

“Earmark Reform – Understanding the Obligation of Funds Transparency Act”

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before
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International Security
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Good afternoon Chairman Coburn and members of the subcommittee. I am Steve Ellis, Vice President of Programs at Taxpayers for Common Sense Action, a national, non-partisan budget watchdog. As a persistent critic of the budget deficit, wasteful federal spending, and Congressional spending priorities – or lack thereof - I pledge to you today that we stand ready to work with you to rein in earmarks and get S. 1495, the Obligation of Funds Transparency Act of 2005 enacted.

Taxpayers for Common Sense Action strongly believes in making earmarks and the legislative process, particularly the appropriations process, fully transparent and more accountable. By denying funding for report provisions that are not in the underlying law, S. 1495 helps force earmarks out of the shadows and into the light of open debate.

What are we up against? Well, as everyone on this panel is painfully aware, earmarking – the practice of including legislative provisions that specify certain discrete projects or entities to receive federal funding – has exploded in recent years. Just about every organization and member of Congress has their own general definition of an earmark – each of which is maybe 90% the same as every other definition. Earmarks are like pornography, maybe in more ways than one, but I’m referring to the late Supreme Court Jurist Potter Stewart’s observation that he couldn’t define pornography but that he knew it when he saw it. Well, we all know an earmark when we see it.

According to the Congressional Research Service (CRS), earmarks have skyrocketed over the last decade. The CRS analysis found that there were 4,126 earmarks in FY1994 worth \$29.6 billion, which increased to 6,073 earmarks worth \$36.4 billion in FY2000. By FY2005 there were 15,877 earmarks worth \$47.4 billion.¹ That’s a 285% increase in the number of earmarks since FY94, and a 60% increase in the cost of those earmarks.

¹ Congressional Research Service Memorandum. Earmarks in Appropriations Acts: FY1994, FY1996, FY1998, FY2000, FY2002, FY2004, FY2005. January 26, 2006. CRS analyzed each bill individually, using bill-by-bill definitions of earmarks. TCS aggregated this data. Also, CRS compiled costs in current year amounts, TCS inflated these amounts to constant 2005 dollars.

TCS's own analysis of the earmarks in FY2005 found that there were 15,584 earmarks worth \$32.7 billion.² Our preliminary analysis of the FY2006 appropriations bills found that the totals are down, but still far outstrip levels from a decade ago.

The problems with earmarking are many. The process itself is resource intensive, absorbing a lot of time and staff work to develop the earmarks, obtain them, and execute them. It also diverts resources from other more important governmental activities, invariably increasing costs and waste and delays the delivery of justified government services. Finally, earmarks are, in the words of Rep. Jeff Flake (R-AZ), the "currency of corruption." Diverting taxpayer money to pet projects is a positive feedback loop of lobbying, campaign cash and legislative paybacks. Like any feedback loop, to stop it, you must interrupt it.

I would like to point out a few examples of the problems with earmarking.

One area you would think we could all agree on is that adequately providing for our men and women in uniform is of the utmost importance. Evidently, some members of congress think some other items are of utmost importance like the Outdoor Odyssey adventure camp in Boswell, PA and paying for Montana's Lewis & Clark bicentennial activities, both of which were among the 2,837 earmarks worth \$11.2 billion in the FY06 defense appropriations bill. That's up from 62 earmarks worth \$8.9 billion in 1980 and a dozen earmarks worth \$5.6 billion in the 1970 defense appropriations bill. As you can see, the average earmark in 1970 was worth \$466 million compared to the average 2006 earmark being \$3.9 million. You could argue that those dozen 1970 earmarks worth nearly a half-billion dollars may have each represented legitimate policy disagreements between the executive and legislative branches, but it's clear that the \$3.9 million average earmark in 2006 represented members of congress eager to steer federal dollars, defense dollars, back home for pork barrel needs and political favors.³

Earmarking dilutes the effectiveness of federal spending. In the case of defense, lawmakers are focused on protecting their local district's military industrial base or worse, toward lobbying interests, instead of focusing funding programs relative to their necessity for national security. Defense programs should be funded relative to their national security merits, not the strength of the political muscle backing them. Programs receiving earmarks are not necessarily underfunded to begin with, nor are they necessarily of any strategic importance, nor are they awarded for merit. Earmarks undergo no independent review, making it impossible to distinguish between truly meritorious projects and those that are pure pork. Despite congressional members' lofty rhetoric about putting our soldiers first, the earmarks they lavish on their districts are usually unrelated to current operations.

² Ken Silverstein. *Harper's Magazine*. "The Great American Pork Barrel." July 2005. Page 32.

³ Austin Clemens. Taxpayers for Common Sense. "DEFENSE PORK REACHES RECORD HIGH: Instead of Cutting, Congress Pays it Forward to the Supplemental" and data from FY2006 Defense Appropriations Act.

