



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF INSPECTOR GENERAL

The Inspector General

September 25, 2007

Memorandum

TO: Ray Simon
Deputy Secretary

FROM: John P. Higgins, Jr. /s/

SUBJECT: Final Inspection Report
Inspection of Active Congressional Earmarks in Fiscal Year 2005
Control Number ED-OIG/I13H0004

This final inspection report presents the results of our Inspection of the Department of Education's Active Congressional Earmarks in Fiscal Year (FY) 2005.

BACKGROUND

Congressional earmarks are funds provided by Congress for projects or programs where the congressional direction is included in bill or report language. The Department is required to ensure that recipients of earmark funds use them in accordance with congressional intent, and applicable laws and regulations.

Budget Service in the Office of Planning, Evaluation, and Policy Development (OPEPD) reviews congressional bills and report language and then provides a list of the earmarks to the appropriate Department program office. Budget Service works with the program offices and the Office of the General Counsel (OGC) to ensure that the intended recipients are located and the congressional language is clearly understood.

Once the program offices receive the list of earmarks from Budget Service, the offices assign individual earmarks to program staff. The intended earmark recipient must submit an application through the program office. Because congressional earmarks do not result from formal solicitations for proposals, the application process is non-competitive. The assigned program staff reviews the applications to ensure that the earmark funds are proposed to be used for the purpose stated by Congress in the legislation. Once the application meets the conditions set by Congress, the program office approves the application and the earmarks are funded. Program staff is responsible for monitoring these earmarks.

The two programs that administer the majority of congressional earmarks are the Fund for the Improvement of Postsecondary Education (FIPSE) within the Office of Postsecondary Education

(OPE) and the Fund for the Improvement of Education (FIE) within the Office of Innovation and Improvement (OII).

INSPECTION RESULTS

The objectives of our inspection were to determine the (1) total number and cost of congressional earmarks within the Department in FY 2005, including the cost of the earmark and related costs such as staff time and administration, (2) adequacy of the oversight conducted on congressional earmarks in FIPSE and FIE, and (3) overall impact of FIPSE and FIE congressional earmarks on advancing the primary mission and goals of the Department. We developed these objectives based on a request from Senator Tom Coburn, received by OIG on January 16, 2007.

Total Number and Cost

We identified 2,594 active earmarks¹ in FY 2005. The total amount drawn down by these earmark recipients during FY 2005 was \$369,655,366.

FY 2005 Active Earmarks by Office/Program

Office/Program	Number of Active Earmarks during FY 2005	Percentage of Total FY 2005 Active Earmarks	Total Drawn Down During FY 2005	Percentage of Total Drawdowns
FIE	1,234	47.57%	\$176,661,780	47.79%
FIPSE	1,202	46.34%	\$166,932,160	45.16%
Office of Special Education Programs (OSEP)	80	3.08%	\$9,461,960	2.56%
Rehabilitation Services Administration (RSA)	58	2.24%	\$6,213,964	1.68%
Office of Elementary and Secondary Education (OESE)	20	0.77%	\$10,385,502	2.81%
TOTAL	2,594	100%	\$369,655,366	100%

We determined that the total cost associated with administering active earmarks during FY 2005 was \$2,137,997. The cost includes but is not limited to pre-award activities, awarding, monitoring, close-out activities, and archiving. The total amount drawn down and the amount spent to administer active earmarks during FY 2005 was \$371,793,363.

¹ We use “active earmarks” to refer to earmarks that were open at some point during FY 2005 (opened either before or during FY 2005). Active does not mean that the recipients have been actively drawing down funds; it means only that the grants were not closed out.

Oversight

The Department experienced a significant increase in the number of congressional earmarks in FY 2005. In the two programs with the majority of earmarks, FIPSE and FIE, the number of earmarks increased 42.47 percent and the congressional appropriations related to earmarks rose 28.02 percent. Although the number increased significantly, Congress did not provide the Department with any additional funding for the costs associated with administering earmarks. In the Department's 2005 Management Challenges, OIG reported the Department's assertion that it does not have enough staff to administer and properly monitor the recipients of congressional earmarks.

To answer our second objective we concentrated our work on FIPSE and FIE, because, as shown in the chart above, active earmarks from FIPSE and FIE represented 93.91 percent of all active earmarks and 92.95 percent of the total drawdowns in FY 2005. The average amount of staff time spent on all activities related to administering earmarks (including pre-award activities, awarding, monitoring, close-out activities, and archiving) in FIPSE and FIE during FY 2005 was 21.10 hours per earmark for the entire fiscal year. We found that the approach toward monitoring earmarks for the two offices was not consistent.

