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Real Reform or Change for Chumps: Earmark Policy Developments, 2006-2010

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In response to widespread perceptions of problems associated with congressional earmarks, reform efforts began in late 2006 and continued through 2010. This essay summarizes those problems, explains the distribution of earmarks within Congress, and documents their rise and relative fall between 1991 and 2010 using government and public interest group databases. The author explains and critiques earmark reform policies, including congressional rules, initiatives taken by the congressional appropriations committees, and reforms pursued by the George W. Bush and Barack Obama administrations. Congressional rules and committee-initiated reforms have been most effective, resulting in significant improvements in earmark transparency and accountability. The number and dollar value of earmarks first dropped noticeably in fiscal year 2007 after an earmark moratorium, and then stabilized as reforms were implemented. It is premature to conclude that these levels will continue or that reforms will alter the policy content of earmarks or their distribution among members of Congress.

Earmarking, Savage argued, “is an important political and budgetary issue” (2009, 448). Its significance, however, lies in the perspective taken on it. For example, in a comprehensive critique of the contemporary budget process, Rubin noted that earmarks have 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” (2007, 608). They are no longer, she argued, part of “the hurly-burly of competitive budgeting” (614). Brookings scholars saw the same problem in that same year, observing that earmarking had gotten “out of hand and was used and abused in a fashion we have not seen before in recent years” (Mann, Binder, and Ornstein 2007). CQ Weekly observed that “earmarks . . . have been cited as a symbol of everything that’s wrong with Congress” (Benkelman 2007).

As earmarks became associated with a series of high-profile scandals and investigations involving members of Congress, lobbyists, and others, public interest organizations such as Citizens Against Government Waste (CAGW) and Taxpayers for Common Sense (TCS) focused extraordinarily critical attention on them. The mainstream media were similarly critical. In a single week in 2008, three television network news broadcasts mentioned earmarks 91 times, nearly as often as they made reference to Afghanistan (Alterman and Zornick 2008).

Within Congress, 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” (2006), “no-bid contracts” (2009), and a “gateway drug to out-of-control spending” (USA Today 2009). Senator John McCain regularly attempted to strike earmarks from appropriations legislation. Earmarking became something of a campaign issue during 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” (Kane 2009).

The sound and fury associated with earmarks signify potential problems of several types, outlined here, none of them a threat to constitutional or fiscal order. Those difficulties have become less acute as a consequence of reforms put in place between 2006 and 2010.

The Earmark Critique
Several themes dominate the earmark critique. First is the notion that earmarks serve only the members of Congress who procure them rather than some larger public purpose. The argument is that some members of Congress use earmarks to steer funds to companies that, in return, provide or arrange for the provision of campaign contributions. This “busy intersection between political fund-raising and taxpayer spending” has been at the heart of a series of events associated with a lobbying firm called the PMA Group (Kirkpatrick 2006). The late congressman John Murtha,
A second theme links earmarks to the suboptimal use of taxpayer dollars. It is assumed, Lazarus asserted, “that the earmarking process is fundamentally flawed . . . that earmarks are distributed on a purely political basis” (2008, 1). Earmarks are criticized as wasteful, or less than efficient, in that the funding is not subject to the kind of competition or analysis thought to underlie the spending proposals that presidents send to Congress. For example, Peter Orszag, director of the Office of Management and Budget (OMB), noted that “the issue with many of the programs that we are proposing to eliminate that are heavily earmarked is when they are not based on sound science or a rigorous approach. And so it’s not necessarily the earmarks per se, but rather the outcomes that then come from the lack of a consistent approach to evaluating projects, for example, that cause the issue” (White House 2009b).

TCS and CQ Weekly documented the distribution of earmarks in the appropriations bills passed by the House in 2007 and noted a similar but more differentiated pattern repeated in subsequent appropriations bills. The lion’s share of earmarks went to three groups within Congress: members of the HAC and the Senate Appropriations Committee (SAC), members of the party leadership, and incumbents whose chances for reelection were in doubt. Members of the HAC received 45 percent of all earmarks in these bills, averaging almost $29 million per member; HAC subcommittee chairman John Murtha received $180 million. That compares with the average member of the House, who received $9.5 million in earmarks. Party leaders averaged $14.1 million, and members from competitive districts garnered $8.8 million (Allen 2007).

