



NAVAL POSTGRADUATE SCHOOL

MONTEREY, CALIFORNIA

THESIS

**EEARMARK REFORM WITHIN THE 110TH CONGRESS:
POLICY, TRANSPARENCY AND EFFECTIVENESS**

by

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December 2008

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TRANSPARENCY AND EFFECTIVENESS**

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from the

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ABSTRACT

Earmark spending has come under attack by, and scrutiny of, government watchdog groups, the media and some fiscal conservatives in Congress because of the political corruption that has centered around its use, the increase in the amount of new earmarks being requested and funded, and because of the waste thought to be associated with earmarked spending. As a result, Congress has considered a series of earmark reforms, focused primarily on reforming Senate and House rules to ensure better control of the appropriations process and also providing transparency and accountability of all earmark requests and spending. Of the numerous reform bills and resolutions introduced in the Senate and House during the 110th Congress, one bill and one resolution became law. The Honest Leadership and Government Act of 2007 was intended to provide greater transparency of earmarks requested during committee mark-ups and in conference. House Resolution 491, "Providing for Earmark Reform," discouraged the unauthorized insertion of earmarks into the language of conference reports. Although total earmarked spending and the number of earmarks declined slightly following passage of these measures, there is little evidence to suggest cause and effect. This was apparent after the passage of the FY2009 spending package when congressional leaders were criticized for failing to offer lawmakers and the public sufficient time and opportunity to adequately scrutinize all earmark requests.

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I. INTRODUCTION

A. PURPOSE

The purpose of this research is to examine earmark reform initiatives that have been introduced throughout the entire session of the 110th Congress and the impact of these initiatives on budget policies, transparency requirements, and relevancy to larger fiscal issues. The goal is to evaluate these legislative measures and determine the extent to which they have been effective or ineffective in addressing these earmark reform needs and to also determine how these efforts compare to other government fiscal priorities.

B. BACKGROUND

The practice of earmarking federal funds for specific projects and programs has been a part of the federal budget system since the country's first congressional session. In the fiscal year 1995 appropriations bills there were 1,439 earmarks. This number increased to an all time high of 13,997 in the fiscal year 2005 appropriations bill. Although the estimated amount spent on earmarks in Fiscal Year 2005 totaled \$27 billion, this was less than one percent of the total federal budget which equaled \$2,742 billion in the same year. Earmarks have reduced slightly since 2005 mainly because of the national attention the subject has garnered due to concerns of fraud, waste, and abuse in government spending and corruption scandals like

those centered around lobbyist Jack Abramoff and former House Representative Duke Cunningham [R-CA].

Because earmarking has attracted such attention, policies have been proposed to control or reduce the use of earmarks by members of Congress. Determined opponents of earmarking federal funds have included Senators Jim DeMint [R-SC], Tom Coburn [R-OK], and John McCain [R-AZ] and Representatives Jeff Flake [R-AZ] and John Boehner [R-OH]. In recent years and during the 110th Congress, these individuals have been some of the most vocal about the need for earmark reform in Congress and have introduced numerous bills, resolutions, and amendments to either revamp the earmark process, put a moratorium on earmark spending, or increase transparency on all earmark request and spending. But because of partisan politics and implementation problems, little action has been taken on many of these proposals.

Although key proponents to earmark reform can be easily identified, opponents of such reform are less visible or obvious. There are however, members of Congress who are vocal about their use of earmarks and proud of the funds that they are able to bring back to their local counties and cities. Representative John Murtha [D-PA] leads the House in earmark spending in the current year and has been able to obtain more than \$162 million for his congressional district. Murtha defends his actions and believes that Congress has the right to award earmarks. Murtha, however, has been known to accept campaign contributions from companies for which he secures federal funding.

Other proud proponents of earmark spending are Senator Ted Stevens (Rep-AK) and Senator Daniel Inouye [D-HI], whose states receive the highest amount in earmark funding per capita, \$490 and \$378 respectively. Inouye has stated that earmarks inserted into appropriations bills, not requested in the President's budget, have been mislabeled by watchdog groups as inappropriate use of tax payers dollars and feels that one of his roles as a politician is to make known the needs of his state and ensure funding for those needs. Just like Murtha though, Inouye has been the focus of some criticism, especially in his relationship to Stevens. Both Inouye and Stevens have been known to give political contributions to one another in exchange for voting for the other's earmark proposals in appropriations bills.

Although much emphasis about earmark reform has been placed on the cost of earmarks to taxpayers, the lack of transparency in congressional spending is the greater concern. Although this issue is being addressed through recent legislation, another important facet of earmark reform that also needs to be considered is the congressional effort that has been put into it instead of other issues that have greater fiscal implications.

C. SCOPE AND METHODOLOGY

The thesis will include a review of the congressional appropriations process, defining earmarks as a baseline for discussion, a study of earmarking trends in Congress, in-depth research into policies affecting earmarks during the 110th Congress, and an assessment of the success of earmark reform. This will be accomplished through the research of books, congressional reports and legislative measures,

public interest group press releases, journal and newspaper articles, and other relevant resources.

D. ORGANIZATION OF STUDY

Chapters II and III of this thesis will introduce the federal budget process and the different components that are susceptible to earmark insertion and abuse. These chapters will also further define the problems associated with earmarking in terms of spending trends over the past several years and the obvious relationships between earmarking and corruption and utilizing congressional positions and rank to meet individual earmarking goals.

Chapters IV through VI will analyze earmark reform legislation that has been introduced before and during the 110th Congress to provide a better understanding of the types of reform that proponents deem most essential and to also demonstrate the reluctance within Congress to effect any substantial change.

The last chapter of this thesis will determine the effectiveness of all legislation introduced or passed in combating the main problems associated with earmarking; transparency and abuse of the congressional budget process. Also in this last chapter is a comparison of earmark reform to larger fiscal issues to demonstrate its overall relevancy in terms of total budgetary impact and the legislative effort and attention that it has received in relation to other topics like Social Security and entitlement spending and the growing federal deficit.

II. OVERVIEW OF EARMARKING IN THE FEDERAL GOVERNMENT

A. INTRODUCTION

The congressional practice of earmarking federal funds for specific purposes or projects has been prevalent within the federal budget process over the last decade.¹ Because the federal budget process crosses lines between the executive and legislative branches, it is important to understand the roles and responsibilities of each. Once an understanding of the federal budget process and all of its complexities is attained, the full scope of earmarking in the federal government and how it is accomplished will be apparent.

B. EARMARKING DEFINED

Although the practice of earmarking has been around for some time now, a globally accepted definition of the term has not been. Earmarking in the past has been synonymous with the terms “pork” or “pork-barreling,” a post-Civil War term that compared how members of Congress loaded legislative bills with special projects to take back to their constituents to how plantation owners once handed out salt pork to slaves out of a wooden barrel.²

¹ Background Brief: Earmarks and the Earmarking Process, *OMB Watch*, March 2008. Retrieved August 3, 2008, See: http://www.ombwatch.org/budget/OMBW-BACKGROUND_BRIEF-EARMARKS.pdf

² C-SPAN Congressional Dictionary. Retrieved August 3, 2008, See: <http://www.c-span.org/guide/congress/glossary/porkbarr.htm>

The Office of Management and Budget (OMB), the executive office responsible for preparing and submitting the President's budget to Congress and also providing advice on regulatory and budgetary issues, defines earmarks as "funds provided by the Congress for projects or programs where the congressional direction (in bill or report language) circumvents merit-based or competitive allocation processes, or specifies the location or recipient, or otherwise curtails the ability of the Administration to manage critical aspects of the funds allocation process."³ This definition was created by OMB and forwarded to executive departments and agencies for the purpose of identifying earmarks within appropriations and authorization bills compiled by OMB in a publicly accessible earmarks database. OMB also provides further clarification of earmarks as including funding that Congress provides to projects and programs not specifically requested in the President's budget submission and also the programmatic control of Congress to specify a location or recipient of a project or program that has been requested by the President.⁴

The congressional watchdog group Citizens against Government Waste (CAGW) distinguishes between the terms "pork" and "earmark." They identify "earmarks" as any funding that has been set aside for a specific purpose through proper legislative action and debate within the

³ Robert Portman, MEMORANDUM FOR THE HEADS OF DEPARTMENTS AND AGENCIES, Director, Office of Management and Budget, January 25, 2007. Retrieved August 3, 2008, See: <http://www.whitehouse.gov/omb/memoranda/fy2007/m07-09.pdf>

⁴ OMB Guidance to Agencies on Definition of Earmarks. Retrieved August 3, 2008, See: http://earmarks.omb.gov/earmarks_definition.html

appropriations committees. The term “pork,” however, is used to describe any funds appropriated for a specific purpose that has gone through no approval process through a circumvention of proper legislative channels. In 1991, CAGW, in conjunction with the Congressional Porkbusters Coalition (a bipartisan congressional group against wasteful government spending), developed the following criteria, all or any of which a project must meet to be considered pork:

- Requested by only one chamber of Congress
- Not specifically authorized
- Not competitively awarded
- Not requested by the President
- Greatly exceeds the President’s budget request or the previous year’s funding
- Not the subject of congressional hearings
- Serves only a local or special interest⁵

The Congressional Research Service (CRS), which performs research and analysis for Congress, has recognized the lack of a universally accepted definition for earmarks. To ensure consistency within their own analysis of earmark spending, CRS has defined an earmark “as any designation in the annual appropriations act or accompanying conference reports which allocates a portion of the appropriation for a

⁵ Tom Finnigan, *All About Pork: The Abuse of Earmarks and the Needed Reforms*, Citizens Against Government Waste: Policy Briefing Series, March 7, 2007, p.4.

specific project, location, or institution.”⁶ To demonstrate the effects of varying definitions, CRS’ study of the FY2005 non-emergency appropriations bill identified 15,268 earmarks, compared to CAGW’s study of the same bill which only indentified 13,997.⁷

For the remainder of this study, and to ensure consistency in the analysis of data and policies, the CRS definition and criteria will be utilized. Also, the terms “pork” and “earmark” will be considered synonymous with one another in all research referenced that chooses to use either of these terms.

C. STATUTORY AND NON-STATUTORY EARMARKS

A big focus of debate for earmarks pertains to their legal status within legislative bills and reports. Aside from how earmarks were described in the definitions covered earlier, earmarks can be further categorized as statutory or non-statutory to suggest their legal authority or status.

An earmark is considered statutory if it is “contained in statute or otherwise subjected to rigorous review.”⁸ These earmarks have been the subject, or potential subject, of debate on either floor of Congress, passed as part of either Senate or House versions of authorization or appropriations bills through a vote, and enacted into law by the President. Because statutory earmarks are considered

⁶ *Earmarks in Appropriations Acts: FY1994, FY1996, FY1998, FY2000, FY2002, FY2004, FY2005*, Congressional Research Service, Washington, D.C., January 26, 2006, p.6.

⁷ Finnigan, p.4.

⁸ Peter Cohn, OMB Chief Tells Agencies to Ignore Earmarks not Written into Law, *CongressDaily*, February 16, 2007. Retrieved August 9, 2008. See: <http://www.govexec.com/dailyfed/0207/021607cdam2.htm>

law, they remain in effect until the appropriation period as expired or the earmark as been rescinded through congressional action.

Non-statutory earmarks are located "in a report, such as a committee or conference report, that accompanies the legislation but was not enacted into law itself."⁹ After each chamber passes its version of an appropriations or authorization bill, both versions are sent to a conference committee, a panel of House and Senate negotiators, to resolve any differences between the two bills and to chronicle these proposed changes in a conference report that is again voted on, without further debate, by both chambers of Congress before proceeding to the President. Because of the time restrictions affecting both chambers when they consider the conference report and the length of the report itself, earmarks "airdropped" into these reports are often subject to little or no scrutiny.¹⁰

D. EARMARKS IN THE FEDERAL BUDGET PROCESS

The contemporary federal budget process was shaped by two acts that defined the responsibilities of both the executive and legislative branches. The Budget and Accounting Act of 1921 established the executive budget process, while the Congressional Budget and Impoundment Control Act of 1974 created the legislative budget process.

⁹ *Congressional Directives: Selected Agencies' Process for Responding to Funding Instruments*, Government Accountability Office, Washington D.C., January 2008, p.28.

¹⁰ Kevin Bogardus, Earmarks 'Airdropped' for Freshmen, *The Hill*, November 15, 2007. Retrieved August 18, 2008, See: <http://thehill.com/business--lobby/earmarks-airdropped-for-freshmen-2007-11-15.html>

It is the combination of these two pieces of legislation that allows the federal budget to fulfill two important purposes: (1) "provide a financial measure of federal expenditure, receipts, deficits, and debt levels and their impact on the economy"¹¹ and (2) "provide the means for the Federal Government to efficiently collect and allocate resources to meet national objectives."¹²

The Budget and Accounting Act of 1921 was created because of the need to centralize financial policy making and the budget process in both executive and legislative branches.¹³ Important aspects of this act were that it codified the President's annual budget submission requirements to Congress and also created the Bureau of the Budget, now known as OMB, to assist the President in his budget submission. Table 1 is the timeline of the President's budget process, and includes OMB's issuance of its budget guidance to executive agencies, executive agencies' budget submissions to OMB, OMB review of agencies' budget requests, the President's budget submission to Congress, and the President's mid-session review to update the President's initial submission and to ensure that the budget reflects changes in economic conditions.¹⁴ Another important aspect of the Budget and Accounting Act of 1921 was the creation of the Government Accountability Office

¹¹ S. PRT. 105-67: *The Congressional Budget Process*, United States Senate, Committee on the Budget, Washington, D.C., December 1998, p.1.

¹² Ibid.

¹³ Committee History, United States Senate Budget Committee. Retrieved August 20, 2008, See: <http://www.senate.gov/~budget/democratic/commhist.html>

¹⁴ Bill Heniff Jr., *Overview of the Executive Budget Process*, Congressional Research Service, Washington, D.C., June 17, 2008, p.2.

(GAO) which was assigned responsibility for providing independent audits of executive agency accounts and reporting these results directly to Congress.¹⁵

The "power of the purse"¹⁶ is granted to the Congress under Article I, Section 9, Clause 7 of the United States Constitution which states that "no money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and account of Receipts and Expenditures of all public Money shall be published from time to time."¹⁷

Prior to the Congressional Budget and Impoundment Control Act of 1974 however, Congress' process for considering the President's budget proposal consisted of a "fragmented or uncoordinated committee process"¹⁸ and as a result did not consider or review the full effects of both federal spending and revenue collections. The Congressional Budget and Impoundment Act fixed Congress' fragmented approach to establishing the budget and enforcing federal policy by requiring Congress to enact a budget resolution to set floors on revenues and ceilings on spending. It also required the budget committees to stay within the limits set by the budget resolutions when appropriating funds to the major government agencies and programs. The key purpose of this act was to "encourage Congress to consider explicitly

¹⁵ S. PRT. 105-67: *The Congressional Budget Process*, United States Senate, Committee on the Budget, Washington, D.C., December 1998, p.7.

¹⁶ Bill Heniff Jr., *Overview of the Authorization-Appropriations Process*, Congressional Research Service, Washington, D.C., June 17, 2008, p.1.

¹⁷ *The United States Constitution*, September 17, 1787.

¹⁸ Philip G. Joyce, Congressional Budget Reform: The Unanticipated Implications for Federal Policy Making, *Public Administration Review*, Vol. 56, No. 4, July - August 1996, p.318.

questions of fiscal policy and to make trade-offs when setting spending levels for individual programs.”¹⁹

Another key aspect of this act was the restriction of the President’s ability to impoundment appropriated funds. Under the impoundment control provisions, the President is required to report any appropriations that he defers or delays and must submit a request to Congress to rescind or cancel any budget authority. Lastly, the Congressional Budget and Impoundment Control Act created the Congressional Budget Office (CBO), which is responsible for providing Congress with “objective, nonpartisan, and timely analysis to aid in economic and budgetary decisions on the wide array of programs covered by the federal budget”²⁰ and “information and estimates required for the congressional budget process.”²¹ The timeline for the congressional budget process is depicted in Table 2 and begins after the President’s budget submission on the first Monday in February and concludes at the start of the FY on October 1.

The federal budget process shown in Figure 1 reflects both the President’s budget process and the congressional budget process. It highlights the main phases within the process, to include the President’s budget proposal to congress, congressional development of the budget resolution, and actions of the different authorizing and appropriations committees to create the authorization and appropriations bills for final approval by the President to

¹⁹ John Ferejohn and Keith Krehbiel, The Budget Process and the Size of the Budget, *American Journal of Political Science*, Vol. 31, No. 2, May 1987, p.296.

²⁰ Fact Sheet, Congressional Budget Office. Retrieved August 3, 2008, See: <http://www.cbo.gov/aboutcbo/factsheet.shtml>

²¹ Ibid.

be enacted into law. It is during each of these steps that the extent of earmarking will be further examined and the impact they have on the legislation created throughout the process.

Date	Activities
Calendar Year Prior to the Year in Which Fiscal Year Begins	
Spring	OMB issues planning guidance to executive agencies for the budget beginning October 1 of the following year.
Spring and Summer	Agencies begin development of budget requests.
July	OMB issues annual update to Circular A-11, providing detailed instructions for submitting budget data and material for agency budget requests.
September	Agencies submit initial budget requests to OMB.
October-November	OMB staff review agency budget requests in relation to President's priorities, program performance, and budget constraints.
November-December	President, based on recommendations by the OMB director, makes decisions on agency requests. OMB informs agencies of decisions, commonly referred to as OMB "passback."
December	Agencies may appeal these decisions to the OMB director and in some cases directly to the President.
Calendar Year in Which Fiscal Year Begins	
By first Monday in February	President submits budget to Congress.
February-September	Congressional phase. Agencies interact with Congress, justifying and explaining President's budget.
By July 15	President submits mid-session review to Congress.
August 21 (or within 10 days after approval of a spending bill)	Agencies submit apportionment requests to OMB for each budget account.
September 10 (or within 30 days after approval of a spending bill)	OMB apportions available funds to agencies by time period, program, project, or activity.
October 1	Fiscal year begins.
Calendar Years in Which Fiscal Year Begins and Ends	
October-September	Agencies make allotments, obligate funds, conduct activities, and request supplemental appropriations, if necessary. President may propose supplemental appropriations and impoundments (i.e., deferrals or rescissions) to Congress.
September 30	Fiscal year ends.

Source: Office of Management and Budget, *Circular No. A-11* (Washington: July 2007), Section 10.5.

Table 1. Timetable for the Executive Budget Process.
From [89]

Date	Action
First Monday in February	President submits budget to Congress.
February 15	Congressional Budget Office submits economic and budget outlook report to Budget Committees.
Six weeks after President submits budget	Committees submit views and estimates to Budget Committees.
April 1	Senate Budget Committee reports budget resolution.
April 15	Congress completes action on budget resolution.
May 15	Annual appropriations bills may be considered in the House, even if action on budget resolution has not been completed.
June 10	House Appropriations Committee reports last annual appropriations bill.
June 15	Congress completes action on reconciliation legislation (if required by budget resolution).
June 30	House completes action on annual appropriations bills.
July 15	President submits mid-session review of his budget to Congress.
October 1	Fiscal year begins.

Source: Section 300 of the Congressional Budget Act of 1974, as amended (P.L. 93-344, 2 U.S.C. 631).

Table 2. Timetable for the Congressional Budget Process.
From [23]

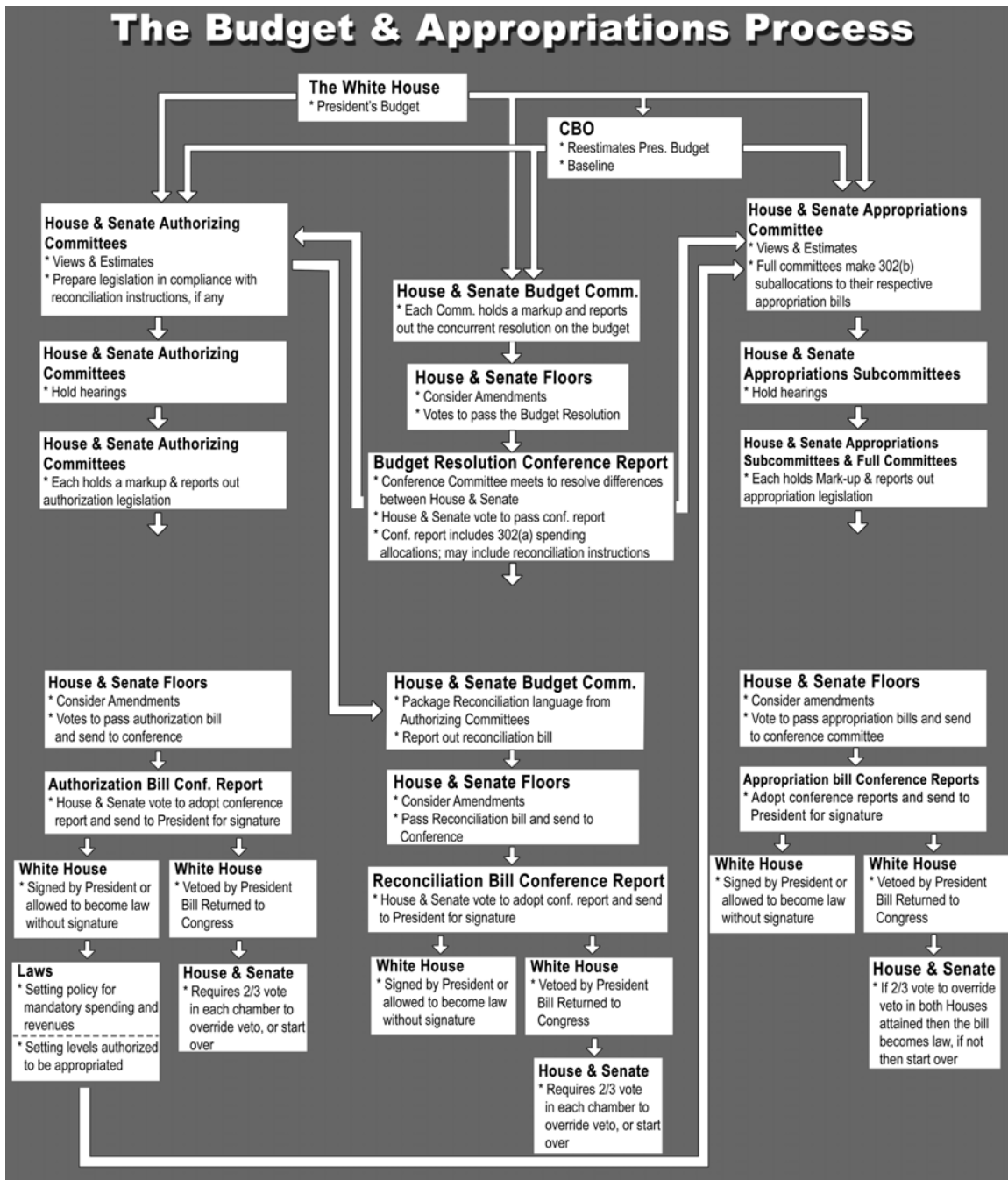


Figure 1. The Federal Budget Process. From [111]

1. President's Budget

The President must submit to Congress by the first Monday in February each year his annual budget request. This submission initiates the appropriations process within

Congress where his request is subject to hearings and markup sessions prior to Congress passing its budget resolution and related budget bills. Although, there is much attention placed on the earmarks requested during congressional markups and conference committees, less attention is placed on the earmarks requested by the President himself.