The earmark coordinator for FIPSE during FY 2005 stated that FIPSE employees do not focus on monitoring earmarks, but they do review applications (including evaluation plans) closely and require final reports. He stated that OPE does not have the funds, staff, or encouragement to monitor earmarks and make site visits. He further stated that the focus of the office is on monitoring the regular, merit-based projects in FIPSE. Our review of a sample of FIPSE earmark files supported the coordinator's statements showing evidence of application review, but little evidence of ongoing monitoring. FIPSE offers an optional two-hour workshop to train earmark recipients on grant management. FIPSE's guidance for earmark recipients states that the program office's role in monitoring earmarks is limited to the review of progress and final reports. During FY 2005, FIPSE had 15 staff members working on 1,202 active earmarks; therefore staff was unable to dedicate significant time to each grantee. We determined that the average amount of staff time spent administering earmarks in FIPSE during FY 2005 was approximately 6 hours per earmark for the entire fiscal year.

The sample of earmark files that we reviewed from FIE showed more evidence of ongoing monitoring than the files from FIPSE. Some of the earmark files included e-mail communications between Department staff and grantees and documented phone conversations. Additionally, OII developed a Monitoring Handbook specifically for FIE earmarks, trained its staff on the specifics of the handbook, and communicated to its staff an expectation that earmarks are to be monitored. However, some FIE monitors were responsible for over 100 earmark projects during FY 2005, and therefore, were unable to dedicate significant time to each grantee. We determined that the average amount of staff time spent administering earmarks in FIE during FY 2005 was approximately 35 hours per earmark for the entire fiscal year.

Mission and Goals

To determine the overall impact of FIPSE and FIE congressional earmarks on advancing the primary mission and goals of the Department, we compared the earmark projects' stated goals

and objectives from our sample with the Department's goals and objectives as outlined in the Department's Strategic Plan for 2002-2007.²

The Strategic Plan describes how the Department intends to accomplish its mission. Using the goals and objectives in the Strategic Plan as our criteria, we are 90 percent confident that at least 82.7 percent (2,014 grants) of the 2,436 total active earmarks from FIPSE and FIE were aligned with the Department's goals and objectives.

While earmarks generally appear to be aligned with the Department's goals and objectives on an individual basis, they are not awarded on a competitive basis, and the Department is limited to evaluating whether the projects conform to the congressional language. The Department does not assess whether the earmark projects do or do not further the Department's mission. According to the Department, the diversity of the earmark projects assigned to the Department by Congress makes it difficult to measure the collective impact earmark projects have on the Department's mission.

Recommendation

We recommend that the Deputy Secretary develop a methodology to ensure that earmark recipients are held accountable for the Federal funds they receive.

DEPARTMENT COMMENTS

On August 2, 2007, we provided the Department with a copy of our draft report for comment. We received the Department's comments to the report on September 24, 2007. The Department generally concurred with the findings and recommendation of our report, but stated that the report did not fully recognize the efforts the Department has made in the area of earmarks. The Department's response also outlined five steps that the Department is taking in response to our recommendation. The response from the Department mainly focused on issues in our report related to FIPSE. It was not our intent to imply that the monitoring in FIE was adequate. The Department should ensure that all offices that administer earmarks are included in their corrective action plan. We have summarized the Department's comments and provided our responses below. The Department's response, in its entirety, is attached.

Department Comment

The Department stated that OPE has made significant efforts to ensure that earmark recipients are accountable for the Federal funds they receive. The Department stated that the report includes a statement from an OPE staff member that does not accurately reflect OPE's monitoring policies and practices, or OPE's focus on appropriate accountability.

OIG Response

The OPE staff member referenced in the report was the Earmark Coordinator for FIPSE during FY 2005. We were referred to him by the Deputy Director of FIPSE.

² We selected a random sample of 72 congressional earmarks from a total of 2,436 FIPSE and FIE earmark grants. We examined the full grant files for all 72 of the earmarks.

