

# House Committees Release Guidance for Transportation Earmarks

April 8, 2021

The House Committee on Appropriations and Committee on Transportation and Infrastructure have separately announced that individual Members may request funding for specific transportation projects. This ends an effective [ban on earmarks](#) that has been in force in the House since 2011. This Insight summarizes the new rules applicable to Member-designated transportation projects and points out certain matters that appear to remain unclear.

A congressional designation, the formal term for an [earmark](#), is a provision in a law or report language that has four basic attributes. It

- is included at the request of a Member, Delegate, Commissioner, or Senator;
- recommends a specific amount of discretionary budget authority, credit authority, or other budget authority;
- is for an identifiable entity or targeted to a state, locality, or congressional district; and
- is not awarded through a statutory or administrative formula-driven or competitive award process.

Earmarks in transportation appropriations bills and surface transportation authorizations have some differences that Member offices should be aware of as they organize, select, and advance their earmark requests. Appropriations bills occur annually, so Members could have opportunities to submit earmark requests each year. Surface transportation bills typically authorize spending for five or six years, so earmarking opportunities occur less often.

## Transportation Appropriations Community Project Funding

In a [February 26, 2021, press release](#), the House Appropriations Committee announced that for FY2022, Members may submit up to 10 requests for Community Project Funding across all the appropriations bills. The total amount available for designation is limited to 1% of discretionary spending. In addition to requiring adherence to the existing accountability and transparency standards under House Rules XXI and XXIII, the committee is imposing other [requirements](#), including the following:

- all requests submitted must also be posted on the Member's website;

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- Members must certify that they and their immediate family members have no financial interest in their requested projects;
- project funding may not be directed to for-profit grantees; and
- the Government Accountability Office is to audit a sample of enacted project funding.

On March 10, 2021, Representative David E. Price, Chairman of the House Appropriations Subcommittee on Transportation, Housing and Urban Development, and Related Agencies (THUD), released a [Dear Colleague letter](#) providing congressional staff with [guidance on submitting requests](#) for highway, transit, and airport projects and a link to the appropriations electronic online database. The database includes the option for Members to submit community projects for two transportation accounts: [Local Transportation Priorities](#) and the [Airport Improvement Program](#). The deadline for submissions is 6:00 p.m., April 30, 2021.

Local Transportation Priorities must be

- a capital project or planning or design for a specific capital project;
- supported by the state or local government that would administer the project, such as by inclusion in a Statewide Transportation Improvement Program ([STIP](#)) or metropolitan Transportation Improvement Program ([TIP](#)); and
- administered by public entities.

All airport requests must be

- eligible under 49 U.S.C. §§47100-47175 and under Federal Aviation Administration [policy and guidance](#);
- broadly supported by local stakeholders, including residents, businesses, and elected officials; and
- administered by an airport and/or airport sponsor.

## Member-Designated Surface Transportation Projects

On March 3, 2021, the House Committee on Transportation and Infrastructure (T&I) announced in a [Dear Colleague letter](#) its intent to advance surface transportation authorization legislation in the spring. The announcement included a statement of intent to “provide an opportunity for Members to submit requests for highway and transit project designations.” A second [Dear Colleague letter](#) on March 23, 2021, provided more [detailed instruction on how to submit requests](#). The letter announced that the committee would formally begin accepting requests April 1, 2021. Submissions are due by [Friday April 23, 2021, at 6:00 p.m.](#)

To request a designation, a Member must provide

- documentation that the project is on the relevant STIP, TIP, or tribal or territorial transportation improvement program;
  - sources of the funding for the full cost of the project beyond the requested amount;
  - letter(s) of support from the state department of transportation, local government, transit agency, or other nonfederal sponsor;
  - a description of the process to assure the opportunity for public comment on the project;
  - the current project phase (planning, final design, construction, etc.);
  - the current status of environmental review;
  - information about previous federal funding for the project; and
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- certification that the Member and immediate family members do not have a financial interest in the project. See [Directions for Member Certifications](#).
- All submissions must be made via the committee's electronic submission database and be simultaneously posted to the Member's official website.

## Potential Uncertainties

The new earmarking policies effective in the House, as described in the Dear Colleague letters referenced above, leave a number of potential uncertainties.

One is the extent of transportation earmarking in the House. The T&I Committee's procedures concerning Member-designated projects pertain only to highway and transit projects addressed in surface transportation reauthorization legislation. The committee has made no statements concerning earmarks of other surface transportation funds likely to be included in a reauthorization bill for purposes such as passenger rail. It has not set an upper limit on the share of total reauthorization funding that may be earmarked. Nor has the committee stated whether a similar earmark policy will apply to separate infrastructure legislation.

The relationship between House Appropriations Committee earmarks and T&I Committee earmarks remains unclear. In the past, language in [appropriations acts](#) overrode language in a surface transportation authorization act to provide earmarks. Announcements to date have not stated whether House appropriators will provide funding for transportation earmarks beyond that included in authorization acts, or whether they will earmark funding previously authorized by Congress. The extent to which the Appropriations Committee is willing to override authorization acts is particularly relevant to transportation programs other than those involving surface transportation; federal aviation programs, for example, are authorized through FY2023, but nonetheless require an annual appropriation.

To date, CRS is unaware of any statements made by Senate committees with jurisdiction over transportation issues about Member-designated projects. It is uncertain at this point how a House-passed surface transportation bill containing earmarks would be received in the Senate.

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