



FINDINGS FOR CONSIDERATION IN THE MANAGEMENT OF CONGRESSIONAL EARMARKS



Drinking water facility. (EPA photo)

Purpose:

We performed this review to highlight prior audit findings about the U.S. Environmental Protection Agency's administration and oversight of congressional earmarks to inform the Agency's management of earmarks in the fiscal year 2022 budget. The project number for this review is [OA-FY22-0147](#).

This review supports the following EPA mission-related efforts:

- *Compliance with the law.*
- *Operating efficiently and effectively.*

This review addresses these top EPA management challenges:

- *Managing increased investment in infrastructure.*
- *Managing business operations and resources.*

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Full list of [EPA OIG reports](#).

Overview

In the ten years prior to 2022, the U.S. Environmental Protection Agency did not receive any congressional earmarks, which are appropriated funds designated by Congress to be spent on a particular project. The EPA's fiscal year 2022 appropriations included almost \$860 million in earmarks. The EPA Office of Inspector General [initiated](#) this review to highlight prior audit findings about the EPA's administration and oversight of congressional earmarks, also known as congressionally directed spending, to inform the Agency's management of earmarks in the fiscal year 2022 budget. Since we initiated our review, the EPA received additional earmarks of over \$1.5 billion in the fiscal year 2023 appropriations.

This project is not an audit or evaluation but a review of prior OIG reports and a summary of our findings. The findings highlighted in this report may help the Agency administer and oversee current and future congressional earmarks.

Background

From 2006 through 2015, the EPA OIG reviewed the EPA's management and oversight of earmarks in four audit reports and made recommendations for improvement in three of those four audit reports. In 2011, Congress imposed a moratorium on earmarks, which it subsequently lifted in 2021.

In the fiscal year 2022 consolidated appropriations law, Congress directed the EPA to administer and oversee 491 earmarks totaling \$859.3 million, as shown in Figure 1 on the next page. Ninety-eight percent of these earmarks were for water, wastewater, and storm water infrastructure, and for water quality protection projects. The remaining earmarks were for feasibility studies, public health and environmental research, wastewater infrastructure assessment, an emission study, and remediation and construction projects. Forty-two states and one U.S. territory received EPA earmarks. The fiscal year 2022 consolidated appropriations law required earmark recipients to contribute no less than 20 percent of the cost of the project or be approved for a waiver.

Responsible Offices

The Office of Mission Support is one of the offices responsible for the Agency's monitoring of congressional earmarks. The Office of Grants and Debarment, which is within the Office of Mission Support, monitors the Agency's grant awards. This includes grants funded by earmarks, which are generally

Figure 1: Fiscal year 2022 EPA earmarks

- 491 earmarked projects
- \$859.3 million
- 98 percent for water and wastewater infrastructure projects
- For projects in all ten EPA regions, including 42 states and one U.S. territory

EPA earmarks (fiscal year 2022 appropriations)



Source: OIG summary of the EPA’s fiscal year 2022 appropriations. (EPA OIG image)

Figure 2: EPA OIG reports reviewed

Year issued	Report number and title
2006	2006-P-00037 , <i>EPA Needs to Emphasize Management of Earmark Grants</i>
2007	2007-P-00024 , <i>Number of and Cost to Award and Manage EPA Earmark Grants, and the Grants’ Impact on the Agency’s Mission</i>
2010	10-P-0081 , <i>EPA Needs Procedures to Address Delayed Earmark Projects</i>
2015	15-P-0299 , <i>Unused Earmark Funds for Water Projects Totaling \$6.2 Million Could Be Put to Better Use</i>

Source: EPA OIG image.

disbursed like other grants. The Office of Grants and Debarment provides cradle-to-grave administrative management of all headquarters-administered grants, loans, cooperative agreements, fellowships, interagency agreements, and the Agency’s Suspension and Debarment program. The EPA regional offices are responsible for awarding grants and monitoring the projects receiving these funds.