Last year's highway bill, which had a record \$24 billion in earmarks, made the spoils of power quite clear. In the House of Representatives, the average allocation by lawmaker was \$12.8 million, junior members of the committee got about \$40 million and up, senior committee members got \$60 million and up. Ranking member Jim Oberstar got \$225 million, Chairman Don Young got a little over \$1 billion. Leadership in both parties got \$100 million and up. It was a simple formula, one that meant that powerful members got all of their wildest dreams enacted into law – including Rep. Young's infamous "bridges to nowhere" – with many less powerful lawmakers waiting for their turn at future troughs.

Even revenue bills are getting pockmarked with earmarks. When Congress finally passed the Foreign Sales Corporation / Extra-Territorial Income (FSC/ETI) bill, what was supposed to be fix for a \$5 billion trade-distorting subsidy became a \$140 billion Frankenstein's monster larded up with tax provisions to benefit bow and arrow manufacturers, professional sports team owners, fishing tackle box manufactures, and shopping mall developers, just to name a few.⁴ No wonder the federal tax rules have gone from 40,000 pages to more than 55,000 over the last decade.⁵

The U.S. Army Corps of Engineers is an agency that lives and dies by the earmark. In the CRS analysis of earmarks, it noted that most Corps funding (along with U.S. Bureau of Reclamation and Department of Energy in the Energy and Water Appropriations bill) is earmarked.⁶ The Corps' budget is built project by project, so it has never met a boondoggle it didn't like. Every year when the President's budget comes out, the Corps has their budget briefing at Headquarters where they provide a document listing the funding for every project in the President's budget. More than 100 pages with the projects conveniently broken down by state – easy reference for Congress to determine which projects OMB thought were naughty or nice so to speak. The President's FY07 Budget proposal zeroed out 532 projects that Congress funded in FY06. How many of those will make it back on the list, virtually all I bet. What happens is Congress increases the budget a bit, but increases the number of projects receiving funding dramatically. We're spreading the money farther and thinner, which invariably means that projects take longer to construct – increasing costs and delaying benefits – and that maintenance is deferred.

Louisiana's Corps projects have gotten a great deal of attention lately. In the President's FY06 budget proposal there were 41 line items or projects solely for Louisiana, worth \$268 million. That works out to \$6.5 million per project on average. The House E&W bill came in with 39 line items or projects, \$254 million, again in the neighborhood of \$6.5 million per project. The Senate stuffed in 71 line items or projects to the tune of

⁴ Keith Ashdown. Taxpayers for Common Sense. TCS Statement on the Conference Agreement on the Corporate Tax Legislation. October 6, 2004.

⁵ Chris Edwards. Cato Institute. 10 Outrageous Facts About the Income Tax. April 15, 2003. The total includes the tax code, regulations and various IRS rulings.

⁶ Congressional Research Service Memorandum. Earmarks in Appropriations Acts: FY1994, FY1996, FY1998, FY2000, FY2002, FY2004, FY2005. January 26, 2006. page 15.

\$375 million – but that averages out to \$5.3 million per project. So again, more projects, less money.

Let's look at one particular project – replacing the navigation lock on the Industrial Canal in New Orleans. Full disclosure here, TCS has named this \$750 million project – the most expensive single lock in history – the fifth most wasteful Corps of Engineers project in the country. In the FY06 budget, the President provided no funding for the project. The House pilfered other projects and came up with \$9 million for construction. The Senate pumped in another \$15 million. Despite what some want to believe around here, money doesn't grow on trees. It had to come from somewhere. I can tell you where \$3 million may have come from. The Senate skimmed it off the top of a hurricane protection project for New Orleans called the Westbank and Vicinity project which got \$28 million in the President and House budgets, but only \$25 million in the Senate's.

The American Association for the Advancement of Science (AAAS) is understandably interested in increased research and development funding across the board. You might think that AAAS would stand side-by-side with lawmakers who feel they know better where to spend research dollars than federal bureaucrats, pushing for more earmarked science funding. Instead, AAAS notes in a recent statement, “[a]lthough earmarked funds have been increasing steadily over the past several decades by all accounts the dramatic explosions in R&D earmarks in 2005 and 2006 coincide with flattening and even declining R&D budgets, meaning that earmarks cut into competitive programs instead of adding to them.”⁷ R&D earmarks came to \$1.5 billion in FY02, in FY06 that had jumped to \$2.4B in FY06.⁸ One area, Department of Energy R&D programs are more than 20% earmarked. Biomass R&D, the program that's supposed to end our country's addiction to foreign oil, is more than 50% earmarked.⁹ If we are serious about shifting from an oil economy, it is necessary to reduce R&D earmarks to ensure that we are funding only the best science.

Okay, we know it's a problem. Well at least those of us in the room know earmarks are a problem. How do we get it under control?