The dominance of appropriators was again apparent in the fiscal year (FY) 2010 spending bills, as 6 of the top 10 earmark recipients in the Senate were on the SAC and 9 of the top 10 in the House were on the HAC (the tenth was the Speaker). The advantage of appropriators over all other members of Congress in winning earmarks subsumes yet another pattern—that of members of the Defense Subcommittees of the HAC and SAC. In the FY 2009 appropriations bills, the top 10 senators and representatives in terms of earmarks sponsored only by a single member of Congress were, with one exception, all members of the Defense Appropriations Subcommittee of the SAC or the HAC. The exception was majority whip James Clyburn (TCS 2009). For FY 2010, TCS found that almost half of all earmarks were within the defense appropriations bill. While members of the House Defense Appropriations Subcommittee made up only 4 percent of the House, those subcommittee members obtained 13 percent of all earmarks; the 18 senators on this Senate subcommittee were responsible for 35 percent of all earmarks (TCS 2010b).

A fourth theme assigns earmarks a major role in the growth of federal spending and, by implication, the deficit. Senator George LeMieux argued that earmarks “are the engine that drives the train that gets us into these huge spending problems” (Friel 2010). Senator Jim DeMint (2010) asserted that earmarks “are at the heart of the spending addiction in Congress.” According to the Wall Street Journal (2007), “Nothing highlighted Congress’s spending problem in last year’s [2006] election more than earmarks.” Earmarks were, indeed, at flood tide when the Journal statement was made.

The relationship of earmarks to total spending is a function of the time frame chosen for measurement (addressed in some detail later). Here it is sufficient to note that if we look at the change in spending between FY 2006, just before reforms were implemented, and FY 2009, after the reforms began, we discover that spending for earmarks dropped 52 percent (using Congressional Research Service data) or 32 percent (CAGW data), while discretionary and total spending increased by 49.7 percent and 46.7 percent, respectively (OMB 2010). Total spending for earmarks in FY 2010 is compared to total federal spending and discretionary spending in figure 1.

Spending obviously is implicated in the deficit problem, but earmark spending is, in relative terms, quite small, and as a share of total spending, getting smaller. One review of total spending and earmarks over the past 18 years found a negative correlation of −0.09 between earmarks and the size of the deficit (Crespin 2009, 4). If there is a fiscal issue here, it arises from the fact that prior to reform, earmark spending grew more rapidly than discretionary spending. This implies, at first glance, that discretion was being minimized. It is more accurate to say that it was being displaced—from agencies to Congress, or to those within Congress who control earmarks. It reminds us why this portion of spending is called “discretionary.”

Figure 1 Total, Discretionary and Earmark Spending, FY 2010 (Budget Authority in Trillions)

Sources: OMB Historical Tables, Taxpayers for Common Sense (http://www.taxpayer.net/index.php).

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Definitional Difficulties

There is agreement on the notion that there is no agreement on the definition of an earmark, officially and unofficially, that is, inside and outside of government. The definitions used by watchdog groups such as CAGW and TCS differ from those used by government organizations such as the Congressional Research Service (CRS), OMB, HAC and SAC, and the House and Senate rules committees. Even the approaches taken by different subcommittees of the HAC and SAC differ when it comes to identifying earmarks (CRS 2008). Further complicating matters, an anodyne alternative for the term “earmark” emerged in 2007. Originating in the Senate, the term “congressional directed spending item” appeared as a substitute for earmark, and has been used subsequently by both Congress and the OMB.

The OMB confronted the definitional problem directly in 2007 when it established its earmarks database (http://www.earmarks.omb.gov). The database was the predicate of the George W. Bush administration’s earmark limitation initiative outlined in the president’s 2007 State of the Union address, in which he urged the 110th Congress to end the practice of putting earmarks in committee reports. The OMB issued several memoranda to agencies over the following months, articulating an evolving series of earmark definitions and simultaneously discouraging agencies from funding non-statutory earmarks (i.e., those in reports rather than bills). The final

result combined elements of conventional earmark definitions with the implication that earmarking results in a suboptimal allocation of funds. That definition is based on Executive Order 13457, “Protecting American Taxpayers from Government Spending on Wasteful Earmarks,” issued by the Bush administration following the 2008 State of the Union address, which included another admonition to Congress to curtail earmarks.

The variation in defining earmarks signals complexity and cautions against certainty in measuring changes in earmark outcomes and detailing policy developments. While it impedes some analyses, particularly when detailed discussions are involved, it does not obstruct an examination of the major developments in earmarking and earmark reform.

The Rise of Earmarks

Earmarks in the federal budget grew steadily and dramatically between the early 1990s and 2007, after which they dropped noticeably, and may have stabilized at roughly 2002 levels. Four databases—two governmental and two from public interest organizations—covering four different segments of the period between 1991 and 2010 are used here to demonstrate the nature and extent of earmark expansion and retreat. Trends in earmark spending as calculated by these four sources are displayed in figure 2.

