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The Rise and (Relative) Fall of Earmarks: Congress and Reform, 2006–2010

RICHARD B. DOYLE

Congressional earmark reform efforts began in 2006. This paper reviews the literature on earmarks and documents the rise and relative fall in earmark spending using four databases. It identifies and critiques earmark reforms, including congressional rules and initiatives taken by the appropriations committees and congressional party organizations. Rules and committee-initiated reforms were the most effective, producing significant improvements in transparency and expediting availability of information. The number of earmarks and their dollar value first dropped noticeably in 2007 after an earmark moratorium, then stabilized as reforms were implemented. It is premature to conclude that reforms will alter the policy content of earmarks or their distribution.

INTRODUCTION

Earmarking, Savage argued, “is an important political and budgetary issue.”1 It became more important in the first decade of the twenty-first century, for a variety of reasons. Rubin noted that by 2007 earmarks had grown “beyond the ability of legislators to evaluate and prioritize,” and that some of them “have been revealed as rewards for financial donors, contributing to the impression that government is corrupt.”2 She also observed that the Bush Administration “attacked congressional earmarks” as part of its “assault on congressional budgetary powers.”3 Brookings scholars saw the same

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problem in 2007, suggesting that earmarking got “out of hand and was used and abused in a fashion we have not seen before in recent years.”

In 2010, the *Washington Post* noted

a wave of investigations focusing on House appropriators’ actions. The Justice Department has looked into the earmarking activities of several lawmakers, and, relying on public documents, the House ethics committee investigated five Democrats and two Republicans on the Appropriations defense subcommittee, finding that the lawmakers steered more than $245 million to clients of a lobbying firm under federal criminal investigation. The lawmakers collected more than $840,000 in political contributions from the firm’s lobbyists and clients in a little more than two years.\(^4\)

According to an editor at *CQ Weekly*, earmarks “have been cited as a symbol of everything that’s wrong with Congress.”\(^5\) In a single week in 2008, three television network news broadcasts mentioned earmarks 91 times, nearly as often as they made reference to Afghanistan.\(^6\)

Within Congress, key members have been critical of earmarking, including Senators Sam Nunn, William Proxmire, John Danforth, and Representatives Bill Natcher and Edward Boland. More recently, a handful of senators and congressmen consistently attacked earmarks as spending bills moved through Congress. Congressman Jeff Flake referred to earmarks as “the currency of corruption in Congress,”\(^7\) “no-bid contracts,”\(^8\) and a “gateway drug to out-of-control spending.”\(^9\) Earmarking became something of a campaign issue in the congressional elections in 2006 and 2008, and Senator McCain employed his opposition to earmarks in 2009 “to rally conservatives reluctant to support his presidential campaign.”\(^10\)

Earmark reform, the subject of this article, began in 2006, impacting both the process to be followed by members of Congress seeking earmarks and the spending that results. Three sources of reform are examined here: House and Senate rules, the policies and procedures of the House and Senate Appropriations Committees, and the initiatives of congressional member organizations. The reforms are detailed and their impact on earmarks assessed. Lobbying reform and the role of presidents in earmark reform are not addressed here.

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EARMARKS: A MEANS TO WHAT END, AND FOR WHOM?

Earmarking, a specific subset of “pork barrel politics,” has been treated at length by students of Congress. Mayhew argued that members of Congress persistently engage in distributive policymaking such as earmarking, in the belief that this will enhance their electoral fortunes.\textsuperscript{12} This logic is stated explicitly by Law and Tonen: “A key element of every candidate’s reelection strategy is to claim credit for services or programs that generate benefits for the voters in her district. Pork-barrel projects clearly serve this function.”\textsuperscript{13} There is the expectation then, that earmarking will be used to advance the electoral fortunes of incumbents and that those best positioned to earmark (members of the majority party, the leadership, and the appropriations committees) will be disproportionately rewarded; for other, but related reasons, party leaders will reward vulnerable members with earmarks to retain control of those seats.

Engstrom and Vanberg looked at earmarks in the 110th Congress and found that the majority party received more earmarks than the minority, that parties use earmarks to assist their most electorally vulnerable members and to reward members who hold “agenda-setting positions.”\textsuperscript{14}

However, research on earmarks does not always or easily comport with these assumptions. Frisch, for example, notes that “empirical evidence connecting the provision of pork with improved electoral fortunes is hard to come by.”\textsuperscript{15} This is owed at least in part to the fact that voters are usually unaware of members’ earmarking activities. Frisch found that in the 1994 congressional elections, “the amount of pork barrel spending during a Congress (in this case measured as the number of earmarks) is not positively related to the subsequent election margin.”\textsuperscript{16} Further, although seniority was positively associated with the number of earmarks, vulnerable members did not receive more earmarks than less vulnerable members. This conclusion regarding vulnerable members of Congress was supported by a study of earmarks in the 110th Congress conducted by Clemens and Finocchiaro, who found that members from competitive districts did not consistently receive more earmark funding than those from safe districts.\textsuperscript{17}