We could try prescriptive solutions like establishing targets, limiting the number of earmarks to members, but that's not really going to address the problem and in the end command and control solutions are unlikely to succeed. Besides, as Rep. Flake pointed out, “[c]ertainly, any meaningful earmark reform will reduce the total number of earmarks. However, simply limiting the number of earmarks Members can receive is not enough. Only limiting the number of earmarks will merely result in bigger earmarks. Earmark reform must include transparency and accountability, and any proposal without those components is incomplete.”¹⁰

⁷ AAAS R&D Funding Update. R&D Earmarks Hit New Record of \$2.4 Billion, Up 23 Percent. January 4, 2006. page 4.

⁸ *Ibid.* page 1. In fact, the House and Senate appropriations bills came in at \$1.2 billion and \$1.5 billion respectively, it wasn't until conference when the \$2.4 billion hit.

⁹ *Ibid.* page 3.

¹⁰ Rep. Jeff Flake. Press Release “Proposal Lacks Accountability and Transparency”. January 25, 2006.

So the first step is to make the earmarking a budgeting process as transparent as possible. Interestingly, and I believe, effectively, S. 1495 goes at this from the opposite direction than most proposals. Instead of requiring that earmarks be included in legislative language, the bill prevents expending funds on any earmark that isn't part of the law, essentially rendering any earmark that isn't in the bill worth little more than the paper it is printed on.

The second step is to get earmarkers to own up to their work. Although many members of Congress issue press releases touting bacon brought back to their districts, it is difficult to sift through all of these, some are sent only to local media outlets and not made public on the lawmakers' web site, and there is no central system to catalog them. Instead, every earmark request should be made public in as close to real time as possible, they should be placed on the Appropriations Committee web site within 24 hours of their arrival, or at least by the committee deadline for submission of earmark requests. This will enable constituents to know what their elected representative or Senator is seeking. Additionally, each earmark in the final legislation should be accompanied by the name of the requesting member or members of Congress. This would likely be in the report accompanying the bill. Any amplifying information on the earmark should also be included.

Next, we have to define earmarks. As I alluded to earlier, this is a difficult task. We should not get too hung up on this however. Since we are not establishing earmark limits or even saying that an earmark is pork per se, there shouldn't be concern with using as broad a definition as possible. In general, it should be provisions that are directed to specific entities or specific locations. These provisions could appear in appropriations, authorizations and revenue bills. Finally, and this differs from S. 1495, all entities should be included, private, non-federal and federal. To leave out federal entities entirely as envisioned by S. 1495 would leave many earmarks such as those for defense or Corps of Engineers projects untouched.

For any real earmark transparency or reform proposal to work, it has to have teeth. S. 1495 has some teeth - if it's not in the legislation itself, it doesn't get funded. But just because an earmark is in the law, that doesn't necessarily make it worthwhile. We need to have effective tools to highlight and possibly remove egregious earmarks, particularly those added late in the legislative process such as in conference committee. Earmarks included for the first time in conference are particularly troubling as these projects have received far less scrutiny than ones added earlier in the legislative process and there is less time and tools to tackle them. Establishing points of order and other tools to open up conference documents would help rein in wasteful spending.

Building on my earlier comments, any substantive earmark reform and transparency proposal must also target non-appropriations earmarks. Revenue bills and direct spending bills such as the transportation bill can have a real and longer term revenue effect than annual appropriations bills. Additionally, omnibus authorization bills such as the Water Resources Development and the Energy Bill essentially establish the earmark

menu to be pursued in the appropriations process. If we can interrupt the cycle or reduce the earmark demand we will be more effective in limiting the earmark output.

Considering our concern with earmarks and runaway federal spending it is not surprising that Taxpayers for Common Sense Action is disappointed that the President seems to have locked the veto pen in a drawer and thrown away a key. We fully support the President's efforts to find another pen, including the recently proposed "line item veto." While not a true line item veto, this enhanced rescission authority could serve as a very useful tool to highlight wasteful spending and make Congress take a second look at pork while justifying to the rest of the country that this is worthwhile use of federal tax dollars.

We have seen the problems with earmarking. Duke Cunningham's schemes to profit off the backs of taxpayers was only possible because earmarking was the norm and unexceptional. Jack Abramoff called appropriations bills "favor factories" because of the payoff opportunities. Rep. Ralph Regula (R-OH) stripped Democrat's earmarks from the FY04 Labor-HHS appropriations bill to enforce discipline since they had not voted for an earlier version of the bill. Earmarks are the direct result of a corrupt process that encourages and rewards lawmakers scrutinize and fight over the minutiae, to spend their time not legislating and conducting oversight, but pulling money in million dollar chunks back to their home districts and their political patrons.

We have a small window of time to enact meaningful change to enable us rein in earmarking pork barrel spending. Taxpayers for Common Sense Action stands ready to work with you and other members of Congress to make "Obligation of Funds Transparency Act of 2005" and other reform legislation into law. There are no silver bullets out there to get earmarking and overall federal spending under control, but this bill could be a hammer in our tool box working to build a responsible federal budget.

Thank you again for inviting me to testify and I would be happy to answer any questions you might have.