According to House Appropriations Committee Chairman Representative David Obey [D-WS], "the President directs 20 times as much spending to special projects than Congress does."²² Although the current administration has been aggressively against earmark spending by Congress, it has acknowledged its own earmark requests. Jim Nussle, the Director of OMB, defends the earmarks found in the President's budget by stating that they are "transparent throughout the process"²³ and "not inserted into bills at the last minute, with little review."²⁴

Examples of earmarks that were requested by the President in 2008 spending bills were \$24 million for the Laura Bush 21st Century Librarian Program and \$8.9 million for the Points of Light Foundation, an organization his father started. Other earmarks requested in the President's budget also include those requested specifically by federal agencies.

²² Susan Ferrechio, Bush Stuffs Budget with Earmarks, *The Examiner*, Nov 15, 2007. Retrieved September 14, 2008, See: http://www.examiner.com/a-1049621~Bush_stuffs_budget_with_earmarks.html?cid=rss-Washington_DC

²³ Ibid.

²⁴ Ibid.

2. Authorization Bills

Although earmarks are normally synonymous with appropriations bills, congressional authorization legislation is also a source.²⁵ Authorizing legislation provides the authority for a program, project, or agency to exist, defines policy and differs from appropriations legislation which provides funding for these programs, projects, and agencies. Because of how earmarks are tracked and defined and because authorization bills on discretionary programs do not award actual budget authority, the earmarks found in this legislation are often overlooked.

Federal spending is classified as either mandatory or discretionary. Mandatory, also called direct or entitlement spending, is the portion of government spending that is controlled by laws other than appropriation bills. This type of spending is comprised of Social Security, Medicaid, Medicare, Supplemental Security Income, and other mandatory programs such as military retirement, food stamp programs, and deposit insurance just to name a few.²⁶ Discretionary spending is all other spending that isn't considered mandatory and must go through the dual authorization and appropriations process (some entitlement programs like Medicaid are funded through appropriations acts but the amounts are controlled by authorization legislation)²⁷. The percentage of federal spending that is either mandatory or

²⁵ Earmarks in 2005 Authorization Bills, Office of Management and Budget. Retrieved September 14, 2008, See: http://earmarks.omb.gov/authorizations_home.html

²⁶ Thomas L. Hungerford, *Mandatory Spending: Evolution and Growth Since 1962*, Congressional Research Service, Washington, D.C., September 13, 2005, p.2.

²⁷ Heniff, *Overview of the Authorization-Appropriations Process*, p.1.

discretionary is shown in figure 2 (2007 data), at 53 percent and 38 percent respectively. Although mandatory spending represents a larger percentage of the federal budget than discretionary, the majority of earmarks are more common with discretionary spending.

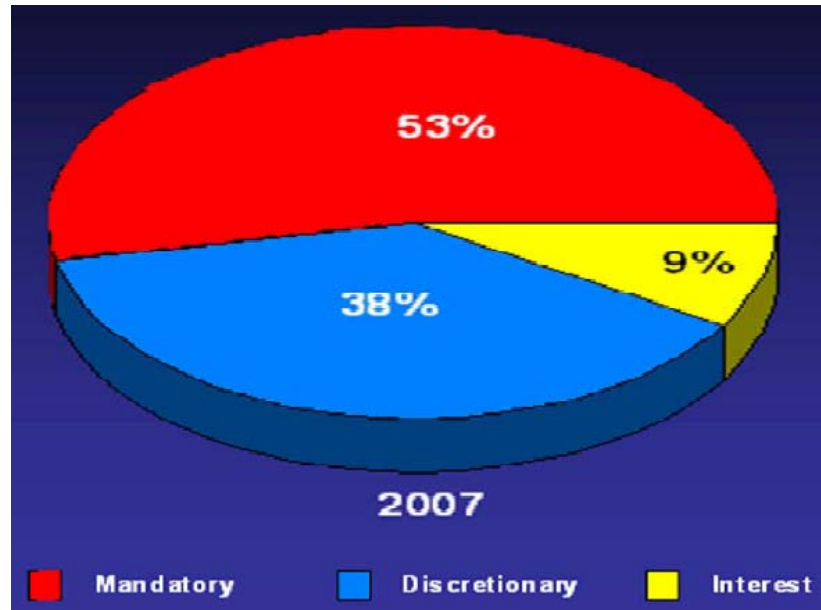


Figure 2. Discretionary and Mandatory Spending. After [28]

The process of enacting authorizing legislation begins within the different authorizing committees. Table 3 shows the standing committees for the Senate and House of Representatives, many of which like the Armed Services, Agriculture, and Commerce, Science, and Transportation Committees, also act as authorizing committees. It is the responsibility of these authorizing committees to recommend the organization and structure, duties and functions, and spending levels to carry out the policy for each program, project, or agency under their jurisdiction.

Standing Committees	
Senate	House of Representatives
Agriculture, Nutrition, and Forestry	Agriculture
Appropriations	Appropriations
Armed Services	Armed Services
Banking, Housing, and Urban Affairs	Budget
Budget	Education and Labor
Commerce, Science, and Transportation	Energy and Commerce
Energy and Natural Resources	Financial Services
Environment and Public Works	Foreign Affairs
Finance	Homeland Security
Foreign Relations	House Administration
Health, Education, Labor, and Pensions	Judiciary
Homeland Security and Governmental Affairs	Natural Resources
Judiciary	Oversight and Government Reform
Rules and Administration	Rules
Small Business and Entrepreneurship	Science and Technology
Veterans' Affairs	Small Business
	Standards of Official Conduct
	Transportation and Infrastructure
	Veterans' Affairs
	Ways and Means

Table 3. Standing Committees within Congress²⁸

Authorizing legislation can be annual, multiyear, or permanent. But unlike with the appropriations process, general authorizing legislation does not follow a regular cycle and can be introduced or enacted at any time during the year. However, for the 12 annual discretionary appropriations bills, authorizing legislation is required prior to its enactment because “House and Senate rules

²⁸ Richard J. McKinney, Standing Committees of Congress: 1789 to Present, July 2008. Retrieved September 2, 2008, See: <http://www.llsdc.org/attachments/wysiwyg/544/Standing-Cmtes.pdf>

generally prohibit unauthorized appropriations."²⁹ For authorizing legislation on mandatory spending, once a bill is accepted in identical forms by both chambers and approved the President it becomes law and budget authority is permanently granted. For the authorization legislation needed for the 12 annual appropriations bills, authority for the programs, projects, and agencies becomes available once the authorization bills become law. However, actual funds for these programs must be made available in appropriations bills.

3. Appropriation Bills

Budget authority for federal discretionary spending is made available through appropriations legislation. Due to the "broad similarities in the format of different appropriations bills (though the bills do differ, one to another), there have been efforts to count earmarks in appropriations bill, but not in tax or authorization bills."³⁰ For this reason, most earmark counts like those offered through OMB's earmark website and through fiscal watchdog groups like Citizens Against Government Waste (CAGW) and Tax Payers for Common Sense are from the annual appropriations bills (although many earmarks that are found in authorization bills are duplicated in appropriations bills).

²⁹ James V. Saturno, *The Congressional Budget Process: A Brief Overview*, Congressional Research Service, Washington, D.C., January 28, 2004, p.4.

³⁰ Committee for Economic Development, Statement on Earmarks Making - Washington Work Project, December 19, 2006. Retrieved September 2, 2008, See: http://www.ced.org/docs/report/report_2007 earmarks.pdf

Agriculture, Rural Development, Food and Drug Administration, and Related Agencies
Commerce, Justice, Science, and Related Agencies
Defense
Energy and Water Development
Financial Services and General Government
Homeland Security
Interior, Environment, and Related Agencies
Labor, Health and Human Services, Education, and Related Agencies
Legislative Branch
Military Construction, Veterans Affairs, and Related Agencies
State, Foreign Operations, and Related Programs
Transportation, Housing and Urban Development, and Related Agencies

Table 4. Subcommittees of the Senate and House Committee on Appropriations^{31, 32}

Where the main purpose of an authorization bill is to allow a program, project, or agency to exist, an appropriations bill provides funding, or budget authority, which allows these programs, projects, or agencies to incur obligations. The appropriations process begins with the submission of the President's annual budget request. The 12 annual appropriations bills are under the jurisdiction of the appropriations subcommittees listed in Table 4. It is the responsibility of these committees to hold hearings to review the President's request and to hold a markup session to debate the content of the legislation and to make spending decisions. Another responsibility of these committees is to ensure that the funding levels specified in the appropriations measure stay within any constraints

³¹ United States House of Representatives, Committee on Appropriations. Retrieved September 14, 2008, See: <http://appropriations.house.gov/>

³² United States Senate, Committee on Appropriations. Retrieved September 14, 2008, See: <http://appropriations.senate.gov/>

contained in any corresponding authorizing legislation and that of the concurrent budget resolution.

The prescribed deadline for the annual appropriations bills is October 1, the start of the new FY, although this target is seldom hit.³³ In the event that an annual appropriation does not get enacted by this date, Congress will pass a continuing resolution, which provides temporary funding at a specified level to agencies that have not received a regular appropriation. This continuing resolution will remain in effect until Congress and the President have resolved any differences with the pending appropriations.

4. Omnibus Spending Packages

Up until the last few decades, each of the annual appropriations measures was enacted separately into law. It is only in recent years that Congress began to use omnibus bills to package together multiple appropriations as a means of expediting what is usually a delayed congressional process of forwarding any appropriations bills to the President for his signature.

An Omnibus bill "packages together several measures into one or combines diverse subjects into a single bill."³⁴ Although Congress once typically considered each of the regular appropriations separately, in more recent years (19 of the past 30 years from FY1977 to FY2008), Congress has packaged two or more regular appropriations bills into one,

³³ Robert Keith, *Introduction in the Federal Budget Process*, Congressional Research Service, Washington, D.C., March 7, 2008, p.12.

³⁴ C-SPAN Congressional Dictionary. Retrieved September 14, 2008, See: <http://www.c-span.org/guide/congress/glossary/omnibus.htm>

or more, omnibus measures.³⁵ The most recent omnibus measure to be enacted into law was the Consolidated Appropriations Act of 2008 (H.R. 2764) which contained 11 unfinished appropriations bills and contained nearly 9,000 earmarks worth close to \$10 billion.³⁶

The main problem with omnibus bills pertains to the lack of time for congressional review, which creates the inability for members to adequately propose debate or call a point of order to the contents of the bills. The Consolidated Appropriations Act of 2008 "was 3,417 pages ... and the House passed the bill less than 22 hours after the text was first made available, while the Senate had 46 hours and 8 minutes for its analysis."³⁷ Therefore, it wasn't until after the bill had been passed that "lawmakers and laymen alike peruse its contents in earnest" and see that "scattered throughout the bill were hundreds of hastily inserted pages of 'earmarks'."³⁸

5. Conference Reports

The source of much earmark reform debate pertains to the transparency of earmark requests that come from conference committees and the reports that are forwarded back to the Senate and House of Representatives for

³⁵ Sandy Streeter, *The Congressional Appropriations Process: An Introduction*, Congressional Research Service, Washington, D.C., September 8, 2006, p.12.

³⁶ Amy Gardner, Bush Signs Domestic Spending Bill but Criticizes Pet Projects, *Washington Post*, December 27, 2007.

³⁷ Nicola Moore, Omnibusted: The Top 10 Worst Problems with the Omnibus Spending Bill, *The Heritage Foundation*, December 21, 2007.

³⁸ Ken Silverstein, The Great American Pork Barrel: Washington Streamlines the Means of Corruption, *Harper's Magazine*, July 2005. Retrieved September 19, 2008, See: <http://www.harpers.org/archive/2005/07/0080635>

consideration. From FY1995 to FY1999 most earmarks were requested before each chamber passed their own version of each appropriations bill, but since FY2000 more earmarks are being added during the Senate and House conferences.³⁹

All bills that are passed in both the Senate and House of Representatives are referred to conference committees, a temporary panel of Senate and House negotiators who are responsible for resolving differences between Senate and House versions of the same bill. These differences include anything from content to the legislative language used. The conference committee must resolve the difference between versions before a single conference report can be returned to the House and Senate for final passage and sent to the President for his approval. The product of these committees is a conference report which is a "compromise product negotiated by the conference committee(s) ... (and) submitted to each chamber for its consideration."⁴⁰ This report, along with a joint explanatory statement (explanation of each conference committee's decisions), is sent back to both chambers where a time limit is placed on the floor for consideration.

The major problem with these conference reports is that most "negotiations occur behind closed doors"⁴¹ and allow for earmarks not first debated or passed by either chamber to be "air-dropped"⁴² into them. This poses transparency

³⁹ Marcia Clemmitt, Pork Barrel Politics, *Congressional Quarterly Researcher*, Volume 16, Number 23, June 16, 2006, p.544.

⁴⁰ United States Senate, Glossary. Retrieved September 19, 2008, See:
http://www.senate.gov/reference/glossary_term/conference_report.htm

⁴¹ Finnigan, p.7.

⁴² Keith, p.28.

headaches because the sources of the earmark requests are not identified or readily known. Also because of the time limitations placed on debate once these reports make their way back to each floor and the lengthiness of the reports, most of these hidden earmark requests go unnoticed until there can be further scrutiny on the measure after the bill has passed.

To demonstrate the abuse of these reports, CAGW reported that of the 3,071 earmarks contained in the FY2005 Labor and Health and Human Service Appropriations Act, 98 percent were added in conference.⁴³

E. CHAPTER SUMMARY

The federal budget process affords both the executive and legislative branches the opportunities to fulfill their constitutional obligations as they pertain to federal spending and revenue collection. However, because of the complexity of the process, and factors such as personal motives and differing opinions on what constitutes a legitimate earmark from one that is abusive or wasteful, the federal budget process has lacked the required provisions to ensure adequate scrutiny of all earmark requests and transparency of these requests within Congress and to the general public. Although the level of earmark spending decreased from FY2005 to FY2007, it significantly increased again in the federal government's spending for FY2008 and has become an important political issue.

⁴³ Finnigan, p.7.

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III. TRENDS AND PROBLEMS IN EARMARKING

A. INTRODUCTION

Congressional and public interest in earmarking reform have been spurred in recent years by accusations of wasteful spending, manipulation of the congressional budget process, and self-driven motives of some members of Congress. Also increasing the fight against earmarks are the high profile cases of members of Congress receiving financial kick-backs from public and private organizations while "lobbying scandals . . . have [also] focused public attention on the congressional practice of earmarking expenditures and have created political momentum for reforming the practice."⁴⁴

The plight and interest of watchdog groups and advocates of earmark reform become more apparent by analyzing the historical patterns in earmarking, observations of congressional proponents of earmark spending, and the scandals of recent years involving members of Congress.

B. EARMARKS BY APPROPRIATION

Although earmarks can be found in authorizing legislation for both mandatory and discretionary spending programs, most of the earmarks tracked by government entities like OMB and CRS and independent watchdog groups like CAGW and Tax Payers for Common Sense have centered on those found within appropriations legislation.

⁴⁴ Rob Porter and Sam Walsh, Earmarks in the Federal Budget Process, Briefing Paper 16, Harvard Law School Federal Budget Policy Seminar, May 1, 2006, p.2.

The total number of earmarks discovered within the annual appropriations measures has grown at an almost exponential rate over the last few decades. As shown in Figure 3, these numbers remained relatively consistent during FY1991 - FY1997, then began a steep increase before peaking in FY2005 at 13,997 earmarks which represented an 872 percent increase over the total number of earmarks tracked in the FY1995 appropriations bill. Although the number of earmarks declined sharply in FY2006 to 9,963 earmarks, the total amount of federal funds spent on these earmarks was 2.9 percent higher (as shown in figure 4) than the previous year.

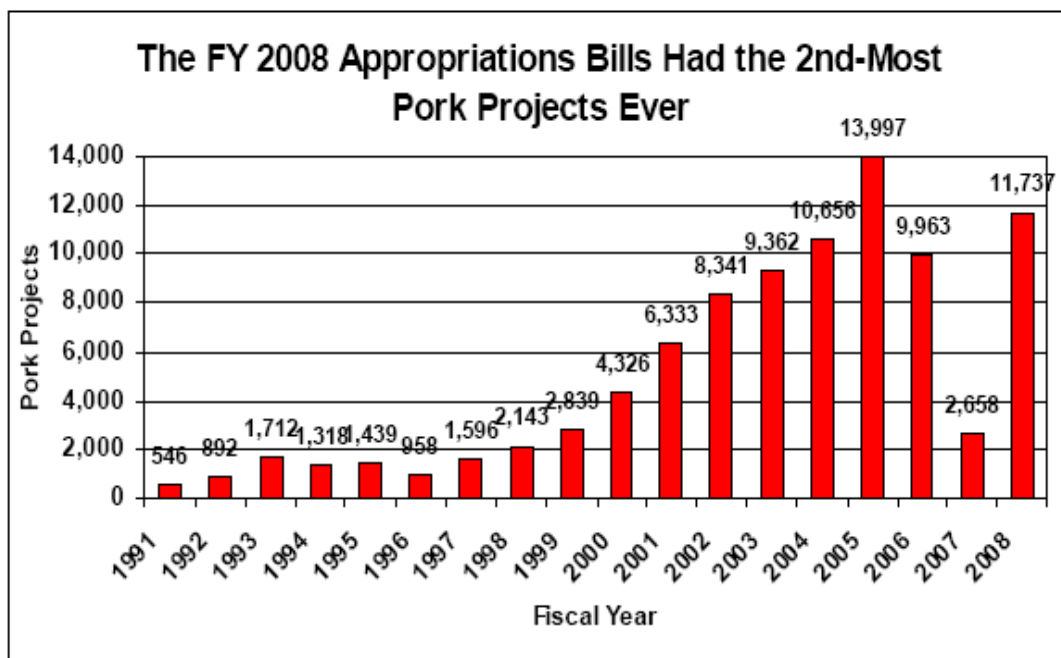


Figure 3. Earmark Levels in Appropriations bills. From [102]

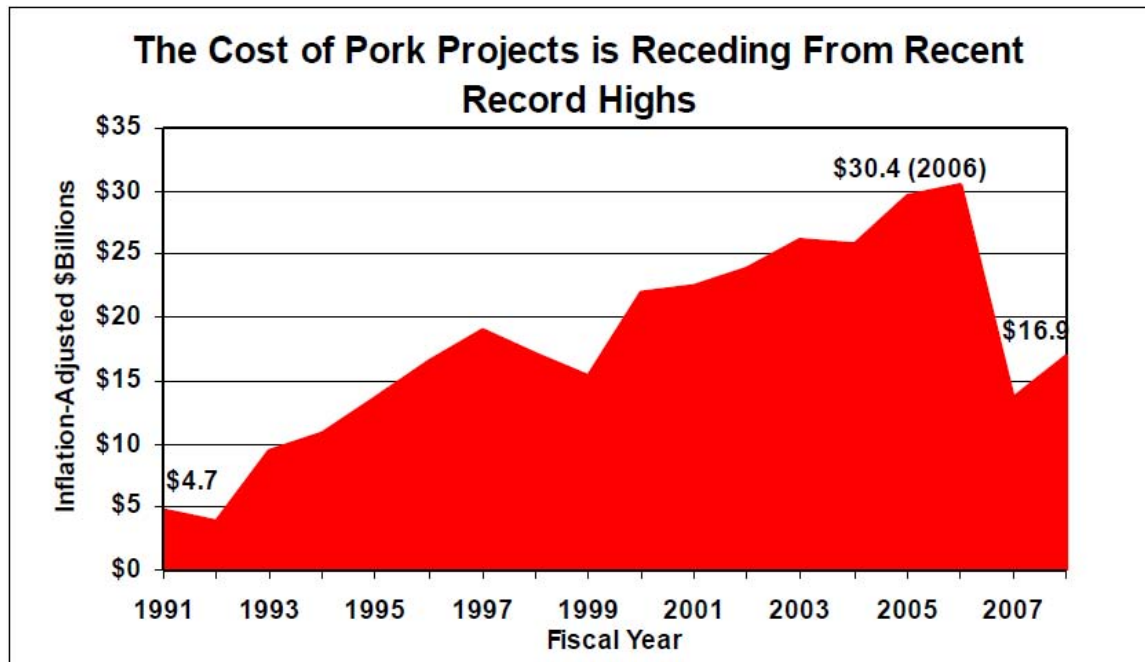


Figure 4. Inflation Adjusted Cost of Earmarks within the Annual Appropriations Bills. From [102]

FY2007 saw a substantial decrease again in the total number of earmarks funded, but more importantly there was also a comparable decrease in the total amount of funding that went into these earmarks (\$13 billion, down from \$29 billion spent on FY2006 earmarks). This decrease in earmarking and spending was attributed to the passing of House Joint Resolution 20 (H.J.RES.20), which was a full-year continuing resolution (CR) of all annual appropriations with the exception of the Defense and Homeland Security appropriations acts.⁴⁵

H.J.RES.20 was advertised as a measure that would allow Congress to meet the President's \$873 billion discretionary spending topline for the fiscal year and also put a

⁴⁵ David E. Williams, Sean Kennedy, and Ben Giovine, 2007 *Congressional Pig Book Summary: The Book Washington Doesn't Want You to Read*, Citizens Against Government Waste, Washington D.C., 2007, p.3.

moratorium on earmark spending. According to a letter released by Representative David Obey [D-WS], chairman of the House Committee on Appropriations, the joint resolution "explicitly eliminates earmarks in both the 2006 bill and report to honor the commitment to put a moratorium on earmarking until a reformed process was in place."⁴⁶

Congressional and public criticism, however, suggest that although the resolution did not create new earmarks, it maintained funding for multi-year earmarks at the previous year's levels. A memo released by Senator Kay Bailey Hutchison [R-TX] stated that earmark provisions in the resolution "merely [maintain] current practice"⁴⁷ and "did not include provisions to remove multi-year earmarks."⁴⁸

In FY2008, the total number of earmarks increased again, to 11,737, second only to the FY2005 totals. Although this total is a 337 percent increase over the FY2007 totals, the total funding for these earmarks increased only 30 percent, from \$13.2 billion to \$17.2 billion.⁴⁹

As regards the FY2009 budget, President Bush signed into law the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act of 2009 which included the FY2009 Defense, Homeland Security, and Military

⁴⁶ David Obey, Summary of the Joint Resolution, United States House of Representatives, Committee on Appropriations, p.5.