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\textsuperscript{12} David Mayhew, \textit{Congress: The Electoral Connection} (New Haven, CT: Yale University Press, 1974).
\textsuperscript{16} Ibid., 149.
\textsuperscript{17} Austin Clemens and Charles Finocchiaro, “Earmarks and Subcommittee Government in the U.S. Congress,” paper presented at the annual meeting of the Southern Political Science Association, January 7–9, 2010.
\end{flushright}
Fisher and Rocca provide a potential solution to the problem posed by Frisch, i.e.,
that voters are not aware of members’ earmarking activities, hence will not reward them
at the ballot box. They posit the possibility that earmarks provide a return to members of
Congress by signaling potential campaign contributors “about the direction and inten-
sity of their preferences.”18 Earmarks, they argue, are “another important form of non-
roll call position-taking in Congress and, as such, are tools (1) for interest groups to
acquire information about members’ preference and (2) for legislators to advertise the
direction and intensity of their positions to potential donors.”19 In this context, interest
groups “provide the crucial link between distributive policy and electoral gain.”20
Reviewing the earmarks provided by the 110th Congress, the authors find “a strong
relationship between earmarks and campaign contributions from defense groups.”21
Put otherwise, “members of Congress seem to be receiving a considerable wage for their
earmarks and that wage provides ample incentive to engage in this sort of distributive
and signaling behavior.”22

Crespin and Finocchiaro examined earmarks in the Senate to test the general proposition
regarding the distribution of earmarks. They found that by using “various procedural
maneuvers,” the majority party garnered a larger share of earmarks between 1995 and
2005.23 Further, members of the appropriations committee did better than nonmembers,
and committee chairs, ranking members and party leaders all received more earmarked
funding than others. This evidence regarding the role of the majority party is congruent,
in part, with the findings of Balla and colleagues, who examined academic earmarks between
1993 and 2000. They concluded that by “giving the minority some pork, the majority party
inoculates itself against charges of wasteful sp-
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Jeff Lazarus looked at a single year (FY 2008) of earmarks to determine the extent to
which “demand” may also drive distribution. The significance of a demand variable is
that it conveys a legitimacy to earmarks, otherwise linked to what Lazarus characterizes
as distribution “on a purely political basis.”25 He finds that political factors—member
ideology, seniority, committee membership, and electoral vulnerability—matter, but so

19. Ibid., 4.
20. Ibid., 7.
22. Ibid., 17.
23. Michael Crespin and Charles Finocchiaro, “Distributive and Partisan Politics in the U.S. Senate:
does demand, as conceptualized and computed by Lazarus, though precisely how it is then brought to bear within Congress is not entirely clear.

Will earmark reform—changes affecting transparency and accountability—alter incentives, distribution and more? Crespin and colleagues used appropriations data from Citizens Against Government Waste (CAGW) through FY 2009 to argue that the earmark reforms initiated in 2006 have not been effective in preventing members from adding earmarks to the Joint Explanatory Statement of Managers, a document that accompanies conference agreements. That indictment leads them to conclude that the rules “are essentially meaningless.”26 “The only real outcome of the reforms,” they note, “is a list of names attached to the appropriations bills designating who requested the earmarks.”27 They discount the effectiveness of this because it simply reinforces members’ interest in publicizing their earmarks to voters at home.

Rebecca Kysar characterizes these earmark reforms as disclosure rules intended to provide transparency and accountability, or “self-referential rules.”28 They “aim to keep undesirable interest group influence at bay through the principled discussion of legislation and a heightened accountability of legislators” and to “surface previously hidden deals with interest groups.”29 However, such rules are, in her view, “adopted by the foxes to govern administration of the henhouse.”30 They have only symbolic value, and “opportunities to defect from the regime are many.”31

THE EARMARK EXPLOSION

Before examining earmark reform, we must first note the expansion in spending within earmarks that has taken place over the past two decades. And before we can measure the change in spending for earmarks and the impact of reform, we must wrestle a bit with the definition of an earmark. It also requires engaging multiple earmark databases, each offering a definition and a count. The definitional issue is minimized here, in favor of identifying major trends.32 In 2007 the Senate began referring to earmarks as...
“congressionally directed spending items,” blurring the matter a bit further. That said, and allowing for such differences, a profile of earmark spending can be constructed, though with caution.

Spending for earmarks rose steadily and dramatically between the early 1990s, the first available data point, and FY 2006, after which it fell sharply. By FY 2010 it appears to have leveled off at FY 2002 levels. Data from two governmental offices (CRS and the Office of Management and Budget [OMB]) and two public interest organizations (CAGW and Taxpayers for Common Sense [TCS]) provide the best information on the nature and extent of earmark expansion and retreat. Figure 1 displays the trends in earmark spending as calculated by these four sources.

Because earmarks continue to be linked to the growth in federal spending (and thus deficits), this relationship should be made explicit. Frisch noted in 1998 that “there is virtual agreement in the more empirically based budgeting literature that congressional distributive spending is not the source of the growth of deficits.”33 But references linking earmarks to spending growth and deficits continues, frequently within a partisan context. In March 2010, GOP Congressman Mark Kirk noted “the dichotomy between Democrats that were debating a trillion dollar spending bill and Republicans that just voted to end all earmarks.”34 According to the Wall Street Journal, “[n]othing highlighted


Congress’s spending problem in last year’s [2006] election more than earmarks.”35 “It is no coincidence,” Congressman Flake remarked, “that the growth of earmarks has paralleled the monstrous increase in overall federal spending.”36

Earmarks were, indeed, at flood tide in 2006. However, their impact on total spending, never significant, diminished after 2006. If we compare earmarks in FY 2006, just before reforms were implemented, with their level in FY 2010, we discover that spending for earmarks fell 43.1 percent, while discretionary and total spending grew by 25.1 and 29.5 percent, respectively.37 Total federal and discretionary spending is compared with spending for earmarks in FY 2010 in Figure 2.

