Backgrounder

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The Congressional Earmark Moratorium: Will It Last the Year?

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Congressional promises to clean up the earmark mess and its associated corruption got off to a strong start in 2007 when the House of Representatives and Senate agreed to strike from the fiscal year (FY) 2007 budget about 10,000 earmarks that had been proposed by the previous Congress. President George W. Bush made this commitment a reality when he signed the joint budget resolution in mid-February.

Yet no sooner had the ink dried when evidence began to emerge that some Members of Congress were discreetly contacting federal agencies to urge that their pet projects be funded despite the putative prohibition.[1] The effort to make the earmarking process more transparent appeared to be mutating into an even more secretive process. Fortunately, Office of Management and Budget (OMB) Director Rob Portman issued a memorandum to heads of departments and agencies directing them not to honor such informal requests.[2]

While some Members of Congress attempted to undermine the FY 2007 reforms within weeks of the moratorium's enactment, members of both the House and Senate appropriations committees are openly soliciting other Members for earmark requests for the FY 2008 budget. On February 7, 2007, the Republican staff of the Subcommittee on Labor, Health and Human Services, Education, and Related Agencies of the Senate Committee on Appropriations sent Republican Senators an e-mail announcing that:

> The Labor–HHS deadline for all requests will be April 13, 2007. This deadline includes any programmatic funding, project funding, bill or re-

Talking Points

- Earmarks undermine the effectiveness of federal programs and compromise national defense and homeland security.
- The congressional leadership should be commended for its bold action to eliminate all earmarks in the FY 2007 budget. The OMB director's timely directive to agencies closed an emerging loophole.
- If history is any guide, Congress will soon resume a business-as-usual attitude, and within a year or two, the earmarking process will revert to the same congressional spending frenzy that has characterized the past several years.
- Courage and leadership matter most in establishing a pattern of fiscal responsibility in Washington. The leadership on both sides of the aisle needs to take steps to ensure that the moratorium is not circumvented by backdoor maneuvering.
- The President should insist that the moratorium be extended to future years and be prepared to veto any bills that contain earmarks.

This paper, in its entirety, can be found at: *www.heritage.org/research/budget/bg2016.cfm*

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port language requests that your Senators would like to submit for the FY2008 LHHS bill. Please submit all requests by e-mail and deliver a hard copy to SD-156.[3]

At about the same time, Representative David R. Obey (D–WI), chairman of the House Committee on Appropriations, advised Members that they have until March 16 to request earmarks, although the dollar amount available is expected to be half of what the previous Congress attempted to spend in FY 2007.[4]

Combined with the timid lobbying and earmark "reform" rules and legislation that both the House and Senate passed in January (H. Res. 6 and S. 1), the promise by one committee to do no more than temporarily modify the scope of the problem suggests that Congress is returning to business as usual and that the lucrative market for earmarks will soon be back in full swing as lobbyists, campaign contributors, Members and staff, and influential constituents line up to buy and sell project privileges financed by taxpayers' dollars.

While many things could explain this about-face, the chief reason is probably that most Members of Congress never believed that it was much of a problem in the first place, although they briefly pretended to oppose earmarks when such a pose offered electoral benefit. With the election over and the temporary reforms presented as a mission accomplished, Congress can now revert to its historical role as "a broker in pillage," with "every election…sort of an advance auction sale of stolen goods," as journalist H. L. Mencken wrote 70 years ago.[5]

Congressional indifference to what many voters see as a problem may stem from the emergence of a new culture on Capitol Hill in which Members no longer see themselves as statesmen debating the lofty principles and issues of the day, but rather as sales clerks serving influential constituents and lobbyists in exchange for campaign contributions and box seats at ball games. However they may disguise these actions as legitimate constituent services governed by the principles of democracy, these actions can in fact cause considerable harm to the nation and to the people of their states and districts.