⁴⁷ Kay B. Hutchison, Problems with the Democrats' Omnibus Appropriations Bill: The Beginning of Fiscal Responsibility, United States House of Representatives, Senate Republican Policy Committee, February 6, 2007, p.1.

⁴⁸ Ibid.

⁴⁹ David E. Williams and Sean Kennedy, *2008 Congressional Pig Book Summary: The Book Washington Doesn't Want You to Read*, Citizens Against Government Waste, Washington D.C., 2008, p.3.

Construction/Veterans Affairs appropriations bills and a continuing resolution for the other annual appropriations. A memorandum from Jim Nussle, Director of the Office of Management and Budget, to heads of departments and executive agencies, indicated that the continuing resolution does fund earmarks that meet all of the following criteria: (1) was in the statutory text of enacted FY2008 appropriations bills, (2) was recurring in nature, and (3) could not be carried out by funding after the expiration of the continuing resolution if Congress decides to provide continued funding for it in FY2009.⁵⁰ The total number and cost of the earmarks that fit these criteria have not been identified; however, this data is available for the three appropriations that were passed as part of this spending package.

The Defense spending bill contained 2,025 earmarks worth \$4.8 billion⁵¹ as reported by Taxpayers for Common Sense. This represents a 39 percent reduction in earmark spending from the FY2008 Defense spending bill which contained 2,100 earmarks worth \$7.9 billion.⁵² In CAGW's analysis of the FY2009 Homeland Security spending bill, they discovered 118 earmarks worth \$286 million, down from the previous year's Homeland Security bill which contained 124

⁵⁰ Jim Nussle, Guidance on Implementing P.L. No. 110-329 in Accordance with Executive Order 13457 "Protecting American Taxpayers From Government Spending on Wasteful Earmarks", Memorandum to the Heads of Departments and Agencies, Office of Management and Budget, Washington, D.C., October 23, 2008, p.1.

⁵¹ Roxana Trion, 5 High Tech Earmarks Hidden in the Pentagon's New Budget, *Popular Mechanics*, October 7, 2008. Retrieved December 1, 2008, See: http://www.popularmechanics.com/technology/military_law/4286342.html

⁵² Robert Brodsky, Defense Bill Proves Lucrative for Biggest Firms, *Government Executive*, November 27, 2007. Retrieved December 1, 2008, See: <http://www.govexec.com/dailyfed/1107/112707rb1.htm>

earmarks worth \$294 million.⁵³ CAGW also reported that the FY2009 Military Construction/Veterans Affairs appropriations contained 172 earmarks worth \$1.2 billion compared to its FY2008 counterpart which contained 191 earmarks worth the same amount.⁵⁴

C. EARMARKS BY STATE

Another means by which earmarks have been tracked has been to determine how many earmarks can be directly connected to an individual state and the value of those earmarks. In 1991, CAGW began such a compilation in their annually released publication titled, Pig Book. Tax Payers for Common Sense has conducted similar research on earmark awards by state and also tracks the cumulative earmarks that each congressional member has secured during his tenure in office.

It can be argued that the number of earmarks awarded to each state correlates to the number, and the seniority, of states' Representatives and Senators within each chamber's Appropriations Committees. Based on research done by Taxpayers for Common Sense on the earmark history of many of the Appropriations Committees' ranking members, in the Senate, Senator Thad Cochran [R-MS] (ranking Republican) has secured over \$837 million⁵⁵ in earmark funding for his

⁵³ Pork Alert: 2009 Homeland Security, *Citizens Against Government Waste*, October 9, 2008. Retrieved December 1, 2008, See: <http://www.cagw.org/site/News2?page=NewsArticle&id=11628>

⁵⁴ Pork Alert: 2009 Military Construction, *Citizens Against Government Waste*, October 8, 2008. Retrieved December 1, 2008, See: <http://www.cagw.org/site/News2?page=NewsArticle&id=11626>

⁵⁵ Power Ranking Senator Thad Cochran, *Congress.Org*. Retrieved October 5, 2008, See: http://www.congress.org/congressorg/power_rankings/power_card.tt?id=341

state, Senator Ted Stevens [R-AK] (second ranking Republican) has secured over \$457 million,⁵⁶ Senator Daniel Inouye [D-HI] (Senate Appropriations Defense Subcommittee Chairman) has secured over \$414 million⁵⁷ and Senator Robert Byrd [D-WV] (Senate Appropriations Committee Chairman) has secured over \$407 million.⁵⁸ The top earmarkers in the House of Representatives are Representative John Murtha [D-PA] (House Appropriations Defense Subcommittee Chairman) who has secured over \$176 million for his state,⁵⁹ Representative Bill Young [R-FL] (ranking Republican in the House Appropriations Defense Subcommittee) who has secured over \$169 million,⁶⁰ and Representative Jerry Lewis [R-CA] (ranking Republican House Appropriations Committee) has secured over \$137 million.⁶¹

Aside from the earmark award numbers noted above, the connection between these congressional members' positions on the different Appropriations Committees and Subcommittees and earmark funding is also validated in CAGW's annual Pig Books. Alaska, Hawaii, Mississippi, and West Virginia have

⁵⁶ Power Ranking Senator Ted Stevens, *Congress.Org*. Retrieved October 5, 2008, See: http://www.congress.org/congressorg/power_rankings/power_card.tt?id=159

⁵⁷ Power Ranking Senator Daniel Inouye, *Congress.Org*. Retrieved October 5, 2008, See: http://www.congress.org/congressorg/power_rankings/power_card.tt?id=201

⁵⁸ Power Ranking Senator Robert Byrd, *Congress.Org*. Retrieved October 5, 2008, See: http://www.congress.org/congressorg/power_rankings/power_card.tt?id=622

⁵⁹ Power Ranking Representative John Murtha, *Congress.Org*. Retrieved October 5, 2008, See: http://www.congress.org/congressorg/power_rankings/power_card.tt?id=511

⁶⁰ Power Ranking Representative Bill Young, *Congress.Org*. Retrieved October 5, 2008, See: http://www.congress.org/congressorg/power_rankings/power_card.tt?id=172

been consistently ranked in the top nine (Alaska and Hawaii being in the top three) in earmarks per capita by state since 2005 (see Tables 5 - 7). Also, in terms of total earmarks awarded by state, California, Mississippi, Florida, Alaska, and Pennsylvania made up the top six in 2008 (see Table 7).

Another fact about the members mentioned above is that all have served in Congress for at least 30 years, with Senators Stevens, Byrd and Inouye having been in Congress for 40 years or more. Although earmark opponents such as Representative Jeff Flake [R-AZ] see the actions of these individuals as a means to "ensure their own reelection,"⁶² these same individuals support their actions and their commitment to ensure earmark funding for their states. Senator Cochran's office states that he "supports funding for projects that are beneficial to the nation"⁶³ and adds that "[Senator Cochran] is very transparent in what he supports and he supports full disclosure."⁶⁴ Senator Inouye has defended his earmarks in similar fashion to Senator Stevens by saying that "lawmakers play a key role in

⁶¹ Power Ranking Representative Jerry Lewis, *Congress.Org*. Retrieved October 5, 2008, See: http://www.congress.org/congressorg/power_rankings/power_card.tt?id=663

⁶² Interview with Representative Jeff Flake, Bill Moyers, *Public Broadcasting Service*, February 22, 2008. Retrieved October 3, 2008, See: <http://www.pbs.org/moyers/journal/02222008/profile.html>

⁶³ Alexander Bolton, Senators Cochran, Stevens Lead in Earmark Tally, *The Hill*, December 3, 2007. Retrieved October 5, 2008, See: <http://thehill.com/leading-the-news/sens.-cochran-stevens-lead-in-earmark-tally-2007-12-03.html>

⁶⁴ Ibid.

addressing the unique needs of their home states”⁶⁵ and believes the notion advocated by fiscal watchdog groups that any funding not requested by the President is wasteful is “misguided.”⁶⁶ Representative Murtha’s thoughts on earmarks are also similar; he feels that it’s “Congress’s right to award such funds”⁶⁷ and that “local lawmakers are best suited to understand the needs of their district.”⁶⁸ What can be considered apparent and what has been concluded about membership to Appropriations Committees is that they “can wield considerable behind-the-scenes power to make sure their favored projects get funded.”⁶⁹

⁶⁵ Inouye Comments on Earmarks as a Senate Panel Approves \$153 Million for Hawaii Projects, Press Release, Office of Senator Daniel Inouye, June 21, 2007. Retrieved October 7, 2008, See: <http://inouye.senate.gov/07pr/20070621pr01.html>

⁶⁶ Inouye Comments on Earmarks as a Senate Panel Approves \$153 Million for Hawaii Projects, Press Release, Office of Senator Daniel Inouye, June 21, 2007. Retrieved October 7, 2008, See: <http://inouye.senate.gov/07pr/20070621pr01.html>

⁶⁷ John R. Wilke, Murtha Inc.: How Lawmaker Rebuilt Hometown on Earmarks, *The Wall Street Journal*, October 30, 2007. Retrieved October 5, 2008, See: http://online.wsj.com/public/article_print/SB119371051667975920.html

⁶⁸ Ibid.

⁶⁹ Kate Ackley and John Stanton, Members Earmarking without Earmarks, *Roll Call*, February 7, 2007. Retrieved October 7, 2008, See: http://coburn.senate.gov/public/index.cfm?FuseAction=EarmarkToolkit.EarmarkNews&ContentRecord_id=57b7131a-802a-23ad-4e46-ec9ac6c7d460

Pork Per Capita by State

(National Average: \$33.03 Per Person)

2005 Rank	State	2005 Pork	Population	Pork/Capita	2004 Rank
1	Alaska	\$645,502,000	655,435	\$984.85	1
2	District of Columbia	\$257,171,000	553,523	\$464.61	3
3	Hawaii	\$573,926,000	1,262,840	\$454.47	2
4	West Virginia	\$398,622,250	1,815,354	\$219.58	5
5	Montana	\$152,441,000	926,865	\$164.47	6
6	South Dakota	\$81,770,250	770,883	\$106.07	7
7	North Dakota	\$64,371,250	634,366	\$101.47	10
8	New Mexico	\$183,658,750	1,903,289	\$96.50	16
9	Mississippi	\$276,307,000	2,902,966	\$95.18	9
10	Vermont	\$56,522,000	621,394	\$90.96	12
11	Nevada	\$205,199,000	2,334,771	\$87.89	11
12	Alabama	\$345,157,750	4,530,182	\$76.19	8
13	Idaho	\$98,991,000	1,393,262	\$71.05	14
14	Wyoming	\$33,571,000	506,529	\$66.28	26
15	New Hampshire	\$84,555,000	1,299,500	\$65.07	4
16	Oklahoma	\$198,823,061	3,523,553	\$56.43	18
17	Rhode Island	\$60,953,500	1,080,632	\$56.41	17
18	South Carolina	\$233,176,000	4,198,068	\$55.54	19
19	Iowa	\$159,057,750	2,954,451	\$53.84	13
20	Tennessee	\$317,329,000	5,900,962	\$53.78	34
21	Kentucky	\$215,874,250	4,145,922	\$52.07	15
22	Delaware	\$40,083,000	830,364	\$48.27	27
23	Kansas	\$115,183,000	2,735,502	\$42.11	23
24	Utah	\$100,293,250	2,389,039	\$41.98	25
25	Missouri	\$224,917,978	5,754,618	\$39.08	29
26	Maine	\$49,053,500	1,317,253	\$37.24	21
27	Virginia	\$271,526,250	7,459,827	\$36.40	24
28	Washington	\$215,011,750	6,203,788	\$34.66	22
29	Maryland	\$184,458,250	5,558,058	\$33.19	30
30	Louisiana	\$147,860,500	4,515,770	\$32.74	31
31	Wisconsin	\$178,260,343	5,509,026	\$32.36	32
32	Arkansas	\$82,917,500	2,752,629	\$30.12	35
33	Nebraska	\$52,021,000	1,747,214	\$29.77	38
34	Pennsylvania	\$359,872,931	12,406,292	\$29.01	28
35	Oregon	\$95,046,750	3,594,586	\$26.44	49
36	Connecticut	\$88,494,000	3,503,604	\$25.26	36
37	Ohio	\$284,611,750	11,459,011	\$24.84	33
38	Arizona	\$136,283,800	5,743,834	\$23.73	40
39	Massachusetts	\$150,372,000	6,416,505	\$23.44	39
40	Illinois	\$296,477,000	12,713,634	\$23.32	42
41	New Jersey	\$192,643,750	8,698,879	\$22.15	51
42	Florida	\$379,959,857	17,397,161	\$21.84	44
43	New York	\$393,032,750	19,227,088	\$20.44	46
44	Colorado	\$92,843,750	4,601,403	\$20.18	20
45	Indiana	\$115,811,250	6,237,569	\$18.57	37
46	Minnesota	\$89,132,500	5,100,958	\$17.47	48
47	North Carolina	\$133,666,000	8,541,221	\$15.65	50
48	Michigan	\$152,614,750	10,112,620	\$15.09	47
49	Georgia	\$130,664,250	8,829,383	\$14.80	41
50	California	\$237,593,250	35,893,799	\$6.62	43
51	Texas	\$65,301,250	22,490,022	\$2.90	45
		\$9,698,986,720	293,655,404	\$33.03	

Table 5. 2005 Earmark Spending by State. From [118]

Pork Per Capita by State
(National Average: \$30.55 Per Person)

2006 Rank	State	2006 Pork	Population	Pork/Capita	2005 Rank	Difference
1	Alaska	\$325,106,000	663,661	\$489.87	1	0
2	Hawaii	\$482,399,000	1,275,194	\$378.29	3	1
3	D.C.	\$100,236,000	550,521	\$182.07	2	-1
4	West Virginia	\$239,069,000	1,816,856	\$131.58	4	0
5	North Dakota	\$78,537,000	636,677	\$123.35	7	2
6	Mississippi	\$321,359,000	2,921,088	\$110.01	9	3
7	Montana	\$99,563,000	935,670	\$106.41	5	-2
8	Nevada	\$166,989,000	2,414,807	\$69.15	11	3
9	New Mexico	\$129,007,000	1,928,384	\$66.90	8	-1
10	South Dakota	\$49,457,000	775,933	\$63.74	6	-4
11	New Hampshire	\$81,688,000	1,309,940	\$62.36	15	4
12	Vermont	\$32,099,000	623,050	\$51.52	10	-2
13	Idaho	\$70,270,000	1,429,096	\$49.17	13	0
14	Rhode Island	\$52,156,000	1,076,189	\$48.46	17	3
15	Alabama	\$203,046,000	4,557,808	\$44.55	12	-3
16	Kentucky	\$185,445,000	4,173,405	\$44.43	21	5
17	Washington	\$253,110,000	6,287,759	\$40.25	28	11
18	Utah	\$97,583,000	2,469,585	\$39.51	24	6
19	Louisiana	\$177,745,000	4,523,628	\$39.29	30	11
20	Arizona	\$228,076,000	5,939,292	\$38.40	38	18
21	Colorado	\$177,264,000	4,665,177	\$38.00	44	23
22	Maryland	\$210,853,000	5,600,388	\$37.65	29	7
23	Wyoming	\$18,574,000	509,294	\$36.47	14	-9
24	Delaware	\$29,915,000	843,524	\$35.46	22	-2
25	Missouri	\$188,131,000	5,800,310	\$32.43	25	0
26	Nebraska	\$53,780,000	1,758,787	\$30.58	33	7
27	New York	\$582,550,000	19,254,630	\$30.26	43	16
28	Maine	\$37,762,000	1,321,505	\$28.57	26	-2
29	Oregon	\$103,959,000	3,641,056	\$28.55	35	6
30	New Jersey	\$240,137,000	8,717,925	\$27.55	41	11
31	Illinois	\$350,546,000	12,763,371	\$27.47	40	9
32	Virginia	\$198,218,000	7,567,465	\$26.19	27	-5
33	North Carolina	\$226,845,700	8,683,242	\$26.12	47	14
34	Tennessee	\$151,162,000	5,962,959	\$25.35	20	-14
35	Connecticut	\$87,247,000	3,510,297	\$24.85	38	3
36	Arkansas	\$68,694,000	2,779,154	\$24.72	32	-4
37	Iowa	\$72,197,000	2,966,334	\$24.34	19	-18
38	Minnesota	\$117,652,000	5,132,799	\$22.92	46	8
39	Kansas	\$62,805,000	2,744,687	\$22.88	23	-16
40	Pennsylvania	\$283,713,000	12,429,616	\$22.83	34	-6
41	Wisconsin	\$117,819,000	5,536,201	\$21.28	31	-10
42	South Carolina	\$88,768,000	4,255,083	\$20.86	18	-24
43	California	\$733,634,000	36,132,147	\$20.30	50	7
44	Ohio	\$226,541,513	11,464,042	\$19.76	37	-7
45	Michigan	\$196,639,000	10,120,860	\$19.43	48	3
46	Massachusetts	\$116,808,459	6,398,743	\$18.25	39	-7
47	Texas	\$403,516,000	22,859,968	\$17.65	51	4
48	Oklahoma	\$58,721,000	3,547,884	\$16.55	16	-32
49	Indiana	\$102,466,000	6,271,973	\$16.34	45	-4
50	Florida	\$266,912,300	17,789,864	\$15.00	42	-8
51	Georgia	\$109,394,000	9,072,576	\$12.06	49	-2
	TOTAL*	\$9,056,163,972	296,410,404	\$30.55		

*This figure differs from the \$29 billion total for pork. Pork projects earmarked for multiple states or projects that cannot be attributed to a specific state are not included in the pork per capita calculations.

Table 6. 2006 Earmark Spending by State. From [121]

Pork Per Capita by State

(National Average: \$33.77 Per Person)

2008 Rank	State	2008 Pork	Population	Pork/Capita	2006 Rank	Change
1	Alaska	\$379,699,715	683,478	\$555.54	1	0
2	Hawaii	\$283,149,151	1,283,388	\$220.63	2	0
3	North Dakota	\$132,883,420	639,715	\$207.72	5	2
4	West Virginia	\$325,799,541	1,812,035	\$179.80	4	0
5	Mississippi	\$449,883,378	2,918,785	\$154.13	6	1
6	Vermont	\$70,631,915	621,254	\$113.69	12	6
7	South Dakota	\$89,241,281	796,214	\$112.08	10	3
8	New Mexico	\$205,220,434	1,969,915	\$104.18	9	1
9	Montana	\$86,749,151	957,861	\$90.57	7	-2
10	District of Columbia	\$46,126,719	588,292	\$78.41	3	-7
11	Arkansas	\$204,151,772	2,834,797	\$72.02	36	25
12	Louisiana	\$291,193,790	4,293,204	\$67.83	19	7
13	Rhode Island	\$70,848,807	1,057,832	\$66.98	14	1
14	Delaware	\$55,605,307	864,764	\$64.30	24	10
15	Nevada	\$158,779,895	2,565,382	\$61.89	8	-7
16	Iowa	\$184,625,783	2,988,046	\$61.79	37	21
17	Alabama	\$280,071,372	4,627,851	\$60.52	15	-2
18	Kentucky	\$237,504,148	4,241,474	\$56.00	16	-2
19	Kansas	\$143,744,440	2,775,997	\$51.78	39	20
20	Idaho	\$68,026,924	1,499,402	\$45.37	13	-7
21	Utah	\$117,671,306	2,645,330	\$44.48	18	-3
22	Maryland	\$240,356,990	5,618,344	\$42.78	22	0
23	Virginia	\$326,488,200	7,712,091	\$42.33	32	9
24	Missouri	\$244,170,488	5,878,415	\$41.54	25	1
25	Washington	\$268,294,892	6,468,424	\$41.48	17	-8
26	Minnesota	\$199,847,089	5,197,621	\$38.45	38	12
27	Connecticut	\$134,387,293	3,502,309	\$38.37	35	8
28	New Hampshire	\$42,159,826	1,315,828	\$32.04	11	-17
29	Wisconsin	\$174,816,697	5,601,640	\$31.21	41	12
30	Nebraska	\$54,252,725	1,774,571	\$30.57	26	-4
31	Massachusetts	\$186,992,813	6,449,755	\$28.99	46	15
32	Wyoming	\$14,294,522	522,830	\$27.34	23	-9
33	Tennessee	\$167,805,330	6,156,719	\$27.26	34	1
34	Oklahoma	\$98,306,642	3,617,316	\$27.18	48	14
35	Pennsylvania	\$332,534,975	12,432,792	\$26.75	40	5
36	Illinois	\$327,333,197	12,852,548	\$25.47	31	-5
37	South Carolina	\$111,630,689	4,407,709	\$25.33	42	5
38	Indiana	\$158,296,422	6,345,289	\$24.95	49	11
39	North Carolina	\$216,408,374	9,061,032	\$23.88	33	-6
40	Texas	\$558,967,383	23,904,380	\$23.38	47	7
41	Maine	\$29,521,553	1,317,207	\$22.41	28	-13
42	Florida	\$382,964,232	18,251,243	\$20.98	50	8
43	New Jersey	\$180,531,502	8,685,920	\$20.78	30	-13
44	Georgia	\$196,628,305	9,544,750	\$20.60	51	7
45	Oregon	\$75,943,902	3,747,455	\$20.27	29	-16
46	Michigan	\$196,478,810	10,071,822	\$19.51	45	-1
47	Colorado	\$94,039,035	4,861,515	\$19.34	21	-26
48	Ohio	\$211,698,486	11,466,917	\$18.46	44	-4
49	California	\$666,398,576	36,553,215	\$18.23	43	-6
50	New York	\$323,390,913	19,297,729	\$16.76	27	-23
51	Arizona	\$89,790,175	6,338,755	\$14.17	20	-31
	TOTAL*	\$10,186,338,285	301,621,157	\$33.77		

* This figure differs from the \$17.2 billion total for pork. Pork projects earmarked for multiple states or projects that cannot be attributed to a specific state are not included in the pork per capita calculations.