Figure 2 Earmark Spending

![Figure 2 Earmark Spending](image_url)
The Citizens Against Government Waste database is the most comprehensive and has the broadest definition of earmarks. CAGW uses the term “pork” interchangeably with “earmarks,” and has an expansive definition of pork (CAGW 2009). CAGW data cover 20 years and paint a distinct and somewhat dramatic picture. The number of earmarks grew 1,572 percent from 1991 to 2010, while spending for earmarks over this period increased 432 percent. By comparison, discretionary spending—the locus of the appropriations bills in the CAGW database—grew 128 percent over this period, a fraction of the rate of increase in earmark spending (OMB 2010). This suggests that earmarks expanded vertically—that is, in terms of numbers and cost—and also horizontally, extending their impact on discretionary spending in general. Put otherwise, earmarks began to take up more space within discretionary spending. This “cramping effect” ended when earmark spending dropped and then leveled off toward the end of this decade, while discretionary spending continued to grow.

The CAGW data indicate an interruption in the pattern of steady growth in the cost and number of earmarks, beginning in FY 2006 and FY 2005, respectively. The cost dropped by more than 54 percent between FY 2006 and FY 2007, and the number of earmarks dropped by 29 percent from FY 2005 to FY 2006. In both instances, growth subsequently resumed, but the rate of increase has diminished (see figures 2 and 3).

The pattern of earmark expansion in the CAGW data is congruent with the conclusions from CRS earmark data, the second most extensive source of information.1 Because of varying definitions and methodologies, the CRS did not aggregate earmark data for all of the bills reviewed. Such differences are ignored here in the interest of providing a general sense of the evolution of earmarks. The CRS results generally indicate a much less dramatic increase than the sixfold change found in the CAGW database (which covered a slightly longer period of time). Following the drop-off for FY 2006, they reveal the same end to the “cramping effect” that earmarks previously exerted on discretionary spending seen in the CAGW data. Over the past decade, earmark spending has dropped from 3 percent of discretionary spending to less than half that amount, at 1.3 percent. That trend is displayed in figure 3.

A third earmark database—from the OMB—purports to provide “more information on earmarks in one place than has ever been available through the Federal Government.” The OMB selected FY 2005 as a baseline for measuring changes in earmark development; to date, three additional years of data (FY 2008–10) are available on the OMB website. The OMB data indicate that the number of earmarks dropped by 31.9 percent between FY 2005 and FY 2010, and their dollar value dropped by 41.3 percent.

A fourth earmarks database, from Taxpayers for Common Sense, also focuses on recent developments, capturing information for FY 2008 through FY 2010. The TCS data indicate that over this brief post-reform period, the number of earmarks dropped 26 percent, while the cost dropped by 13 percent.

Thus, the earmark expansion that began in the early 1990s abated beginning around FY 2006; earmark spending then dropped, stabilizing at about the FY 2002 level. This is explained by an earmark moratorium and subsequent reforms of the processes affecting earmarks.

**The Scope and Structure of Reform**

Pro forma earmark reform began in FY 2006. Real reform was initiated in 2007, first by congressional rules (extended through 2010), then by decisions taken by the HAC and SAC over the same period. The Bush and Barack Obama administrations also attempted to influence congressional earmarking practices during this period, with minimal impact.

Various congressional party organizations also engaged in the earmark reform debate. These efforts, primarily involving House GOP organizations and earmark moratoria, have been similarly ineffective to date. They are not addressed here, although they are worth noting as indicators of the political salience of this issue and perhaps the direction of future reform. This is particularly relevant with respect to earmark bans, on the agenda again in 2010, though with uncertain results.

Efforts to curb earmarks undertaken by individual members of the House and Senate fall into yet another category. Over the period covered here, the most notable members advocating earmark reform are Senators Tom Coburn, Jim DeMint, Russ Feingold, and John McCain and Representatives Jeff Flake, Jeb Hensarling, and Paul Ryan. These “saints” figured prominently in efforts such as the attempt to impose a moratorium on earmarks or, in a welter of cases involving individual bills, to remove all earmarks.2 These endeavors are also omitted because they are less concerned with the reform of earmark policy than with the abolition of earmarks, either temporarily (the moratoria) or permanently. As such, they have had marginal impact on earmark policy.3