Department Comment

The Department stated that it takes the responsibility to monitor earmarks appropriately very seriously. The Department cited recent examples of aggressive monitoring and oversight of two OPE earmarks, which resulted in designating one grantee as a “high risk” grantee, and only allowing reimbursement payments to be made to the grantee when proper documentation of allowable expenditures was provided. The Department delayed the release of payments to the other earmark grantee until compliance issues were fully addressed.

OIG Response

Neither of the two earmark grants cited by the Department were included as part of our random sample of 72 earmarks from a total of 2,436 FIPSE and FIE earmark grants and therefore information related to the monitoring of these two earmark grants was not included in our report. One of the earmark grants cited by the Department was the subject of a prior OIG audit (ED-OIG/A09F0020).

Department Comment

The Department stated it appreciated that the report acknowledged the significant increase in the number of earmarks the Department received in 2005 without additional funding for the costs of administering earmarks. The Department stated that the report does not adequately characterize the workload of OPE staff that worked on the 1,202 earmarks nor does it convey the time that the staff devoted to work on earmarks. The Department further stated that the report does not convey that the monitoring of earmarks was in addition to staff responsibilities to review applications and to award and monitor grants made through the regular FIPSE competitive grant process.

OIG Response

The average staff time spent administering earmarks in FIPSE during FY 2005 was approximately 6 hours per earmark for the entire fiscal year based on the responses to our survey of FIPSE staff responsible for administering and monitoring earmarks during FY 2005. We recognize that the monitoring of earmarks was done in addition to staff responsibilities related to the regular FIPSE competitive grant process and have included a statement to that effect from the FIPSE earmark coordinator in the report. Additionally, during our fieldwork, the Deputy Director of FIPSE informed us that FIPSE did not have a competition for the comprehensive program in 2005 and as a result staff would not have spent much time making new awards for the comprehensive program. As a result of the Department’s comment we have clarified that the “100” projects referenced in the OII section of the report referred to earmark projects.

Department Comment

The Department stated that the report does not recognize the significant efforts that OPE made to provide support and assistance to earmark grantees at the early stages of the grant process. The Department stated that in addition to providing earmark grantees written materials on grantee responsibilities and requirements, OPE holds an orientation workshop each year for in-person grant management training and hosts a Web page with information specifically for earmark grantees.

OIG Response

We recognize these efforts to provide support and assistance to earmark grantees and have added language to the report to this effect. We would add that it is important to have ongoing monitoring to ensure that grantees are complying with the requirements and responsibilities presented to them in the early stages of the grant process.

Department Comment

The Department stated it was somewhat puzzled by the report's conclusion that 83 percent of the earmarks were aligned with the Department's primary mission and goals and the statement that the Department does not assess whether the earmarks further the mission of the Department. The Department noted that it has little discretion in determining whether to fund an earmark or whether it should require that an earmark be aligned with the Department's goals and objectives. The Department stated that it is not clear what purpose such an assessment would serve and what the benefit would be to advancing the Department's goals and objectives. The Department also stated that it believes earmarks are an inefficient use of taxpayer dollars and that, by their very nature, earmarks limit the ability of the Department to direct funds where they are most needed to address the Department's goals, objectives, and priorities and where the funds have the greatest potential for achieving successful outcomes.

OIG Response

We reported that earmarks are not awarded on a competitive basis and that the Department is limited to evaluating whether the projects conform to the congressional language. The Department's policy position that earmarks are an inefficient use of taxpayer dollars does not alleviate the responsibility of the Department to hold grantees accountable. We did not recommend that the Department perform such an assessment of earmarks in our report. Our only recommendation is that the Department develop a methodology to ensure that earmark recipients are held accountable for the Federal funds they receive.

OBJECTIVES, SCOPE, AND METHODOLOGY

The objectives of our inspection were to determine the (1) total number and cost of congressional earmarks within the Department in FY 2005, including the cost of the earmark and related costs such as staff time and administration, (2) adequacy of the oversight conducted on congressional earmarks in FIPSE and FIE, and (3) overall impact of FIPSE and FIE congressional earmarks on advancing the primary mission and goals of the Department.

We began our fieldwork on February 13, 2007. We interviewed Department staff in OII, OPE, OPEPD, and OGC.

We defined earmarks as specifically identified revenues, often supplemented by other financing sources, which remain available over time for designated activities, benefits, or purposes.

We requested that the Department provide us an electronic listing of congressional earmarks that would include:

- All congressional earmarks awarded in FY 2005,
- All other congressional earmarks active in FY 2005,
- Award date for each earmark,
- Amount originally awarded for each earmark, and
- Amount dispersed during FY 2005 for each earmark.