**CAGW**

The earmark database available from CAGW is the most comprehensive, covering each of the 20 years between FY 1991 and FY 2010.38 CAGW data indicate that spending for earmarks grew 432 percent over this period, while the number of earmarks grew even more rapidly, at 1,572 percent. By comparison, appropriated, or discretionary spending (the category within which earmarks reside in the federal budget and the source used by CAGW) increased 128 percent during this period.39 Thus earmarks not only expanded vertically, i.e., in terms of numbers and cost, but also horizontally, consuming a larger share of each year’s

36. “Earmarked Men.”
37. Earmark spending is calculated here using data from Citizens Against Government Waste. Discretionary and total spending data come from the OMB Historical Tables.
39. OMB Historical Tables.
appropriated spending. As appropriated spending continued to grow through the end of this
decade and earmark spending dropped and then leveled off, horizontal expansion ended.

**CRS**

The second most comprehensive earmark database is provided by CRS. CRS does not compile earmark information on each year’s spending bills, which explains the intermittent pattern in Figure 1. The 10 years of CRS data that include most of the same period covered by CAGW reveal much the same trajectory of earmark expansion through FY 2006, followed by a sharp drop and then a rough stabilization.\(^{40}\) Because CRS and CAGW define, and therefore count, earmarks differently, and started counting at different points, they found different rates of growth. CRS data, which begin at FY 1994, indicate that spending for earmarks grew by 57 percent by FY 2010, as compared with CAGW’s 432 percent. Similarly, CRS data indicate that the number of earmarks grew by 174 percent by FY 2010, compared with growth of 1,572 percent in the CAGW database.

The CRS data show the same acceleration in earmark spending between the early 1990s and FY 2006 as revealed by the CAGW data, following which spending dropped dramatically. Between FY 2006 and FY 2010, the dollar value of earmarks dropped by 50 percent, while over this same period, discretionary spending went up by 25.1 percent.\(^ {41}\) That said, the CRS data also indicate three years of small but steady growth in earmark spending between FY 2008 and FY 2010.

**OMB**

The OMB earmark database was apparently intended to serve, at least for the executive branch, as an official government standard for tracking earmarks. OMB defined earmarks in 2007 in Executive Order 13457 (addressed below) and established a public, searchable online database on earmarks to “establish a clear benchmark for measuring progress” toward the Bush Administration’s goals of cutting their numbers significantly.\(^ {42} \) The database purports to provide “more information on earmarks in one place than has ever been available through the Federal Government.”\(^ {43} \) However, complete OMB data on earmarks


\(^ {41}. \) OMB Historical Tables.


in appropriations bills are available for only four fiscal years—the FY 2005 baseline and FY 2008 through 2010. These data indicate a 41.3 percent reduction in earmark spending between FY 2005 and FY 2010, and a 31.9 percent drop in their number.

**TCS**

The newest contributor to earmark data is TCS, capturing information for FY 2008 through FY 2010. TCS numbers show the cost of earmarks dropping by 13 percent over this three-year period and their number falling by 26 percent.44

In sum, the data on earmarks spending indicate a significant expansion beginning in the early 1990s that peaked around FY 2006, following which earmark spending dropped sharply and stabilized at about the FY 2002 level. This pattern is explained by an earmark moratorium on FY 2007 spending bills and subsequent earmark reforms (addressed below). The conclusion of Crespin and colleagues that the new rules have had no meaningful impact is contradicted by this data.

**REFORM ON THREE FRONTS**

Earmark reform began in FY 2006 and had three sources. New House and Senate rules came first, followed by additional constraints put in place by the House and Senate Appropriations Committees. Congressional member organizations within Congress operated somewhere between these two fronts, primarily advocating earmark moratoria. These organizations were dominated by fiscally conservative House organizations.

It should be noted that individual senators and House members made many attempts to impact earmarks before and during the reform period. Among the most notable of these were senators McCain, Coburn, DeMint, Feingold, and Inhofe, and representatives Flake, Ryan, and Hensarling.45 These efforts are not addressed because they are less concerned with earmark reform than with they are with earmark elimination. As such, they were met with limited success. (In 2007, a motion in the House to eliminate all earmarks was defeated, 53 to 369, with majorities in both parties opposing it.46)

The role of presidents is also minimized here, because presidents have very limited power to control earmarks. The exception occurred during the brief period when the line item veto was available, which President Clinton used to veto, among other spending

45. Earmark moratorium legislation was again introduced by Rep. Flake in the House (H. Res. 1101) and Senator DeMint (S. 2990) in the Senate in 2010.
President Bush singled them out for criticism in his 2007 and 2008 State of the Union speeches, as did President Obama in 2010. President Bush issued EO 13457, which applied to all bills passed after January 29, 2008, and remains in effect. This EO set out a series of detailed duties for agency heads in dealing with earmarks, encouraging agencies to implement only those included in appropriations bills rather than reports. There is little evidence that either administration used the authority provided by EO 13457 to impact earmark funding. In May 2010, President Obama proposed the Reduce Unnecessary Spending Act of 2010, a bill that would allow presidents to veto earmarks by incorporating them within legislation to be rescinded. Congress did not act upon this proposal.

Rule Reform

Following elections, each new Congress adopts rules to govern committee operations and the manner in which legislation is to be considered. Rules are enforced by parliamentary points of order. To address concerns about earmarks, the House changed its official rules late in 2006, at the end of a Congress, rather than the beginning. This was the least effective of four rule changes addressing earmarks adopted between 2006 and 2007.