**Reform by Rule**

Each new Congress adopts rules to govern the operation of committees and the manner in which legislation will be considered on the floor. Such rules include points of order for enforcement and remain in effect for the two-year tenure of the Congress that adopts them. The House adopted formal changes to its official rules late in 2006, ostensibly providing some of the transparency demanded by earmarks critics. This was the precursor to more substantive rules addressing earmarks adopted in 2007.
The GOP, the majority party in the House and Senate in 2006, promised “comprehensive earmark reform rules change” (Higa 2006). H.R. 1000, adopted on September 14 by a vote of 245–171, was the result. With this vote, “the House reacted to a year of congressional scandals by requiring its members to own up to the thousands of earmarks they sponsor each year” (Birnbaum 2006). According to this rule, earmarks inserted into appropriations bills in committee or in conference would have to be disclosed, along with the names of the members of Congress sponsoring them. (Notably, of the 24 Republicans who voted against the rule change, 22 were members of the HAC.) In this early instance of earmark reform, disclosure meant inclusion within the reports that accompany appropriations bills.

This reform may not have been too little, but it was clearly too late. H.R. 1000 was not retroactive, and the House already had passed all but one of its appropriations bills for the year by the time these rules took effect. Thus, the rules would affect only this single bill and conference reports, and only in the House. In any event, no earmarks of any kind were disclosed as a consequence of the 2006 House rule change (Dennis 2006).

However, a major portion of the earmarks that apparently escaped this eleventh-hour reform were blocked in 2007 by a one-time event that occurred as political power passed from the GOP to the Democrats in the 110th Congress. That event was the first and only earmark moratorium, implemented between the promulgation of this first symbolic earmark reform rule and more substantive earmark reform rules adopted in early 2007. The moratorium, an initiative of the HAC and SAC, is treated in the next section.

The second rule change affecting earmarks—and the first one to have an impact—was put in place when the 110th Congress was sworn in 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.R. 6). House Democrats said that 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” (Dennis 2007).

Earmarks in the rule were defined, generally, as provisions that are primarily included at the request of a member of Congress and that provide specific amounts of discretionary budget authority for certain purposes “with or to an entity or targeted to a specific State, locality, or Congressional district” (House Rule XXI, clause 9, section 4d). The House could not consider legislation unless a list of earmarks and their sponsors in such legislation or the accompanying report was made available in specified public documents—that is, committee reports or the Congressional Record (in the former for committee-reported bills, in the latter 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 intended earmark recipient, its purpose, and certification that neither the requesting member nor his or her spouse had a financial interest in the earmark (House Rule XXIII, clause 17).

Implementing the new earmark rule became a severe problem, ultimately providing the incentive for a 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. This was the first FY 2008 appropriations bill to come to the floor of the House under the new earmark rules. Republicans blocked action on the bill, objecting to Congressman David Obey’s plan to delay publishing earmark information.

Chairman Obey said that the HAC staff had been deluged with earmark requests (in excess of 30,000), 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” (Williamson 2007). Time for scrutiny of the earmarks would be available between House passage and the conference—roughly a month—but this would preclude review before House members actually voted on the bill.

The resolution of this impasse produced the third congressional rule on earmarks. H.R. 491, passed by the House on June 18, 2007, addressed transparency issues affecting “air-drops.” Air-drops are earmarks added to conference agreements that were not in either the House or the Senate version of the appropriations bills subject to the conference. The new House rule provided for public disclosure of air-dropped earmarks within conference reports by prohibiting consideration of conference reports unless the joint explanatory statement accompanying such reports included a list of earmarks in the conference report or joint statement, and the names of the earmark sponsors. H.R. 491 was a standing order, rather than part of the conventional rules package (H.R. 6) adopted at the beginning of the 110th Congress. However, like those rules, it was effective for the remainder of the Congress and was included in the Senate version of earmark reform.

The fourth rule change affecting earmarks was the Senate version of the two rule changes that took effect in the House. The vehicle in the Senate was S. 1, an ethics reform bill that included a section on earmarks titled the Legislative Transparency and Accountability Act of 2007. S. 1 became law on September 14 as the Honest Leadership and Open Government Act of 2007 (P.L. 110-81). Section 521, titled “Congressionally Directed Spending,” incorporated the earmark reforms for the Senate, 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 provided 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 least 48 hours before such vote” (Rule XLIV, 1[a][2]). 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 bring the Senate rules to bear—that is, they were not self-enforcing.
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 the 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 also would have to certify that they had no financial interest in the earmark (SAC 2007).

The earmark rule changes put in place in 2007 were in effect for the 110th Congress (2007–8) and were adopted again by the 111th Congress (2009–10) in 2009 in H.R. 5.

