

BACKGROUNDER

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Earmarks Won't Fix the Broken Budget and Appropriations Process

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Abstract

The Joint Select Committee on Budget and Appropriations Process Reform is tasked with providing “recommendations and legislative language that will significantly reform the budget and appropriations process.” One of the proposals being discussed is to end the moratorium on earmarks that began in 2011. The idea behind bringing earmarks back is that it would make it easier to pass bills by the beginning of the fiscal year and avoid continuing resolutions and massive omnibus bills. The passage of the Bipartisan Budget Act of 2018 signaled that the end is likely near for the Budget Control Act of 2011 (BCA) and its discretionary spending caps. From 2011 to 2017, the BCA served as an effective tool for curbing spending and facilitating debate about the trade-offs necessary to meet changing budget priorities. With the future of the BCA caps or other spending restraints unclear, now is not the time to bring back earmarks. It would solidify “the swamp,” which President Trump promised to drain. Instead of moving in this direction, the Joint Select Committee should focus on more effective reforms.

The Bipartisan Budget Act (BBA) of 2018 formed the Joint Select Committee on Budget and Appropriations Process Reform. The committee is tasked with providing “recommendations and legislative language that will significantly reform the budget and appropriations process.”¹

One of the proposals being discussed to help create a better functioning appropriations process is to end the moratorium on earmarks that began in 2011.² The idea behind bringing earmarks back is that it will provide more Members of Congress with incentives to support each appropriations bill, thus making it easier to pass bills

KEY POINTS

- The 2018 Bipartisan Budget Act (BBA) formed the Joint Select Committee on Budget and Appropriations Process Reform, which is tasked with developing recommendations and legislation to significantly reform the budget and appropriations process.
- One proposal being considered by the Joint Select Committee is to end the moratorium on earmarks in appropriations bills.
- In response to the rapid growth of earmarks beginning in the 1990s and high-profile cases of corruption, President Obama and congressional leadership agreed to a moratorium on earmarks in 2011 that remains in place today.
- The BBA marks the unofficial end of the 2011 Budget Control Act and its discretionary caps, eliminating one of the few tools for reducing spending. With no legislative spending restraints in place, now is not the time to bring back earmarks.
- Instead of reversing the earmark ban, the Joint Select Committee should focus on more effective reforms.

This paper, in its entirety, can be found at <http://report.heritage.org/bg3353>

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by the end of the fiscal year and avoiding continuing resolutions and massive omnibus bills.³ In reality, there is little evidence that the appropriations process was more functional in the years leading up to the earmark ban.⁴

There is also a movement to restore earmarks on a limited basis, specifically for Army Corps of Engineers infrastructure projects. Evidence shows that the will of Congress is not being taken into consideration when projects are selected. Lawmakers question the process currently being used to determine which projects receive funding and if they are an effective use of money. While earmarks would give more control to Congress, earmarks would also likely lead to more waste. Congress should instead put forth reforms to change the Corps selection process and ensure strict congressional oversight.

The passage of the BBA, the fourth amendment of the Budget Control Act (BCA) of 2011, signaled that the end is likely near for the BCA's discretionary spending caps. From 2011 through 2017, the BCA served as an effective tool to curb spending and facilitate debate about the trade-offs necessary for meeting changing spending priorities.⁵ With the future of the BCA caps and other spending restraints unclear, now is not the time to bring back earmarks. Doing so would ensure that "the swamp" that President Donald Trump promised to drain is here to stay.

If the budget and appropriations process had strong fiscal restraints built in, one could argue for a limited role for earmarks if used transparently and openly. In that case, earmarks could help push appropriations bills across the finish line when vote margins are particularly tight. However, that is simply not the reality of the current budget environment.

The BBA raised base discretionary spending by \$296 billion over two years, much of which was not paid for period, let alone through reductions in spending in other areas of the budget.⁶ Allowing earmarks to return would lead to more wasteful spending. Reversing the ban without strong spending restraints would lead to more spending. Instead of moving in this direction, the Joint Select Committee should focus on more effective reforms.