As the majority party in the House and Senate in 2006, the GOP had promised “comprehensive earmark reform rules change.” H. Res. 1000, adopted September 14 by a vote of 245 to 171, was the result. (Notably, of the 24 Republicans who voted against the rule change, 22 were members of the HAC.) According to this rule, earmarks inserted in appropriations bills in committee or in conference would have to be disclosed, along with the names of the members of Congress sponsoring them. Disclosure at this first step in the reform process meant inclusion within the reports that accompany appropriations bills.

But H. Res. 1000 was not retroactive, and the House had already passed all but one of its appropriations bills for the year when it took effect. Thus the rule would affect only this single bill and conference reports, and only in the House. No earmarks were disclosed as a consequence of the 2006 House rule change.

The first earmark rule change to have an impact was implemented by the 110th Congress, January 5, 2007. Earmark reforms were incorporated in Clause 9 of Rule XXI and Clauses 16 and 17 of Rule XXIII of the House rules package (H. Res. 6). According

49. H. Res. 1000.
to House Democrats, the new rules would help bring an end to a ""culture of corruption" that led to the GOP losing control of Congress after 12 years.""51

The rule prohibited the House from considering bills unless a list of earmarks and their sponsors in such bills or the accompanying report was made available in specified public documents, i.e., committee reports (for committee-reported bills) or the Congressional Record (for other legislation). Members requesting earmarks were required to provide to the chairman and ranking member of the HAC, in writing, the name and address of the earmark recipient, its purpose and certification that neither the requesting member nor their spouse had a financial interest in the earmark.52 House members were prohibited from considering special rules waiving the public disclosure requirements.53

Implementing the new earmark rule became a severe problem, ultimately providing the incentive for the third rule change affecting earmarks. The conflict centered on the timely publication of earmark information on the House version of the Homeland Security appropriations bill for FY 2008 in June 2007. Chairman Obey said that the HAC staff had received in excess of 30,000 earmark requests, as a result of which, more time was needed to review them. Consequently, he indicated his intention to ignore the new House rule on the timing of the release of earmark information and ""drop the earmarks into the bills when they move to the House-Senate conference committees before the August break.""54

The resolution of this impasse produced H. Res 491, the third congressional rule on earmarks. This rule addressed transparency issues affecting ""air-drops,"" earmarks added to conference agreements that were not in either the House or Senate version of the appropriations bills at issue in the conference. The new House rule prohibited consideration of conference reports unless the joint explanatory statements accompanying them included a list of earmarks in the conference report or joint statement, and the names of the earmark sponsors.55

The final rule change impacting earmarks was the Senate version of the two rules changes that took effect in the House. The vehicle, an ethics reform bill that included a section on earmarks, became law September 14 as the Honest Leadership and Open Government Act of 2007 (P.L. 110–81). Section 521, Congressionally Directed Spending, incorporated the Senate earmark reforms, adding them to the Standing Rules of the Senate as Rule XLIV.

The Senate earmark rules were very similar to the House rules, but not identical. Rule XLIV made it out of order in the Senate to vote on appropriations bills containing earmarks until the chairman of the committee of jurisdiction or the Majority Leader provides a list of the names of senators sponsoring the earmarks. The information had to be ""available on a publicly accessible congressional website in a searchable format at

52. House Rule XXIII, clause 17.
53. House Rule XXI, clause 9, section 4b.
55. H. Res. 491.
least 48 hours before such vote.’’ Senators requesting earmarks were required to provide to the committee of jurisdiction their names, the name and location of the intended recipient, the purpose of the earmark and certification that neither they nor their immediate family had a financial interest in the earmark (Rule XLIV, 6(a)). As with the House rules, points of order were used to enforce the Senate rules.

Because the Senate rules did not take effect until late in the year, their applicability to FY 2008 spending bills may be questioned. Compliance issues aside, it should be noted that in April, before adoption of S.1, the SAC announced that it would adopt earmark reforms for the FY 2008 spending bills pending passage of the Honest Leadership and Open Government Act. The new policies called for clear identification of earmarks, their sponsor, amount, recipient, and purpose. Earmark information would be published on the website of the SAC and the Library of Congress. Senators would also have to certify that they had no financial interest in the earmark.

The earmark rule changes put in place in 2007 were in effect for the 110th Congress (2007–2008) and were adopted again in 2009 by and for the 111th Congress (2009–2010).

Committee Reforms

The HAC and SAC have initiated several earmark reforms, the most important of which have come from the HAC. These committee-initiated earmark reforms can be seen as operationalizing and sometimes complicating the reforms effected by House and Senate rules. Their objectives may be more stringent than those imposed by congressional rules, particularly as regards transparency, but committee-initiated reforms are also more problematic. These problems stem from the fact that the processes of promulgation and enforcement of committee-initiated rules are opaque, and because of the differences between reforms coming from the HAC and the relatively tepid steps taken by the SAC.

Committee-initiated reforms began in earnest as Representative Obey and the late Senator Byrd prepared to assume their positions as chairmen, respectively, of the House and Senate Appropriations Committees in the newly elected 110th Congress. In December 2006, the chairmen announced an important committee decision affecting earmarks. That decision would affect the joint funding resolution (the final continuing resolution for most FY 2007 spending) left over from the 109th Congress, and ultimately the number of earmarks allowed. The decision stemmed in part from the campaign statements of the Democrats in Congress, including the incoming Speaker of the House Nancy Pelosi, who, had “railed for months against wasteful ‘special interest earmarks’ inserted into bills ‘in the dark of night.’”

