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## CONGRESSIONAL DIRECTIVES Selected Agencies' Processes for Responding to Funding Instructions

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<http://www.gao.gov/new.items/d08209.pdf>

### Department of Defense

DOD Officials' Views on Trends and Impact of Congressional Directives

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We interviewed DOD officials who had responsibility for budgeting, financial management, and legislative issues related to congressional directives from six components. Some of the officials stated that they had only been in their positions for a short time and therefore could not comment on the trends and impact of directives on their budget and programs. However, others provided views on how congressional directives affect budget and program execution. Anecdotally, they offered the following views:

- According to OSD officials, they have not maintained data on whether the number of congressional directives has increased or decreased over time. However, two military service officials commented that in their view there has been an increase in the number of such directives.
- DOD officials from the six components we interviewed provided a range of views on how congressional directives affect budget and program execution. These views do not necessarily represent an official agency position on congressional directives. Among the views we heard were the following:
  - Congressional directives are viewed as tasks to be implemented and are opportunities to enhance their mission requirements through additional funding in areas that would not have been priority areas because of budget constraints.
  - Congressional directives can sometimes place restrictions on the ability to retire some programs and to invest in others. Restrictions have an effect on the budget because they require the components to support an activity that was not in the budget.
  - There has always been a feeling that the billions of dollars of congressional directives must come from somewhere, but it is not possible to determine whether any specific directive resulted in reducing funding for another program.
  - Congressional directives could tend to displace “core” programs, which according to a DOD official, are programs for which DOD has requested funding in its budget submission.
  - Additional time and effort are required to manage the increasing number of congressional directives.

- Program execution of congressional directives is delayed in some cases as efforts are made to identify congressional intent.
- The process for identifying the purposes and objectives of a congressional directive was significantly streamlined in the fiscal year 2008 defense appropriations bill, and it is now easier to determine the source of a directive.

## **Department of Energy**

DOE Officials' Views on Trends and Impact of Congressional Directives

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DOE officials stated that through fiscal year 2006 the number of congressional directives had increased, and that this growth limited the ability of certain program offices to develop and implement their strategic goals.

DOE program officials reported that implementing congressional directives imposed a high administrative burden. For example, many officials reported that it takes longer to process and award congressional directives because DOE personnel need to educate some recipients on DOE's processes, such as how to submit an application and comply with DOE's reporting requirements and the applicability of cost-sharing requirements. To help address this issue, EERE invites all recipients of congressional directives to a presentation at DOE headquarters for an overview of the process.

DOE officials varied in their views of the impact of congressional directives on program execution. For example, Office of Science officials reported that they received additional appropriations for their congressional directives, which made it hard to determine what the program impact has been. On the other hand, program officials from EERE and the Office of Electricity Delivery and Energy Reliability said that they were not appropriated additional dollars to fund congressional directives. These program officials told us that their ability to accomplish their strategic goals has been limited because congressional directives make up a large percentage of their budget and it is often difficult to align the outcomes of congressional directives with these goals.

## **Department of Transportation: Highways and Transit**

FHWA and FTA Officials' Views on Trends and Impact of Congressional Directives

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FHWA officials, as well as officials from the state departments of transportation with whom we spoke, stated that the number and value of directives, notably high-priority projects, increased substantially from TEA-21 (1998 to 2003) to SAFETEA-LU (2005 to 2009). FHWA officials provided documentation that showed that the number of High Priority Projects listed in SAFETEA-LU was almost triple that of the number of projects listed in TEA-21. FTA officials also stated that the number and value of authorization and appropriations directives in transit programs increased between TEA-21 and SAFETEA-LU.