That the issue of national and constituent harm seldom surfaces in these debates stems from both a misrepresentation and a misunderstanding of the federal budget process and how Congress spends taxpayers' money. Perhaps the greatest misrepresentation is that earmarks represent something extra that Representatives and Senators bring home to their districts and states. This is simply not true. In the budget process or the periodic reauthorization bills that set longer-term spending totals for broad programs, Congress first establishes a total dollar amount to be spent for a specific purpose or a federal agency. By definition, earmarks cut into this total, effectively taking away funding from some other program or agency.

Undermining Transportation

In the most recent six-year reauthorization of the federal highway program (SAFETEA-LU),[6] Congress and the President agreed to spend $286 billion between FY 2004 and FY 2009 on federal highway and transit programs and established annual spending limits. Congress also reconfirmed that the amount allocated to each state would be determined by the same mathematical formula that has governed the program since its creation in the mid-1950s. With each state's financial apportionment set by formula, most of the money for the 7,000 to 8,000 earmarks listed in the bill must therefore come out of each state's allocation. Thus, if a mem-

1. Kimberley A. Strassel, "It's a Trough Life," *The Wall Street Journal*, February 9, 2007.
2. Rob Portman, memorandum for the heads of departments and agencies, Office of Management and Budget, February 15, 2007, at *www.whitehouse.gov/omb/memoranda/fy2007/m07-10.pdf* (March 5, 2007).
3. Congressional staff e-mail provided anonymously to The Heritage Foundation and other organizations.
4. Jeffrey H. Birnbaum, "When House Changed Rules for Travel, He Lobbied for the Lobbyists," *The Washington Post,* February 13, 2007, p. A19, at *www.washingtonpost.com/wp-dyn/content/article/2007/02/12/AR2007021201293.html* (March 5, 2007).
5. H. L. Mencken, "Sham Battle," *Baltimore Evening Sun*, October 26, 1936, reprinted in Malcolm Moos, ed., *A Carnival of Buncombe: Writings on Politics, H. L. Mencken* (Chicago: University of Chicago Press, 1984), p. 325.
6. Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Public Law 109–59.

ber of the Nevada delegation succeeded in getting a $2 million earmark to build a bicycle trail in Elko in 2005, then that $2 million would be taken out of the $254 million allocated to the Nevada Department of Transportation (DOT) for that year, effectively reducing the state's discretionary spending on its own priorities by that amount.

One of the reasons why earmarks are included in spending bills even though they provide no additional money is that they allow lobbyists and Members of Congress to preempt a state DOT's investment priorities. The state may otherwise have concluded that a new lane on a congested highway in a Las Vegas suburb would be more beneficial than a hiking trail, but earmarks allow Washington players to overrule that decision and reallocate the money to other purposes while pretending that the earmark represents extra money.

In fact, the abusive practice of earmarking often leads to less spending in many states and districts than would have been the case if the formula allocation prevailed or if the decision had been left to the state agency responsible for distributing the federal funds. For the most part, Senators and Representatives who are members of the majority party, have the most seniority, and hold seats on the relevant spending committee or leadership positions generally get far more earmarks than the many other Members of Congress. Nonetheless, the uninfluential junior Member typically misrepresents (or misunderstands) the handful of earmarks that his or her district receives as something extra, even though the Member's district would likely have done better if the money had been given to the appropriate state agency to distribute according to need and established priority.

For example, SAFETEA-LU provides the state of Indiana with 146 earmarks totaling $329 million over the six-year life of the bill. Of that amount, $95 million is reserved for the two Senators, leaving $234 million to be split among the state's nine Representatives in an amount that would average $26 million per district.[7] In practice, however, that amount varies from district to district, depending on the Member's seniority and committee assignment. Thus, a junior Representative might receive only $11 million in earmarks but still brag about it even though the practical effect of the earmark process is to shortchange that Member's district in comparison to what a distribution by the state DOT would likely provide.

The congressional district that received the most money in earmarks was the state of Alaska, which is also the district of Representative Don Young (R–AK), former chairman of the House Transportation and Infrastructure Committee and one of the authors of SAFETEA-LU. In second place was the district of former Representative Bill Thomas (R–CA), then chairman of the House Ways and Means Committee.