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56. Rule XLIV, 1(a)(2).
opposition to passage of the FY 2007 omnibus appropriations bill from some congressional Republicans, led to the postelection statement on earmarks and the omnibus.

Senator Byrd and Congressman Obey indicated their decision “to dispose of the Republican budget leftovers by passing a year-long joint resolution,” meaning there would be no new congressional earmarks in a bill providing $463.5 billion in new spending.59 The measure would constitute “a moratorium on all earmarks until a reformed process is put in place.”60 When the joint funding resolution was filed in January 2007, Chairman Obey explained that most FY 2007 programs would be funded at the FY 2006 level, adjusted for increased pay costs, but the resolution “is free of earmarks.”61

The measure became law February 15. Thus the only new earmarks in spending bills for FY 2007 were those in the two full-year appropriations bills approved in 2006 by the previous Congress. This is the primary explanation for the drop in earmarks and their cost between FY 2006 and FY 2007 seen in Figure 1. This initiative, whatever its importance in constraining earmarks in FY 2007 appropriations bills, was a one-time event, hence of marginal policy consequence.62

More meaningful committee-initiated reforms began in January 2009, when the HAC and SAC jointly announced additional transparency requirements. The key changes were to require posting of data about earmark requests, as opposed to earmarks that had been approved, and the requirement that members post this information on their own websites rather than committee websites. For FY 2010, members requesting earmarks in appropriations bills had to post information on these items when the request was made, “explaining the purpose of the earmark and why it is a valuable use of taxpayer funds.”63 Further, the committees promised to provide earmark disclosure tables to the public the same day as the relevant appropriations subcommittees release their report or 24 hours before full-committee consideration of bills that have not been marked up a Senate subcommittee.

Some additional transparency has resulted, though not without problems. Requiring members requesting earmarks to post their requests on their own congressional websites produced a variety of responses. In the House, compliance produced “a hodgepodge, with some members of each party proudly displaying their requests while many

60. Ibid.
62. House Democratic leaders discussed but did not agree to a party-wide moratorium affecting FY 2011 appropriations in March 2010. One factor contributing to this discussion may have been the concern that appropriations for FY 2011 may remain incomplete, as they were for FY 2007, the year of the earmark moratorium. If the earmarks would not take effect in the end, better perhaps to relinquish them publicly in advance. Tory Newmyer, “Majority Eyes Earmark Ban,” Roll Call, March 8, 2010; available from: http://www.rollcall.com: accessed 8 March 2010.
others apparently did their utmost to keep their requests out of public view.” 64 Rarely did House member websites use the term earmark in providing the required information. Off the record, some member offices admitted relabeling, moving or altering what their initial online disclosures “after they were criticized or after their offices became concerned that they soon would come under scrutiny for how they first posted their spending requests.” 65

The SAC provided a link to the websites of individual senators titled Congressionally-Directed Spending Requests 66 However, it not always clear at those websites where to find senatorial earmark information, and some senators indicate the amount of their request, while others do not.

The HAC also provided member earmark request data by subcommittee bill. HAC subcommittees provide links for their bill, titled “Earmark Certification Letters,” which provide access to a list of House members requesting earmarks within that bill. Letters reflect each member’s interpretation of the need to rationalize earmark requests, including the need to indicate the amount requested.

Another constraint to House earmarks was adopted in March 2009. 67 House earmarks would now be reviewed by the executive branch, and those directed to for-profit entities would be subject to competition. The executive branch review, however, only required that agencies involved in executing earmarked funds would have 20 days “to check that the proposed earmark is eligible for funding and meets goals established in law.” 68 The competition mandate is similarly vague, requiring that earmarks “directed to for-profit entities will undergo a competitive bidding process.” 69 This reform was not adopted by the SAC.

OMB made no commitment to the 20-day deadline imposed by the HAC, which would have most likely been difficult to achieve. OMB agreed only to provide “answers to factual questions articulated by Chairs of relevant House committees of jurisdiction in as timely a manner as possible,” but these responses “should not be construed as an evaluation or recommendation of specific requests based on merit or value.” 70

Because the SAC had not agreed to compete for-profit earmarks, the issue had to be resolved when the Senate took up its FY 2010 appropriations bills. The resolution found in the defense appropriations bill indicates the problem agencies faced in implementing the competition for for-profit earmarks requirement. It also illustrates the fragmentation of

68. Ibid.
69. Ibid.
70. OMB, Letter to the Honorable Nancy Pelosi, April 16, 2009.
earmark reform policy originating with committees. The HAC and SAC agreed that earmarks to for-profit entities originating in Senate appropriations bills would not be held to the HAC standard, but those originating in the House would. Those (roughly 5 percent) with both House and Senate sponsors would be exempt from the House competition requirement the first year, but would fall under that requirement in subsequent years.\footnote{David Clarke, “Democrats Are Ready To Move Appropriations Conference Agreements,” \textit{CQ Today}, September 25, 2009; available from: \url{http://corporate.cq.com/wmspage.cfm?parm1=101}: accessed 10 October 2009.}

