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Earmark Disclosure Rules in the House: Member and Committee Requirements

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Summary

Earmark disclosure rules in both the House and Senate establish certain administrative responsibilities that vary by chamber. Under House rules, a Member requesting that an earmark be included in legislation is responsible for providing specific written information, such as the purpose and recipient of the earmark, to the committee of jurisdiction. Further, House committees are responsible for compiling, presenting, and maintaining such requests in accord with House rules. In the House, disclosure rules apply to any congressional earmark, limited tax benefit, or limited tariff benefit included in either the text of a bill or any report accompanying the measure, including a conference report and joint explanatory statement. The disclosure requirements apply to earmarks in appropriations legislation, authorizing legislation, and tax measures. Furthermore, they apply not only to measures reported by committees but also to measures not reported by committees, “manager’s amendments,” and conference reports. This report will be updated as needed.

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Introduction

In the 110th Congress (2007-2008), the House and Senate codified earmark disclosure requirements into their respective chamber rules with the stated intention of bringing more transparency to the earmarking process. In the 112th Congress (2011-2012), the House and Senate began observing what has been referred to as an “earmark moratorium” or “earmark ban.” The earmark disclosure rules in both the House and Senate, however, remain in place. For more information on the earmark moratorium, see CRS Report R45429, *Lifting the Earmark Moratorium: Frequently Asked Questions*, by Megan S. Lynch.

The administrative responsibilities associated with earmark disclosure rules vary by chamber. This report outlines the major administrative responsibilities of Members and committees of the House of Representatives associated with the chamber’s earmark disclosure rules.

House Earmark Disclosure Rule

House Rule XXI, clause 9, generally requires that certain types of measures be accompanied by a list of congressional earmarks, limited tax benefits, or limited tariff benefits that are included in the measure or its report or a statement that the proposition contains no earmarks. Depending upon the type of measure, the list or statement is to be either included in the measure’s accompanying report or printed in the *Congressional Record*.

Rule XXI, clause 9, explicitly defines *congressional earmark*, *limited tax benefit*, and *limited tariff benefit* as follows:

Congressional earmark- a provision or report language included primarily at the request of a Member, Delegate, Resident Commissioner, or Senator providing, authorizing or recommending a specific amount of discretionary budget authority, credit authority, or other spending authority for a contract, loan, loan guarantee, grant, loan authority, or other expenditure with or to an entity, or targeted to a specific State, locality or congressional district, other than through a statutory or administrative formula driven or competitive award process.

Limited tax benefit- (1) any revenue-losing provision that (A) provides a federal tax deduction, credit, exclusion, or preference to 10 or fewer beneficiaries under the Internal Revenue Code of 1986, and (B) contains eligibility criteria that are not uniform in application with respect to potential beneficiaries of such provision; or (2) any federal tax provision which provides one beneficiary temporary or permanent transition relief from a change to the Internal Revenue Code of 1986.

Limited tariff benefit- a provision modifying the Harmonized Tariff Schedule of the United States in a manner that benefits 10 or fewer entities.

If either the list of earmarks¹ or the letter stating that no earmark exists in the measure is absent, a point of order may lie against the measure’s floor consideration. The point of order applies only in the absence of such a list or letter and does not speak to the completeness or the accuracy of either document.² A point of order may lie against the consideration of any general appropriations conference report containing earmarks that are included in conference reports but not committed

¹ For the purposes of this report, from this point forward the term *earmark* includes any congressional earmark, limited tax benefit, or limited tariff benefit.

² U.S. Congress, House, *Constitution, Jefferson’s Manual, and Rules of the House of Representatives of the United States, 110th Congress*, H. Doc 109-157 (Washington: GPO, 2007), §1068e.

to conference by either chamber and not in a House or Senate committee report on the legislation. Such a point of order would be disposed of by a question of consideration, which is debatable for 20 minutes.³

Legislation Subject to the Rule

House earmark disclosure rules apply to any congressional earmark included in either the text of the bill or the committee report accompanying the bill as well as the conference report and joint explanatory statement. The disclosure requirements apply to items in authorizing legislation, appropriations legislation, and tax measures. Furthermore, they apply not only to measures reported by committees but also to unreported measures, “manager’s amendments,”⁴ Senate bills, and conference reports.

These earmark disclosure requirements, however, do not apply to all legislation at all times. For example, when a measure is considered under the “suspension of the rules” procedure, House rules are laid aside, and therefore earmark disclosure rules do not apply. Also not subject to the rule are floor amendments (except a manager’s amendment), amendments between the houses, or amendments considered as adopted under a self-executing special rule, including a committee amendment in the nature of a substitute made in order as original text.⁵

Requirements for Members Submitting Earmark Requests

Under House Rule XXIII, clause 17(a), a Member⁶ requesting a congressional earmark is required to provide a written statement to the chairman and ranking minority Member of the committee of jurisdiction that includes

1. the Member’s name;
2. the name and address of the intended earmark recipient (or, if there is no specific recipient, the location of the intended activity);
3. in the case of a limited tax or tariff benefit, identification of the individual or entities reasonably anticipated to benefit to the extent known to the Member;
4. the purpose of the earmark; and
5. a certification that the Member or Member’s spouse has no financial interest in such an earmark.⁷

³ House Rule XXI, 9(c), adopted under H.Res. 5 (111th Congress), January 6, 2009. This provision had previously been adopted as a standing order of the House under H.Res. 491 (110th Congress).