Typical of instances in which earmarks preempt the priorities and judgment of state and federal officials and circumvent federal law is the $19 million that Representative Bill Pascell (D–NJ) brought home to build the Passaic–Bergen rail line in his district. This was the only way to obtain federal funding for the new train service—described by a local newspaper as one that "would carry fewer riders than any railroad in the state, prompting criticism that it is little more than a pet project for the hometown"—because, by law, the train project's low ridership would disqualify it for funding from the Federal Transit Administration.[8]

A recent analysis of the effects of the earmarking process on Colorado's transportation priorities highlights how earmarks distort a state's ability to fulfill its priorities. The head of the Colorado DOT recently noted that 2 percent of the federal transportation money coming to the state in 2000 was earmarked in Washington, but by 2006, earmarks took 13 percent of the total.[9]

7. All SAFETEA-LU earmark data are derived from Taxpayers for Commonsense, "Database of Earmarks in Conference Agreement to the Transportation Bill," updated August 12, 2005, at *www.taxpayer.net/Transportation/safetealu/states.htm* (March 5, 2007), and from Public Law 109–59.

8. David A. Michaels, "Critics Question Demand for Passaic–Bergen Rail Line," North Jersey Media Group, February 18, 2007.

9. Brody Mullins, "As Earmarked Funding Swells, Some Recipients Don't Want It," *The Wall Street Journal*, December 12, 2006, p. A1.

Moreover, as wasteful as the New Jersey earmark may be, it will at least serve people, in contrast to a Colorado project designed exclusively for animals. Among the authorized spending from another program was $500,000 to draw up plans for a $10 million wildlife bridge over I-70 supported by the state's two Senators. Although Colorado has built several animal underpasses to serve the many creatures seeking safe passage across I-70 in the Vail area and only eight animals are killed per year on the stretch of road to be served by the $10 million overpass, a spokesperson for the Southern Rockies Ecosystem Project notes:

> [D]ifferent types of animals like to cross the road in different ways. An overpass has an openness factor that deer and elk prefer, while mountain lions and bears prefer the underpass.… If you have multiple crossing structure types you are increasing the chances that a greater diversity of species will find a safe passage.[10]

For students of America's transportation policy debates, the eco-objective cited above is a logical extension of the "transportation choices" concept advocated by lobbyists seeking greater federal subsidies for public transit systems.[11]

Homeland Insecurity

The harm done to society by irresponsible congressional earmarking extends well beyond transportation and has increasingly infected federal efforts to bolster homeland security and national defense. With a budget of more than $50 billion in FY 2007,[12] the Department of Homeland Security is a ripe target for earmarking, and Members of Congress have availed themselves of the opportunity to waste vast sums of money that could otherwise have been used to protect the nation.

For example, in this misplaced money marathon, the volunteer fire department of Cheshire, Massachusetts (population 3,500), asked for federal help to buy a new fire truck and instead received a homeland security grant of $665,962 with the restriction that the money *not* be spent on a fire truck. As Congress appears to have had nothing to do with the acceptance of the proposal, DHS spokeswoman Val Bunting was left to explain that Cheshire's request "presented a multifaceted project proposal." James Carafano, Heritage Foundation expert on homeland security, clarified the issue by observing, "It's pure pork. It has nothing to do with homeland security."[13]

Taking from the Poor

The growing abuse of earmarks has also undermined federal efforts to aid the poor by redirecting money programmed for low-income households to projects that largely benefit the wealthier. This year, the Department of Housing and Urban Development (HUD) will spend $4 billion through its Community Development Block Grant (CDBG) program on projects that are supposed to foster economic development and affordable housing in low-income communities and neighborhoods. In theory, the money is to be allocated to these communities by a formula that measures need, and this year, President Bush has proposed tightening the formula to ensure that CDBG funds are directed more precisely to those in greatest need.[14]

By contrast, Congress seems to see the CDBG program as just another piggy bank for rewarding influential constituents and supporters. Unhappy with needs-based formulas designed to allow communities to determine their own priorities among permissible uses, Congress has increasingly preempted local decision-making by earmarking a

