

# WebMemo



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## President Bush Should Keep His Pledge to Halve the Number of Earmarks

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*Next, there is the matter of earmarks. These special interest items are often slipped into bills at the last hour—when not even C-SPAN is watching. In 2005 alone, the number of earmarks grew to over 13,000 and totaled nearly \$18 billion. Even worse, over 90 percent of earmarks never make it to the floor of the House and Senate—they are dropped into committee reports that are not even part of the bill that arrives on my desk. You didn't vote them into law. I didn't sign them into law. Yet, they're treated as if they have the force of law. The time has come to end this practice. So let us work together to reform the budget process, expose every earmark to the light of day and to a vote in Congress, and cut the number and cost of earmarks at least in half by the end of this session. (Applause.)*

—President Bush, State of the Union speech, January 23, 2007<sup>1</sup>

*Another thing that's not responsible is the number of earmarks that Congress included in a massive spending bill... Congressional leaders ran in the last election on a promise that they would curb earmarks. And they made some progress and there's more transparency in the process, but they have not made enough progress. The bill they just passed includes about 9,800 earmarks. Together with the previously passed defense spending bill, that means Congress has approved about 11,900 earmarks this year. And so I'm instructing Budget Director Jim Nussle to review options for dealing with the wasteful spending in the omnibus bill.*

—President Bush, December 20, 2007<sup>2</sup>

In last year's State of the Union address, President Bush pledged to cut the number of pork projects in half, from the 2005 peak of 13,492 down to 6,746.<sup>3</sup> House Speaker Nancy Pelosi made the same pledge on behalf of her party's Members. Congressional Democrats, however, brazenly violated that pledge to the American people by including 11,738 earmarks in their appropriations bills. And instead of halving the cost of earmarks, they actually increased it from \$18 billion in 2005 to \$21 billion.<sup>4</sup> Before the next State of the Union address turns the page to another year, President Bush has the power to keep last year's pledge to the American people. He has the power to sign an executive order cancelling the vast

majority of earmarks. Anything less would be a failure to keep his promise.

The American people clearly want strong earmark reform, but Congress and the Washington establishment are bitterly opposing this loss of their perks. Like President Reagan firing the striking air traffic controllers, President Bush must decide whether to take a

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stand for the American people or to cave in to Washington interests.<sup>5</sup> The President's role is to defend the national interest, sometimes against lawmakers focused only on bringing tax dollars back to their districts. Cancelling earmarks would not make the President many friends in Congress, but grateful taxpayers would remember it.

**The Earmark Problem.** Originally, lawmakers would fund government grant programs and then let federal agencies distribute the funds: (A) to state or local governments through statutory formulas; or (B) to specific groups through competitive application processes. Now, Congress actually determines, within legislation, who will receive government grants by "earmarking" grant money to specific recipients. Earmarks are also known as "pork projects." Since 1996, the number of annual earmarks has leapt from 958 to 11,738.<sup>6</sup>

Earmarking is a corrupting process. It effectively gives individual lawmakers their own pot of tax dollars to distribute to organizations of their choosing. Consequently, politics and campaign contributions now play a larger role in government grant distributions, at the expense of statutory formulas and competitive application processes. Lobbyists promote their matchmaker role, effectively auctioning government grants to the highest bidder. As a result, the FBI has launched several corruption investigations to determine whether lawmakers based earmark decisions on personal profit.

**The Executive Order Option.** Most earmarks are not written into the actual appropriations bills that are signed into law. Rather, they are included in conference reports, which are explanatory state-

ments that accompany the legislation to the President's desk. Because they are not technically part of the bill, the executive branch is not legally bound to implement conference reports. The President could simply direct agencies to ignore the earmarks listed in the conference reports. The funds would still be spent, but the agencies would have the discretion to distribute the funds by merit rather than congressional diktat.

Some earmarks in the conference reports may have been given the force of law by appropriations bill language stating that a certain amount of a program's budget "shall be available for projects and in the amounts specified in the explanatory statement described in section...." Yet the majority of earmarks are likely not protected by such language. President Bush could require that all government grants, save for the fraction of them earmarked in the legislative text, be distributed by merit or statutory formulas.

In addition, this executive order should include a ban on "phone-marking," whereby lawmakers simply call an agency and demand funding for their pet projects, which are not even included in conference reports. Phone-marking is effective, because most agencies do not want to anger the lawmakers who vote on their budgets. Yet because phone-marks never appear in legislation, they are kept secret from the American people, undermining accountability more than regular earmarks. Phone-marking is also against the law; lawmakers are effectively asking agencies to set aside the statutory laws for distributing government grants in favor of their own personal whims.