We attempted to verify the listing against the appropriations language from FY 2005 and found that the earmarks listed under “Rehabilitation Services and Disability Research” were missing from the Department’s list. The Department revised its original listing to include these earmarks. We were then able to verify the revised listing as complete.

To determine staff time and administration costs associated with congressional earmarks during FY 2005, we requested that RSA, OSEP, FIE, FIPSE, and OESE provide us a listing of all individuals who were involved with all congressional earmarks that were active in FY 2005, including earmarks that were awarded in FY 2005 and earmarks from past years that were still active during FY 2005.

We conducted a survey of these individuals requesting that they provide us with the percentage of their time that they spent working on congressional earmarks in FY 2005 and their pay grade and series at the beginning of FY 2005 (October 1, 2004). We asked that their responses include time spent on activities including but not limited to pre-award, awarding, monitoring, administering, close-out, and archiving. We had a response rate of 71.94 percent. For employees who did not respond or were no longer with the Department, we estimated time spent based on the averaged responses for their respective program offices.

We selected a random sample of 72 congressional earmarks from a total of 2,436 FIPSE and FIE earmark grants and compared the earmark projects’ stated goals and objectives with the Department’s goals and objectives as outlined in the U.S. Department of Education’s Strategic Plan for 2002-2007. We examined the full grant files for all 72 of the earmarks. Based on our review of earmark recipients’ stated goals and objectives, we concluded that eight of the earmarks in our sample did not align with at least one of the goals or objectives from the Department’s Strategic Plan for 2002-2007.

Our inspection was performed in accordance with the *2005 President’s Council on Integrity and Efficiency Quality Standards for Inspections* appropriate to the scope of the inspection described above.

ADMINISTRATIVE MATTERS

An electronic copy of this final inspection report has been provided to your Audit Liaison Officer. We received your comments, which generally concurred with our findings and recommendation.

Corrective actions proposed (resolution phase) and implemented (closure phase) by your offices will be monitored and tracked through the Department’s Audit Accountability and Resolution

Tracking System (AARTS). Department policy requires that you enter your final corrective action plan (CAP) for our review in the automated system within 30 days of the issuance of this report.

In accordance with the Inspector General Act of 1978, as amended, the Office of Inspector General is required to report to Congress twice a year on the audits that remain unresolved after six months from the date of issuance.

In accordance with the Freedom of Information Act (5 U.S.C. §552), reports issued by the Office of Inspector General are available to members of the press and general public to the extent information contained therein is not subject to exemptions in the Act.

Electronic cc: Morgan Brown, Assistant Deputy Secretary, OII
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UNITED STATES DEPARTMENT OF EDUCATION

THE DEPUTY SECRETARY

September 24, 2007

Honorable John P. Higgins, Jr.
Inspector General
Department of Education
Washington, D.C. 20202

Dear Mr. Higgins:

The purpose of this letter is to provide comments on the Draft Inspection Report (Draft Report) entitled *Inspection of Active Congressional Earmarks in Fiscal Year 2005*, ED-OIG/I13-H0004 (August 2, 2007). I would like to thank you and your staff for your work in compiling this report.

The Department agrees that monitoring grants, including earmarks, is an important responsibility and, in recent years, has taken a number of steps to strengthen its monitoring of grants to help ensure that grant funds are spent in accordance with all applicable requirements. However, while we thus generally concur with the findings and the recommendation in the Draft Report, the report does not fully recognize the efforts that the Department has made in this area.

As discussed at the exit conference, for example, we believe that the Draft Report includes several statements that mischaracterize the monitoring of earmarks funded through the Fund for the Improvement of Postsecondary Education (FIPSE) program administered by the Office of Postsecondary Education (OPE). OPE has made significant efforts to ensure that earmark recipients are accountable for the Federal funds they receive. The Draft Report includes a statement from an OPE staff member that does not accurately reflect OPE's monitoring policies and practices, or OPE's focus on appropriate accountability.