Table 7. 2008 Earmark Spending by State. From [120]

D. CORRUPTION RELATED TO EARMARKS

Corruption scandals involving bribery and kick-backs in the form of direct compensation and inappropriate campaign contributions have plagued Congress in recent years. Although scandals have existed in government since the country's inception, concerns over wasteful spending in programs like Alaska's "Bridge to Nowhere," which would have cost \$398 million to build and would have linked the small town of Gravina Island with 50 residents to Ketchikan, have also drawn critical attention to earmarks.⁷⁰ Notable examples of these recent scandals involve Representatives Randy "Duke" Cunningham [R-CA] and Allan Mollohan [D-WV] and Senator Ted Stevens [R-AK].

1. Representative Randy "Duke" Cunningham [R-CA]

Former Representative Randy "Duke" Cunningham [R-CA] of California's 50th district was sentenced to eight years in prison on March 3, 2006 on criminal conspiracy charges involving three defense contractors. Cunningham plead guilty to taking \$2.4 million in bribes from two defense contractors, MZM Inc., a "national security firm" based in Washington, D.C., and Automated Data Conversion Systems (ADCS) Inc., an information technology company based in San Diego, CA.⁷¹

⁷⁰ Sean Kennedy, Earmark Scandals Continue Unabated, *Citizens Against Government Waste*, January 4, 2007. Retrieved September 29, 2008, See: <http://www.cagw.org/site/News2?page=NewsArticle&id=10259>

⁷¹ Charles R. Babcock, Contractors Linked to Bribery Case Worked Together, *The Washington Post*, November 30, 2005. Retrieved October 5, 2008, See: <http://www.washingtonpost.com/wp-dyn/content/article/2005/11/29/AR2005112901641.html>

From 2002 to 2006, Cunningham used his positions on the House Defense Appropriations Subcommittee and House Intelligence Committee to secure funding that resulted in revenues of \$150 million for MZM Inc. From 1999 to 2006 Cunningham also helped ADCS secure over \$80 million in defense contracts. Because of his key position "he would have been privy to the most sensitive information about intelligence contracting and he would have been in a position to improperly assist his benefactors."⁷² The earmarks that he secured for these companies were inserted into the annual Defense Appropriations bills and also Intelligence bills which are not completely reviewed or debated by the entire House because of the classified nature of the material found in the bill.

2. Representative Allan Mollohan [D-WV]

Representative Alan Mollohan [D-WV] has been in the United States House of Representatives since 1983 and has been under recent investigation for House ethics violations. These violations include allegations of bribes and illegal campaign contributions he received in return for securing hundreds of millions of dollars in earmarks to five non-profit organizations.

Between 1990 and 2000, Mollohan created five non-profit organizations; the Institute for Scientific Research, the West Virginia High Technology Consortium Foundation, Canaan Valley Institute, the Vandalia Heritage Foundation, and the MountainMade Foundation. From 1997 to 2006, Mollohan used

⁷² Tony Eckert, Earmarking has Grown in Congress, *The San Diego Union Tribune*, December 3, 2005.

his position as a member of the House Appropriations Committee to secure \$250 million in earmark funding to these non-profits.⁷³ Suspicions of Mollohan's alleged bribe taking arose when his personal fortune increased from \$550,000 in 2000 to \$31 million in 2005.⁷⁴

In 2006, the National Legal and Policy Center (NLPC), a research institute based in Virginia, filed a complaint to the Federal Bureau of Investigation (FBI) on possible violations by Mollohan for not accurately reporting his personal finances and also possible bribe taking. Because of these alleged violations of the Ethics Reform Act of 1989 and House Rule XXIII, which both state that it is illegal to use a position as a representative to benefit others in return for compensation, Mollohan was forced to step down in 2006 as the ranking Democrat on the House Ethics Committee.

Regardless of any alleged impropriety, Mollohan remains in the House, serving his 13th term as a Representative for West Virginia as the FBI continues to investigate his non-profit organizations and his associates. He has since submitted amendments to his personal financial disclosures to correct any deficiencies in his statements from previous years and continues to secure funding for earmarks for his congressional district.

⁷³ John Bresnahan, West Virginia Footed Mollohan Trip, *Roll Call*, May 8, 2006.

⁷⁴ Jody Rudoren and Aron Pilhofer, Congressman in FBI Inquiry Corrects Errors in Financial Disclosure Forms, *The New York Times*, June 14, 2006, p.16.

3. Senator Ted Stevens [R-AK]

Senator Ted Stevens [R-AK] has served in the United States Senate continuously since first assuming office in 1968. Stevens, the second ranking Republican in the Senate Appropriations Committee and the ranking Republican in the Defense Appropriations Subcommittee in the 110th Congress, has been known for his extensive use of earmarks and supporting the infamous "Bridge to Nowhere" and has been characterized as a politician "who wields outsize influence over federal spending."⁷⁵ As a result of Stevens' numerous earmark requests in all of the annual appropriations bills and "steering hundreds of millions of dollars a year in earmarks for his home state,"⁷⁶ he has drawn the attention of many critics and has also been the subject of several investigations.

The first investigation involves a series of earmarks Stevens secured for the SeaLife Center in Seward, Alaska worth \$1.6 million. A joint investigation by the FBI and the Department of the Interior's Inspector General examined allegations that this money was steered away from the City of Seward to the SeaLife Center specifically for the purchase of land owned by Trevor McCabe for \$558,000 for the purpose of expanding the center. What raised concerns about this deal and suggested the possibilities of wrong doing is

⁷⁵ David Johnston and David M. Herszenhorn, Senator Charged in Scheme to Hide Oil Firm Gifts, *The New York Times*, July 30, 2008. Retrieved October 10, 2008, See: <http://www.nytimes.com/2008/07/30/washington/30stevens.html?hp>

⁷⁶ Paul Kane and Dan Eggen, FBI Probes Stevens's Earmark, *The Washington Post*, August 1, 2007. Retrieved October 10, 2008, See: http://www.washingtonpost.com/wp-dyn/content/article/2007/07/31/AR2007073101878.html?nav=rss_politics

that McCabe, an Anchorage fisheries lobbyist, was a former aide to Senator Stevens and also a business partner of Senator Stevens' son. Allegations further detail that these earmarks would "ensure that McCabe would be bailed out of a money-losing real estate venture by U.S. taxpayers."⁷⁷

Senator Stevens was convicted on October 27, 2008 in a federal court in Washington, D.C., and found guilty of seven counts of failing to disclose on financial forms services that he had received from a private company. These charges claim that Stevens received over \$250,000 in gifts and services (in the form of home improvements to his Alaska vacation home) from VECO Corporation, an oil services contractor, and its Chief Executive Officer (CEO) William Allen. The official indictment prior to his hearing also states that Stevens used his position to assist VECO by securing funding for several VECO projects, providing grants from other federal agencies, and helping build a national gas pipeline that also benefited VECO.⁷⁸

Regardless of his felony conviction and the rare possibility of receiving a prison term, Senator Stevens continued to serve in the United States Senate for a short period until he lost his bid for re-election to Anchorage Mayor Mark Begich [D-AK].

⁷⁷ Documents Show Stevens' Earmark Led to Real Estate Purchase, *Fairbanks Daily News-Miner*, The Associated Press, February 11, 2008. Retrieved October 10, 2008, See: <http://www.newsminer.com/news/2008/feb/11/documents-show-stevens-earmark-led-real-estate-pur/>

⁷⁸ Senator Charged with Lying about Gifts, *CBS News*, The Associated Press, July 29, 2008. Retrieved October 10, 2008, See: <http://www.cbsnews.com/stories/2008/07/29/politics/main4303372.shtml>

E. SUMMARY

The current trends in earmark spending, along with recent examples of congressional corruption, have amplified the need for earmark reform as it pertains to transparency, government ethics reform, and improvements to the federal budget process involving earmarks. Reforms have been urged by watchdog groups like CAGW, Taxpayers for Common Sense, and the National Taxpayers Union, to name a few, but have been further supported on Capital Hill by earmark reform proponents like Senator John McCain [R-AZ], Senator Jim DeMint [R-SC], Senator Tom Coburn [R-OK], Senator Barack Obama [D-IL], and Representative Jeff Flake [R-AZ]. Because of the direct and indirect actions of these groups and individuals, legislation has been introduced in the last two sessions of Congress that has called for both reform and an end to wasteful earmark spending.

IV. PRE-110TH CONGRESS EARMARK AND TRANSPARENCY REFORM

A. INTRODUCTION

With the exception of a few acts, e.g., the Lobbying Disclosure Act of 1995, few bills regarding how the Senate or House of Representatives handles earmark reform and transparency have become law. Prior to the 110th session of Congress, i.e., during the 107th, 108th, and 109th sessions, many bills were introduced on this particular subject, but only a small percentage actually received consideration in either chamber and only one made its way to the President for enactment into law.

B. CLEAN UP ACT

The Curtailing Lobbyist Effectiveness through Advance Notification, and Posting (CLEAN-UP) Act (S.2179) of the 109th Congress was introduced in the Senate on January 18, 2006, sponsored by Senator Barack Obama [D-IL] and co-sponsored by nine other Democrats, including Senators Hillary Clinton [D-NY], John Kerry [D-MA], and Edward Kennedy [D-MA]. The CLEAN-UP Act was proposed by Senator Obama "to increase transparency in government and decrease the influence of lobbyists in the legislative process."⁷⁹ It does this by proposing amendments to several standing rules in the Senate (standing rules remain consistent from Congress to Congress unless approved changes are made during

any given session). The CLEAN UP Act specifically called upon the Senate to amend three of its standing rules that pertain to the conduct of conference committees, the availability of bills and reports to members of the Senate and the public, and the requirement to publish a list of earmarks prior to the consideration of any bill that contains them.

1. Senate Rule XXVII

The changes that S.2179 called for in Rule XXVII (Conference Committees, Reports, Open Meetings) were intended to enhance the visibility of any violations where new or non-germane matter is added to any conference report (conference committees resolve differences in bills and are not intended to introduce or insert new material into them). This would be done through the submission of joint explanatory statements by the committee to report the violations and also the members responsible.

Another change would have made it out of order to consider any conference reports unless a statement of managers is signed by both the senior majority and minority manager for the committee stating that: 1) all Senate managers have had an opportunity to vote on all amendments and propositions, 2) roll call votes have been held in public meetings of the committee members on any motion, and 3) the minority has been afforded the opportunity to submit dissenting or minority views.

⁷⁹ Obama Introduces CLEAN UP Act to Increase Transparency in Government, Decrease Lobbyists' Influence, Press Release, Office of Senator Barack Obama, January 23, 2006. Retrieved October 25, 2008, See: http://obama.senate.gov/press/060123-obama_introduce_4/

2. Senate Rule XIV

The change to Rule XIV (Bills, Joint Resolutions, Resolutions, and Preambles Thereto) pertains to the availability of bills, resolutions, or conference reports to members of the Senate and the general public prior to their consideration. Under this change, legislation must be provided to members and published on the internet 72 hours prior to any vote unless waived by two-thirds of the Senate.

3. Senate Rule XVI

The change to Rule XVI (Appropriations and Amendments to General Appropriations Bills) requires added transparency of earmark requests in appropriations bills and accompanying conference reports. Under the proposed change, no bill or report would be considered unless a list of all earmarks was provided to all members and made available to the general public, via the internet, 72 hours prior to consideration.

4. Legislation Outcome

Although the CLEAN UP Act had the backing of some influential members of Senate, it failed to come to a vote. The last action on this bill after it was introduced was that it was forwarded to the Senate Committee on Rules and Administration, where no further action was taken on it.

C. TRANSPARENCY AND INTEGRITY IN EARMARKS ACT OF 2006

The Transparency and Integrity in Earmarks Act of 2006 (S.2261) of the 109th Congress was introduced on February 8, 2006 by Senator Barack Obama [D-IL] and co-sponsored by Senator Evan Bayh [D-IN]. This act, like Senator Obama's

other earmark reform bills, proposed changes to Senate rules to provide greater transparency of earmark requests within appropriations bills. It also included provisions for ethics reform in the Senate and would have required recipients of federal funds to disclose information about the lobbyists who helped secure their earmarked funds.

1. Senate Rule XVI

Similar to CLEAN UP, the Transparency and Integrity in Earmarks Act proposed a change to Rule XVI (Appropriations and Amendments to General Appropriations Bills) that requires that a list of all earmark requests within appropriations measures be made available to all members of the Senate and to the general public 72 hours prior to the consideration of the measure. It also required that all earmarks be germane or appropriate to the bill and that these earmarks exist in the text of the appropriations bill and not referenced or directed from any committee or conference report.

2. Senate Rule XXXVII

This bill, unlike Senator Obama's previous bill, also addressed several ethical considerations. It proposed an addition to Rule XXXVII (Conflict of Interest) that would prohibit any member of the Senate from advocating for any earmark in which he had a financial interest. It also recommended an addition that would have prevented members of the Senate from "buying votes", which is accomplished by one member including language in bills, resolutions, or

conference reports to provide earmark funding for a program beneficial to one member's state by allowing another or other members to do the same.

3. Lobbying Disclosure Act of 1995

Lastly, this act provided an amendment to the Lobbying Disclosure Act of 1995 to increase the visibility in relationships between federal funding recipients and lobbyists. It would have accomplished this by requiring these recipients to publicly report the lobbyists who worked on behalf of the recipient and also the amount the recipient paid the lobbyist.

4. Legislation Outcome

As with the CLEAN UP Act also introduced by Senator Obama, the Transparency and Integrity in Earmarks Act of 2006 never made it to a vote. It was forwarded to the Senate Committee on Rules and Administration after its introduction, where no further debate or action was taken on it.

D. PORK BARREL REDUCTION ACT

The Pork Barrel Reduction Act (S.2265) of the 109th Congress was introduced by Senator John McCain [R-AZ] on February 9, 2006 and intended to "provide greater accountability of taxpayers' dollars by curtailing congressional earmarking."⁸⁰ Co-sponsored by other earmark reform advocates like Senators Jim DeMint [R-SC] and Tom

⁸⁰ John McCain, *Pork Barrel Reduction Act*, S.2265, United States Senate, Washington, D.C., February 9, 2006.

Coburn [R-OK], this bill proposed numerous changes to Senate Standing Rules to enhance transparency through added disclosure requirements, restricting the introduction of new unauthorized appropriations in bills or reports, preventing obligations of federal funds from non-statutory earmarks, and requiring recipients of federal funds to disclose their relationships with lobbyists.

1. Senate Rule XVI

Proposed changes to Senate Rule XVI (Appropriations and Amendments to General Appropriations Bills) constitute the bulk of the text found in this legislation. This section is important with respect to earmark reform because it would “make it more difficult to insert pork barrel spending into bills”⁸¹ by strengthening the point of order relevant to the violation of rules against inserting earmarks and new or unauthorized appropriations into appropriations bills or conference reports. These changes would also provide greater authority for opponents of earmark spending to bring debate to unworthy projects and have these earmarks removed from the text of the bill or report with the consent of the Senate or House.

These changes included allowing points of order to be raised by a member of the Senate if:

- New or general legislation and unauthorized appropriations were included in a general appropriations bill

⁸¹ Bayh Introduces Bipartisan Legislation to Reduce Pork Barrel Spending, Press Release, Office of Senator Even Bayh, February 6, 2006. Retrieved October 28, 2008, See: <http://bayh.senate.gov/news/press/release/?id=84c332f3-4a23-4c93-a0a5-f625910de8a3>

- New or general legislation and unauthorized appropriations were included in a conference report to a general appropriations bill
- Unauthorized appropriations are included in any amendment between chambers

Also, if a point of order is raised on any matter in violation of the above restrictions and the point of order is sustained, those changes or additions would be stricken from the appropriations bill or amendment that the point of order was called on and/or the amount of budget authority granted would be reduced accordingly.

An additional change to this rule would require appropriations committees to disclose information about unauthorized appropriations before the bill or amendment is to be considered. This information includes the unauthorized appropriation, the names of the members who inserted the unauthorized appropriation, and the members' justification for inserting the unauthorized appropriation.

2. Senate Rule XXVIII

Changes to Senate Rule XXVIII (Conference Committees, Reports, and Open Meetings) would include making it out of order to consider a conference report that contains matter not agreed upon by committee members from both the Senate and House of Representatives. This was another key component to much needed transparency within Congress since the common practice of inserting earmarks into the text of reports at the last minute has been a major obstacle in ensuring that all appropriations are fully scrutinized. It

also required that conference reports be made available to Senate members 48 hours prior to the presentation of the report on the Senate floor.

Another disclosure requirement would require conference committees to provide a list of unauthorized appropriations discovered during reconciliation. This list would also include the unauthorized appropriation, the identification of the members involved, and their justifications for including the unauthorized appropriation.

The last addition to Senate Rule XXVIII would place a restriction on federal agencies from committing federal funds to unauthorized earmark projects. These unauthorized earmarks are defined as those earmarks placed in accompanying reports but not listed in the general appropriations bills.

3. Lobbying Disclosure Act of 1995

The final proposal in the Pork Barrel Reduction Act would amend the Lobbying Disclosure Act of 1995 to make the relationships between federal funding recipients and lobbyist more apparent, similar to the Transparency and Integrity in Earmarks Act of 2006. Under this amendment, federal funding recipients would have to make it publicly known what lobbyists worked on the recipients' behalf and also how much the lobbyists were paid by the recipient to do the work.

4. Legislation Outcome

As with many other bills to reform the rules in the Senate, this bill too did not get any consideration after it

was introduced. It was read twice on the Senate floor and referred to the Committee on Rules and Administration where no further action was taken on it.

E. OBLIGATION OF FUNDS TRANSPARENCY ACT OF 2005

The Obligation of Funds Transparency Act of 2005 of the 109th Congress was introduced in slightly varying versions in both the Senate (S.1495) and House of Representatives (H.R.1642). The Senate version was introduced by Senator John McCain [R-AZ] and co-sponsored by two other Republicans, including Senator Tom Coburn [R-OK]. The House version was introduced by Representative Jeff Flake [R-AZ] and co-sponsored by 72 other representatives, an even mix of Democrats and Republicans. Both versions offered amendments to Senate and House rules, respectively, that would require that earmarks be placed only in the text of appropriations bills and prohibited federal agencies from spending money on non-statutory earmarks. During a committee hearing on this bill, Senator McCain stated in regards to committee reports and joint explanatory statements that "the time has come to make it clear to all federal agencies that they should not be interpreting language as law."⁸² Representative Flake, during the same hearing, also noted that "Congress needs

⁸² John McCain, Testimony of Sen. John McCain on S.1495, the Obligation of Funds Transparency Act, before the Subcommittee on Federal Financial Management, Government Information, and International Security, United States Senate, Senate Committee on Homeland Security and Governmental Affairs, Washington, D.C., March 16, 2006. Retrieved October 28, 2008, See: http://hsgac.senate.gov/public/_files/031606McCain.pdf

transparency and accountability”⁸³ and that transparency can be achieved if “earmarks are in the bill text and [not] originate in conference.”⁸⁴

1. General Proposals

Both versions proposed a general prohibition on the use of federal funds by federal agencies from earmarks that are found in congressional reports but not listed in the approved appropriations bills. Also, to ensure consistency in the various definitions that pertain to earmarking, both bills proposed the following definitions:

a. Assistance

“Includes a grant, loan guarantee, or contract”^{85, 86}

b. Congressional Report

“A report of the Committee on Appropriations of the House of Representatives or the Senate, or a joint explanatory statement of a committee of conference”⁸⁷

⁸³ Jeff Flake, The Honorable Jeff Flake Hearing on H.R.1642 – The Obligation of Funds Transparency Act, United States Senate, Senate Committee on Homeland Security and Governmental Affairs, Washington, D.C., March 16, 2006. Retrieved October 28, 2008, See: http://hsgac.senate.gov/public/_files/031606Flake.pdf

⁸⁴ Jeff Flake, The Honorable Jeff Flake Hearing on H.R.1642 – The Obligation of Funds Transparency Act, United States Senate, Senate Committee on Homeland Security and Governmental Affairs, Washington, D.C., March 16, 2006. Retrieved October 28, 2008, See: http://hsgac.senate.gov/public/_files/031606Flake.pdf

⁸⁵ John McCain, *Obligation of Funds Transparency Act of 2005*, S.1495, United States Senate, Washington, D.C., July 26, 2005.

⁸⁶ Jeff Flake, *Obligation of Funds Transparency Act of 2005*, H.R.1642, United States House of Representatives, Washington, D.C., April 14, 2005.

⁸⁷ Ibid.

c. Earmark

"A provision that specifies the identity of an entity to receive assistance and the amount of the assistance"⁸⁸

d. Entity

"A state or locality, but does not include any Federal Agency"⁸⁹

2. House Rules

The only difference between Senator McCain's version of this bill and that of Representative Flake are specific provisions that Representative Flake introduced to amend House Rules XIII (Calendars and Committee Reports) and XXII (House and Senate Relations). The changes to these rules prohibit waiver of the germaneness requirements for conference reports, limit debate on germaneness questions to 20 minutes, and ensure that germaneness points of order are not applicable to special rules which waive all other points of order.

3. Legislation Outcome

Although the Obligation of Funds Transparency Act of 2005 was backed by two of the most notable earmark reform proponents in Congress, the Senate version of this bill failed to make it beyond committee hearings, and the House

⁸⁸ Jeff Flake, *Obligation of Funds Transparency Act of 2005*, H.R.1642, United States House of Representatives, Washington, D.C., April 14, 2005.

