timely data; (2) agency program officials lacked knowledge of FAADS reporting requirements; and (3) agencies had not implemented sufficient oversight to ensure they were submitting accurate data. A Census Bureau official concurred with these findings, adding that a number of data elements S. 2590 would require are not uniformly captured by federal agencies or grant award recipients, such as information on subrecipients and the congressional district in which federal funds are spent.³² The official also noted that agencies are currently required to update their information in FAADS on a quarterly basis, so it may take time for agencies to develop the capability to update FAADS within 30 days of making an award, as S. 2590 would mandate. Given the amount of work necessary to enhance the scope, quality, and timeliness of information reported to FAADS, the official was skeptical that the database would meet the bill's requirements by the January 1, 2008, deadline.

Finally, some observers note that it is unclear how users of the public database would actually identify earmarked funds, since neither FAADS nor FPDS collects that information. Instead, the ability of users to identify earmarks appears to rest on the manner in which a funding action is described under the "award title" field. To use an egregious example, a \$100 million grant may be alternatively described as, "funding for planning and development of an interconnected transportation system important to commerce and travel," or, "a highway to a virtually uninhabited village." By the same token, an earmarked project that some believe has merit may be described in a manner that puts it in an unfavorable light. One ramification, given the absence of an agreed-upon, government-wide method for identifying earmarks, is that different award descriptions may lead the public to draw different conclusions about the value of a given federally funded project.

Concluding Observations

The underlying logic of S. 2590 is that by providing citizens with information on federal assistance awards through an online database, government officials will be less likely to fund earmarks and other "wasteful" projects. To put this argument succinctly: greater transparency will yield greater accountability. Most observers agree that in order for a public database of federal awards to provide maximum transparency, it must encompass as broad a range of financial assistance categories as possible. The database proposed by S. 2590 is generally considered to provide substantial transparency, since it covers all forms of federal financial assistance —

³¹ U.S. Government Accountability Office, *Rural Economic Development: More Assurance Is Needed that Grant Funding Is Accurately Reported*, GAO-06-294, Feb. 24, 2006, pp. 23-34.

³² Telephone conversation between the author and Jerry Keffer, Chief of the Federal Programs Branch U.S. Census Bureau, Aug. 17, 2006.

including contracts, which are excluded under H.R. 5060. The database proposed by S. 2590 also provides transparency by including information on subcontractors and subgrantees, thus allowing the public to track the flow of federal funds down to the level of the ultimate recipient.

However, even a database of such breadth and depth is only as useful as the quality of the information that populates it. A number of observers have cautioned that a database of federal assistance relying primarily on information from FAADS and FPDS would be of limited value. Both government officials and knowledgeable members of the public describe significant weaknesses in FAADS and FPDS — such as incomplete and inaccurate information — that cannot be quickly corrected. Moreover, some observers point out that it is unclear how earmarks would be consistently identified in the new public database, because such information is not captured as a separate, searchable category by either FAADS or FPDS. These observers suggest that substantial changes in the collection, reporting, and verification of information relating to federal assistance awards would likely be necessary before FAADS and FPDS could be considered reliable sources of information. As one commentator put it, it would be “an embarrassment” to the government to launch a public website that drew on information from these databases before improvements were made.³³

Another point of view suggests that FAADS and FPDS do not need to be error-free in order to help accomplish the bill’s objectives. Even with gaps in the data, a publicly accessible database on federal financial assistance may constrain funding for earmarks and other “wasteful” projects if government officials are concerned those awards *might* be in the database. From this perspective, it could be useful to weigh the value of launching the public website by the bill’s deadline — even with imperfect data — so as to exert pressure on government officials sooner, against delaying implementation of the new public website until the quality of the data it provides is enhanced.

³³ Ibid.

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