10. *Ibid.*
11. American Public Transportation Association, "APTA Strategic Plan 2005–2009," October 10, 2004, at *www.apta.com/strategic/index.cfm* (March 5, 2007).
12. Office of Management and Budget, *Budget of the U.S. Government, Fiscal Year 2008* (Washington, D.C.: U.S. Government Printing Office, 2006), p. 80, at *www.whitehouse.gov/omb/budget/fy2008/pdf/budget/dhs.pdf* (March 5, 2007).
13. Raja Mishra, "Firefighters' Windfall Comes with a Catch," *The Boston Globe*, February 9, 2007, at *www.boston.com/news/local/articles/2007/02/09/firefighters_windfall_comes_with_a_catch* (March 5, 2007).
14. Office of Management and Budget, *Budget of the U.S. Government*, p. 83.

growing share of CDBG money to beneficiaries other than low-income households.

Since CDBG money can be used to construct and renovate affordable housing for low-income families (among other purposes), any diversion from allowable uses can be realistically expressed in terms of the number of families harmed by the earmark abuse. Federal housing assistance for a low-income family of four costs an estimated $7,500 per year. Because federal housing assistance is not an entitlement and thus is allocated on a first-come, first-served basis until the money runs out, every $7,500 of CDBG money wasted on earmarks leads to another low-income family stuck on the waiting list for federal housing assistance. For example, Washington, D.C., has 56,047 families on the waiting list for housing assistance,[15] and at least one Virginia region has stopped adding names to its waiting list because all of those now on it are unlikely ever to be served.

Applying this measure to just five of the 920 earmarks in the House and Senate HUD appropriations bills for FY 2007, the $300,000 for construction of a gay and lesbian center in Los Angeles would lead to an additional 40 unserved families on the waiting list; $800,000 for the National Women's Hall of Fame would add 107 families; $500,000 for an Audubon nature center in Columbus, Ohio, would add 67 families; $800,000 for the Cobb Performing Arts Center, Cobb County, Georgia, would add 107 families; and $2,500,000 for the Tongass Coast Aquarium, Ketchikan, Alaska—future home of the "Bridge to Nowhere"—would add 333 unserved families.

All told, just these five earmarks would have harmed a total of 654 low-income families. Chairman Obey's plan to halve the amount of money spent on earmarks in the FY 2008 appropriations bills would presumably deprive only 327 low-income families of federal housing assistance.[16]

A Budget Riddled with Earmarks

These examples of the harmful consequences of earmark abuse are just a fraction of the counterproductive effects of earmarks scattered throughout the federal budget. In other policy areas, independent scientists have noted that earmarks have undermined the Department of Energy's core research efforts into renewable energy,[17] the Army Corps of Engineers' flood control projects,[18] NASA's exploration operations,[19] and national security. Although the FY 2007 defense appropriations bill included only a small number of earmarks, the FY 2006 bill included 2,847 pork-barrel projects totaling $9.4 billion, including $35 million for a wastewater treatment plant in DeSoto County, Mississippi; $4 million for a Fire Sciences Academy in Elk, Nevada; $5 million for a mood disorder study; $4 million for a "diabetes regeneration project"; and money to keep open a National Drug Intelligence Center in Johnstown, Pennsylvania, that the Department of Defense wanted to shut down.[20]

Under current federal budget practices, earmarks do not represent additional spending, but are

15. Lubna Takruri, "Low-Income Families Pushed Out," *The Free Lance-Star* (Fredericksburg, Va.), February 25, 2007, p. A6.