⁸⁹ Ibid.

version died in the House Committee on Rules. Present at the Senate hearings on this bill were representatives from Citizens Against Government Waste (CAGW), Taxpayers for Common Sense, and the Center for American Progress, all of whom testified on its behalf. During the hearing, Steve Ellis, Vice President of Programs for Taxpayers for Common Sense, stated that this bill would "force earmarks out of the shadows and into the light of open debate."⁹⁰ This bill was dead after the 109th Congress ended its session.

F. FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT OF 2006

The Federal Funding Accountability and Transparency Act of 2006 (S.2590) of the 109th Congress was introduced by Senator Tom Coburn [R-OK] on April 6, 2006 and co-sponsored by 47 other Senators from both sides of the aisle. The goal of this bill was to create an online searchable database that contained federal spending information in order to improve funding accountability and transparency. Also, because of citizen access to the database, the public would be better able to "hold policy makers and government agencies accountable for questionable decisions."⁹¹

This bill was supported by 110 organizations which included watchdog groups, various non-profit organizations,

⁹⁰ Steve Ellis, Earmark Reform – Understanding the Obligation of Funds Transparency Act of 2005, United States Senate, Senate Committee on Homeland Security and Governmental Affairs, Washington, D.C., March 16, 2006. Retrieved October 28, 2008, See: http://hsgac.senate.gov/public/_files/031606Ellis.pdf

⁹¹ Dr. Coburn Remarks on the Federal Funding Accountability and Transparency Act, Press Release, Office of Senator Tom Coburn, April 6, 2006. Retrieved October 28, 2008, See: http://coburn.senate.gov/public/index.cfm?FuseAction=LatestNews.FloorStatements&ContentRecord_id=cc2e244e-802a-23ad-45d3-a7f210f96722&Issue_id=

grassroots movements, and nationally recognizable public organizations and also by some of the Senate's most prominent earmark reformists. Senators McCain and Obama, who testified on behalf of the bill during committee hearings, both stated the importance of transparency in government spending as a means of curtailing wasteful and fraudulent spending. Senator Obama testified that "the lack of transparency over the use of Federal resources is simply appalling"⁹² and that "if government spending can't withstand public scrutiny, then the money shouldn't be spent."⁹³ Senator McCain also stressed the importance of transparency during his testimony and stated that "the only way to control spending and ensure accountability is to let the American people see exactly how their money is being spent."⁹⁴

Although this bill had an overwhelmingly large number of supporters within the Senate, it did have opponents who tried to kill it. In an attempt to keep this bill from being considered on the Senate floor, two secret holds (a temporary motion to stop consideration) were placed on the bill after it was unanimously reported out of the committee. It was discovered that the holds were placed on the bill by

⁹² Barack Obama, Statement of Senator Barack Obama, United States Senate, Senate Committee on Homeland Security and Governmental Affairs, Washington, D.C., July 18, 2006. Retrieved November 1, 2008, See: http://coburn.senate.gov/ffm/index.cfm?FuseAction=Files.View&FileStore_id=591a66f1-291b-45cd-904d-dba3bd3ab6b9

⁹³ Ibid.

⁹⁴ John McCain, Statement of Senator John McCain on S.2590 - The Federal Funding Accountability and Transparency Act of 2006, United States Senate, Senate Committee on Homeland Security and Governmental Affairs, Washington, D.C., July 18, 2006. Retrieved October 28, 2008, See: http://coburn.senate.gov/ffm/index.cfm?FuseAction=Files.View&FileStore_id=fb55ff21-736c-445e-8ff2-21cf6e2ed024

two of the Senate's biggest earmark users, Senator Ted Stevens [R-AK] and Senator Robert Byrd [D-WV]. Within a week however, both holds were dropped and the Senate was able to pass the bill.

1. General Proposals

The main proposal in this legislation was the requirement for the Office of Management and Budget (OMB) to create a searchable database on the internet by January 1, 2008 and that the information found on this website include the amount of federal expenditure, funding agency, name and location of the funding recipient, and any parent entity of the funding recipient. Also, in the requirement for OMB to accomplish this task, the bill authorized its Director to designate federal agencies to participate in the development, establishment and operation of the website.

2. Legislative Outcome

The Federal Funding Accountability and Transparency Act of 2006 passed the Senate on September 7, 2006 and the House on September 13, 2006, and eventually became Public Law 109-282 (P.L.109-282) when the President signed the bill on September 26, 2006. As a result of this law, OMB launched its mandated website, USAspending.gov, which can be accessed at <http://www.usaspending.gov/>.

G. SUMMARY

Although there has been a reluctance within Congress in the past to pass legislation centered on earmark reform, the growing debate around this subject and the increased attention from public watchdog groups continue to support

the initiatives of a few within Congress to introduce new legislation on this topic. The passage of the Federal Funding Accountability and Transparency Act of 2006 was an important step in the direction of bringing transparency to federal spending. However, it fails to address the transparency and accountability that is needed within the congressional budget process with regards to earmarking. During the 110th Congress, earmark reform proponents in the Senate and the House continued to introduce legislation that addressed this shortfall in an attempt to eliminate the abusive use of earmarks.

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V. SENATE EARMARK REFORM LEGISLATION IN THE 110TH CONGRESS

A. INTRODUCTION

Earmark reform measures introduced in the 109th Congress focused primarily on preventing the secretive insertion of earmarks into appropriations bills during conference in reports or amendments. These measures also sought to increase the transparency of such activities by requiring full disclosure of earmark requests prior to the consideration of any bill or identifying members of Congress who continued such practices. Many of the initiatives introduced in the 110th Congress, especially the Senate, differ from these previous bills in that they are a mixed bag of different types of reform that aim to bundle lobbying practices, congressional ethics, and earmark reform into single bills.

Although House bills introduced in the 110th Congress include measures that continue to target the lack of transparency and continued practice of inserting earmarks into conference committee reports, the focus appears to have shifted slightly, possibly to address recent lobbying scandals like that involving Jack Abramoff, a lobbyist who used his influence to swindle \$85 million from Indian casinos that he represented. This case also involved the prosecution of former Representative Bob Ney [R-OH] and staff members of former Representative Tom DeLay [R-TX].

Regardless of the additional content of these new earmark reform initiatives or the extent to which recent external events have influenced them, the same reform proponents, including Senators John McCain [R-AZ] and Jim DeMint [R-SC], continued the struggle, while new proponents begin to join them.

B. HONEST LEADERSHIP AND OPEN GOVERNMENT ACT OF 2007

The Honest Leadership and Open Government Act of 2007 (S.1) of the 110th Congress was introduced in the Senate on January 4, 2007, sponsored by Senator Harry Reid [D-NV] and co-sponsored by seventeen other senators. A House version of this bill (H.R.2316) was also introduced by Representative John Conyers [D-MI] on Jun 4, 2007, with the same title. This bill was “designed to end the culture of corruption and restore accountability in Washington”⁹⁵ through a series of rule changes that place stringent restrictions on the lobbying activities of former congressional members, limit allowable donations and gifts that a member of congress can receive from lobbying firms, require greater disclosure of lobbyist activities, and reinforce the requirement for congressional members to publicly disclose their earmark requests.

Although this bill centered mainly on lobbying and ethics reform, it is relevant to broader earmark reform because of the relationship between corrupt politics and congressional earmarking highlighted by scandals involving former Representative Duke Cunningham [R-CA] and Senator Ted

⁹⁵ Honest Leadership, Open Government, Press Release, Office of the Speaker of the House, United States Senate. Retrieved October 28, 2008, See: <http://www.speaker.gov/legislation?id=0072>

Stevens [R-AK]. President Bush said of this bill that “strengthening the ethical standards that govern lobbying activities and beginning to address meaningful earmark reform are necessary steps to provide the public with a more transparent lawmaking process.”⁹⁶ Even though President Bush signed this bill into law, he still felt that this “bill falls far short of the reform that American taxpayers deserve”⁹⁷ and that the earmark provisions “included in this bill [would] allow earmarks to escape sufficient scrutiny.”⁹⁸

1. Lobbying Reform

Title I of this law aims to “close the revolving door” through which federal employees, namely congressional members and their staffers, transition directly to special interest organizations upon departure from their federal positions. What these individuals are able to do for their new employees is “provide an insider’s roadmap on how [their] clients can get their interests stoked and stroked in Congress.”⁹⁹ The bill puts a mandatory waiting period of two years for Senators and one year for Representatives and congressional staffers from becoming registered lobbyists. It also makes public on the internet, the restrictions

⁹⁶ President Bush Signs Honest Leadership and Open Government Act of 2007, Press Release, Office of the Press Secretary, Office of the President of the United States, September 14, 2007. Retrieved October 28, 2008, See: <http://www.whitehouse.gov/news/releases/2007/09/20070914-5.html>

⁹⁷ Ibid.

⁹⁸ Ibid.

⁹⁹ Chuck Raasch, Revolving Door Spins Faster than Ever in D.C., *USA Today*, April 14, 2005. Retrieved November 1, 2008, See: http://www.usatoday.com/news/opinion/columnist/raasch/2005-04-14-raasch_x.htm

placed upon these individuals leaving office, to make both the public and potential employers aware of this waiting period.

With respect to lobbying disclosure, this bill also amends the Lobbying Disclosure Act of 1995 by requiring that lobbyists file disclosure reports on a quarterly vice semiannual basis. It also increases the number of lobbying activities that must be reported by reducing the cost requirement for these activities. Another disclosure change requires new lobbyists who are former congressional members or staffers to register with the Secretary of the Senate and Clerk of the House of Representative within 20 days of employment. The last major disclosure changes now require lobbying firms and lobbyists to report contributions made to political, private, and public organizations.

2. Ethics Reform

In terms of ethics reform, the bill amends rules in both chambers to further restrict the receipt of gifts or travel from lobbyists to congressional members or staffers. Another important aspect of this bill is that it includes provisions that disqualify congressional members from receiving a federal pension if they are convicted on fraud, bribery, or corruption charges.

3. Earmark Reform

The earmark reform portion of this bill is relatively small compared with the other reform proposals it offers, but it still highlights the requirement for transparency and internal checks within Congress to ensure that all earmarks

are adequately scrutinized. It addresses these earmark reform needs through a series of amendments to Senate Rules XXVIII (Conference Committees, Reports, Open Meetings), XXVI (Committee Procedure), and XLIV (Congressionally Directed Spending and Related Items).

The changes to Rule XXVIII provide transparency and accountability by requiring that no new earmarks be inserted into conference reports and that these reports be available to other members of Congress and the public 48 hours prior to consideration by the committee. Changes to Rule XXVI also improve transparency by making all committee hearings and meetings available to the public, via the internet, through a combination of video and audio files and transcripts.

The last major proposal for the earmark reform portion of this bill modifies Senate Rule XLIV. It requires that any congressional member who desires to insert an earmark into an appropriations bill must submit an official request that identifies the recipient of the earmark, the purpose of the earmark, and a statement of non-monetary interest in the earmark. It also requires that the chairman of any committee that has jurisdiction over any appropriations bill, joint resolution, or conference report, verify that all earmarks have been identified and that a list of these earmarks, along with the congressional member that requested it, is made available to the public.

4. Legislative Outcome

After being introduced on January 4, 2007, the Honest Leadership and Open Government Act of 2007 quickly passed

the Senate on January 18, 2007 by a margin of 92 yeas to 2 nays. It was subsequently passed in the House on July 31, 2007 with 411 yeas to 2 nays, with amendments which the Senate agreed to on August 2, 2007. It was signed by the President on September 14, 2007 and officially became Public Law 110-81 (P.L.110-81).

C. LOBBYING, ETHICS, AND EARMARKS TRANSPARENCY AND ACCOUNTABILITY ACT OF 2007

The Lobbying, Ethics, and Earmarks Transparency and Accountability Act of 2007 (S.192) of the 110th Congress was introduced on January 4, 2007 by Senator John McCain [R-AZ]. This act, similar to the Honest Leadership and Open Government Act of 2007, introduced lobbying, ethics, and earmarks reform, with the primary emphasis on curtailing and disclosing lobbyist activity. Although earmark reform in this measure appears to be a secondary thought, it addresses the same reform measures that Senator McCain introduced in previous earmark reform bills.

During his initial introduction of the bill on the Senate floor, Senator McCain stated that this bill was necessary because "voters were concerned about corruption and ethics in Government more than any other issue."¹⁰⁰ Although, he emphasized the need for lobbying and ethics reform, he also addressed the problems with increased earmark spending and also stressed that this bill would

¹⁰⁰ John McCain, Floor Speech Transcripts, United States Senate, Washington D.C., January 4, 2007. Retrieved November 1, 2008, See: <http://www.govtrack.us/congress/record.xpd?id=110-s20070104-64&bill=s110-192#sMonofilemx003Ammx002Fmmx002Fmmx002Fmhomemx002Fmgovtrackmx002Fmdatamx002Fmusmx002Fm110mx002Fmcrmx002Fms20070104-64.xmlElementm68m0m0m>

“allow lawmakers to challenge unauthorized appropriations, earmarks, and policy riders in appropriations bills.”¹⁰¹

1. Lobbying Reform

The lobbying reform measures in this bill include putting restrictions and disclosure requirements on employment or employment negotiations between departing congressional members and staff and lobbying firms and increasing disclosure requirements on lobbyists’ activities. It accomplishes this by recommending changes and amendments to Senate Standing Rules and the Lobbying Disclosure Act of 1995.

The changes recommended to the Lobbying Disclosure Act of 1995 are intended to make disclosure requirements more stringent and frequent. Instead of semiannual filing of lobbying disclosure reports, it requires that these filings be done quarterly. It also requires that these reports be filed electronically to facilitate the availability of such information on the internet for public viewing. Other changes also increase the penalty for failing to disclose reports in an accurate or timely manner from \$50,000 to \$100,000.¹⁰²

The other notable proposals alter Senate Rules XXXVII (Conflict of Interest) and XXIII (Privilege of the Floor). The changes to Rule XXXVII include instilling a one year

¹⁰¹ John McCain, Floor Speech Transcripts, United States Senate, Washington D.C., January 4, 2007. Retrieved November 1, 2008, See: <http://www.govtrack.us/congress/record.xpd?id=110-s20070104-64&bill=s110-192#sMonofilemx003Ammx002Fmmx002Fmmx002Fmhomemx002Fmgovtrackmx002Fmdatamx002Fmusmx002Fm110mx002Fmcrmx002Fms20070104-64.xmlElementm68m0m0m>

¹⁰² John McCain, *Lobbying, Ethics, and Earmarks Transparency Act of 2007*, S.192, United States Senate, Washington, D.C., January 4, 2007.

moratorium on the ability of former congressional members or their staff to lobby on Capital Hill and also make it a requirement for existing congressional members or their staff to disclose any negotiations with lobbying firms for future employment. To Rule XXIII, Senator McCain proposes denying floor privileges to former members who are registered lobbyist or seek to influence the passage of any bill for an organization for which they are employed.

2. Ethics Reform

The ethics reform measures proposed by Senator McCain were intended to reduce the influence of lobbyists on congressional members or their staff. They place greater restrictions on the receipt of gifts by congressional members and their staff from lobbying firms and also create a new Senate office to investigate and report on cases involving ethics violations.

The amendments to Rule XXXV (Gifts) under this bill would remove gifts received from lobbyists from the gift ban exceptions list that was originally in the Senate Standing Rules. It would also limit travel that could be accepted by congressional members and their staff and also enforce official travel requests by increasing filing disclosure of all official travel.

The most prominent effect of this bill in terms of ethics reform would be the creation of the Senate Office of Public Integrity. This office would work alongside the Senate Committee on Ethics by investigating alleged ethics violations and also making recommendations on any cases referred to the Senate Committee on Ethics. This office

would also screen complaints brought up by other members of Congress before such complaints are referred to the Senate Committee on Ethics. An additional duty of this office would be to provide training to congressional members and their staffs on ethics and awareness of possible violations.

3. Earmark Reform

The earmark reform provisions in this bill are similar to those that Senator McCain attempted to pass in other bills he has introduced, such as the Pork Barrel Reduction Act and the Obligations of Funds Transparency Act of 2005. In this measure he continued to call for added transparency of earmark requests and the appropriations process, spending restrictions on non-statutory earmarks, and lobbyist disclosure from earmark funding recipients. It attempts this primarily by offering amendments to the Lobbying Disclosure Act of 1995 and Senate Standing Rules XVI and XXVIII.

Changes to the Lobbying Disclosure Act of 1995 require that the recipient of any federally earmarked funds disclose the lobbying firm that represented the recipient and influenced the directing of these funds. Additional information that would also be required is the amount paid to the lobbying firm by the recipient.

In regards to non-statutory earmarks, this bill prevents any federal agency from obligating these types of earmarks. Again, non-statutory earmarks are those found in conference committee reports that accompany an appropriations bill but are not contained in the bill itself.

With respect to Senate Rules XVI (Appropriations and Amendments to General Appropriations Bills) and XXVIII (Conference Committee, Reports, Open Meetings), the changes offer transparency and restraint within the budget process. Amendments proposed under Rule XVI make it out of order to consider any appropriations bill in which new or non-authorized appropriations have been added unless a list of these requests is provided with the requesters' information. Changes to Rule XXVIII forbid the insertion of new earmark requests in conference reports unless the requests are submitted to committee members 48 hours prior to committee consideration.

4. Legislation Outcome

The Lobbying, Ethics, and Earmarks Transparency Act of 2007 was referred to the Senate Committee on Homeland Security and Governmental Affairs on January 4, 2007 and subsequently referred to the Senate Committee on Commerce, Science, and Transportation on February 27, 2007. Although hearings were held by the latter committee, this measure failed to receive further consideration and became moot after the passage of the Honest Leadership and Open Government Act of 2007 later that year because it shared many of the same reform proposals. Another measure with similar content to both of these bills was also introduced by Senator Russell Feingold [D-WI], titled the Lobbying and Ethics Reform Act of 2007 (S.230). This bill, as with Senator McCain's, also failed to be reported out of the Senate Committee on Homeland Security and Governmental Affairs for further consideration.

D. TRANSPARENCY IN FEDERAL FUNDING ACT OF 2007

The Transparency in Federal Funding Act of 2007 (S.1134) was introduced on April 17, 2007 by Senator Ben Nelson [D-NE]. This bill differs with many of the other bills dealing with the transparency of congressional earmark requests in that it calls for transparency in how executive agencies spend earmarked funds. The goal of this bill was to make public all earmarked funds that are withheld by executive agencies administering the program for which those funds were intended.

Senator Nelson, who “hailed passage of the Federal Funding Accountability and Transparency Act”¹⁰³ because it provided a database for the public to track spending, is also an advocate of the use of earmarks. He has shown his pride in his ability to bring federal funding back to his state and is proud that “earmarks in Nebraska have funded local priorities like nurse training in Norfolk [and] sewers in South Sioux City.”¹⁰⁴ Along with “supporting more transparency and disclosure when it comes to federal spending,”¹⁰⁵ he also believes that Congress has “the authority to direct funding to identified entities”¹⁰⁶ and

¹⁰³ Nelson Hails Passage of Earmark Transparency, Press Release, Office of Senator Ben Nelson, September 6, 2006. Retrieved November 2, 2008, See: <http://bennelson.senate.gov/news/details.cfm?id=262691&&>

¹⁰⁴ Earmarks Create Jobs and Economic Development in Nebraska, Press Release, Office of Senator Ben Nelson, September 27, 2007. Retrieved November 2, 2008, See: <http://bennelson.senate.gov/news/details.cfm?id=284092&&>

¹⁰⁵ Ibid.

¹⁰⁶ Ben Nelson, *Transparency in Federal Funding Act of 2007*, S.1134, United States Senate, Washington, D.C., April 17, 2007.

that "Congress expects executive branch agencies to comply with congressional funding directives."¹⁰⁷

1. Disclosure and Reporting

This bill would require that by January 31st of each year, all agencies or entities controlling programs that receive earmarked funding report to Congress any earmarked funds that were withheld. The report to Congress would specify the exact amount withheld from the program or project, how the retained funds were used, the justification for that use, and the authority by which the agency retained the funds.

2. Legislative Outcome

This bill was referred to the Senate Committee on Homeland Security and Governmental Affairs on April 17, 2007 and subsequently referred to the Subcommittee on Federal Financial Management, Government Information, Federal Services, and International Security on June 6, 2007. No hearings or any further consideration was given to this bill.

E. CONGRESSIONAL ACCOUNTABILITY AND LINE ITEM VETO ACT OF 2007

The Congressional Accountability and Line Item Veto Act of 2007 (S.1186) of the 110th Congress was introduced on the Senate floor on April 23, 2007 by Senator Russell Feingold [D-WI], co-sponsored by prominent earmark proponent Senator Tom Coburn [R-OK]. A House version of this bill, H.R.1998,

¹⁰⁷ Ben Nelson, *Transparency in Federal Funding Act of 2007*, S.1134, United States Senate, Washington, D.C., April 17, 2007.

under the same title was concurrently introduced in the House on the same day by Representative Paul Ryan [R-WI]. The purpose of this bill was to “target wasteful earmarks, improve congressional accountability, and deter lawmakers from inserting frivolous spending into future spending bills.”¹⁰⁸ As opposed to other earmark reform legislation, which proposed changes pertaining primarily to the conduct of business within Congress, this measure proposed changes to the President’s ability to repeal or rescind specific congressional earmarks. During Senator Feingold’s introduction of this bill, he noted that under his bill “wasteful spending doesn’t have anywhere to hide”¹⁰⁹ and that it would allow the “Congress and the President [to] have a chance to get rid of wasteful projects before they would become law.”¹¹⁰

1. Line Item Veto Authority

The law that this bill was intended to amend is the Congressional Budget and Impoundment Control Act of 1975. Although the second part of this act already contains provisions which authorize the President to submit to Congress requests to rescind budget authority, this bill attempted to expedite the process, for earmark rescissions

¹⁰⁸ Feingold Looks Ahead, Across the Aisle in the New Year: Senator to Continue Longstanding Commitment to Bipartisanship in 2008, Press Release, Office of Senator Russell Feingold, December 28, 2007. Retrieved November 3, 2008, See: <http://feingold.senate.gov/~feingold/releases/07/12/20071228.html>

¹⁰⁹ Russell Feingold, Floor Speech Transcript, United States Senate, Washington, D.C., April 23, 2007. Retrieved November 3, 2008, See: <http://www.govtrack.us/congress/record.xpd?id=110-s20070423-27&bill=s110-1186#sMonofilemx003Ammx002Fmmx002Fmmx002Fmhomemx002Fmgovtrackmx002Fmdata mx002Fmusmx002Fm110mx002Fmcrmx002Fms20070423-27.xmlElementm3m0m0m>

¹¹⁰ Ibid.

only, by placing stricter time restrictions on Congress once it has received the “special message” from the President.