As noted at the exit conference, OPE and the Department take very seriously the responsibility to monitor earmarks appropriately, as evidenced by the amount of technical assistance and guidance provided to earmark applicants by both OPE, with regard to FIPSE, and the Office of Innovation and Improvement (OII), with regard to the Fund for the Improvement of Education, to help ensure that funds are spent appropriately, and appropriate documentation is maintained by the grantee. The Department also provided recent examples of aggressive monitoring and oversight of two OPE earmarks, which resulted in designating one grantee as a "high risk" grantee, and only allowing reimbursement payments to be made to the grantee when proper documentation of allowable expenditures was provided. The Department delayed the release of payments to the other earmark grantee until compliance issues were fully addressed. There are other examples in OII's administration of earmarks.

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We appreciate that the Draft Report acknowledges the significant increase in the number of earmarks the Department received in 2005 without additional funding for the costs of administering the earmarks. As noted at the exit conference, however, we continue to believe that the Draft Report does not adequately characterize the workload of the OPE staff that worked on 1,202 earmarks, nor does it convey the time that the staff devoted to work on the earmarks. For example, it does not convey that the monitoring of these 1,202 earmarks was in addition to staff responsibilities to review applications, and to award and monitor grants made through the regular FIPSE competitive grant process. We believe a more accurate statement would be that OPE employees working on FIPSE earmarks in 2005 were responsible for monitoring an average of 160 grantees. We believe this statement more accurately reflects the responsibilities of OPE staff and is consistent with the statement in the report acknowledging that OII staff were not able to devote significant time to each grantee because they were responsible for monitoring over 100 projects.

Finally, while the Draft Report recognizes that OII developed a monitoring handbook specifically for earmarks, the report does not recognize the significant efforts that OPE made to provide support and assistance to earmark grantees at the early stages of the grant process. In addition to the excellent written materials on grantee responsibilities and requirements, including proper fiscal management, that OPE provides to these grantees, OPE also holds an orientation workshop each year for in-person grant management training and hosts a Web page with information specifically for earmark grantees. Such proactive guidance and technical assistance helps ensure that grantees understand the process from the beginning so that grantees implement the programs funded through earmarks in accordance with applicable requirements.

As a final note, we continue to be somewhat puzzled by the report's conclusion for the inspection's third objective, which was to determine the overall impact of the earmarks on advancing the Department's primary mission and goals. The report notes that 83% of the earmarks were aligned with the Department's goals and objectives, and states that the Department does not assess whether the earmarks further the mission of the Department. Since the Department has little discretion in determining whether to fund an earmark or whether it should require that an earmark be aligned with the Department's goals and objectives, it is not clear what purpose such an assessment would serve and what the benefit would be to advancing the Department's goals and objectives. We believe earmarks to be an inefficient use of taxpayer dollars. By their very nature, earmarks limit the ability of the Department to direct funds where they are most needed to address the Department's goals, objectives, and priorities, and where the funds would have the greatest potential for achieving successful outcomes.

In terms of the report's recommendation to develop a methodology to ensure that earmark recipients are accountable for the Federal funds they receive, the Department has already taken the following steps:

1. OII is updating and revising its monitoring handbook for earmarks and has shared the handbook with OPE. OPE is reviewing the handbook to determine if it is appropriate for OPE staff, and OII is examining guidance that OPE issues to earmark

grantees to determine whether OII's handbooks should be revised accordingly. Overall, the Department is considering whether it would be beneficial to develop a standard monitoring handbook for earmarks to be used across the Department.

2. OPE has a new Assistant Secretary who has made overseeing the work on FIPSE, including FIPSE earmarks, one of her priorities. Among other things, she is focusing on improving the coordination, monitoring, and evaluation of all OPE grant programs, including earmarks.

3. OPE is in the process of hiring additional staff to help increase its focus on monitoring and evaluation of grant programs, including earmarks.

4. OPE is increasing its emphasis on a risk assessment process for its grants, which will be part of its new electronic monitoring system. The risk assessment will identify grantees that need additional or different monitoring/supervision. OPE expects a new Grants Electronic Monitoring System (GEMS) to be fully operational by the end of 2007.

5. In conjunction with training on the new GEMS system, OPE will instruct staff on the monitoring process, including following up with grantees and better documenting its monitoring efforts. OPE will place an emphasis on ensuring that OPE staff monitor earmarks in the same manner as other grants.

Thank you again for the opportunity to review the Draft Report. I appreciate the care you have taken in preparing this draft and the courtesy shown by your staff in working with the Department.

Sincerely,

A handwritten signature in black ink that reads "Raymond Simon". The signature is written in a cursive style with a large, prominent "R" and "S".

Raymond Simon