Reform by Committee
The HAC and SAC have initiated several earmark reforms, the most important of which have come from the HAC. 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 congressional rules, particularly with regard to transparency, but they are also more problematic. These problems stem from the fact that the processes of promulgation and enforcement of committee-initiated reforms are opaque, and there are 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 Senator Robert Byrd prepared to assume their new positions as chairmen of the House and Senate appropriations committees, respectively, 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 incoming Speaker of the House Nancy Pelosi, who, had “ruled for months against wasteful ‘special interest earmarks’ inserted into bills ‘in the dark of night’” (Kirkpatrick 2006).

Congressman Obey and Senator Byrd 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. The measure would constitute “a moratorium on all earmarks until a reformed process is put in place” (HAC 2006). 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 that the resolution was “free of earmarks” (HAC 2007). The measure became law on 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 earmark spending between FY 2006 and FY 2007 seen in figure 2. This initiative, however important it was in constraining earmarks in FY 2007 appropriations bills, was a one-time event, and hence of marginal policy consequence. The data in figure 2 support this conclusion.

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 the posting of data about earmark requests, as opposed to earmarks that had been approved, and to require members to post this information on their own websites rather than on committee websites. For FY 2010, members requesting earmarks in appropriations bills would have 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” (HAC 2009b). Further, the committees promised to provide earmark disclosure tables to the public on the same day that the relevant appropriations subcommittees released their report, or 24 hours before full committee consideration of bills that had not been marked up a Senate subcommittee.

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 others apparently did their utmost to keep their requests out of public view” (Allen 2009b). Few House member websites used the term “earmark” in providing the required information. Some member offices admitted off the record that they “relabeled, moved or altered their initial online disclosure links 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” (Allen 2009a). Moreover, the HAC-imposed deadline for activating links to earmark requests on member websites was not met by all members, though it is impossible to know how many were delinquent and whether their requests were denied because they were tardy, as this HAC policy would require (Allen 2009a).

The HAC also provided member earmark request data by subcommittee bill. On the SAC website, subcommittees provide links for their bill, titled “Earmark Certification Letters,” where copies of the letters sent by each House member to the SAC requesting earmarks are available for viewing. As in the Senate, the letters from representatives reflect each member’s interpretation of the need to rationalize earmark requests, including the need to indicate the amount requested.

The SAC provided a link to the websites of individual senators titled “Congressionally-Directed Spending Requests.” Those websites, however, are not always clear as to the location of senatorial earmark data. Senators exercise discretion in complying with the SAC mandate to explain and justify their earmark requests (e.g., some senators indicate the amount of their request, while others do not).
In March 2009, House leaders added another constraint on House earmarks (HAC 2009c). Earmarks in the House were to be reviewed by the executive branch, and those directed to for-profit entities would be awarded through a competition. Speaker Pelosi characterized these measures as ensuring “accountability for Congressional earmarks at every step of the Process” (HAC 2009c). The executive branch review, however, only required that agencies involved in executing earmarked funds have 20 days “to check that the proposed earmark is eligible for funding and meets goals established in law” (HAC 2009c). The competition mandate is similarly vague, requiring that earmarks “directed to for-profit entities will undergo a competitive bidding process” (HAC 2009c). Notably, the Senate did not endorse these reforms.

Although the requirement for competing earmarks targeting for-profit entities was roughly congruent with one of the earmark reforms proposed by the Obama administration on the same day, the OMB did not promise to meet the 20-day deadline imposed by the HAC. Reviewing thousands of such requests within such a tight time frame would be difficult. Perhaps reflecting that difficulty, the OMB responded to the 20-day executive branch review requirement by telling the House that “the appropriate agencies and departments will 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” (OMB 2009a).

Because the SAC did not adopt the March 2009 requirements, the for-profit earmark issue arose when the Senate took up its FY 2010 appropriations bills. The resolution found in the FY 2010 defense appropriations bill suggests the difficulty that agencies faced in implementing the requirement to compete for-profit earmarks, as well as the fragmentation of earmark reform policy originating with committees. The HAC and SAC agreed that earmarks to for-profit entities originating in House appropriations bills would be held to the HAC competition standard, but those originating in the Senate would not. The roughly 5 percent of earmarks that have 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 (Clarke 2009). Thus, committees and Congress fractured policy to resolve their problems, but created new ones for the executive branch.