The special message to Congress from the President must include the specific earmark to be repealed, the project or program the earmark funds, the reason for the repeal, and the budgetary effects of the repeal. Once the special message is received, Congress must introduce a bill which introduces the President’s repeal request to either chamber, within three days. After the bill is introduced and referred to the appropriate committee, the committee must ensure that the bill is available for consideration within seven days of its introduction on the floor. Once the Senate and House version of the approval bill has passed, the earmark is rescinded from future obligation. All funding for earmarks that are approved for repeal are “dedicated to reducing the deficit or increasing the surplus.”¹¹¹

2. Deferral Authority

In addition to the earmark “line item veto” authority that this bill would grant the President, it also enhances the President’s ability to defer the obligating of earmarked funds. This deferment could be for earmarks that the President has requested to be repealed via his special message to Congress or for earmarks that he does not wish to cancel altogether. In the case of earmarks on his repeals request, the President can defer the obligation of those funds for 45 days. The President would have the ability to

¹¹¹ Russell Feingold and Paul Ryan, *Congressional Accountability and Line Item Veto Act of 2007*, S.1186/H.R.1998, United States Congress, Washington, D.C., April 23, 2007.

defer earmarks he does not want cancelled for as long as he feels necessary. In either case, Congress has the ability to overrule the President's deferment to make the earmarked funds available for obligating again.

3. Legislative Outcome

The Congressional Accountability and Line Item Veto Act of 2007 was referred to the Senate Committee on Budget, and the House version to the House Committee on Rules, on April 23, 2007. There were no hearings held on this bill in either chamber; it will be considered dead at the end of the 110th Congress.

F. FEDERAL SPENDING AND TAXPAYER ACCESSIBILITY ACT OF 2008

The Federal Spending and Taxpayer Accessibility Act of 2008 (S.2852) was introduced by Senator John Cornyn [R-TX] on April 14, 2008. This bill was designed to increase the transparency of earmark requests and the accountability of congressional members who request that earmarks be inserted into appropriations bills. In a floor speech, Senator Cornyn stated that greater transparency "would limit the number of earmarks introduced because were they to be completely transparent, it would discourage the use of earmarks and make certain only meritorious ones are accepted by Congress."¹¹²

¹¹² John Cornyn, Floor Speech Transcript, United States Senate, Washington D.C., April 14, 2008. Retrieved November 3, 2008, See: <http://www.govtrack.us/congress/record.xpd?id=110-s20080414-30&bill=s110-2852>

1. Earmark Tracking Website

The bill required that the Congressional Research Service (CRS) create a searchable database of all earmark requests that is free and accessible to the entire public. The information that is to be included in this database is the recipient of the earmark request, the dollar amount of the earmark, the congressional member who requested the earmark, and the status of the appropriations bill where the earmark is found. Also required of CRS is that the website be continually updated as new appropriations are introduced in Congress.

2. Other Proposals

This bill also included two more proposals intended to provide the American public with government spending and revenue collection information. It would task the Office of Management and Budget (OMB) with publishing the outlays of all federal agencies on the same website that was mandated by the Federal Funding Accountability and Transparency Act of 2006, which can be searched by agency and by budget function. It further requires that the Internal Revenue Service (IRS) provide, upon request by any citizen, a taxpayer account statement that shows the total amount of federal income tax paid and also the projected amount to have been paid by an individual by normal retirement age.

3. Legislative Outcome

The Federal Spending and Taxpayer Accessibility Act of 2008 was referred to the Senate Committee on Homeland Security and Governmental Affairs where it received no further consideration.

G. A RESOLUTION REFORMING THE CONGRESSIONAL EARMARK PROCESS

On March 26, 2007 Senator Jim DeMint [R-SC] introduced S.RES.123, "A Resolution Reforming the Congressional Earmark Process." Unlike the previous measures mentioned in this chapter, this resolution required no Presidential approval and only majority approval of the Senate to take effect. The purpose of this resolution is to enhance transparency and accountability in the Senate's appropriations process, similar to how other bills have attempted this. During his floor speech, Senator DeMint stated that Congress "should stop earmarking the way we are today"¹¹³ and that Congress needs to "use commonsense disclosure rules for America to know how [Congress is] spending its money."¹¹⁴

1. General Proposals

Like previous bills, this resolution proposed changes to Senate Standing Rules XLIV (Congressionally Directed Spending and Related Items) that would require that all earmark requests be published on the internet 48 hours prior

¹¹³ Jim DeMint, Floor Speech Transcript, United States Senate, Washington, D.C., March 29, 2007. Retrieved November 3, 2008, See: <http://www.govtrack.us/congress/record.xpd?id=110-s20070329-13&bill=sr110-123>

¹¹⁴ Ibid.

to the consideration of a bill, resolution, or conference report. It also required that the committee chairman with jurisdiction over an appropriations bill, resolution, or report, publicly verify that a list of all earmarks and their requesters has been made available. Lastly, it required that all congressional members submitting earmark requests provide the recipient of the earmark, the purpose of the earmark, and a statement that the congressional member is not monetarily benefitting from the earmark.

2. Legislative Outcome

During floor speeches on June 28, 2007, July 9, 2007, and July 17, 2007 Senator DeMint continued to stress the importance of this type of reform and also asked for unanimous consent on this resolution. Each time he brought up this measure, the motion for unanimous consent was rejected.

H. SUMMARY

Although the Honest Leadership and Open Government Act of 2007 was enacted into law and is considered key to effecting needed lobbying and ethics reform changes, it falls short in addressing the earmark reform measures introduced by other bills that have failed in the Senate. President Bush, who vowed to cut earmark spending in half for FY2009 spending, stated that this law “does not address

other earmark reform . . . such as ending the practice of putting earmarks in report language.”¹¹⁵

As with the Senate, the House has also proposed numerous bills and resolutions to bring about reform to earmark spending. These measures attempted to address typical earmark issues such as transparency in the legislative process, increasing debate and scrutiny over earmark spending, and the fiscal accountability of members of Congress. Though no bills on any of these issues were passed, a resolution was approved to strengthen the points of order pertaining to the practice of inserting earmarks into report language. This resolution however, only gives members of the House the ability to raise these objections; it is up to the House or relevant committees to sustain them and to correct the violation. All and all, the reluctance within the House to effect any substantial change mirrors that of the Senate.

¹¹⁵ President Bush Signs Honest Leadership and Open Government Act of 2007, Press Release, Office of the Press Secretary, Office of the President of the United States, September 14, 2007. Retrieved October 28, 2008, See: <http://www.whitehouse.gov/news/releases/2007/09/20070914-5.html>

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VI. HOUSE EARMARK REFORM LEGISLATION IN THE 110TH CONGRESS

A. INTRODUCTION

During the 110th Congress, the Senate saw some success in the passing of the Honest Leadership and Open Government Act of 2007, which would reform lobbying and ethics procedures and which included several provisions pertaining to earmark reform. During this same session, the House also proposed bills and resolutions to address transparency and accountability in the practice of congressional earmarking. Along with these typical earmark reform needs, other measures in the House attempted to create committees to study the practice of earmarking, shift earmark funding to other programs, and to establish a moratorium on the consideration of any bill until earmarks have been fully examined. Unlike the Senate however, the House had less success in passing any substantial legislation.

B. EARMARK TRANSPARENCY AND ACCOUNTABILITY ACT OF 2007

The Earmark Transparency and Accountability Act of 2007 (H.R.631) of the 110th Congress was introduced in the House on January 23, 2007 by Representative Jeff Flake [R-AZ] and co-sponsored by forty two other representatives. This bill was relatively short in content and simply put, aimed to prevent federal agencies from obligating earmarked funds that are found in committee reports and not within the text of appropriations acts or other acts that these reports accompany. Representative Flake, who has taken a stance against earmark spending during his tenure in Congress,

stated that this bill “would subject earmarks to increased levels of scrutiny and accountability.”¹¹⁶

1. Legislative Outcome

The Earmark Transparency and Accountability Act of 2007 was referred to the House Committee on Oversight and Government Reform on January 23, 2007 and subsequently referred to that committee’s Subcommittee on Government Management, Organization, and Procurement on March 27, 2007. There are no records of hearings held on this bill at either committee or subcommittee level and no further action was taken on it.

This bill was similar in purpose to an Executive Order that the President signed into law on January 29, 2008 that precludes federal agencies from spending funds from non-statutory earmarks. Representative Flake, along with fellow earmark reform proponent Senator Tom Coburn [R-OK], are both supporters of President Bush’s initiative. Representative Flake also asked the President, in a formal letter, to issue another Executive Order to place stricter rules on the ability of federal agencies to spend earmarked dollars. These additional restrictions and requirements would include requiring federal agencies to reject statutory earmarks that are vaguely described in appropriations bills and report language, stripping agencies of the discretion to obligate non-statutory earmarks and placing this discretion solely with the Office of Management and Budget (OMB), and

¹¹⁶ Congressman Flake Applauds President Bush’s Comments on Immigration and Earmark Reform, Press Release, Office of Representative Jeff Flake, January 23, 2007. Retrieved November 7, 2008, See: <http://flake.house.gov/News/DocumentSingle.aspx?DocumentID=56090>

requiring greater transparency from federal agencies on how and where they spend their earmarked funds.¹¹⁷

C. APPROPRIATIONS TRANSPARENCY ACT OF 2007

The Appropriations Transparency Act of 2007 (H.R.1733) of the 110th Congress was introduced by Representative Brian Bilbray [R-CA] on March 28, 2007. The purpose of this bill was to prevent or discourage the insertion of earmarks into conference committee reports by strengthening the points of order applicable to this practice. Representative Bilbray did not advocate eliminating earmarks altogether (he has requested 19 earmarks worth \$38 million for FY2009 spending).¹¹⁸ However, he has "changed his beliefs"¹¹⁹ because of recent controversies like that of former Representative Duke Cunningham whom he replaced in the House and now "believes a more regulated and transparent approach has been made necessary because members try to insert projects into legislation before elections."¹²⁰

1. General Proposal

This bill attempted to discourage the insertion of earmarks into conference reports by strengthening the points of order that may be called when earmarks appear in

¹¹⁷ Tom Coburn and Jeff Flake, Letter to President Bush, November 6, 2008.

¹¹⁸ Bilbray Announces Funding Recommendations for 2009 Fiscal Year, Press Release, Office of Representative Brian Bilbray, March 28, 2008. Retrieved November 9, 2008, See: http://www.house.gov/apps/list/press/ca50_bilbray/March_23_2008_2009_Earmarks.html

¹¹⁹ Jackie Kucinich, Congressional Challengers Call for Earmark Reforms, *The Hill*, May 18, 2006. Retrieved November 7, 2008, See: <http://thehill.com/campaign-2008/congressional-challengers-call-for-earmark-reforms-2006-05-18.html>

¹²⁰ Ibid.

conference reports. If a point of order is raised by a member of a conference committee, each must be voted on by the conference committee, and if sustained, the earmark will be struck from the report.

2. Legislation Outcome

The Appropriations Transparency Act of 2007 was referred to the House Committee on Rules on March 28, 2007 and received no further debate or consideration.

D. EARMARK REFORM ACT OF 2007

The Earmark Reform Act of 2007 (H.R.3738) of the 110th Congress was introduced on October 3, 2007 by Representative John Gingrey [R-GA] and co-sponsored by 50 other House Republicans. This act, which is different from other measures that attempted to indirectly reduce earmark spending through added transparency and procedural changes, is intended to reduce the total amount of budget authority or outlays committed to earmarks by instituting a spending cap that would limit congressional earmark spending altogether. Aside from establishing a spending limit on earmark spending, this bill also proposes to ensure equality in the distribution of such funding.

Under this bill, the amount available for earmarks would be equally divided among all members of Congress, giving each the same amount to spend on projects of their choosing. According to Representative Gingrey, this bill would eliminate the "discrepancy where some members may get the opportunity to bring home \$6 or \$7 million to their district and other members get an opportunity to bring home

\$180 million to their district"¹²¹ and also "save money for the taxpayers . . . and stop [the] runaway spending"¹²² in Congress.

1. Congressional Budget Act of 1974

The bill proposes to make changes to the Congressional Budget Act of 1974, which governs the role of Congress in the federal budget process, to implement its agenda. It would add a new subsection under section 302, which allocates budget authority to committees in both chambers who have jurisdiction over specific spending bills, to define the spending cap on earmark spending and a further requirement to equally divide this amount among all 535 members of Congress (100 senators and 435 representatives).

The spending cap that this bill proposes is \$14.5 billion, which is half of the FY2006 amount of \$29 billion that has been reported by Citizens Against Government Waste.¹²³ It would also ensure that each member receives approximately \$27 million to fund projects of their own choosing, with limited to no scrutiny from other members. In the event that a member chooses not to request any earmarks, like Representatives Jeff Flake [R-AZ] and Jeb Hensarling [R-TX] and Senator Jim DeMint [R-SC] who have made a "no earmark pledge", their share would be available for further subdivision by both chamber's Committee on Appropriations to those members who desire earmark funding.

¹²¹ John Gingrey, Floor Speech Transcript, United States House of Representatives, Washington, D.C., October 4, 2007. Retrieved November 7, 2008, See: <http://www.govtrack.us/congress/record.xpd?id=110-h20071004-49&bill=h110-3738>

¹²² Ibid.

¹²³ Ibid.

2. Legislative Outcome

The Earmark Reform Act of 2007 was concurrently referred to the House Committee on Rules and the House Committee on Budget on October 3, 2007 for consideration. Since then, no further action was taken on this bill.

E. BIPARTISAN EARMARK REFORM COMMISSION ACT OF 2008

The Bipartisan Earmark Reform Commission Act of 2008 (H.R.5755) of the 110th Congress was introduced on April 10, 2008 by Representative Ronald Kind [D-WI] and co-sponsored by two House Republicans and eight other House Democrats. The goal of this commission was to “formally define an earmark and examine the earmarking process to develop and recommend reforms that would increase transparency, equity, and fiscal responsibility in the process.”¹²⁴ Representative Kind stated that this commission was needed because “abuse of the earmarking system has eroded the public’s trust in the process and overshadowed the worthy projects earmarks often fund.”¹²⁵ Representative Jim Cooper [D-TN], co-sponsor of this bill, added that “Congress needs to stop and reevaluate the way we appropriate money for projects around the country”¹²⁶ and that Congress needs to take “stewardship of taxpayer money seriously.”¹²⁷

¹²⁴ Kind Introduces Bill Creating Bipartisan Commission to Reform Earmarking, Restore Public Trust in the Process, Press Release, Office of Representative Ronald Kind, April 15, 2008. Retrieved November 7, 2008, See: <http://www.ronkind.org/release.cfm?id=118>

¹²⁵ Ibid.

¹²⁶ Ibid.

¹²⁷ Ibid.

1. Commission Make-Up

The earmark reform commission would consist of 12 members from both the Senate and House of Representatives. These 12 members would include three appointed by the Speaker of the House, two appointed by the House minority leader, three appointed by the Senate majority leader, two appointed by the Senate minority leader and two members appointed by the President. The President would also have the authority to appoint the chairperson and co-chairperson, of which one must be a Republican and one a Democrat.

2. Commission Responsibilities

The main product of the earmark reform commission would be a report to the President and Congress on the findings from current earmark practices and its budgetary and legislative effects, as well as recommendations for legislative reform of the earmark process. In order to accomplish this, the commission would study and determine the following:

- A clear definition of an earmark
- Historical trends in earmark spending
- Policy effects of these trends
- Extent to which for-profit organization receive earmarks
- Disparity in how earmark funding is distributed among congressional members and states
- Impact of earmark spending on the overall federal budget
- Whether a merit-based or competitive process of awarding earmarks could be adopted by Congress

- Whether current earmark disclosure requirements are sufficient for public transparency
- The extent to which the executive branch utilizes earmarks
- Disparity in members or states receiving executive branch earmarks
- The extent to which earmarked projects are named after congressional members or executive branch officials¹²⁸

3. Legislative Outcome

The Bipartisan Earmark Reform Commission Act of 2008 was referred to both the House Committee on Rules and the House Committee on Oversight and Government Reform on April 10, 2008. No subsequent action or consideration was taken on this bill.

F. GAS TAX RELIEF AND EARMARK MORATORIUM ACT OF 2008

The Gas Tax Relief and Earmark Moratorium Act of 2008 (H.R.5995) of the 110th Congress was introduced on May 8, 2008 by Representative Paul Ryan [R-WI] and co-sponsored by 23 other House Republicans, to include earmark spending opponents Representatives Jeff Flake [R-AZ] and Jeb Hensarling [R-TX]. This bill is unique from other earmark reform measures introduced in that it attempts to provide relief to taxpayers by subsidizing the federal gasoline tax for a period of three months by utilizing money that has been previously allocated to earmarks. This bill also

¹²⁸ Ronald Kind, *Bipartisan Earmark Reform Commission Act of 2008*, H.R.5755, United States House of Representatives, Washington, D.C., April 10, 2008.

proposed the creation of a joint select committee on earmark reform to study the practice of earmarking within Congress and to report its findings to Congress and propose earmark reform recommendations. In a press release by Representative Ryan, he stated that this bill would replace the funds that the Highway Trust Fund would lose from the suspension of the federal highway fuel tax during the three month period with funds saved from a one year moratorium on earmark spending. He also added that the joint select committee would study the "broken practice of earmarking"¹²⁹ and "bar any new earmarks until the system is fixed."¹³⁰

1. Gas Tax Relief

Under this bill, there would have been a suspension of the federal highway fuel tax for gasoline, diesel, and kerosene from May 26, 2008 to September 1, 2008. This would provide temporary relief to individuals and businesses from high gas pump prices during the summer period when gas prices are historically the highest and because of the price spike in gasoline from increasing oil prices early in 2008. Because the Highway Trust Fund would lose revenue from this gas tax relief, and to ensure that the fund is able to meet its fiscal year 2009 spending requirements, this bill would also require the Treasury Department to restore the lost revenue to the trust fund. This additional allocation of funds by the Treasury Department to the Highway Trust Fund would be offset by the cost savings that would result from

¹²⁹ Pork at what Price?, Press Release, Office of Representative Paul Ryan, May 8, 2008. Retrieved November 7, 2008, See: http://www.house.gov/ryan/press_releases/2008pressreleases/5808pork.htm

¹³⁰ Ibid.

the one year moratorium on earmark spending. This would mean that no new money would have to be appropriated for this bill to be enacted.

2. Earmark Reform

In terms of earmark reform, this bill proposed the creation of a joint select committee on earmark reform and an immediate moratorium on the consideration of any further bills, resolutions, or conference reports containing earmarks during the current session of Congress. To offset the lose of tax revenue from the gas tax relief, this bill also required that the Senate and House Budget Committees reduce budget authority and outlays for earmarks in the next fiscal year by \$14.8 billion, an estimate of anticipated earmarked funds in FY2009 appropriations.¹³¹

The joint select committee on earmark reform would be responsible for providing Congress a study on current practices regarding earmark spending. The committee itself would be comprised of eight senators and eight representatives, with the majority and minority leaders of each chamber appointing equal numbers to each. For this special committee to accomplish its study, it would be required to consider the following in making its recommendations:

- Disclosure requirements
- Full transparency of the appropriations process

¹³¹ Paul Ryan, *Gas Tax Relief and Earmark Moratorium Act of 2008*, H.R.5995, United States House of Representatives, Washington, D.C., May 8, 2008.

- Earmarks placed in reports after committee consideration
- Ability of members to offer amendments to remove earmarks at committee and conference meetings and during floor consideration
- Recommending changes to earmarks requested by the President
- Categorizing earmarks as either projects for national scope, military projects, and local or provincial projects

3. Legislative Outcome

The Gas Tax Relief and Earmark Moratorium Act of 2008 was referred to the House Committee on Budget on May 8, 2008. No committee hearings were held on this bill nor were any other subsequent actions taken.

G. RESOLUTIONS

Along with traditional bills requiring presidential approval for enactment, House resolutions that pertained to earmark reform were also introduced. These resolutions primarily offered changes to Senate and House Rules and took one of two forms - a simple resolution which needs only House approval, or a concurrent resolution which needs approval by both the Senate and the House to take effect. Any resolution that is passed as either a simple or concurrent resolution is valid only for the particular session of Congress during which it was introduced and does not carry with it the force of law.

1. Ethics Reform Resolution

The "Ethics Reform Resolution" (H.RES.6) of the 110th Congress was introduced on January 4, 2007 by Representative Steny Hoyer [D-MD]. This lengthy resolution introduced changes under five distinct titles (Adoption of Rules of 109th Congress, Ethics, Civility, Fiscal Responsibility, and Miscellaneous).

Title II (Ethics) of this resolution introduces changes to House Rules that closely mirror other bills that have proposed ethics reform. Just like these other bills, this resolution aims to reduce the influence of lobbyists on members of Congress through restrictions on gifts and travel exchange and through tougher disclosure requirements of such activity.

Explicit earmark reform measures are included in Title IV (Fiscal Responsibility) of this resolution. It proposes amendments to House Rules XXI (Restrictions on Certain Bills) and XXIII (Code of Official Conduct). As regards Rule XXI, this resolution would have made it out of order to consider any bill or resolution that contains earmarks unless a list of all earmarks and the identity of the earmarks' requestor is provide beforehand. It also would have made it out of order to consider any conference report unless the chairman of the conference committee states, through an explanatory statement, that a list of all earmarks contained in the report has been provided to other members.

On January 5, 2007, this resolution received partial consideration in the House. Through a vote of 232 yeas to 200 nays, Title V (Miscellaneous) was agreed to. However,

this portion of the resolution pertains to matters that are not related to earmark reform, such as calling emergency recesses in the House and updating rules to conform to recent intelligence community reform. No subsequent consideration was given to the remainder of this resolution.

2. Amending the Rules of the House of Representatives to Require that the Lists of Earmarks be Made Available to the General Public on the Internet

On February 15, 2007, Representative Dennis Moore [D-KS] introduced "Amending the Rules of the House of Representatives to Require that the Lists of Earmarks be Made Available to the General Public on the Internet," (H.RES.169) of the 110th Congress. This resolution was simple and straightforward. It simply offered an amendment to House Rule XXI (Restrictions on Certain Bills) that would require that all earmark requests be posted to the internet 48 hours prior to the consideration of bills containing such earmarks. During a floor speech, Representative Moore stated that this resolution was to "make the earmarking process in the House as open and transparent as possible."¹³²

After this resolution's introduction on February 15, 2007, Representative Moore provided additional sponsor comments on the House floor on August 2, 2007. In both instances, the resolution failed to receive any consideration.