- FHWA, FTA, and state department of transportation officials with whom we spoke expressed a variety of views about the impact of the growing number of congressional directives on budget and program execution, including the following:
  - FHWA and FTA officials said that congressional directives do not always support their program goals, particularly with respect to research. For example, FHWA officials told us that they had no flexibility in carrying out their research priorities because all funding for the surface transportation, research, development, and deployment programs was designated under SAFETEA-LU. FHWA officials further noted that congressional directives can be inconsistent with states' transportation priorities, particularly if the congressional directives are for projects outside of their statewide transportation programs. Officials from one state department of transportation noted that although many congressional directives in SAFETEA-LU were requested by the state, about one-third of the congressional directives did not have statewide benefits or serve an eligible highway purpose.
  - A senior FTA official also noted that congressional directives may result in the displacement of projects that FTA views as being a higher priority and ready for implementation with projects that are a lower priority for FTA. For example, some New Starts congressional directives provide funding for projects that are not yet ready for implementation, delaying the implementation of FTA's higher-priority projects that are scheduled to receive federal appropriations.
  - FTA officials said that roughly 85 to 90 percent of the congressional directives received in the New Starts program are for projects that FTA has recommended for funding in its budget. One FTA official also acknowledged that some congressional directives provide funding for projects that FTA has identified as priorities in its research program and were included in the President's Budget, although the majority of directives were not requested and displaced research activities FTA identified as being of higher priority.
  - Officials from FHWA and FTA stated that congressional directives sometimes displace their priority transportation projects by providing funds for projects that would not have been chosen in a competitive selection process. For example, FHWA officials stated that some congressional directives listed in the Projects of Regional and National Significance<sup>18</sup> program in SAFETEA-LU would not have qualified for funding in a merit-based selection process.<sup>19</sup> FTA officials also told us that congressional directives sometimes provide funding for projects that would otherwise be considered ineligible, such as directives to construct parking garages with transit funding.
  - Officials from FHWA division offices and FTA noted that in some cases, the language of congressional directives makes it difficult to implement projects. For example, an official from one FHWA division office noted that some congressional directives for the state contained language that was either too specific and was therefore inconsistent with the purposes and objectives of the local sponsor or contained language that made the project ineligible because it did not meet certain federal regulations. According to agency officials, in these cases, a technical corrections bill must be passed before the projects can be implemented, delaying implementation of the projects.
  - Officials we spoke with from three state departments of transportation also noted that inflexibilities in the use of congressionally directed funds limit the states' ability to implement projects and efficiently use transportation funds by, for example, providing

funding for projects that are not yet ready for implementation or providing insufficient funds to complete particular projects.

- An official from one state department of transportation noted that although congressional directives can create administrative challenges, they often represent funding that the state may not have otherwise received.
- FHWA and FTA officials noted that the growth in the number of congressional directives has increased the time and staff resources needed to identify and track projects. For example, FHWA officials noted that relative to their proportion of the budget, they devote a higher percentage of time to administering congressional directives than other projects. Similarly, officials from FHWA division offices stated that they spend a substantial amount of time working with the state to determine whether projects meet federal eligibility requirements, respond to questions of transferability, and provide assistance to the state for projects that were not included in their state transportation plan. FTA officials noted that some recipients of a congressional directive are unaware of the directive and may decide to use the grant for another purpose, making it difficult to obligate funds within the 3-year availability period.

## **U.S. Army Corps of Engineers' Civil Works Programs**

Corps Civil Works Officials' Views on Trends and Impact of Congressional Directives

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The Corps does not analyze trends in congressional directives, and there was no consensus among the officials we spoke with on trends in the number of these directives. While some Corps officials told us that they believe the overall number of congressional directives has remained at about the same level for the last decade, another Corps official told us that he believes the number of congressional directives has increased throughout the decade. This official stated that in recent years Congress has added a number of projects that the Corps labels as “environmental infrastructure projects” that are outside the scope of the Corps’ historic missions. Those projects included building sewage treatment plants and water supply facilities, revitalizing local waterfronts, and maintaining waterways primarily for local recreation. The Chief of the Programs Integration Division, who is responsible for the Civil Works budget, estimated that these types of congressional directives are a small portion of the Corps’ Civil Works program budget.

Corps officials we interviewed also did not have a consistent view about the impact of congressional directives on the Corps’ budget and program execution. Some Corps officials said they believe that congressional directives have not had a serious impact on the Corps, except to increase its budget and resulting activities. However, other officials described the following impacts of congressional directives on the Corps’ ability to execute its mission:

- If the Corps categorizes a congressional directive as being inconsistent with the Administration or Corps policy, the Corps will not budget for the project in subsequent fiscal years. Officials said that they believe this could potentially increase the Corps’ backlog of incomplete projects.
- Congressional directives are more difficult to plan and schedule for execution in advance compared with projects included in the President’s Budget. Officials said that this is because

it is more difficult to develop an accurate project timeline because of the greater uncertainty about future funding levels for these projects.

- Congressional directives may make it more difficult for the Corps to predict and manage full-time equivalent (FTE) levels and allocations from year to year. Even though congressional directives increase the Corps' budget authority, the Corps generally establishes FTE levels using the President's Budget much earlier in the year. Because the number and regional focus of congressional directives can change from year to year, the Corps faces some uncertainty about whether it will have adequate staff in the right locations to manage the project workload of each district in response to the changing nature of the congressional directives.