Previously, the Office of Wastewater Management under the Office of Water monitored, oversaw, and reported on water infrastructure grants funded by congressional earmarks. The Office of Wastewater Management also worked with the regional offices to manage these grants and was responsible for implementing some of the OIG recommendations issued in two of the four prior OIG audit reports that we discuss in this report. The Office of Wastewater Management supports the Clean Water Act by promoting effective and responsible water use, wastewater treatment, disposal and management, and by encouraging the protection and restoration of watersheds.

Scope and Methodology

As shown in Figure 2, we reviewed four OIG reports related to the EPA’s management of congressional earmarks. The reports cover related EPA activities from 1998 through 2015, OIG-identified deficiencies, and OIG recommendations for improvement. Appendix A details our scope and methodology.

What We Found

From our review of prior OIG reports, we identified three areas for improvement that the EPA should consider as it administers and oversees congressional earmarks:

- Ensure grant work plans adhere to EPA policies and align with strategic goals.
- Ensure policies and procedures are in place to address the timely award and use of earmarked funds.
- Ensure compliance with grant terms and conditions.

In the following sections, we provide related examples from prior audit findings.

Ensure Grant Work Plans Adhere to EPA Policies and Align with Strategic Goals

In two reports, the OIG identified challenges related to work plans. A work plan identifies how and when a grantee will use its funds and is the basis for the EPA’s grantee performance management and evaluation.

[EPA OIG Report No. 2006-P-00037, EPA Needs to Emphasize Management of Earmark Grants](#)

In the 2006 report, the OIG reviewed 17 prior audit and investigation work products from 1998 to 2006 to assess whether the EPA should take additional actions to improve the overall management of earmarked grants. The OIG found grants with incomplete work plans in four of 17 audits and investigations. These included grants with work plans that did not

sufficiently outline the work needed to accomplish the project objectives. Factors that contributed to the EPA’s approval of the incomplete work plans included EPA project officers not performing required duties, such as conducting cost reviews to determine whether costs were reasonable and assessing the technical merits of the project.

EPA OIG Report No. 2007-P-00024, Number of and Cost to Award and Manage EPA Earmark Grants, and the Grants’ Impact on the Agency’s Mission

In the 2007 report, the OIG reviewed 86 work plans from 444 earmark grants issued in 2005 and 2006. The OIG determined that 95 percent of the earmark grant projects promote the EPA’s mission. However, four projects, totaling \$1.29 million in EPA grant funds, did not demonstrate how they would contribute to the Agency’s strategic plan, mission, and goals. For example, one of the four work plans did not identify specific environmental problems the grant funds would address. In response to the OIG finding, the EPA worked with the local government to improve the quality of the work plan.

Ensure Policies and Procedures are in Place to Address the Timely Award and Use of Earmarked Funds

In two reports, the OIG identified concerns related to the timely award and use of earmarked funds.

EPA OIG Report No. 10-P-0081, EPA Needs Procedures to Address Delayed Earmark Projects

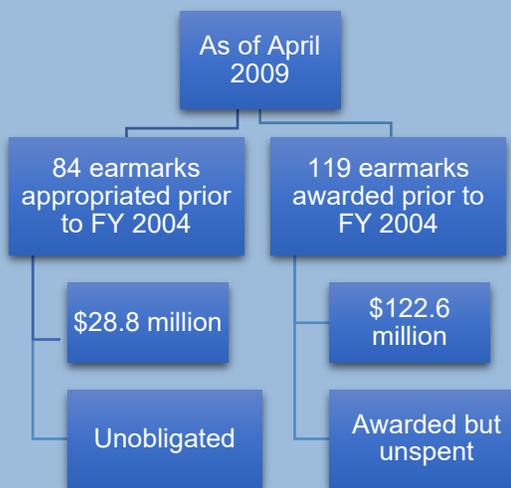
In the 2010 report, the OIG noted that the EPA needed a policy that specified time limits and procedures for addressing earmarks that remained unobligated or steps to take when projects were delayed. As shown in Figure 3, this resulted in unobligated and unspent funds, including:

- \$28.8 million in earmarked funds that were unobligated five years after congressional appropriation.
- \$122.6 million in earmarked funds that remained unspent five years after award.