As Congress prepared for work on FY 2011 appropriations bills, the chairman of the HAC reminded House members of the reforms of 2007 and 2009, indicated that these rules would be retained for FY 2011 appropriations bills, and announced a goal of holding earmarks to less than 1 percent of discretionary spending (HAC 2010). He added two new conditions for FY 2011 appropriations. In place of the mandate for competing earmarks to for-profit entities, an outright prohibition on such earmarks was to be implemented. The chairman also promised to establish an online “one-stop” link to all earmark requests from House members. The SAC chose not to follow either of these HAC initiatives.

The ban on earmarks to for-profit entities is likely to cause problems for many would-be recipients and for some on K Street who profit by assisting them. Even if it is enforced, the ban would have a barely discernable fiscal impact. The cost of earmarks to for-profit entities in FY 2010 was roughly $1.7 billion (Lichtblau 2010). The ban was implemented “in a surprisingly casual fashion. No rules were drafted and issued to the Democratic Caucus, the Appropriations Committee or the full House” (Donnelly 2010). That is the nature of committee-initiated reforms—they are announced by committee leaders, and are creatures of the power and proclivities of those individuals. “Committee intent” must be inferred from the context, and the record of enforcement is a matter of conjecture. The new House earmark policies were taken without involving either the other party or the other chamber.

Further complicating matters, on the following day, the House Republican Conference “saw” the HAC’s prohibition on earmarks to for-profit entities and “raised it one,” prohibiting its members from submitting requests for earmarks of any kind for FY 2011 (CQ Politics News 2010). An attempt by earmark opponents in the Senate to adopt a similar ban in that chamber was easily defeated (Pierce 2010).

Reform from Above: The Bush Administration and Earmarks

Presidents uniformly oppose earmarks, but they have very limited power to control them. Were earmarks included in bills rather than reports, the veto option would be available, though that approach likely would prove ineffective given the trade-off between the desirable (most of what is in the bill) and the undesirable (earmarks).

Presidents are left to proselytize, or to threaten nonimplementation of earmarks in reports, as implied by Executive Order 13457. This order set out a series of detailed duties for agency heads in dealing with earmarks, all of which were intended to discourage agencies to implement only those earmarks included in appropriations bills rather than reports. It provides agencies some room for maneuver, by, for example, allowing them to fund nonstatutory earmarks on the basis of administration policy. Had the Bush administration applied it with sufficient rigor, it could have significantly altered the power of the White House regarding the disposition of earmarks not included in statutory law.

Unless and until Executive Order 13457 is rescinded, it remains in effect. It was available to the Bush administration for all of the appropriations bills for FY 2009, most of which were passed while President Bush was still in office, but some of which became law under President Obama. Given the potential it provides for leverage, an administration may use it in bargaining with members of Congress regarding earmarks and other matters. However, there is scant public evidence that either administration used the authority provided by this executive order to influence earmark funding.\(^3\)
Reform From Above: The Obama Administration and Earmarks

The Obama administration has taken a moderate position regarding earmark reform. Early in his administration, President Obama signed a major appropriations bill—the omnibus spending bill for FY 2009 left over from the previous Congress and the Bush administration. That bill included more than 9,000 earmarks worth some $7.7 billion (Jones 2009). Some of these earmarks were inserted by members of the Obama administration when they were still in Congress. Transportation secretary Ray LaHood, Labor secretary Hilda Solis, Chief of Staff Rahm Emanuel, and Vice President Joe Biden were all credited with earmarks in FY 2009 appropriations legislation (Jones 2009). The administration characterized the FY 2009 earmarks as “the finishing up of last year’s appropriations legislation, and drew attention to another, much larger spending bill the president had signed that included no earmarks, i.e., the stimulus package (White House 2009c).

The president also used the occasion of signing the omnibus appropriations bill for FY 2009 to announce a series of principles intended to further reform earmarks. They include the following:

1. Earmarks must be posted on the websites of sponsoring members in advance.
2. Earmarks must be subject to public hearings “where members will have to justify their expense to the taxpayer.”
3. Earmarks for for-profit entities must “be subject to the same competitive bidding requirements as other federal contracts.”
4. Earmarks must never be traded for political favors.
5. If the administration determines that an earmark serves no legitimate public purpose, it will work with Congress in an attempt to eliminate it (White House 2009a).

President Obama reiterated his interest in using transparency to curb earmarks in his 2010 State of the Union speech, urging Congress “to publish all earmark requests on a single website before there’s a vote, so that the American people can see how their money is being spent.”