As the FY 2011 appropriations season began, the chairman of the HAC set the stage for the continuation of earmark reform. After reviewing the reforms of 2007 and 2009, he informed his House colleagues that these rules would be retained (and in one case, stiffened) for FY 2011 appropriations bills, and announced a goal of holding earmarks below 1 percent of discretionary spending. He then added two more conditions for FY 2011 appropriations. Rather than mandating competition for earmarks to for-profit entities, such earmarks were to be prohibited. Further, agency Inspector Generals would be tasked with inspecting earmarks to nonprofit earmark recipients to insure that for-profit entities do not receive earmark funding. The chairman also promised to provide additional transparency with the establishment by the HAC of an on-line “one-stop” link to display all earmark requests from House members. This may make it more convenient to access this data, which had been previously provided by bill on the HAC subcommittee websites, though it is not clear that any new information will result.\footnote{Congress, House, Committee on Appropriations, Dear Colleague letter, January 25, 2010, and Press Release; Appropriations Committee Bans For-Profit Earmarks, March 10, 2010.}

The SAC did not consider these reforms necessary. The chairman of the SAC positioned the Senate above earmark problems, noting that he understood “the reasons why the House might feel it is necessary to adjust its practices in light of previous problems in that body.”\footnote{Congress, Senate, Committee on Appropriations, Press Release, Senate Appropriations Committee Policy on Earmarks, March 11, 2010.} Senator Inouye then indicated his satisfaction with Senate earmark policy: “The policies that the Appropriations Committee has adopted for the Senate safeguard the Senate’s constitutional role in directing spending decisions while ensuring transparency and strict control on the practice of earmarking.”\footnote{Ibid.}

The reforms of March 2010 capture nicely the problem with committee-initiated reforms. They materialized, as did many previous committee-initiated reforms, as an announcement from a congressional committee. The \textit{Wall Street Journal} reported this event as follows: “The ban was not voted on by the House, but was simply agreed to by Rep. David Obey (D., Wis.) and Rep. Norm Dicks (D., Wash.) who control the process for adopting House spending bills.”\footnote{Corey Boles, “House Curbs Earmarks, Senate Balks,” \textit{Wall Street Journal}, March 11, 2010. It should be noted that Rep. Dicks, who replaced Rep. Murtha as chairman of the Defense.} We can speculate regarding the motives for the change, but there is no public record. Similarly, the reform was unilateral, i.e., the Senate
did not follow, which means that the disposition of earmarks to for-profit entities will occur in the context of conference negotiations between the House and Senate on FY 2011 appropriations bills. It was also unilateral in that House Republicans had not been involved in the HAC decision. To compound the issue, House Republicans upped the ante the day after the HAC announcement, declaring their intention to ban all earmarks, not just those to for-profit entities (addressed below).  

Reform and Congressional Party Organizations

The decision by House Republicans noted above is an example of another front in the earmark reform conflict. The decision was taken by the House Republican Conference, in the form of a resolution. The House Republican Conference is the official representation of the Republican Party in the House. Other organizations within Congress also attempted to influence earmark reform. Most active in the House, these organizations included some ad hoc, informal, and temporary Member groups and some congressional Member organizations (e.g., the Republican Study Committee [RSC]). Although these efforts have had minimal effect on earmark policy to date, they are worth noting, as indicators of the political salience of this issue and perhaps of the direction for future reform. This may be particularly relevant as re earmark moratoria.

The primary earmark reform theme advanced by House Republican groups was a moratorium pending adoption of additional reforms to be developed by a bipartisan committee on earmarks. In November 2007, for example, Republican members of the HAC, supported by the RSC, proposed a moratorium on earmarks and the establishment of a bipartisan bicameral select committee on earmark reform. This offer was renewed in January 2008, with the additional support of the Republican Leader, Whip and Chief Deputy Whip, three members of the Republican Conference, and members from the National Republican Congressional Committee, the Republican Policy Committee and the Rules Committee. These House Republicans notified the Speaker of their belief that “the earmark system should be brought to an immediate halt, and a bipartisan select committee should immediately be established for the purpose of identifying ways to bring fundamental change to the way in which Washington spends taxpayers’ money.”

(footnote Continued)

Subcommittee of the HAC, does not control other appropriations bills in the House, contrary to the implication of this statement.


77. House CMOs are registered with the House Committee on Administration; available from: http://cha.house.gov/member_orgs111th.aspx.


In the meantime, House Republicans indicated their intent to adopt “a series of earmark reform standards that we insist that all House Republican members honor.”\textsuperscript{80} These standards included the following:

1. No projects named for themselves
2. No airdrops
3. No “pass-through” earmarks (earmarks that disguise actual recipients)
4. More details provided with earmark requests
5. Earmark recipients must put up matching funds for projects.\textsuperscript{81}

A Select Committee on Earmark Reform was eventually put in place in the House, but it was neither bipartisan nor bicameral. Its 10 members are all Republicans. Its impact has been primarily in the form of press releases and proposals, none of which have been adopted by either Republicans or Democrats. It was charged with filing a report no later than February 16, 2009 with recommendations for reform, but has not done so. Some of its activities are captured on the website devoted to earmark reform launched by the House Republican leadership in February 2008 to support the committee.\textsuperscript{82}

In March 2009, House GOP Conference Chairman Adam Putnam attempted (without success) to pressure his party leadership into denying committee leadership positions to House Republicans who did not adhere to the standards proposed by the House Republican leadership.\textsuperscript{83} In May, the RSC circulated a letter asking House GOP leaders to adopt the RSC position on earmarks, i.e., a one-year moratorium; the leadership, however, declined a GOP-only moratorium, opting to propose a bipartisan moratorium instead. Speaker Pelosi declined this offer.