The 2010 report noted that funds were not obligated because, frequently, earmark recipients either could not provide the matching funds required for the grant or the projects were complex and required extensive planning. At the time, the OIG determined that the EPA did not have a policy that clearly identified when the EPA regions should take action on unobligated earmarked funds. The OIG also identified instances in which some designated recipients did not apply for the funds and the funds could have been considered for other purposes. Of the 22 unobligated earmarks reviewed in the 2010 report, the EPA only took steps to put the funds to better use in two cases. The OIG concluded that the EPA needed a policy outlining what actions EPA staff could take when communities were not able to start their projects in a timely manner.

The 2010 report also noted that millions of dollars of grant funds were not spent because of project delays. The OIG identified the following factors that

Figure 3: 2010 OIG report finding: Earmarked funds that remained unobligated and unspent after five years



Source: EPA OIG image.

Figure 4: 2015 OIG report finding: Earmarked funds that could have been put to better use*



*Funds were from Regions 4 and 6
Source: EPA OIG image.

Figure 5: 2015 OIG report finding: Explanations for delayed grant progression



Note: As of 2015, funds were awarded in fiscal year 2009 and earlier.

Source: EPA OIG image.

contributed to delayed projects: recipient changes to the original work plans and problems complying with non-EPA regulatory requirements. The OIG determined that at the time, the EPA had limited guidance on how to deal with delays in spending earmarked grant funds, and lacked the policies and procedures needed to provide reasonable assurance that funds would be spent in a timely manner. The Agency agreed with all the recommendations in the 2010 report, which resulted in the creation of the *Management Plan for the Timely Award and Completion of Special Appropriations Act Project Grants* in October 2011. Following the issuance of the management plan, unobligated funds and unliquidated obligations significantly declined in both number and dollar amount. For example, the number of unobligated grants decreased from 866 totaling \$375 million in 2010, to 76 totaling \$32.2 million in 2015.

EPA OIG Report No. 15-P-0299, Unused Earmark Funds for Water Projects Totaling \$6.2 Million Could Be Put to Better Use

In the 2015 report, the OIG noted that 76 grants worth \$32.2 million remained unobligated and all missed the programmatic goal to award grants within three years of appropriation. The report focused on Regions 4 and 6, which had 41 of the 76 grants totaling \$14 million. These regions had the largest amount of unliquidated obligations and the greatest number of unobligated funds. As outlined in Figure 4, these funds included \$3.4 million that remained unobligated and missed the programmatic goal to award grants within three years of appropriation.

The OIG found that, per the management plan, regions classified unobligated funds as no-progress when they did not receive a grant application—or received an unacceptable grant application—and an unreasonable amount of time had passed. Once classified as no-progress, the regions could start the process to return the funds to the U.S. Department of the Treasury. Since only Congress can rescind or reassign earmarked funds, the regions have the option to return funds associated with no-progress grants to EPA headquarters and request congressional rescission of the earmarked funds.

The OIG found that taking actions on unobligated earmarks was not a priority for the regions at the time. Staff hesitated to send no-progress letters to recipients and instead waited for recipients to say funds were not needed. The OIG determined that, had the regions been more proactive in the management of funds and sent no-progress letters to recipients, \$3.4 million in unobligated funds could have been—with congressional rescission—returned to the Treasury Department and put to better use. The OIG recommended the development and implementation of a plan to expedite the reduction of unobligated funds.

Further, the OIG found that 12 grants totaling \$6.68 million had been obligated more than five years prior but had no financial activity. These grants were from Regions 2, 4, 6, 8, and 9. The OIG reviewed six of the 12 grants, totaling \$4.1 million, from Regions 4 and 6 to determine whether the grants could have been identified as no-progress grants. The regions were considering identifying two of the six grants as no-progress. As shown in Figure 5, the other four grants were delayed for various reasons.