The History of Earmarks

Article I, Section 9, of the United States Constitution states that "No money shall be drawn from the Treasury, but in consequence of appropriations made by law; and a regular statement and account of receipts and expenditures of all public money shall be published from time to time."⁷

These 37 words bestow upon Congress sole authority to determine how taxpayer resources should be spent. However, it also requires that lawmakers spend money in a transparent fashion, publishing on a regular basis an accounting of how much money is coming in and on what it is being spent.

Earmarks have long been a part of Congress' power of the purse. The word "earmark" originated in ancient England and quite literally meant that farmers tagged or marked the ears of their livestock to distinguish the animals from those of other farmers.⁸ Today, the term retains its agrarian roots, often referred to as "pork." The Congressional Research Service defines an earmark as:

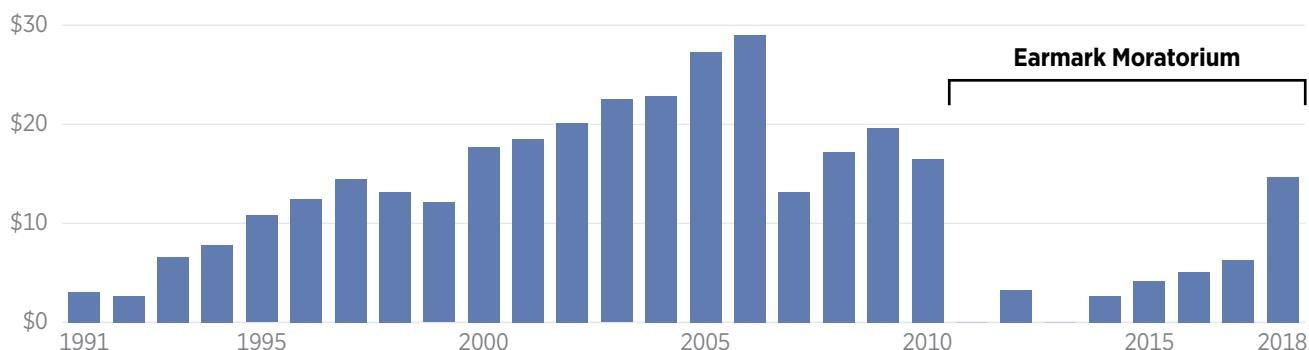
a provision or report language included primarily at the request of a Member, Delegate, Resident Commissioner, or Senator providing, authorizing,

1. H.R. 1892, 115th Cong., 2018.
2. Katherine Rohlff, "'Pig Book' Spotlights 232 Earmarks Amid Pork That Wastes Taxpayers' Money," The Daily Signal, July 19, 2018, <https://www.dailysignal.com/2018/07/19/pig-book-spotlights-232-earmarks-amid-pork-that-wastes-taxpayers-money/>.
3. Paul Winfree, "Joint Select Committee Should Focus on Improving Budget Transparency," The Daily Signal, April 17, 2018, <https://www.dailysignal.com/2018/04/17/joint-select-committee-should-focus-on-improving-budget-transparency/>.
4. Drew Desilver, "Congress Has Long Struggled to Pass Spending Bills on Time," Pew Research Center, January 16, 2018, <http://www.pewresearch.org/fact-tank/2018/01/16/congress-has-long-struggled-to-pass-spending-bills-on-time/> (accessed August 14, 2018).
5. Romina Boccia and Justin Bogie, "Reform the Budget Control Act Spending Caps," Heritage Foundation Backgrounder No. 3262, November 1, 2017, <https://www.heritage.org/sites/default/files/2017-11/BG3262.pdf>.
6. Justin Bogie, "5 Things to Know About Congress' Latest Budget-Busting Deal," The Daily Signal, February 7, 2018, <https://www.dailysignal.com/2018/02/07/5-things-know-congress-latest-budget-busting-deal/>.
7. U.S. Constitution, Article I, Section 9.
8. Jeanne Sahadi, "Earmarks: Myth and Reality," CNN Money, March 11, 2009, https://money.cnn.com/2009/03/11/news/economy/earmark_primer/index.htm?postversion=2009031111 (accessed August 6, 2018).