The Obama administration’s position is largely congruent with the reforms adopted by Congress, either by rule or by committee initiative. Its ability to enhance the effectiveness of these reforms, however, is quite limited, residing largely in its willingness to subject earmarks to the kind of review contemplated by Executive Order 13457 or to move aggressively to compete earmarks aimed at for-profit entities. Such internal reviews and competition initiatives may be occurring, but they are not a matter of public record. Absent such efforts and information about them, earmark reform will continue to be dominated by congressional developments.

Summary and Assessment

Following a quarter century of significant growth, spending for earmarks peaked in FY 2006. The singular FY 2007 earmark moratorium had a noticeable impact on earmark spending. Since then, and roughly coinciding with the reforms instituted for FY 2008–10, spending for earmarks has stabilized at about $20 billion, approximately where it was in 2002. This means that the real dollar value of earmarks has dropped since FY 2006. Similarly, the cramping effect that earmarks were exerting on discretionary spending has diminished, as discretionary spending has continued to grow, both absolutely and relative to inflation. Similarly, as total spending accelerated to stimulate the economy and to provide benefits for those disadvantaged by the recession of 2008–9, the portion attributable to earmarks became even more marginal to our fiscal tribulations. While it may be premature to stipulate pre- and postreform eras for earmarks, figure 4 uses average annual rates of growth in the relevant variables to contrast these two periods.

Transparency and accountability of earmarks have increased demonstrably as a consequence of the reforms put in place by congressional rules and committee actions between 2006 and 2010. The public, students of Congress, the media, and, of course, members of Congress themselves can now “see” earmarks as they move through the appropriations process, including even earmarks for intelligence programs funded within the defense appropriations bill (Tiron 2007). Public interest databases (CAGW, TCS) have brought a further dimension of transparency to the earmark process. On the website of the Center for Responsive Politics, detailed information on campaign contributions from earmark recipients for each member of Congress is available with just a few clicks (Center for Responsive Politics 2010). As a result—and to return to Rubin’s criticism—earmarks are now a very visible part of the hurly-burly of competitive budgeting. One could argue that given the large amount of information now available on this topic and the small amount of spending now involved, there is more “hurly” involved in earmarks than is justified by their “burly.”

Reform by congressional rulemaking allows for enforcement through points of order. No attempt was made here to determine the extent to which these mechanisms actually were used to enforce the new rules for earmarking. Earmark reform by committee has been dominated by the HAC, followed, in part and infrequently, by the SAC. Committee-initiated reforms have bolstered the use of the Internet to provide transparency, and also have expanded and expedited the availability of information on earmarks.

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<tbody>
<tr>
<td>Number of Earmarks</td>
<td>154%</td>
<td>-7.1%</td>
</tr>
<tr>
<td>$ Value of Earmarks</td>
<td>52.2%</td>
<td>-4.1%</td>
</tr>
<tr>
<td>Discretionary Spending</td>
<td>5.2%</td>
<td>1.9%</td>
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</tbody>
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Source: FY 2007 is used as the dividing line between pre and post reform and is omitted because that was the year of the first and only earmark moratorium and because substantive reforms first became effective in FY 2008. CAGW data were used for the number and dollar value of earmarks while discretionary spending data were taken form OMB’s Historical Tables, 2010.

Figure 4. Average Annual Rates of Growth Before and After Earmark Reform
the committee reform process remains difficult, given the opacity of earmark policy making and enforcement within the committee. The impact of HAC reforms is diminished when the SAC does not follow the same course, as is common.

As the sums involved in earmarking become increasingly marginal to fiscal policy, competition for them continues to be dominated by a small subset within Congress. The governing role of the members of the HAC and SAC in the distribution of earmarks is unlikely to attenuate under the reforms, as the advantages that earmarks offer them persist. The distribution of earmarks in post-reform spending cycles reinforces this notion, particularly with regard to the defense subcommittees. Well before the implementation of the reforms addressed here, Schick noted 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” (2000, 215).

Following the March 2010 announcement of the HAC ban on for-profit earmarks and the House Republican Conference ban on all earmarks for its members, public interest groups remained predictably unsatisfied. The lobby arm of CAGW sent an e-mail requesting contributions and warning against complacency: “These earmark reform measures are full of loopholes and workarounds” (Council for CAGW 2010). CAGW argues that the only good earmark is no earmark. TCS took an apparently more pragmatic position, endorsing the two bans as a means to the end of earmark reform. That end, according to TCS, is “merit-based, competitive or formula systems for awarding project funding” (2010a). This, however, is the antithesis of the logic of earmarking, which is to allow individual members of Congress to exercise that institution’s power of the purse, in lieu of other criteria.