The OIG found that if a recipient had indicated that it was interested in a grant, Regions 4 and 6 hesitated to identify the grant as no-progress. The regions would consider the grant as making progress if the recipient had communicated with the region, identified a project, or developed a plan, even if there was no financial activity. Therefore, the OIG determined that the Region 4 and Region 6 standards for when a grant was making reasonable or sufficient progress allowed grant funds to remain unliquidated. As a result, the OIG determined that nearly \$2.8 million could have been put to better use if grants that had no financial activity were deobligated and—with congressional rescission—returned to the U.S. Treasury, as shown in Figure 4. In the 2015 report, the OIG recommended that the EPA develop guidance for, and communicate guidance to, the EPA regions to clarify how to determine whether a grant is making sufficient progress and the time period for a grant to have no financial activity before it is identified as no-progress.

Ensure Compliance with Grant Terms and Conditions

EPA OIG Report No. 2006-P-00037, EPA Needs to Emphasize Management of Earmark Grants

In the 2006 report, which covered audits and investigations from 1998 through 2006, the OIG identified several instances in which grant recipients did not comply with grant terms and conditions. The OIG concluded that the EPA's insufficient oversight of earmark grants contributed to grant recipient mismanagement. This resulted in the OIG questioning nearly \$73 million in federal grant funding. Further, the report indicated that Agency policies did not give specific steps for EPA staff to address concerns with award and project oversight. The OIG found that:

- In four of 17 audits and investigations, there was noncompliance with applicable laws and regulations. For example, one grant recipient did not meet federal matching requirements and another improperly used grants and earmarked funds.
- In five of 17 audits and investigations, grant recipients were not in compliance with their terms and conditions. The OIG gave examples of noncompliance issues from two grantees. They did not:
 - Competitively procure contractual services.
 - Require cost or pricing analyses.
 - Separately identify and accumulate the costs for all direct activities.
 - Account for program income generated by the activities funded by the EPA agreements.
 - Maintain an adequate labor distribution system.
 - Submit the project's final report.
- In ten of 17 audits and investigations, recipients did not properly account for federal funds. The OIG noted issues with improper billing, incomplete accounting records, and improper federal reimbursements to the recipients.

- In four of the 17 audits and investigations, there were conflicts of interest between the grantee and the subcontracted entity. For example, after the grant award, an officer of the organization participated in the selection, award, and administration of a noncompetitive contract to a company in which a relative had a financial or other interest.

Conclusions

In the fiscal years 2022 and 2023 consolidated appropriations law, Congress directed the EPA to administer and oversee 1,224 earmarks totaling nearly \$2.36 billion. As the Agency awards these and future earmarks, it should consider the findings identified in prior EPA OIG reports regarding earmarks management to ensure that it efficiently and effectively administers earmarks, meets the earmarks' intended purpose, improves the environment, protects taxpayer dollars, and ensures public trust. Specifically, the Agency should ensure grant work plans adhere to EPA policies and align with strategic goals, ensure policies and procedures are in place to address the timely award and use of earmarked funds, and ensure grantee compliance with grant terms and conditions.

Scope and Methodology

We conducted this project from October 2022 to March 2023. We did not follow generally accepted government auditing standards or the Council of the Inspectors General on Integrity and Efficiency's *Quality Standards for Inspection and Evaluation*. However, we did follow the OIG's quality control procedures for ensuring that the information in this report is accurate and supported. Additionally, the *Quality Standards for Federal Offices of Inspector General* require that our work adheres to the highest ethical principles of integrity, objectivity, confidentiality, independence, and professional judgement, and we adhered to these principles in performing our work.

To answer our objective, we reviewed four OIG audit reports related to the EPA's management of congressional earmarks. The reports were issued from fiscal year 2006 through fiscal year 2015, as shown in Figure 2, and covered related EPA activities from 1998 through 2015. We reviewed the findings and recommendations in the four reports. We also reviewed the status of the issued recommendations in the Agency's audit tracking system. We summarized the reported findings and areas for improvement. We also collected earmark-specific data from the 2022 Consolidated Appropriations Act and the December 2022 Congressional Record (Senate) for the FY 2023 earmarks.

To obtain an understanding of the applicable criteria for grant management and oversight, we reviewed the following:

- Office of Management and Budget Circular No. A-123, *Management's Responsibility for Enterprise Risk Management and Internal Control*, dated July 15, 2016.
- U.S. Government Accountability Office's *Standards for Internal Control in the Federal Government*, dated September 2014.

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