

FY 2023 Earmark Repurposing Process

This guidance describes the steps necessary to implement the statutory requirements to request earmarks to be repurposed. The address for FHWA's Earmark Repurposing website is <http://www.fhwa.dot.gov/cfo/earmarkrepurposing/>. Questions should be submitted to the "Repurposed Earmarks" mailbox (RepurposedEarmarks@dot.gov).

REPURPOSING PROCESS

1. If the funds are not allocated in the Fiscal Management Information System (FMIS), then a written request should first be made by the State to the FHWA division office. A Demo ID should also be requested for these funds and should be included on the repurposing form. The FHWA division office will send the request to the appropriate FHWA program office to allocate the funds following the normal process. The request should note that the funds will be used for repurposing and a Demo ID is needed. This process may take several days which should be included in the timeline to meet the August 25, 2023 or September 8, 2023, deadline and should be received before August redistribution submittals; States should account for this when prioritizing the preparation of repurposing requests.

Once the funds are allocated in FMIS and a Demo ID assigned, the State may continue to step 2 of this process.

2. The State submits a request to repurpose eligible earmarks to the FHWA division office for concurrence utilizing the modified transfer form (FHWA-1575 (ERP 2023)). An example form is attached. **A separate transfer form should be submitted for each Demo ID to be repurposed.** The left side of the form contains the information on the earmark (i.e., the Demo ID) to be repurposed. The right side of the form provides the information needed to identify the new project(s) and the amount of funds for each project.

When submitting repurposing requests, States should use a file naming convention for the transfer forms that includes the Demo ID, whether the request is new or a revision, and the date of the request (Demo ID – [new/revision] _XX-XX-2023).

The submission must contain sufficient information to demonstrate that each requested earmark is eligible for repurposing and each new project meets the requirements of the Repurposing Provision (section 124 of division L, title I, of Public Law 117-328). Below are specific requirements for completing the modified transfer form:

- a. The top portion of the modified transfer form includes:
 - i. The requesting State or territory;
 - ii. contact information for the transfer request;

- iii. tracking numbers (States should assign their own tracking number as shown in the sample transfer forms to each request to make it easier to identify during review and processing); and
 - iv. Demo ID for the earmark that the State is requesting to repurpose. A valid Demo ID is required on all transfer forms.
- b. The left side of the modified transfer form should include information concerning the original earmark, including:
 - i. The name of the earmark as provided in the applicable legislation or report or as provided in FMIS Demo ID information;
 - ii. identify the specific legislation or report if not identified in FMIS. The Public Law number, section, and subsection should be noted for each fund that is listed;
 - iii. the program code of the funding to be repurposed; and
 - iv. the amount to be transferred from the earmark. This should be the full unobligated balance for the earmark as of the date of the repurposing request.
- c. The right side of the modified transfer form should include the new project descriptions that comply with the statutory requirement, including:
 - i. The location and scope of work. It should demonstrate that the funding will be obligated for an eligible STBG (for States) or THP (for territories) project. It may be necessary to provide more detail in the comments box or an attachment;
 - ii. repurposed program codes will be selected based on the original program code for the earmark funds (see Program Code Crosswalk on the repurposing website) and obligation authority type to be used;
 - iii. obligation authority (OA) type (select via drop-down box); and
 - iv. the amount of funds being repurposed for this project description. The total amount should match the unobligated balance of the earmark.
- d. Include the following in the “Comments” box of the modified transfer form:
 - i. Describe how the project qualifies if 10 percent or more of the funds have been previously obligated.
 - ii. FHWA will presume that the maximum amount of applicable obligation limitation available for the funds will be repurposed and transferred with the funds. If it is desired to transfer less obligation limitation, indicate this in the Comments. This is most important when the earmark uses a shared type (a “bucket”) of obligation limitation. **Under the annual appropriations act in effect at the time of obligation, funds subject to**

limitation in excess of the amount available will require the use of annual formula obligation limitation at the time of obligation.