On the Senate side, a Fiscal Reform Working Group chaired by Senator Lugar was announced by the Republican leader in January 2008. The panel was “to review the earmark process for spending and revenue and recommend additional means for the Senate to bring greater transparency and fiscal responsibility to government spending.”\textsuperscript{84} The five senators issued their report March 11, recommending a set of principles for the Republican Conference. After carefully acknowledging “the Constitutional responsibility of each Member of Congress to make decisions on the appropriation of federal taxpayer funds,” the report recommended that:

1. Senate rules should be modified to require that earmarks be put in bills rather than reports.

\textsuperscript{80} Ibid.
\textsuperscript{81} Ibid.
\textsuperscript{83} Susan Crabtree, “Choose reform or panel post, Putnam warns,” \textit{The Hill}, March 5, 2009; available from: \url{http://thehill.com/}; accessed 9 October 2009.
2. Senators should provide detailed information about earmark requests on their individual websites as well as websites of relevant committees in searchable formats at least 48 hours before floor consideration; the disclosure data should include the name and address of the intended recipient, full justification (financial/budget plans, federal matching requirements, and reasons for a lack of nonfederal funding), evidence that the requesting member will not benefit financially and whether or not the earmarked funds will be competed.

3. The administration should provide greater transparency for the earmarks it includes in the budget request to Congress.

4. Savings from earmarks removed from legislation should be used to reduce the national debt.85

The Senate Republican leader hedged his bet regarding the prospect of proposing these reforms in the form of a rule and “would not say whether his conference would adopt the plan if Democrats do not want to go along.”86 Item two on this list is the only one that proved relevant, but it was, in part, moot. The rules adopted by the Senate for the 111th Congress before the report was issued addressed the primary earmark disclosure issue it raises. The Senate was not willing to adopt measures requiring the additional information recommended by the Fiscal Reform Working Group.

The possibility of a second moratorium on earmarks was raised by the approval of a unilateral ban on earmark requests for FY 2011 by the House GOP Conference in March 2010.87 The Republican Leader threatened to use the power of the Republican Steering Committee over committee assignments to enforce the ban.88 The fact that the endorsement came from the Republican Conference rather than a subordinate Republican-led group suggests a broader consensus among House Republicans on this issue (though some House Republicans went on record as disagreeing with the ban, indicating that they would request earmarks for FY 2011). A resolution inviting House Democrats to join the GOP moratorium, supported by 162 House Republicans, including their leadership, was


introduced in the House, but never came up for a vote. It included another call for a bi-partisan, bicameral committee to study and then reform the earmark process.\textsuperscript{89}

In March, the Senate defeated a proposal for a similar ban by a vote of 68 to 21, with 15 Republicans voting against the ban.\textsuperscript{90} The next month, a two-year prohibition on earmarks—to be achieved by requiring a two-thirds majority to approve bills containing earmarks—sponsored by a Senate Democrat was defeated by a 2-to-1 majority.\textsuperscript{91}

Fiscal conservatives in the Senate (two Republicans and two Democrats) launched an oblique attempt at earmark reform by calling for "a new centralized earmark database."\textsuperscript{92} The database would ostensibly provide better access to most of the same kind of data that has been mandated by congressional rules and committee reforms. It would address a need for consolidation and clarification of earmark information. Further, and as noted here, compliance with the existing disclosure rules is a problem, though whether the proposed Earmark Transparency Act would solve those problems is uncertain. Key senators suggested that technical difficulties would prohibit passage of the bill, which died in committee.

\textbf{CONCLUSIONS AND OBSERVATIONS}

Following two and a half decades of significant growth, spending for earmarks peaked in FY 2006, then dropped noticeably after the FY 2007 earmark moratorium. Subsequently, and most likely as a consequence of the reforms instituted for FY 2008–2010, earmark spending has stabilized at about $20 billion, approximately where it was in 2002. Discretionary spending continued to expand after 2007, minimizing the cramping effect of earmarks noted in the rise in earmarks before that year. Figure 3 uses average annual rates of growth in the relevant variables to compare pre and post-reform periods.

The reforms implemented through congressional rules and committee policies during the 110th and 111th Congresses have demonstrably increased transparency of and accountability for earmarks. It is now possible to observe earmarks as they move through the appropriations process, from request to approval, and, usually, to connect them to individual members of Congress. This visibility is almost certainly linked to the decline in spending for earmarks evident in the databases reviewed here.

\textsuperscript{89} Jackie Kucinich, “House GOP to Push Ban on All Earmarks This Year,” \textit{Roll Call}, April 21, 2010: accessed 10 July 2010.

\textsuperscript{90} Emily Pierce, “GOP Splits as Senate Defeats Earmark Moratorium,” \textit{Roll Call}, March 16, 2010: accessed 17 March 2010. Republican Senator Bob Corker from Tennessee, publically withdrew his FY 2011 earmark requests, suggesting that the cost of those requests was less problematic than the process, “which is fundamentally flawed and lacks oversight.” Dan Friedman and Humberto Sanchez, “Corker Become Latest Republican To Reject Earmarks,” \textit{CongressDaily AM}, April 15, 2010.


Committee-initiated earmark reform has been dominated by the HAC, with the SAC following, intermittently. Committee-initiated reforms have expedited the availability of information on earmarks and bolstered the use of the internet to provide transparency. It remains difficult to assess committee reforms because the committee reform process, including enforcement measures, is opaque. Where only one of the Appropriations Committees implements an earmark reform, the impact is diminished. Party-oriented congressional organizations had a minimal effect on earmark reform, notwithstanding their intentions and the publicity they have received.