1. President Bush, 2007 State of the Union Address, January 23, 2007, at [www.whitehouse.gov/news/releases/2007/01/20070123-2.html](http://www.whitehouse.gov/news/releases/2007/01/20070123-2.html).
2. President Bush, press conference of December 20, 2007, at [www.whitehouse.gov/news/releases/2007/12/20071220-1.html](http://www.whitehouse.gov/news/releases/2007/12/20071220-1.html).
3. The Web site of House Speaker Nancy Pelosi (D-CA) states: "The second [transparency and accountability commitment] is cutting the amount of earmarks in half—the total FY 2008 earmarks will be half of the earmark total included in the FY 2006 bill under the Republican-controlled Congress," at [www.speaker.gov/legislation?id=0045](http://www.speaker.gov/legislation?id=0045). The Office of Management and Budget's Web site states: "On January 3, 2007 President Bush called on Congress to cut the number and cost of earmarks by at least half," at [www.earmarks.omb.gov](http://www.earmarks.omb.gov).
4. The Office of Management and Budget is tracking earmarks at <http://earmarks.omb.gov/by-tracking/summary.html>.
5. Michael Franc, "Earmarks Still a Problem," Heritage Foundation *Commentary*, January 5, 2008, at [www.heritage.org/Press/Commentary/ed010508a.cfm](http://www.heritage.org/Press/Commentary/ed010508a.cfm).
6. Earmark data from 1996 is calculated by Citizens Against Government Waste, at [www.cagw.org](http://www.cagw.org).

In addition to banning federal agencies from implementing phone-marks, the President can ensure that no earmarks slip through the cracks by mandating that every agency keep a list of all grants not distributed by the merit- or formula-based standards written in the program's underlying statutes. The grants on such a list, which should be made available to the public, could be further investigated.

#### **New Earmark Guidelines Are Not Enough.**

The White House is reportedly considering a watered-down proposal that would only ask lawmakers to provide more detailed information on, and justifications for, future earmarks, with the possibility that some unjustified earmarks could eventually be cancelled.<sup>7</sup> This would replace real reform with mere symbolism. Lawmakers would continue spending a disproportionate amount of legislative energy seeking and advancing earmarks. Many would continue to see their job as primarily bringing home federal tax dollars and would continue to feel pressure to vote for bloated spending bills simply to secure their pork. Lobbyists would continue to assert more control over the appropriations process. Government grants would continue to be distributed on the basis of congressional politics rather than by merit. Little would change.

Furthermore, President Bush did not pledge to create a few new procedural guidelines; he pledged to cut the number of earmarks in half. Guidelines can be too vague to apply to each earmark. In that case, having the White House judge each earmark individually would likely become a subjective prac-

tice and, therefore, susceptible to political calculation—the very thing earmark reform is trying to reduce.

Finally, it is very late in the Bush Administration to implement new guidelines and see them through. At most, they would be in effect for one year, which is not enough time to set a real precedent for the next president to follow. And with the campaigns dominating the fall schedule, even this year's appropriations bills may not pass before President Bush leaves office. Thus, the guidelines would not have the opportunity to change the culture of earmarks. The better option is for the President to fulfill his pledge and use his authority to cancel earmarks during his remaining time in office.

**Conclusion.** In the November 2006 elections, the American people sent a clear message that they are tired of runaway spending, pork, and corruption.<sup>8</sup> Despite promising reform, the Democratic majority in Congress produced an omnibus spending bill that includes the second-most pork projects of any bill in American history.<sup>9</sup> The \$21 billion of FY 2008 pork is not trivial: It is equal to the entire federal personal income tax liability for the states of Iowa, New Hampshire, New Mexico, West Virginia, and Delaware combined.<sup>10</sup> President Bush pledged to rein in earmarks and has the power to keep his promise by issuing an executive order cancelling them.

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7. Robert Pear, "Earmarks Likely to Continue, but With Details," *New York Times*, January 22, 2008.

8. CNN's 2006 election exit poll revealed that 41 percent of voters listed corruption/ethics as "extremely important"—the highest total for any issue. See [www.cnn.com/ELECTION/2006/pages/results/states/US/H/00/epolls.0.html](http://www.cnn.com/ELECTION/2006/pages/results/states/US/H/00/epolls.0.html).

9. The FY 2005 omnibus appropriations bill (P.L. 108-447) contained 11,108 earmarks, according to Heritage Foundation calculations based on earmark data from Citizens Against Government Waste, [www.cagw.org](http://www.cagw.org). The new FY 2008 omnibus bill contains an estimated 9,170 earmarks.

10. Individual Income Tax Returns: Selected Income and Tax Items by State, ZIP Code and Size of Adjusted Gross Income, Tax Year 2005.