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Money For Nothing: Sen. Coburn's Report on \$70 Billion Available Federal Grant Dollars

The Public Policy & Infrastructure practice has often discussed the availability of unused or "returned" grant funds. This means that often not all grant funds are fully obligated (or obligated at all because of various problems in the award process); some grant amounts must also be "returned" because of eligibility and allowability decisions, and for audit-based decisions (often by federal inspector generals). The potential availability of these funds is often not publicized. Sen. Tom Coburn (R-Okla.), however, shines a spotlight on them as part of a greater oversight report from his office that finds more than \$70 billion available in unspent federal funds (found at www.coburn.senate.gov). Sources of these funds range from expired and inactive grant accounts to unused or unclaimed funds remaining at the programmatic level. As Fiscal Year 2012 draws to a close, federal agencies will work hard to spend these un-obligated balances remaining on their books. Opportunities may be available, however, to seek to access such funds.

Billions not spent for transportation, environmental, and disaster aid projects. Sen. Coburn relies on reports from the Government Accountability Office ("GAO"), Office of Management and Budget ("OMB"), Offices of Inspector General ("OIG") from various federal agencies, congressional testimony, and news accounts, to identify billions in unspent money.

Some notable instances include:

- \$13 billion at the Department of Transportation ("DOT") and more than \$122 million at the Environmental Protection Agency ("EPA") remain unspent for earmarked projects. At the DOT alone, "nearly 1 in 3 highway dollars earmarked for highway projects since 1991 had not been spent as of 2011."
- More than one-fourth of the \$19.7 billion appropriated for recovery efforts in the wake of Hurricane Katrina was unspent, five years later.

- More than a decade after 9/11, billions in tax breaks, bonds and grants designated to help New York City recover have remained either unused or unspent. For example, of the \$3.5 billion in Community Development Block Grants (“CDBG”) “intended to rebuild and develop the areas around the World Trade Center site...\$235.1 million remains to be formally obligated to projects and \$28.7 million had not been budgeted as of August 2011.”

Un-obligated grant funds are a significant portion of the unspent balance.

Sen. Coburn cites a GAO study from April 2012 that identifies nearly \$1 billion of un-disbursed or expired grant funds. (“GRANTS MANAGEMENT: Action Needed to Improve the Timeliness of Grant Closeouts by Federal Agencies” (GAO-12-360), found at www.gao.gov.) By failing to close out these grants, agencies open up the possibility to greater costs and an increasing lack of accountability over them. This is not a new problem, per the senator: “audits over the years have suggested failure to close out grants in a timely manner is a long standing problem for federal agencies.” The senator further notes that in the GAO report, for example, there was “about \$1 billion in unspent, undisbursed, and expired funds remaining in expired grant accounts” in the year 2008 alone.

“The fault lies not in our stars...” Sen. Coburn points a finger at a number of culprits for this problem:

- **Congress.** Poorly written laws; earmarked projects to recipients who are unable to complete them; and a lack of congressional oversight are the major reasons Congress is ineffectively spending the federal dollar, according to Sen. Coburn.
- **Agencies:** Sen. Coburn also cites “bureaucratic obstacles and mismanagement” as a reason for the un-obligated balances. A big problem is the fact that agencies are loathe to return funds to the general treasury.
- **Recipients:** Many times, the recipient is unable to spend the funds involved but does not want to return the money to the treasury. For example, Sen. Coburn cites the City of Detroit paying its workers overtime to spend more than \$20 million remaining in CDBG funds. The overtime costs were allowable expenses under the CDBG program.

What to do. Sen. Coburn identifies a number of ways (e.g., greater transparency, improved legislative drafting, and agency obligation reforms) to effectively alter circumstances to ultimately decrease this balance of unused money. For current client interests, however, the Coburn report also discusses how agencies simply do not understand what they can, or should, do to make these monies available, or are not motivated to do so. It is up to individual clients to seek out: (1) what funds might be available; (2) whether agencies have internal plans to deal with grant reuse; (3) whether member support can be developed to support a request

to agencies to exercise their discretion, or to seek legislative direction; (4) if the funds might be used defensively to offset any claimed grant repayment demand by a federal or state agency; and (5) if the available funds can be used to amend existing grant-funded projects, perhaps by also increasing the scope of the grant instrument. Variations of these approaches exist, but the key is to actively approach this funding as ultimately available for allowable funding purposes. Members are anticipated to be generally supportive of these efforts, as the funding has already been authorized and appropriated (although members may also have differing perspectives on how to best account for these funds).

Given current fiscal pressures, and moratoria on direct earmarks, the confirmation and identification of significant “unused” grant funds should be welcomed news. Timing of activities is important, however, as Congress has only the pre-election time period within which to work before the end of the federal Fiscal Year September 30, 2012. If unused grant funds remain available after this date, the returning Congress, in the expected Lame Duck session, may take affirmative steps to eliminate some existing accounts from current use. Certainly, the new 113th Congress, to be sworn in January 2013, may also have ideas as to what to do with these funds. Please contact the undersigned with questions regarding developing a strategy to potentially access such unused grant funds.