As talk of reinstating earmarks ramps up, we understand that most current members and staff do not have first-hand experience with the earmarks process due to regular turnover during the 10-year ban and an outsized narrative of corruption and deficit inflation.

Contrary to these concerns, earmarks can help catalyze Congress’s lawmaking process if done with responsibility and transparency. Below, we’ve rounded up what Hill staff need to know about the earmark process—and how it can be reinstated in a way that is transparent and effective.

If you have any questions or we can be of assistance, please don’t hesitate to reach out to me directly at MKelley@bpcaction.org.

Take care,
Michael Kelley
Director, BPC Action

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**Previous Earmark Concerns & Reform Efforts**

There were other substantive critiques about earmarks involving the transparency of requests as well as their distribution prior to 2007. Main concerns were:

- **Hard to distinguish in legislative language:** Vague mention of an earmark in a bill without knowing much about who requested it or its location
- **Time consideration:** Occurrences when an earmark would be added late in the legislative process
- **Disproportionality:** Earmarks tended to be awarded to appropriations committee members and leadership more than other rank and file members
To bring accountability, important reforms were put in place in 2007 through new statutory rules enacted by both chambers. These provisions included requirements for members to:

1. Publicly disclose their requested earmark
2. Certify that a member or spouse did not have a financial interest in the request
3. Identify them clearly in legislative text from the start

Impacts of Eliminating Earmarks

Diminishing earmarks has resulted in two major consequences over the last decade:

Lessened members’ stakes in the legislative process: Members who make these requests have “skin in the game” resulting in a common interest in working with others on enactment of bills. With earmarks, members had opportunities to build coalitions in appropriations and momentum for passing bipartisan legislative agendas. Without earmarks, members—especially those in the minority—do not see themselves as having a particular stake in the process. Research shows the 2011 moratorium may have done more harm than good when it comes to bipartisanship and the legislative process.

Inflated further the power of the executive branch in a way that is inconsistent with the Constitution: Because of less frequent budget resolutions and a hobbled appropriations process in recent years, the executive has taken upon itself via executive order to direct funds directly to communities, something that is not within its jurisdiction. This has led members to work with agencies in the executive branch, and even the president, to help secure funds for their communities in what is known as lettermarks or phonemarks. This process not only continues the concession of Congress’s constitutional powers, but it brings with it a lack of transparency, which was one of the original chief complaints of earmarks in the first place.
Myths & Misconceptions

A common myth about earmarks is that they are a form of runaway government spending contributing to growing deficits. Even at the height of their usage, earmarks constituted only about 1 percent of discretionary spending or about one percent of one-third of the total federal budget.

- **Restoring earmarks does not mean there will be increases in federal spending.** Agency budgeting is a zero-sum game: The choice is between agencies controlling 100 percent of specified funding decisions or agencies controlling 99 percent with 1 percent under the purview of members acting in the interest of their constituents.

- **Eliminating earmarks did not balance the budget.** In fact, even as earmarks have been banned, we have seen a multi-trillion increase in spending. If anything, leadership has more control of the budget process now which has resulted in negative effects on member participation and the increased loss of congressional control over the nation’s coffers.

Benefits & Principles for Reform

- **Fiscal Responsibility:** Banning earmarks has not done anything to reduce federal spending or decrease the debt.
- **Greater Accountability:** At this point, unelected officials in executive branch bureaucracy now have greater control over federal spending. The President can easily put his or her mark on the federal budget while Congress has delegated its power of the purse.
- **Responsiveness to Local Needs:** The Constitution intentionally gave Congress the authority to direct how money should be expended. Over decades, members directed tens of thousands of earmark projects to local needs which have been put to good use in accordance with the American idea of representative government.
- **Increased Functionality:** Earmarks create opportunities for individual members to be involved in the legislative process which in turn could reveal unexpected common ground in an increasingly divided institution.
How to Reinstate Earmarks Responsibly

Ensure Transparency

- **Require Regular Order and Deliberation**: Prohibit the inclusion of congressionally directed spending provisions in:
  - Any supplemental documents in lieu of any project not specifically being included in the actual text of the bill or report during the Appropriations Committee markup process
  - Any appropriations bill on the House or Senate floor, in an appropriations conference report, or in omnibus appropriations legislation that did not previously include that request in either of the Senate or House bills or reports reported by the committee

- **Increase Accountability**: Continue to require that:
  - All requests are posted both on individual lawmaker websites and a relevant, publicly accessible on the relevant Appropriations Committee's website prior to a full committee markup, including an explanation of the project
    - A list of all congressionally directed projects in appropriate legislation be published on a publicly accessible website
  - Individual members send a letter indicating that they have no personal financial interest in the request

Increase Vetting

- **Require Expert Review**: Professional subcommittee staff should vet potential project requests, including by soliciting comments from the executive branch agency which would implement the programs through which the project would be funded.
• **Require Authorization before Appropriation:** Allow congressionally directed spending only in instances where an underlying program has been specifically authorized—which will provide an incentive for enacting authorization bills and ensure both authorizers and appropriators are engaged in the process.

• **Evaluate Spending:** Instruct the GAO or another suitable, independent entity to randomly review and audit projects after funding has been allocated.

**Set Limits**

• **Prohibit For-Profit Projects:** Codify prohibitions for congressionally directed projects to not be available to for-profit companies and allow them only for publicly funded federal, state, local, tribal, or other similar not-for-profit entities.

• **Total Spending Limit:** Appropriations subcommittee bills should limit project funding to keep overall congressionally directed spending at not more than one percent of total annual discretionary federal spending.

• **Individual Member Limit:** Limit the total amount or number of congressionally directed spending requests that any member can receive.

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**THE 411 ON EARMARKS**
Q&A ON PROCESS FOR RETURN

HOW TO RESPONSIBLY REINSTATE