A small subset within Congress continues to dominate earmark allocation. Among those key players are members of the HAC and the SAC, whose leadership is also critical to earmark reform. The role of these committees in the distribution of earmarks is not likely to diminish in the postreform era, because the incentive to seek them remains. Schick observed this long before the reforms examined here, noting that “earmarks survive periodic reform campaigns because the chief political value of serving on Appropriations is to bring home the bacon, not to guard the Treasury.”

Notwithstanding the small and diminishing share of discretionary and total spending attributable to earmarks, some within Congress continue to argue that earmarks are a serious threat to fiscal solvency. In proposing a Senate ban on earmarks in 2010, Senator DeMint argued that earmarks “are at the heart of the spending addiction in Congress.” Following the House GOP earmark ban, Senator DeMint went further, stating that “earmarks were used to grease the skids for the bailouts, stimulus and health care

takeover.” But the bailout bill (The Emergency Economic Stabilization Act) and the stimulus bill (The American Recovery and Reinvestment Act) had no earmarks. That is also the case regarding the health care bills Congress passed at the time this statement was made, unless the definition of earmark is significantly broadened.

That said, earmarks have been considered a catalyst for passage of appropriations bills. The chairmen of the HAC and SAC subcommittees typically provide earmarks sufficient “to give the appropriations bill a solid base of support in the full committee and on the floor.” If these trade-offs are diminished as a consequence of earmark reform, Congress will have more difficulty passing appropriations bills.

The DeMint comment above is of a piece with the GOP earmark critique, which incorporates two potentially conflicting themes. Earmarks are considered inherently bad for the budget, either directly or indirectly, and as such, must be banned. The ban, however, is usually linked to the notion that reform, as yet imperfect, will somehow change the process and allow earmarks some redemption. For example, in announcing the FY 2011 earmark ban, the House Republican Leader stated that it means the beginning of “a process for bringing more transparency and accountability to how we spend the American peoples’ money . . . what the American people want to see is a process that does have all the transparency and accountability it ought to have. But we’re not going to get to a cleaned up process until we break with the past.” Senator DeMint repeated this suggestion: “Isn’t it time we took a time out to see if we can reform the system?”

Senator McCain made the same point as part of his endorsement of the Earmark Transparency Act of 2010, noting that “it is abundantly clear that the time has come for us to eliminate the corrupt, wasteful practice of earmarking. While we work toward that end, it is important that we give the American people the ability to see how their money is being spent.” By combining calls for earmark bans with calls for earmark reform, the distinction is blurred between a ban as a necessary prelude to reform and a ban as the reform itself.

As detailed above, earmarks have indeed experienced a break with the past, beginning with a moratorium, followed by reforms that added important elements of transparency and accountability and stabilized earmark spending. Public interest databases have used this information to provide another dimension of transparency (and interactivity) to the earmark process. For example, the Center for Responsive Politics provides data linking

96. Schick, p. 212.
member earmarks to campaign contributors.\textsuperscript{100} We may be approaching a marginal rate of return on transparency and accountability for earmarks in the federal budget.

The process now used to move earmarks through Congress can be compared with the one that provides for mandatory spending. Appropriations bills must be passed by committees, then the full House, Senate, and conference committees each year, and all of the information about earmarks must be provided pursuant to the reforms of 2006–2010. Many votes and much information—who was asking for and receiving what—were involved in providing the 0.004 percent of total spending that earmarks comprised in FY 2010. On the other hand, mandatory spending (mostly entitlements, dominated by Social Security, Medicare, and Medicaid), made up 65 percent of FY 2010 spending, and occurred without naming a name or taking a vote.\textsuperscript{101}

Earmark transparency and accountability may result in more—and more pointed—questions to lawmakers regarding the value of earmarks for their districts and states, as compared with the role earmarks play in direct or indirect sources of campaign contributions. This may alter the quality and quantity of earmarks. For-profit entities may more frequently find themselves competing for funds.\textsuperscript{102} The FY 2010 defense appropriations bill passed by the House is cautionary, suggesting that the links among lobbyists, HAC members, earmarks, and campaign contributions remain in place.\textsuperscript{103} Members of Congress may be shifting earmarks intended for private companies (banned by House Democrats for FY 2011) to nonprofits, which, in turn, will distribute the funding to the intended for profit sources.\textsuperscript{104} The effect of the reforms is a function of their durability, the interests and decisions of the congressional appropriations committees and interest groups and continued media attention.

\textsuperscript{100} Available from: \url{http://www.opensecrets.org/bigpicture/earmarks.php?cycle=2008}

\textsuperscript{101} This ignores votes on budget resolutions, which are not laws, but which can be seen as confirming the mandatory spending portions of the budget. Earmark spending for FY 2010 was taken from TCS; total and mandatory spending was taken from OMB’s Historical Tables.

\textsuperscript{102} Some lobbyists may be directing their for-profit clients toward “competitive grant programs run by the Obama administration.” Kevin Bogardus, “Earmark bans forcing K Street to get creative,” \textit{The Hill}, March 15, 2010.

\textsuperscript{103} “The Center for Public Integrity found that 10 of the 16 members of the House subcommittee on defense appropriations obtained 30 earmarks in the bill worth $103 million for contractors currently or recently employing former staffers who have become lobbyists.” Carol Leonnig, “Ex-Stafﬁers Winning Defense Panel Pork, Study Finds,” \textit{Washington Post}, October 8, 2009.