¹³² Dennis Moore, Floor Speech Transcript, CR E1694, United States House of Representatives, Washington, D.C., July 31, 2007. Retrieved November 8, 2008, See: <http://thomas.loc.gov/cgi-bin/query/D?r110:2:./temp/~r110Qf86Eg::>

3. Amending the Rules of the House of Representatives to Strengthen the Earmark Point of Order

House Resolution 284 of the 110th Congress, "Amending the Rules of the House of Representatives to Strengthen the Earmark Point of Order," was introduced by Representative Jeff Flake [R-AZ] on March 29, 2007. It was short, proposing an amendment to House Rule XXI (Restrictions on Certain Bills) that would make it out of order to consider any legislation if the list of earmarks provided for the bill was inaccurate. An additional change to this rule would also require that the earmarks requested by the chairman of a committee or subcommittee report the earmark if it is targeted specifically at the chairman's district or if the earmark is not related to the underlying legislation.

This resolution was referred to the House Committee on Rules on March 29, 2007 where it received no further consideration.

4. Amending the Rules of the House of Representatives to Strengthen the Budget Process

"Amending the Rules of the House of Representatives to Strengthen the Budget Process" (H.RES.484) of the 110th Congress was introduced on June 12, 2007 by Representative Heath Shuler [D-NC]. This resolution was multi-faceted in the types of earmark reform provisions it contains in that it proposed transparency, accountability, and roll call voting requirements on new budget authority over a specified amount. To accomplish this, it proposed changes to House Rules XXI (Restrictions on Certain Bills) and XX (Voting and Quorum Calls).

The amendments to Rule XXI provided transparency of earmark requests. It would require that a list of earmarks be made available on the internet to the general public 48 hours prior to the consideration of any bill containing the earmarks. Also required under this amendment was a written justification for each separate earmark request to accompany any appropriations bill or report.

The amendment to Rule XX provided further accountability of the appropriations process. Although not specific to earmark requests, it required a roll call vote for any new budget authority requested that is \$50 million or greater.

This resolution was referred to the House Committee on Rules on June 12, 2007 and received no further consideration.

5. Providing for Earmark Reform

House Resolution 491, "Providing for Earmark Reform," was introduced by Representative Steny Hoyer [D-MD] on June 18, 2007 and co-sponsored by earmark reform proponent Representative John Boehner [R-OH]. This resolution was simple in that it proposed greater accountability in the appropriations process by identifying members who inserted earmarks into conference reports that were not subject to the scrutiny of other conference committee members. It accomplished this by making it out of order for the House to consider any conference report accompanying an appropriations bill unless a statement from the committee chairman with jurisdiction over the report included a list

of any earmarks and the name of the member that requested it that were not agreed to by the conference committee.

The House agreed to this resolution without objection on June 18, 2007 and allowed points of order to be raised on any violation of this resolution. Although this resolution applied to FY2008 and FY2009 spending bills, there were no joint explanatory statements that were found that "called-out" members who attempted to sneak earmarks into the language of conference reports. This is not to say that violations did not occur in either years' spending bills, it simply implies that no committee chairmen or committee members chose to report this violation. An explanatory statement for the FY2009 Defense, Homeland Security, and Military Construction/Veterans Affairs spending bills from Representative David Obey [D-WI], chairman of the House Committee on Appropriations, however, provides evidence of some compliance with rules that required him to include a list of earmarks that was agreed upon in conference and contained in the accompanying conference reports. It is not clear though if this list is complete and includes earmarks that were offered adequate scrutiny and debate.

6. Providing for a Moratorium on the Consideration of any Bill or Joint Resolution that Contains any Congressional Earmarks

House Resolution 727 of the 110th Congress, "Providing for a Moratorium on the Consideration of any Bill or Joint Resolution that Contains any Congressional Earmarks," was introduced on the House floor on October 10, 2007 by Representative Jeff Flake [R-AZ]. This resolution offers a measure to assist with accountability of earmark spending by

requiring a bipartisan panel to review the earmarking process and provide recommendations on how to improve oversight in the process to prevent fraud, waste, and abuse of taxpayers' dollars. Under this resolution, no appropriations bill or report can be considered until after this bipartisan panel has reported its recommendations to the House.

This resolution was referred to the House Committee on Rules October 10, 2007 and failed to see any subsequent action or consideration taken on it.

7. To Establish the Joint Select Committee on Earmark Reform and for Other Purposes

House Concurrent Resolution 263 of the 110th Congress, "To Establish the Joint Select Committee on Earmark Reform and for Other Purposes," was introduced by Representative Jack Kingston [R-GA] on November 17, 2007 and co-sponsored by 160 other Republican representatives. This resolution proposed the same earmark reform measures that were introduced in the Gas Tax Relief and Earmark Moratorium Act of 2008. This resolution would require Congress to create a joint select committee on earmark reform to study the practice of earmarking and make recommendations to Congress on further earmark reform needed and it would also provide a moratorium on the consideration of any bill containing earmarks until the committee on earmark reform reported its results. According to Representative Kingston, this resolution was a step towards imposing "discipline back on

the budget process” and allowing Congress to “earn some integrity back in Washington.”¹³³

This concurrent resolution was referred to the House Committee on Rules on November 17, 2007. Although it had the backing of most Republicans in the House, the committee took no action on it. Another resolution, H.CON.RES.314, containing the same language as H.CON.RES.263, was introduced by Representative Jeb Hensarling [R-TX] on March 11, 2008 and also died within the House Committee on Rules.

H. SUMMARY

As in the Senate, the House of Representatives failed in its attempts to effect any substantial earmark reform. Although a simple resolution (H.RES.491) was agreed to, the provisions of this resolution expired with the adjournment of the 110th Congress and no evidence of its effectiveness could be found.

In determining the effectiveness and relevancy of any of the earmark reform initiatives passed or introduced in Congress, it is important to look at some basic metrics of performance in the congressional earmarking process and also how earmarking reform has compared to other budget reforms. These measures of effectiveness include any increase in transparency in earmark requests and a comparison of earmarks in FY2009 spending bills with those of previous years. Although the Honest Leadership and Open Government Act of 2007 mandated transparency by requiring managers to

¹³³ Kingston Bill Adopted as Standard for Earmark Reform, Press Release, Office of Representative Jack Kingston, January 25, 2008. Retrieved November 5, 2008, See: <http://kingston.house.gov/News/DocumentSingle.aspx?DocumentID=82602>

incorporate a list of earmarks requested in conference into their joint explanatory statements and provide this information 48 hours prior to the consideration of the bill that it pertained to and H.RES.491 discouraged the secretive practice of inserting earmarks into the language of conference reports without committee knowledge, these measures have had minimal effect on the process. Finally, the political climate of Congress must also be understood to gain a better understanding of why these initiatives have failed.

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VII. CONCLUSION

A. INTRODUCTION

During the 110th Congress, partisan and bipartisan efforts were undertaken to reform the practice of earmarking that has plagued the congressional budget process. While typical partisan politics have attempted to place blame or inaction on the opposing party in addressing the problems with earmarking, there has also been bipartisan consensus and action to either accept or offer solutions to it. Congressional politics and not partisan politics however, suggests the unlikelihood of any real type of reform in the near future. This becomes apparent after determining the effectiveness of the earmark reform legislation that was passed or accepted by the Senate and the House during this session.

To determine the effectiveness of the earmark reform efforts of the 110th Congress, a few simple metrics of success must be studied and analyzed. The most obvious metric is any reduction in earmark spending or in the number of earmarks in FY2009 appropriations when compared to previous years' levels. Since added transparency and disclosure should prevent or identify unscrutinized earmarks from being slipped into committee reports at the last moment and allow lawmakers to debate and deny earmarks that do not have merit, it can be assumed that a reduction will be visible in FY2009 spending, especially since FY2008 earmark spending is second only to the earmark spending level in FY2006. Another measure of success, and one that may be

more difficult to determine, is the level of increased transparency in the congressional budget process and the availability of earmark requests within Congress and to the public in sufficient time to offer analysis and debate on each earmark request before an appropriations bill's passage. This metric can only be measured after an appropriations bill has gone through committee mark-ups and more importantly, through conference committee reconciliation. It is only after each appropriations bill has gone through these stages of the budget process that earmark counts can be tallied and a determination made as to whether or not there is still abuse of the earmarking process.

Also of importance is the focus of Congress to address truly pressing fiscal issues. Earmark reform has been a hot topic in recent years because of cases of corruption and scandal involving members of Congress. However, more pressing issues face the nation, like the growth rate of entitlement spending when compared to discretionary spending and also the inability of the government to balance the budget because of this and other current fiscal policies. It becomes imperative to determine if the efforts of Congress, and even watchdog groups and political earmarking opponents, in dealing with earmark reform are commensurate with the amount of energy that should be spent on these larger fiscal issues.

B. PARTISAN AND BIPARTISAN POLITICS

The debate over earmarks has increased the past several years, and so has the finger pointing by both sides of the aisle regarding why the practice has gotten out of hand.

Democrats argue that the trend of excessive federal spending and earmarking resulted from Republican control of the Senate and House of Representatives prior to the 110th Congress and has continued under Republican President George W. Bush. Republicans argue that Democrats have used their current control of Congress to block repeated attempts by Republicans to enact earmark reform legislation to curtail and bring greater transparency to the practice. Regardless of these sentiments, both parties have hindered more than they have assisted in creating any opportunity for real and effective reform.

Democrats have taken credit for making the biggest steps toward reform and reducing earmark spending but their control of budget and appropriations committees in the Senate and House have also reversed some of this progress. Democrats state that "the new Democratic Congress delivered on the promise of ethics and lobbying, and made considerable progress in reigning in earmarks"¹³⁴ in the passage of the Honest Leadership and Open Government Act of 2007. Democrats also claim that under their rule, "between the 2006 and 2008 fiscal years, the cost of appropriations earmarks appear to have dropped from \$29 billion to \$14.1 billion."¹³⁵ Although new earmark spending did drop drastically during this period, it can also be attributed to President Bush's threats to veto spending bills in FY2008 if earmark spending was not reduced and also because congressional disputes in FY2007 resulted in the government

¹³⁴ President Bush: Trying to Have it Both Ways on Earmarks, Democratic Caucus's Senate Journal, Office of Senate Democrats, January 28, 2008. Retrieved December 2, 2008, See: <http://democrats.senate.gov/journal/entry.cfm?id=291430>

¹³⁵ Ibid.

operating on a year-long continuing resolution that continued to fund earmarks from the previous year. Democrats also state that their earmark reforms have increased congressional accountability because "members are more sensitive to impropriety now"¹³⁶ and that the old system of "doling out earmarks as rewards to help get their bills passed"¹³⁷ is less prominent in Congress. This can be argued as well, especially since the FY2009 appropriations measures (where appropriations and conference committees are chaired by Democrats) continue to reflect the same trends that got Congress in trouble and caused earmark spending to increase at an exponential rate from FY1995 to FY2006.

Republicans used to be known for their fiscal conservative ideologies, but excessive spending and scandals involving earmarks have tarnished that reputation. While there still continues to be advocates for reduced federal spending like fiscal conservatives Representatives Jeff Flake [R-AZ] and Jack Kingston [R-GA] and Senators Tom Coburn [R-OK] and Jim DeMint [R-SC] who oppose wasteful spending and favor reducing the national debt, there are also other Republicans like Representatives Bill Young [R-FL] and Jerry Lewis [R-CA] and Senators Thad Cochran [R-MS] and Ted Stevens [R-AK] who continue to top the list of congressmen who are able to secure the highest amounts in earmark funding. Recent corruption cases involving Senator Stevens and former Representative Duke Cunningham [R-CA] have also not helped the Republicans' image.

¹³⁶ President Bush: Trying to Have it Both Ways on Earmarks, Democratic Caucus's Senate Journal, Office of Senate Democrats, January 28, 2008. Retrieved December 2, 2008, See: <http://democrats.senate.gov/journal/entry.cfm?id=291430>

¹³⁷ Ibid.

Although Republicans have been blamed for the runaway spending in Congress, the most vocal proponents of earmark reform have also been Republicans. They have criticized Democrats for failing to agree to a House resolution (H.CON.RES.263) that would put a moratorium on earmark spending until a bipartisan panel could be created to investigate the current practice of earmarking. A letter from Representative John Boehner [R-OH] to Representative Nancy Pelosi [D-CA], Speaker of the House, urged that Democrats agree to the resolution because “the earmark process in Congress has become a symbol of a broken Washington”¹³⁸ and that both “parties bear responsibility of this failure.”¹³⁹ He also asked that House Democrats accept earmark reform standards that were proposed by the House Republican caucus. These standards would restrict earmark funding for projects named after members of Congress, prevent earmarks from being inserted into conference reports, require members to publish a plan on how to spend requested earmark funds, and hold the executive branch accountable for earmarks that they request. Although Representative Pelosi did not explicitly reject Representative Boehner’s request, she also did not state that House Democrats would follow suit. Instead she added that “Democrats will continue to hold the line on earmarks in the House and require unprecedented disclosure from Members in both parties who seek earmarks.”¹⁴⁰ These standards proposed by the House Republican caucus became a

¹³⁸ John A. Boehner, Letter to The Honorable Nancy Pelosi, January 25, 2008.

¹³⁹ Ibid.

¹⁴⁰ Nancy Pelosi, Letter to The Honorable John A. Boehner, February 8, 2008.

moot point because they were not fully accepted by all Republicans, to include Senate Republicans who did not agree with the temporary ban on earmarks that the proposal called for. Senator Thad Cochran [R-MS] stated that it was a "bad idea . . . [to] give up a constitutional responsibility that is given to Congress."¹⁴¹ Although the Republicans have shown sporadic interest in reform, they have also demonstrated reluctance to do so.

One example of this hypocrisy in the Republican Party involves Representative Flake. Early in 2008, Representative Flake vied for a seat on the House Appropriations Committee to replace outgoing representative and now Senator Roger Wicker [R-MS]. Representative John Boehner [R-OH], House Minority Leader (whose responsibility includes chairing the Republican Party's committee selection panel) and also a strong proponent of earmark reform, wanted his selection to this vacant seat "to symbolize his commitment to overhauling the process for doling out lawmaker-requested projects."¹⁴² Instead of picking Representative Flake, who is arguably one of the loudest opponents of earmark spending and believes that Republicans need to "regain credulity on fiscal issues"¹⁴³ by

¹⁴¹ Manu Raju, Senate Republicans are Likely to Reject Idea of Earmark Freeze, *The Hill*, March 6, 2008. Retrieved December 1, 2008, See: <http://thehill.com/leading-the-news/senate-republicans-are-likely-to-reject-idea-of-earmark-freeze-2008-03-06.html>

¹⁴² Patrick O'Connor, Bonner to Get Appropriations Seat, *Politico*, February 14, 2008. Retrieved December 1, 2008, See: http://www.politico.com/blogs/thecrypt/0208/Bonner_to_get_Appropriations_seat.html

¹⁴³ Congressman Flake to Seek Seat on House Appropriations Committee: Committee Needs Member Who Does Not Seek Earmarks, Press Release, Office of Representative Jeff Flake, November 20, 2008. Retrieved December 1, 2008, See: <http://flake.house.gov/News/DocumentSingle.aspx?DocumentID=106044>

demonstrating “their commitment to reigning in runaway spending,”¹⁴⁴ Representative Boehner chose Representative Jo Bonner [R-AL] to fill the seat. Although appointing Representative Flake “would have upset many Republican appropriators but also sent a clear message to the GOP base about earmarks,”¹⁴⁵ he was presumably passed over because he was considered disloyal to the party for being outspoken and critical of Republican Party leaders over the years.¹⁴⁶ This is also considered a reason why Representative Flake was also removed from the House Committee on the Judiciary.

Although there have been earmark reform measures sponsored or co-sponsored by members from both parties, there is also an overwhelmingly bipartisan consensus on the desire to keep the practice of earmarking alive. In a floor speech by Representative David Obey [D-WI], chairman of the House Appropriations Committee, he stated that in a motion that he brought to the house floor to eliminate earmarks altogether, that the “motion failed by a vote of 53 to 369, with a majority of both parties voting against it.”¹⁴⁷ He also added that the House voted in this fashion because “an overwhelmingly majority of honorable Members on both sides of the aisle believe that Members should not lose the ability to fund priority items . . . because of the

¹⁴⁴ Ibid.

¹⁴⁵ Jackie Kucinich, Rep. Boehner Backtracks on 08’ Predictions, *The Hill*, May 18, 2008. Retrieved December 1, 2008, See: <http://thehill.com/leading-the-news/rep.-boehner-backtracks-on-08-prediction-2008-05-19.html>

¹⁴⁶ O’Conner.

¹⁴⁷ Obey Statement on Earmarks, Press Release, Office of Representative David Obey, United States House of Representatives, Washington, D.C., February 7, 2008.

scurrilous behavior of a handful of renegade members."¹⁴⁸ What is evident in this bipartisan view on earmarks is that regardless of any partisan strife, until both parties are willing to accept change, no amount of reform is going to change how business is handled in Congress.

C. REDUCTION IN EARMARK SPENDING

One of the primary methods to determine the effects of earmark reform attempts and attention that has been highlighted on this subject in the past years by watchdog groups and political earmark reformers is to evaluate the change in earmark spending for FY2009 from previous years' earmark spending levels. Although no congressional legislation passed that called for a direct reduction in earmark spending, transparency should have increased. That would be the consequence of the Honest Leadership and Open Government Act of 2007 (P.L.110-81), which imposed rules to ensure that all earmarks were identified and made public 48 hours prior their consideration, and H.RES.491, which strengthened the point of order in the House relevant to the practice of inserting earmarks into conference reports. Because the government is operating on a continuing resolution for FY2009 for most of its annual appropriations, not all earmark spending could be fully evaluated. Regardless of this, a few watchdog groups have been able to tally the earmarks in the appropriations that did not fall

¹⁴⁸ Obey Statement on Earmarks, Press Release, Office of Representative David Obey, United States House of Representatives, Washington, D.C., February 7, 2008.

under the continuing resolution for FY2009, as well as some of the appropriations awaiting further action from Congress when they start their new session in January 2009.

According to Citizens Against Government Waste (CAGW) the FY2008 appropriations bills were stuffed with 11,620 earmarks worth \$17.2 billion.¹⁴⁹ These totals represent the second highest amount spent on new earmarks since earmark spending peaked in FY2006 appropriations with 13,997 earmarks worth \$29 billion. For FY2009, President Bush signed into law the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act of 2009 (P.L.110-329) which included the FY2009 appropriations bills for Defense, Homeland Security, and Military Construction/Veterans Affairs and continuing resolution provisions for the other annual appropriations that will remain valid until March 6, 2009. Although the total earmark levels for FY2009 are not completely conclusive because nine of the 12 annual appropriations will not be addressed again until after Congress returns to Washington in 2009, the data available does demonstrate some trends when compared to FY2008 levels.

The Defense spending bill is the largest of the annual appropriations and constitutes almost half of all federal discretionary spending. Based on totals computed by Taxpayers for Common Sense, the FY2008 Defense Appropriations Bill contained more than 2,100 earmarks worth

¹⁴⁹ David E. Williams and Sean Kennedy, *2008 Congressional Pig Book Summary: The Book Washington Doesn't Want You to Read*, Citizens Against Government Waste, Washington D.C., 2008, p.3.

\$7.9 billion.¹⁵⁰ For FY2009, they estimated 2,025 earmarks worth \$4.8 billion.¹⁵¹ Although the number of earmarks present in each bill is relatively similar, there is a 39 percent reduction in the cost of FY2009 earmarks from FY2008 figures.

Based on earmark information provided by CAGW, the Homeland Security and Military Construction/Veterans Affairs appropriations did not have as significant a reduction in earmark spending or in the number of earmarks that were reported on the Defense appropriations. In CAGW's analysis of the FY2009 Homeland Security spending bill, they discovered 118 earmarks worth \$286 million, down from the previous year's spending bill which contained 124 earmarks worth \$294 million.¹⁵² CAGW also reported that the FY2009 Military Construction/Veterans Affairs appropriations contained 172 earmarks worth \$1.2 billion compared to its FY2008 counterpart which contained 191 earmarks worth the same amount.¹⁵³

CAGW has also analyzed several House and Senate versions of appropriations that will be covered by the FY2009 continuing resolution. Even though these are

¹⁵⁰ Robert Brodsky, *Defense Bill Proves Lucrative for Biggest Firms*, *Government Executive*, November 27, 2007. Retrieved December 1, 2008, See: <http://www.govexec.com/dailyfed/1107/112707rb1.htm>

¹⁵¹ Roxana Trion, *5 High Tech Earmarks Hidden in the Pentagon's New Budget*, *Popular Mechanics*, October 7, 2008. Retrieved December 1, 2008, See: http://www.popularmechanics.com/technology/military_law/4286342.html

¹⁵² Pork Alert: 2009 Homeland Security, *Citizens Against Government Waste*, October 9, 2008. Retrieved December 1, 2008, See: <http://www.cagw.org/site/News2?page=NewsArticle&id=11628>

¹⁵³ Pork Alert: 2009 Military Construction, *Citizens Against Government Waste*, October 8, 2008. Retrieved December 1, 2008, See: <http://www.cagw.org/site/News2?page=NewsArticle&id=11626>

preliminary mark-ups of each spending bill that had not yet passed in either chamber, some reveal likely increases in earmark spending from FY2008 levels unless the number of earmarks are decreased in conference. The House version of the Financial Services appropriations had 197 earmarks worth \$57 million, an increase in earmarks of 45 percent and an increase of 84 percent in spending from the FY2008 House version. The House version of the Labor, Health and Human Services, and Education appropriations also had astonishing increases in spending levels. CAGW reports that the House mark-up contains 1,370 earmarks worth \$618.8 million, compared to the FY2008 version that had 1,305 earmarks worth \$277.9 million.¹⁵⁴

It is probable that the total amount of federal funds appropriated to earmarks for FY2009 may be less than FY2008 because of the significant reduction in earmarks in the FY2009 Defense appropriations bill. However, this can not be attributed solely to any of the earmark reforms passed. Another cause may be the threat by President Bush to veto spending bills if the number of earmarks was not cut in half from FY2008 levels. However, with a new administration taking over the White House in January 2009 this drop in earmarks may be short lived. Further, the total number of earmarks may increase once the continuing resolution expires and full year appropriations are enacted.