⁴ As defined in the rule and clarified in a letter from the House Parliamentarian to the chairman of the House Committee on Rules (*Congressional Record*, daily edition, vol. 153 [October 3, 2007], pp. H11184-H11185), a “manager’s amendment” is “an amendment offered at the outset of consideration for amendment by a member of a committee of initial referral under the terms of a special rule.”

⁵ *Congressional Record*, daily edition, vol. 153 [October 3, 2007], pp. H11184-H11185.

⁶ In this report, *Member* includes Members, delegates, or the resident commissioner.

⁷ Guidance and clarification in determining a financial interest is available in U.S. Congress, House Committee on Standards of Official Conduct, *The House Ethics Manual*, 110th Cong., 2nd sess., 2008, (Washington: GPO, 2008), pp. 238-239. Available also at http://ethics.house.gov/Media/PDF/2008_House_Ethics_Manual.pdf.

When submitting earmark requests, it is important to note that individual committees and subcommittees often have their own additional administrative requirements beyond those required by House rules (e.g., prioritizing requests or submitting request forms online). The House Appropriations Committee, for example, has stated that it will require Members requesting earmarks to post information regarding their earmark requests on their personal websites. This information must be posted at the time of the request and must include the purpose of the earmark and why it is a valuable use of taxpayer funds.⁸ Additionally, the House Appropriations Committee has announced that it will no longer approve requests for earmarks that are directed to for-profit entities.⁹

Committees may also establish relevant policy requirements (e.g., requiring matching funds for earmark requests) or restrictions regarding earmark requests (e.g., not considering earmark requests for certain appropriations accounts or disallowing multiyear funding requests). In addition, committees and subcommittees often have deadlines, especially for earmark requests in appropriations legislation. For this reason, it is important to check with individual committees and subcommittees to learn of any supplemental earmark request requirements or restrictions.¹⁰

The committee of jurisdiction is responsible for identifying earmarks in both the legislative text and any accompanying reports. When it is not clear whether a Member request constitutes an earmark, the committee of jurisdiction may be able to provide guidance.

When submitting an earmark request, it may be relevant whether the Member wants the earmark to be included in the text of the bill or the committee report accompanying the bill. Committees may make an administrative distinction between these two categories in terms of the submission of earmark requests, and there may be policy implications of an earmark's placement in either the bill text or the committee report. For example, under Executive Order 13457,¹¹ issued in January 2008, executive agencies are directed to not commit, obligate, or expend funds that were the result of an earmark included in non-statutory language, such as a committee report.

Requirements for Committees

Under House rules, earmark disclosure responsibilities of House committees and conference committees fall into three major categories: (1) determining if a spending provision is an earmark, (2) compiling earmark requests for presentation to the full chamber, and (3) preserving the earmark requests. Individual committees may establish their own additional requirements.

Committees of jurisdiction must use their discretion to decide what constitutes an earmark. Definitions in House rules, as well as past earmark designations during the 110th Congress, may provide guidance in determining if a certain provision constitutes an earmark.

House Rule XXIII, clause 17(b), states that in the case of any reported bill or conference report, a list of included earmarks and their sponsors (or a statement declaring the absence of earmarks) must be included in the corresponding committee report or joint explanatory statement. In the

⁸ House and Senate Appropriations Committees, "House and Senate Appropriations Committees Announce Additional Reforms in Committee Earmark Policy," press release, January 6, 2009, <http://appropriations.house.gov/pdf/Obey-InouyeRelease01-06-09.pdf>.

⁹ House Appropriations Committee, "Appropriations Committees Bans For-Profit Earmarks," press release, March 10, 2010, http://appropriations.house.gov/pdf/2010_Earmark_Reforms_Release-3.10.2010.pdf.

¹⁰ Often these requirements are communicated through a "Dear Colleague" letter or through the committee's website.

¹¹ Executive Order 13457, "Protecting American Taxpayers from Governmental Spending on Wasteful Earmarks," 73 *Federal Register* 22, January 29, 2008.

case of a measure not reported by a committee or a manager's amendment, the committee of initial referral must cause a list of earmarks and their sponsors, or a letter stating the absence of earmarks, to be printed in the *Congressional Record* before floor consideration is in order. The House Appropriations Committee has stated that it will make earmark disclosure tables publicly available the same day that a subcommittee reports its bill.¹²

A conference report to accompany a regular appropriations bill must identify congressional earmarks in the conference report or joint explanatory statement that were not specified in the legislation or report as it initially passed either chamber.¹³

Each House committee and conference committee is responsible for "maintaining" all written requests for earmarks received, even those not ultimately included in the measure or the measure's report. Furthermore, those requests that were included in any measure reported by the committee must be not only "maintained" but also "open for public inspection." Rule XXIII does not specify how the information shall be "maintained" and "open for public inspection."

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¹² As stated in the January 6, 2009, joint press release.

¹³ During the 110th Congress, it was the practice to include such earmarks in the list required by Rule XXI, clause 9, and identify them with asterisks. Note that the Senate defines items related to earmark disclosure somewhat differently. For more information, see CRS Report RS22867, *Earmark Disclosure Rules in the Senate: Member and Committee Requirements*, by Megan S. Lynch.