- e. The State should certify the earmark is eligible for repurposing and will be obligated for the identified purposes as required by the Repurposing Provision by marking the “YES” in the certification box. The State should sign the form and submit it to the FHWA division office. The State should also submit a text readable (e.g., MS Excel) version of the form.
3. The Division Administrator (DA) or, if designated, the Deputy Division Administrator (DDA) or the Chief Operating Officer (COO), will either approve the transfer request form and submit it to the “FHWA Transfers” mailbox (FHWA_Transfers@dot.gov) or reject the transfer request form and notify the State. The DA may delegate this authority only to the DDA or COO. The DA’s approval represents the FHWA’s concurrence on eligibility of each earmark requested for repurposing and the requirements for project selection. The DA is responsible for confirming the following:
 - a. The earmark is less than 10 percent obligated as of October 1, 2022, or all related projects that used the earmarked funds are final vouchered and closed.
 - b. The new project is eligible under the Surface Transportation Block Grant Program (STBG) (23 U.S.C. 133(b)), or Territorial and Puerto Rico Highway Program (THP) (23 U.S.C. 165) and located within 25 miles of the earmark description in the same State or Territory.
 - c. Obligation limitation available is properly identified, if applicable.

The FHWA division office is also responsible for verifying the amount of funds available for repurposing. The total unobligated balance of applicable funds must be checked. The balance can be checked in FMIS on either the M58A or W10A report. The N25A is another resource but may show a “demo” project (a type of earmark in the system) with an unobligated balance of funds but those funds may have been used on another demo when allowable in certain situations, causing a negative unobligated balance on the other demo. Only the net balance of the projects is available. If funds have not been allocated in FMIS, the repurposing request cannot be submitted.

The email to the FHWA Transfers mailbox should include the following information in the subject line: that it is for FY 2023 earmark repurposing, the name of the State, and the Demo IDs. If a correction is necessary, that must be clearly identified in the subject of the email along with the State and Demo ID.

4. The FHWA Office of the Chief Financial Officer (HCF) will evaluate the request and verify the amount of funds and obligation limitation, if applicable, available to transfer with the applicable earmark, dependent on its original obligation limitation. The demo description will be revised in FMIS to reflect “Repurposing” and one or more program codes will be used to re-allocate the funds for the new description.

The HCF, in conjunction with the appropriate program office, will verify that the earmark meets the definition of “earmarked amount” including that it was identified in a prior law, report, or joint explanatory statement, which was authorized to be appropriated or appropriated on or before September 30, 2011.

When complete, HCF will notify the FHWA division office official mailbox and submitter that the transfer is processed, and the funds may be obligated to the projects. Once the division office is notified that a transfer has been processed, the division office should review and verify the accuracy of the transfer. If discrepancies are identified, the division office should promptly inform HCF.

ANNUAL REPORT

The FHWA will facilitate the annual reporting required by the States in the Repurposing Provision. The HCF will consolidate the list of repurposed projects received during the year. The timeline for HCF to provide the annual list of projects to the FHWA division offices to then be provided to the States will be determined and communicated to the division offices and States at a later date.

The State should provide a letter to the FHWA division office confirming the list of projects and certifying that the earmarks were eligible for repurposing and the projects identified are within 25 miles of the earmark location within the State and will be obligated for eligible purposes as required in the Repurposing Provision. The State should attach the list of projects to the letter. The timeline for the FHWA division office to provide the State’s certification to the “Repurposed Earmarks” mailbox will be determined and communicated to the division offices and States at a later date.

The HCF will consolidate the reports for the required annual report to Congress.

OBLIGATIONS

The State should obligate the funds in FMIS for the eligible projects as identified on the modified transfer form. The State has until the end of FY 2026 to establish project agreements and make the obligations for earmarks repurposed in the 2023 process pursuant to the Repurposing Provisions. Note, this does not change the availability period for previously repurposed earmarks. The project title and description should clearly reflect the purpose of the project as identified on the modified transfer form.

If transfers to Federal Lands or other agencies are desired, the repurpose transfer process should be followed first. Then, a request to transfer the repurposed funding to Federal Lands or another agency should be submitted following the normal process after the funds are repurposed.

When the funds are obligated on a project agreement in FMIS, the FHWA division office must ensure the project description clearly reflects the use of the funds for the new project and is

consistent with the repurpose request on the modified transfer form. The project should use the associated demo ID.

If an obligated project is completed and excess funds are deobligated, the unobligated funds may be used only on another project from the same earmark identified on the modified transfer request form submitted before September 8, 2023; based on the definition of “earmarked amount” in the Repurposing Provision, once funds are repurposed for a specific project, the funds may not be changed to a different project that was not on the repurposing request.