Thus, these two organizations, so critical to tracking and publicizing earmarks, would terminate them, either literally or functionally. But earmarks will not be abolished. What matters now are the particulars of each appropriations bill, including earmarks, all of which will be available on the web, and what the media and the public make of them. The synergy of governmental and public interest databases is essential to this enterprise. The media can report as members of Congress earmark wisely, or otherwise, and the electoral chips will fall as they may and as they should.

Earmarks reflect two forms of waste: one negligible, the other notable because it deflects attention from more serious budget matters. As noted here, earmark spending is stable and smaller than ever as a share of discretionary and total spending. It is what former Senator Alan Simpson referred to as “a sparrow’s belch in the midst of a typhoon” (Calmes 2010). Some earmarks will always fail the smell test, and will be more easily spotted and quickly reported than ever. Earmarks are wasteful insofar as the time and attention they receive within the congressional budget process and the associated media cycle might be better spent—for example, in understanding the implications of complexity in the tax code. Earmarks now represent much ado about very little, except insofar as individual members cross ethical or legal lines.

Are earmarks the grease still needed to move the appropriations wheel? At the margin, perhaps. Earmarks go predominantly to members of the HAC, SAC, and the congressional leadership, none of whom need bribes to move these bills. Do earmarks scar Congress and the budget process? Of course. But this depends in part on public expectations of Congress, and the values assigned to the disturbing shifts of the tectonic plates of entitlements, deficits, and debt, compared to provisions for swine odor and manure management research and the Harlem United wind power project. The former affect the U.S. economy and shape global power, determining economic and national security for U.S. citizens; the latter drive political careers, press releases, tweets, blogs, and news cycles.

Over time, lawmakers may anticipate more direct and informed questions from the media and opponents regarding the value of earmarks for their districts and states, compared to their value as direct or indirect sources of campaign contributions. The public value of earmarks may have to be more demonstrable, which, in turn, may alter their quality and quantity. That said, the FY 2010 defense appropriations bill passed by the House suggests that the nexus involving HAC members, lobbyists, earmarks, and campaign contributions has not disappeared. In the fall of 2009, almost half of the members of the HAC Defense Subcommittee were pictured in the Washington Post under the headline “Under Scrutiny” as part of a story on investigations by the House Ethics Committee and the Office of Congressional Ethics involving earmarks and the PMA Group in the fall of 2009 (Leonnig 2009).

The earmark reform era is well underway. Shafts of light now illuminate these small but previously shadowed pockets of discretionary spending, itself a declining category of the federal budget. What is commonly suspected about the contents of these nooks and crannies and how they get there is revealed: select legislators use their power over appropriations to send small sums to favored entities for specific purposes, some of which are questionable from a public policy perspective. This frequently results in campaign contributions to these legislators, a legal, if ethically questionable, transaction that is also now quite visible. The earmarks themselves have minimal and diminishing impact on the deficit. Much still depends on the duration and enforcement of earmark reforms, and the culture of Congress.

Notes
1. In 2007, the director of the Congressional Research Service indicated that it had relinquished this effort “due to the recent changes made in legislation that establishes legislative standards for earmark reporting” (Mulholland 2007). The agency resumed reporting on earmarks in 2009.
2. James Savage (1991), attributing the term “saints” to David Mayhew, used it to draw attention to the role played by prominent and persistent critics of pork-barrel spending.
3. In 2007, Chairman Obey introduced a motion on the floor of the House to eliminate all earmarks; it failed, 53–369, with a majority in both parties voting against it (HAC 2008).
4. No earmark information of this kind can be found on the website of the Library of Congress.
5. Some HAC subcommittees may have held “member request” hearings to allow members to justify their earmark requests. If so, this would be without precedent (Krawzak 2009).
6. For example, http://appropriations.house.gov/pdf/2010_DE_Certs.pdf, the link to the certification letters for the FY 2010 defense appropriations bill, provides access to a document that runs to 1,443 pages (accessed March 1, 2010).
7. In 2009, the OMB released a report required by Congress indicating that 2.6 percent of earmarked spending for FY 2008 did not go to the intended recipients, or was “deducted” for any of several reasons (OMB 2009b).
8. The Department of Defense has a webpage titled “Earmarks” linked to the website of the comptroller (http://www.defenselink.mil/comptroller/earmarks.html), the purpose of which is “to comply with Order 13457.” However, the links provided there reveal very little correspondence on earmarks and more than a few dead ends.

References
Pierce, Emily. 2010. GOP Split as Senate Defeats Earmark Moratorium. Roll Call, March 16.