16. Listed earmarks are from House Report 109–495, *Departments of Transportation, Treasury, and Housing and Urban Development, the Judiciary, District of Columbia, and Independent Agencies Appropriations Bill, 2007*, Committee on Appropriations, U.S. House of Represetatives, June 9, 2006, at *www.congress.gov/cgi-bin/cpquery/R?cp109:FLD010:@1(hr495)*, and Senate Report 109–293, *Transportation, Treasury, Housing and Urban Development, the Judiciary, and Related Agencies Appropriations Bill, 2007*, Committee on Appropriations, U.S. Senate, July 26, 2006, at *www.congress.gov/cgi-bin/cpquery/R?cp109:FLD010:@1(sr293)*. For other CDBG earmark examples, see Ronald D. Utt, Ph.D., "President's Plan to Consolidate Federal Economic Development Programs Is Long Overdue," Heritage Foundation *WebMemo* No. 656, February 7, 2005, at *www.heritage.org/Research/Budget/wm656.cfm*.

17. Lynn Garner, "DOE's Renewable Energy Lab Cuts Staff; Congressional Earmarks Cited as Culprit," Bureau of National Affairs, *BNA Daily Report for Executives*, February 8, 2006, p. A32.

18. Ronald D. Utt, Ph.D., "The Army Corps of Engineers: Reallocating Its Spending to Offset Reconstruction Costs in New Orleans," Heritage Foundation *Backgrounder* No. 1892, November 4, 2005, at *www.heritage.org/Research/Budget/bg1892.cfm* (March 5, 2007).

19. Brian M. Riedl, "Still Spending: Senate Set to Bust Budget Caps by $32 Billion," Heritage Foundation *WebMemo* No. 1222, September 25, 2006, at *www.heritage.org/Research/Budget/wm1222.cfm*.

20. Information distributed by the Office of Senator Tom Coburn (R–OK).

instead carved out of predetermined spending allocation targets established early in the budget process by a congressional budget resolution. Thus, earmarks do not necessarily lead to increased spending in the year in which they are established, but over the longer term, they undermine the effectiveness of core programs and limit their ability to address specific needs and problems.

As these needs and problems persist because spending is diverted to low-priority earmarks, Congress may feel compelled to allocate more money in future budgets to resolve these unmet needs. In the case of the CDBG earmarks, persistently long waiting lists for housing assistance may encourage future Congresses to increase federal spending on housing assistance beyond what would be needed without earmarks. In some cases, more money has been added to emergency supplemental spending bills to compensate for the harmful diversions to pet projects and lobbyists' clients.

Maintaining the Momentum for Reform

Although the 110th Congress got off to an impressive start by refusing to fund the more than 10,000 earmarks proposed by the 109th Congress, the difficulty in developing and enacting meaningful earmark controls leaves the budget process open to abuse in the future. There is already evidence suggesting that the timid reforms adopted so far and the continued public opposition to earmarks have encouraged "a dirtier earmark game" based on private phone calls rather than public documents, and lobbyists are assuring clients that the market for earmarks is still open and abundant with opportunity. OMB Director Portman's directive to ignore such informal requests (and threats) from Congress and others could thwart these backdoor earmark attempts, but the OMB needs to be vigilant in enforcing it.

The measure of vigilance that will be required to enforce the Portman directive underscores the importance of leaders' determined action to ensure that earmarks are substantially reduced or eliminated on a sustained basis. As The Heritage Foundation has noted in an earlier review of legislative earmark reform proposals, even the toughest of the many bills introduced would have at best only a limited effect on the number of earmarks forced on federal agencies.[21]

The impressive success of Speaker of the House Nancy Pelosi (D–CA) in eliminating most earmarks for FY 2007 was not the result of any reform legislation, but the consequence of a congressional leader demonstrating the will to use her office to accomplish a major goal that others thought impossible. Of course, she was not alone in this effort. Earlier efforts by Representative Jeff Flake (R–AZ) and Senators John McCain (R–AZ), Tom Coburn (R–OK), and Jim DeMint (R–SC) helped to clear the way by forcing their colleagues to take a stand one way or the other in highly visible floor fights that helped to make the "Bridge to Nowhere" a household term. As a brief review of congressional budget history reveals, the will to resist wasteful earmarks was once a more common characteristic in Congress. Only in recent years has this willpower evaporated.