¹⁵⁴ Fiscal Year 2009 Appropriations Earmarks, *Citizens Against Government Waste*. Retrieved December 1, 2008, See: <http://www.cagw.org/site/PageServer?pagename=FY09Appropriations>

D. VOLUNTARY PUBLIC DISCLOSURE OF EARMARK REQUESTS

Currently, there is no requirement for members of Congress to publish their earmark requests publicly via the internet. CAGW began a campaign in 2007 to solicit such information from members of Congress. Of the 535 senators and representatives that responded back to CAGW's request that year, 13 members stated that they would not request earmarks in the following year's appropriations bills, 75 stated that they would offer their requests to the public via the internet, and the remaining 447 members either stated that they would not publish their earmark requests or did not respond to the CAGW's solicitation altogether.¹⁵⁵

CAGW conducted a similar campaign in 2008 in regards to earmark requests in the FY2009 appropriations. The results were more favorable this time. Of those members that responded, 46 stated they would not request earmarks in the upcoming year's appropriations bills, while 86 members stated that they would request earmarks, but more importantly, they would also disclose their requests to the general public for scrutiny.¹⁵⁶

Although 381 members of Congress failed to respond to CAGW's requests to have their earmark requests published on the internet, the trend toward volunteering to disclose earmark requests has increased, however slightly. This demonstrates the power of watchdog groups to bring to light

¹⁵⁵ 2007 Earmark Requests, *Citizens Against Government Waste*. Retrieved December 1, 2008, See: http://www.cagw.org/site/PageServer?pagename=EarmarkRequests_2007_House

¹⁵⁶ 2008 Earmark Requests, *Citizens Against Government Waste*. Retrieved December 1, 2008, See: http://www.cagw.org/site/PageServer?pagename=EarmarkRequests_2008_House

the need for transparency and the ability to use public perception to improve upon a system that congressional legislation has failed to reform.

E. TRANSPARENCY IN THE CONGRESSIONAL BUDGET PROCESS

The need for transparency in the congressional budget process to ensure that all earmarks and federal spending programs are adequately scrutinized has been the main focus of most earmark reform legislation. The passage of the Honest Leadership and Open Government Act of 2007 and H.RES.491 should have fulfilled this need in both the Senate and the House. However, congressional actions on FY2009 appropriations have proven otherwise. Even though public attention and watchdog groups have forced an increasing number of lawmakers to volunteer their earmark requests, the disclosure of such information in a timely manner in each chamber after committee mark-ups and conference meetings have not followed suit, regardless of the mandates provided by the legislation mentioned above. The practice of inserting earmarks into conference reports also appears to be persistent in FY2009 appropriations. The FY2009 continuing resolution, including the defense appropriations bill incorporated within it, has been criticized by lawmakers on Capital Hill and groups like Taxpayers for Common Sense as having been subject to little debate because of the same lack of transparency and secretive practices that have plagued Congress in the past.

With respect to the continuing resolution, very little time was given to members of Congress to examine its content in detail before it went to vote. According to a press release from Senator Tom Coburn [R-OK], only a few in

Congress were privy to the bill before it and the joint explanatory statements were released to the rest of the members, giving them less than 36 hours to scrutinize it. The press release also quotes Representative David Obey [D-WI], chairman of the House Committee on Appropriations, who, when asked about the secretive nature of the spending bill, stated that if the bill was "done in the public it would never get done"¹⁵⁷ and also that Congress has "done this the old fashioned way by brokering agreements in order to get things done and [he] makes no apology for it."¹⁵⁸ Steve Ellis, Vice President for Taxpayers for Common Sense, also noted that the earmarks in the spending package that contained the continuing resolution "have never been exposed to one iota of public scrutiny and now will jam through the House after literally just a few hours of daylight."¹⁵⁹

The obvious violations by Congress of the earmark reform provisions it passed during the 110th session are not new for FY2009. In a Seattle Times investigation of the FY2008 Defense appropriations bill, they found numerous violations of the disclosure and transparency requirements that were mandated by the Honest Leadership and Open Government Act of 2007. The Seattle Times discovered that "the House broke the new rules at least 110 times by failing

¹⁵⁷ Coburn Comments on the Fiscal Year 2009 Continuing Resolution, Press Release, Office of Senator Tom Coburn, September 27, 2008. Retrieved December 1, 2008, See: http://coburn.senate.gov/public/index.cfm?FuseAction=RightNow.Home&ContentRecord_id=a48c3c8d-802a-23ad-4f57-69e4b334cd07

¹⁵⁸ Ibid.

¹⁵⁹ Brian Faler, House Backs Oil Drilling, Loans to Auto Makers, *Bloomberg News*, September 24, 2008. Retrieve December 1, 2008, See: <http://www.bloomberg.com/apps/news?pid=newsarchive&sid=a5ZY5gRaAWpo>

to disclose who was getting earmarks”¹⁶⁰ and “in at least 175 cases, senators did not list themselves in Senate records as earmark sponsors.”¹⁶¹ When asked by Seattle Times to respond to their findings, Senator Jim DeMint [R-SC] stated that “whole ethics bill was a sham”¹⁶² and that “it was written to create loopholes, to get around transparency.”¹⁶³ Senator DeMint further added that “neither leadership is committed to significantly changing the earmarking process.”¹⁶⁴

Because committee chairmen are now including a list of all earmarks that are supposedly contained in the language of conference reports in their joint explanatory statements, they are meeting one of their required obligations of the Honest Leadership and Open Government Act of 2007. However, what they continue to fail to do is to provide this information to non-committee members in the time required to allow for sufficient scrutiny, especially since the number of earmarks present in these statements is large. This trend shows the lack of effectiveness of the efforts made from inside and outside of Congress during the 110th Congress to impose earmark reform to promote the essential purpose of transparency – to give other lawmakers and the public sufficient time to offer debate on worthy earmarks in an effort to reduce corruption and wasteful spending.

¹⁶⁰ David Heath and Christine Willmsen, Despite Reforms, Congress Hides \$3.5B in Defense Earmarks, *The Seattle Times*, October 12, 2008. Retrieved December 1, 2008, See: http://seattletimes.nwsourc.com/html/localnews/2008257178_favorfactory12.html

¹⁶¹ Ibid.

¹⁶² Ibid.

¹⁶³ Ibid.

F. LARGER FISCAL ISSUES

When comparing earmark spending to other fiscal issues facing the nation, the notion of earmarks becomes much less significant. Although there has been a link between recent political scandals and congressional earmarks, "earmarks, which make up less than one percent of overall federal spending, simply are not that important"¹⁶⁵ and that "more pressing financial matters loom."¹⁶⁶ In the recent presidential election, Senator John McCain [R-AZ] has been criticized for his constant criticism of earmarks and wasteful government spending during debates instead of talking about more important fiscal and budget reform. Senator Barack Obama [D-IL], his opponent and winner of the election, substantiated the importance of these other issues through his "attempt[s] to show the triviality of McCain's obsession with earmarks."¹⁶⁷ Instead of fighting earmarks, the energy and focus of earmark reformers may be better spent addressing these larger fiscal issues, to include entitlement spending and a growing national debt. This is even more important in light of the major federal fiscal commitments undertaken in the fall and winter of 2008 to reverse the effects of a recession.

¹⁶⁴ Heath and Willmsem.

¹⁶⁵ Timothy Brownrigg, Viewpoint: Earmarks; Spending without Substance, *BYU NewsNet*, November 5, 2008. Retrieved November 23, 2008, See: <http://newsnet.byu.edu/story.cfm/70104>

¹⁶⁶ Ibid.

¹⁶⁷ Jules Siegel, The Alder Planetarium and McCain's Fake War on Earmarks, *The Huffington Post*, October 8, 2008. Retrieved November 24, 2008, See: http://www.huffingtonpost.com/jules-siegel/the-adler-planetarium-and_b_133024.html

1. Entitlement Spending

Before the onset of the recession, the most pressing fiscal matter for the United States was the excessive growth rate of entitlement spending, in contrast to discretionary spending or federal revenue collections. This problem will remain once the economy begins growing again. Mandatory spending, which is comprised of the major entitlement programs (Social Security, Medicaid, and Medicare) along with Supplemental Security Income, and other mandatory programs such as federal retirement, food stamp programs, and unemployment insurance, made up 53 percent of the total federal budget in 2007, up 27 percent from 1962 as shown in Figure 5. Without any increases in tax revenues, entitlement spending is expected to be approximately 70 percent (see Figure 6) of total federal spending by 2020.

Although the nation's problem with entitlement spending is "the government's biggest fiscal challenge,"¹⁶⁸ little has been done to bring about needed reform for these programs. Proposals by President Bush to save money on Social Security and Medicare by decreasing or shifting benefits from higher income recipients were rejected by Congress in favor of the status quo, which has continued to increase both benefits at the historical, and unsustainable, rates. Representative Paul Ryan [R-WI] introduced measures in his Roadmap for America's Future Act of 2008 (H.R.6110 of the 110th Congress) that would have reduced entitlement spending without increasing taxes through, (1) private

¹⁶⁸ Richard B. Doyle, Kicking the Can: The U.S. Congress, the Bush Administration and the 2008 Budget, *International Public Management Network*, Volume 9, Issue 1, 2008, p.89.

Social Security accounts for Americans (similar to the federal Thrift Savings Plan) where the government guarantees a certain level of return while also allowing individuals to take advantage of excess market gains above this level; (2) eliminating Medicare for individuals under 55 and replacing it with a refundable tax credit based on income and health risk to be used on private health insurance; and (3) reducing the federal government's role in Medicaid by providing states with inflation-indexed grants to award Medicaid assistance at their discretion.¹⁶⁹ Representative Ryan's bill was also rejected in Congress because opponents disagreed with bill language that many felt "would increase the federal deficit by cutting taxes for the wealthiest Americans and lead to the privatization of Social Security."¹⁷⁰

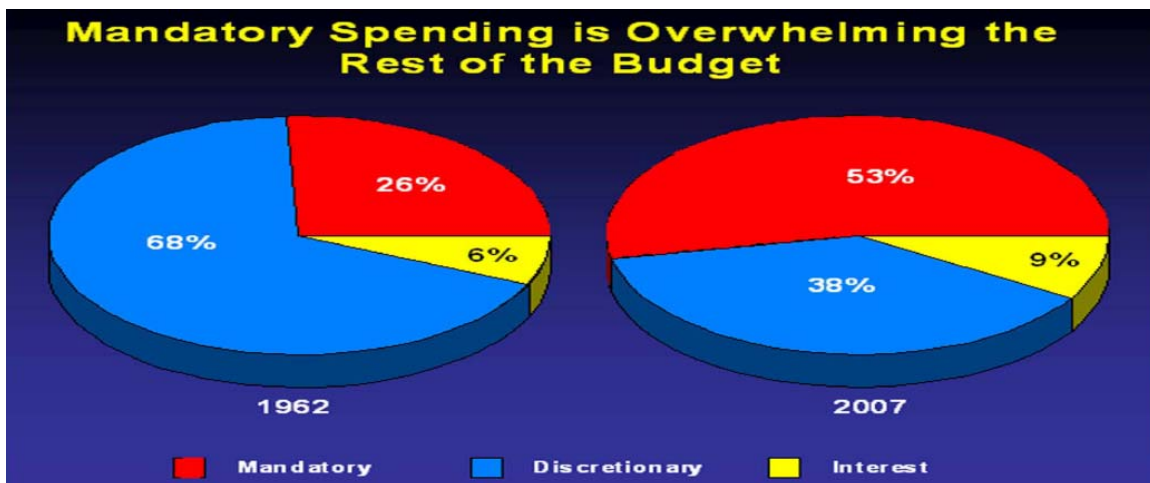


Figure 5. Increase in Mandatory Spending. After [28]

¹⁶⁹ Diane Marrero, Conservatives Cheer Ryan's 'Roadmap' Bill, *Journal Sentinel*, May 22, 2008. Retrieved November 23, 2008, See: <http://www.jsonline.com/news/president/29584969.html>

¹⁷⁰ Ibid.

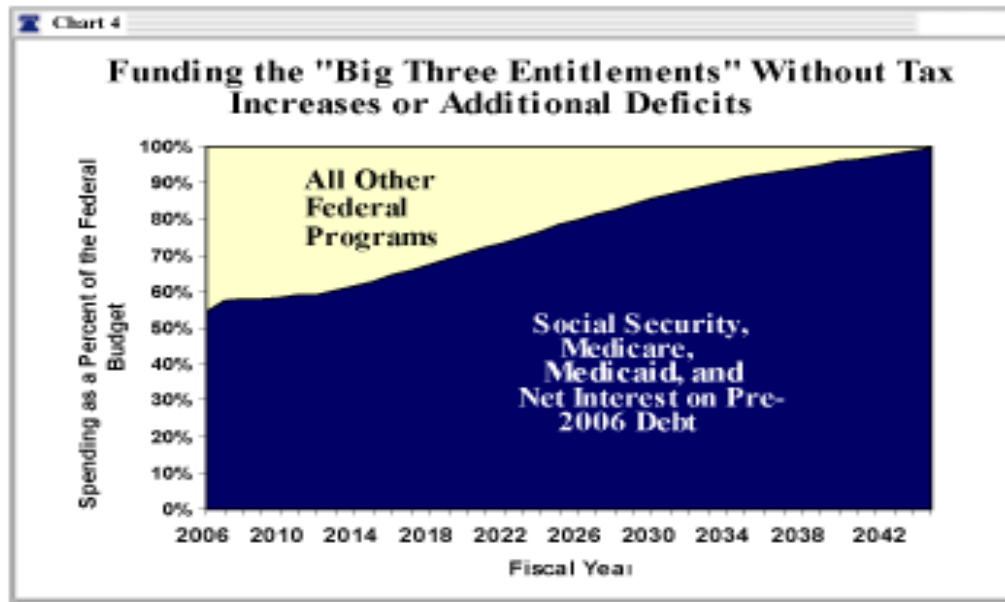


Figure 6. Entitlement Spending as Percentage of Overall Federal Spending. From [101]

2. Federal Spending as Percent of Gross Domestic Product

Another fiscal problem linked to issues with entitlement spending and the nation's debt is the percentage of the country's gross domestic product (GDP) that will be attributed to total federal spending as compared to anticipated revenues. As shown in Figure 7, the ratio of federal spending to GDP has averaged 20 percent over the past 50 years. Figure 7 reflects the possibility of this ratio approaching 40 percent by 2050 at current spending rates because of the increasing cost of entitlement programs and other federal expenditures and financing cost associated with a federal deficit (\$455 billion¹⁷¹ for FY2008) and the

¹⁷¹ Michael Kranish, Federal Deficit Could Top \$1 Trillion, *The Boston Globe*, November 23, 2008. Retrieved on November 23, 2008, See: http://www.boston.com/news/nation/washington/articles/2008/11/23/federal_deficit_could_top_1_trillion/

total national debt currently estimated at \$10.6 trillion.¹⁷² This problem will be exacerbated by the dramatic growth in the deficit implicit in the measures being taken by the Treasury and the Federal Reserve to stabilize the economy.

This percentage increase poses several potential problems for the country that may lead to accelerated inflation and economic stagnation. Because the government relies on selling securities to domestic and foreign investors to fund its deficits, the higher the debt to GDP ratio, the less willing these investors become to hold these treasury bonds because of fear of the government's inability to meet its interest payments. This has not been true in the current recession, even as returns on government treasuries reach historically low rates, because of high demand from investors to shift their investments into safer government securities. If the government is unable to attract new investors however, it must sell these securities to the Federal Reserve Bank, and as a result of this sale, increase the amount of money in circulation. The problem with this is that Federal Reserve's "continued financing of large government budget deficits by 'printing money' runs a substantial risk of rapidly accelerating inflation"¹⁷³ because it greatly devalues the dollar. A direct by-product of inflation resulting from high debt to GDP ratios (as

¹⁷² The Debt to the Penny and Who Holds it, *Treasury Direct*, November 23, 2008. Retrieved November 23, 2008, See: <http://www.treasurydirect.gov/NP/BPDLogin?application=np>

¹⁷³ Brian W. Cashell, *The Federal Government Debt: Its Size and Economic Significance*, Congressional Research Service, Washington, D.C., January 27, 2006, p.9.

France and Germany experienced in recent years) is double digit unemployment and economies unable to grow.¹⁷⁴

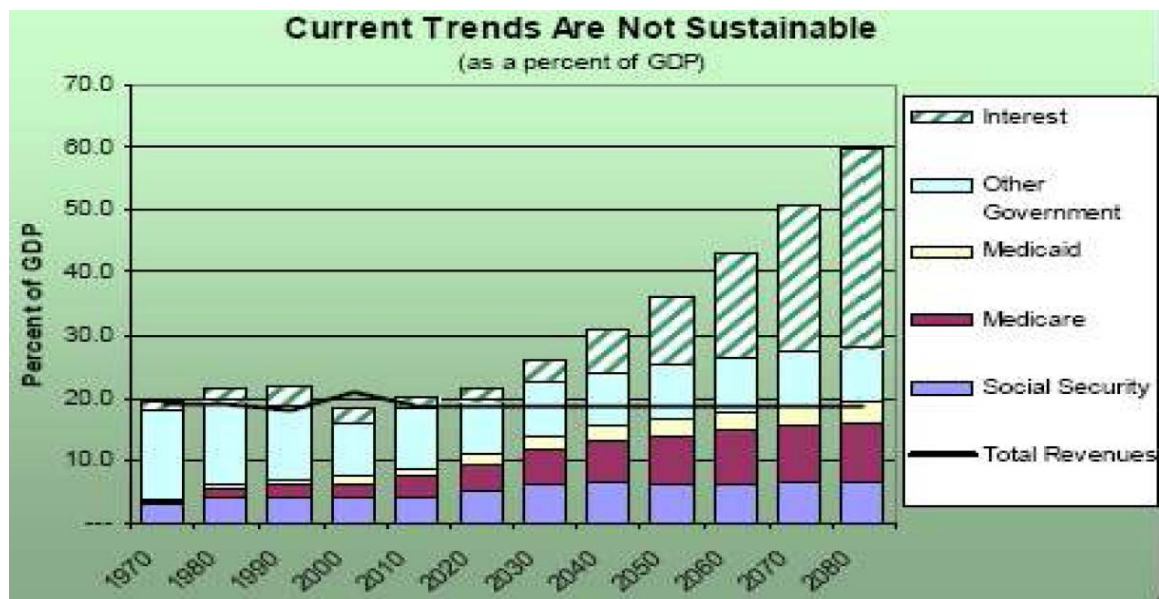


Figure 7. Estimates of Future Federal Revenues and Spending.
From [30]

The only way to tame this problem is to increase taxes, reduce expenditures, or both. The President and Congress have failed to see eye to eye on this, as spending increases for both mandatory and discretionary spending programs. An example of this conflict is the funding of the Global War on Terror (GWOT) being fought in Iraq and Afghanistan and where these costs are going "straight to the debt"¹⁷⁵ and "while taxes are being constantly cut."¹⁷⁶

¹⁷⁴ Alison A. Fraser and Michelle Muccio, The FY2007 Budget Resolution: Long-Term Spending Challenges, *The Heritage Foundation*, April 5, 2006. Retrieved November 23, 2008, See: <http://www.heritage.org/Research/Budget/wm1029.cfm>

¹⁷⁵ Doyle, p.90.

¹⁷⁶ Ibid.

G. SUMMARY

The actions of the 110th Congress with regards to earmark reform reveal a lack of desire to change the way they do this business. Although earmark reform measures were passed in the Honest Leadership and Open Government Act of 2007 and a House resolution took effect that would discourage the insertion of earmarks into the non-statutory language of committee reports, the same problems of a lack of transparency and disclosure persist and were profoundly evident in the FY2009 spending bills. One can blame the Democrats because of their control of Congress and failure to enforce these measures or Republicans because of the steady increase in spending during the years they were in control, but it is obvious that the culture of Congress as a whole encourages and accepts earmarking and resists reform. This culture in Congress has become accustomed to the bartering of favors among members to get earmarks passed and has used earmarks as a means to "ensure their own reelection"¹⁷⁷ as Representative Flake puts it. This culture makes up over 90 percent of Congress (those who will or have requested earmarks in FY2009 appropriations) and it becomes difficult to assume that the violators in Congress, to include the senior leaders from both parties in the most influential budgetary positions, can create substantial reform and enforce it themselves. It is also unlikely that Congress will address more difficult fiscal issues and policies when they have clearly demonstrated their inability to reform earmarks.

¹⁷⁷ Interview with Representative Jeff Flake, Bill Moyers, *Public Broadcasting Service*, February 22, 2008. Retrieved October 3, 2008, See: <http://www.pbs.org/moyers/journal/02222008/profile.html>

It is widely known that earmarks make up less than one percent of total federal spending, but receives significant attention, including efforts at reform. It may be because earmarks are a simpler topic to address than other fiscal issues including entitlement spending programs, growing national debt, and current policies that have forced the economy into a recession, but it is clear that these other matters will quickly overwhelm the federal budget process if they are not addressed. Senator John McCain [R-AZ] was continually criticized for this during his bid for the presidency, when he spoke of earmarks and wasteful spending with more passion than these other issues. Even though cutting back on earmarks and wasteful spending is a component of balancing the federal budget and ensuring that needed discretionary programs can be paid for in the near-term, it only offers a band-aid to a greater federal spending catastrophe that is bound to happen if effective long-term fiscal policies are not implemented.

There are many good reasons to examine earmark reform, one of which is not in its impact on federal spending, but rather gaining an understanding of how Congress works and what matters most to the federal government. Because some of the larger fiscal issues mentioned previously are at manageable levels and have not imposed many problems in the nation's ability to meet its near-term obligations, they may not become a main focus for Congress and the President until they worsen.

H. RECOMMENDATIONS FOR FURTHER STUDY

A recommendation for further research on these issues is a study into how the different proposals to reform Social Security and Medicare will affect federal spending in the future, to include cost savings or losses and revenue offsets. Another possibility is to explore the potential links between entitlement reform and the efforts being taken to stabilize the economy.

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