A review of federal transportation spending practices—both appropriations and authorizations—over the past several decades reveals the changing role of congressional earmarks and the decline of fiscal responsibility. While today one takes for granted that a transportation bill of either type will be larded with pork-barrel spending and several thousand earmarks, the record indicates that the propensity to waste taxpayers' money in this fashion did not fully emerge until the late 1990s. In contrast to the more than 7,000 earmarks in the 2005 reauthorization of the federal highway program (SAFETEA-LU), the 1982 reauthorization bill contained only 10 earmarks, and the 1987 reauthorization bill contained 152, two-thirds of which were never funded.

A similar pattern holds with the annual transportation appropriations bills. Between 1971 and 1984, transportation appropriations bills averaged just three earmarks per year. Beginning in 1985, the

21. Ronald D. Utt, Ph.D., "A Primer on Lobbyists, Earmarks, and Congressional Reform," Heritage Foundation *Backgrounder* No. 1924, April 27, 2006, pp. 19–21, at *www.heritage.org/Research/Budget/upload/96399_1.pdf*.

number of earmarks began to rise gradually, reaching 156 in 1992; but then it fell to just five in 1994, partly because of intervention by Representative Norman Mineta (D–CA), chairman of the authorizing committee.[22]

After this one year of fiscal responsibility, earmarks rose to 125 in FY 1995, but this lapse was soon corrected by the change in control of the House, which made Representative Frank Wolf (R–VA) the new chairman of the appropriations transportation subcommittee. With the support of committee chairman Bob Livingston (R–LA) and the House leadership, Wolf succeeded in eliminating all earmarks from the transportation bills in FY 1996, FY 1997, and FY 1998 and limiting the FY 1999 bill to just 14. Term limits ended Wolf's chairmanship after 2000, and earmarks in transportation appropriations bills soared to 612 in FY 2002.

Significantly, Representative Wolf was alone in achieving this three-year clean sweep of earmarks in his subcommittee. In 1995, total earmarks in all appropriations bills declined from 1,439 in FY 1995 to 958 in FY 1996, reflecting the Republican takeover of the House. However, while Wolf kept his transportation bills free of earmarks in FY 1997 and FY 1998, the total number of earmarks in all other appropriations bills jumped to 1,596 in FY 1997 and 2,100 in FY 1998 and continued to increase until FY 2005.

This brief history shows that courage and leadership matter most in establishing a pattern of fiscal responsibility in Washington. While legislative changes in support of a tighter budget process, the line-item veto, enhanced recission authority, and lobbying and earmark reform would help, they cannot substitute for determined leaders willing to stand up to profligate colleagues, campaign contributors, and persistent lobbyists.

Conclusion

After nine years of wasting tens of billions of dollars on an escalating volume of earmarks, a handful in Congress stood up to the many and created an environment in which another bold leader could reduce the number of pork-barrel earmarks to almost nothing for FY 2007. But if history is any guide, Congress will soon resume a business-as-usual attitude, and within a year or two, the earmarking process will revert to the same congressional spending frenzy that has characterized the past several years. Already, leaders of the appropriations committees and subcommittees have announced that they expect the process to resume, albeit at perhaps a somewhat lower level, and no member of the House or Senate leadership in either party has publicly objected to this promised backsliding.

The President's and the OMB leadership's renewed concern about the process, however, could alter this regrettable pattern of success and retreat. In both his State of the Union address and his FY 2008 budget proposal, the President was critical of the congressional earmarking process, discouraged its use, and promised to work with Congress to diminish the number of earmarks.

This is a good start, but leaders in both branches of government need to focus on maintaining the effort for the rest of this year and in the years to follow. The President needs to state clearly that he will veto earmarked bills and needs to follow through on the threat if needed. With much of the public convinced that earmarks represent waste, corruption, and fiscal irresponsibility, such a threat would be taken seriously, and earmarks would be reduced or eliminated in response one way or another.

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22. All transportation earmark totals are from Legislative Services Group (Falls Church, Va.), "In-Depth Analysis: Earmarked Highway Projects," *Transportation Weekly*, April 10, 2002, p. 1.