CHART 1

Trends in Earmark Spending

IN BILLIONS OF U.S. DOLLARS



SOURCE: Citizens Against Government Waste, "Historical Trends," https://www.cagw.org/reporting/pig-book#historical_trends (accessed August 27, 2018).

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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.⁹

Congressional earmarks date back to at least the Lighthouse Act of 1789, which included funding for construction of a pier in Philadelphia at the behest of the Pennsylvania congressional delegation.¹⁰ The use of earmarks officially continued until 2011, when President Barack Obama and congressional leadership agreed to a moratorium.¹¹

The earmark process was intended to serve as a way for lawmakers to target specific areas of need in their home states. However, the perception of ear-

marks is that they have often been used as a means of buying votes and greasing the skids so that it is easier for legislation to pass.¹²

For most of their history, earmarks were included in appropriations bills only sparingly. Citizens Against Government Waste (CAGW) has tracked earmarks since 1991. According to CAGW, earmark usage rose dramatically in the late 1990s and early 2000s, reaching a peak of 14,000 individual items in 2005 and an expenditure of \$29 billion in 2006. In 2010, the year before the earmark moratorium began, earmark spending was at \$16.5 billion. CAGW attributes much of the spike in earmark spending to former Speaker of the House Newt Gingrich (R-GA), who began using earmarks as political currency in an effort to help get Republicans re-elected.¹³

It is important to keep in mind that while the moratorium on earmarks continues to exist, it has no force of law. It is simply a "gentlemen's agreement"

9. Megan Lynch, "Earmark Disclosure Rules in the House: Member and Committee Requirements," Congressional Research Service, May 21, 2015, <https://fas.org/sgp/crs/misc/RS22866.pdf> (accessed August 6, 2018).
10. Matt Loffman, "The Bipartisan Movement to Bring Back Earmarks in Congress," PBS, March 2, 2018, <https://www.pbs.org/newshour/politics/the-bipartisan-movement-to-bring-back-earmarks-in-congress> (accessed August 7, 2018).
11. Scott Wong, "Senate Dems Give in on Earmark Ban," Politico, February 1, 2011, <https://www.politico.com/story/2011/02/senate-dems-give-in-on-earmark-ban-048623> (accessed August 6, 2018).
12. David Leach, "GOP Replacing Earmarks with 'Congressional Directed Spending,'" Red State, February 17, 2017, <https://www.redstate.com/diary/stridentconservative/2017/02/17/gop-replacing-earmarks-congressionally-directed-spending/> (accessed August 6, 2018).
13. Citizens Against Government Waste, "2018 Congressional Pig Book," July 18, 2018, https://www.cagw.org/reporting/pig-book#historical_trends (accessed September 13, 2018).

or pledge by lawmakers to reduce the number and amount of annual earmarks.¹⁴ House rules still allow earmarks in appropriations bills, so long as the committee report includes a listing of each earmark, and who requested it, in the bill.¹⁵

While the moratorium did initially reduce the use of earmarks, they have not stopped. In fact, earmarks are on the rise again. Members of Congress have developed creative ways to circumvent the ban, such as commemorative coin schemes that benefit a Member's home district, attempting to influence how agencies spend money once it has been appropriated, and opening up the grant process to a wider group of applicants so that it appears to be more competitive.¹⁶

Despite the earmark moratorium, the CAGW estimates that from 2011 to 2018, nearly \$37 billion in earmarks were included in appropriations bills. From 2017 to 2018, earmarks more than doubled, reaching \$14.7 billion. The 2018 total is over half of what earmarks were at their peak in 2006.¹⁷

Arguments for Earmarks—and Why They Don't Add Up

Over the past several years, lawmakers from both sides of the aisle have called for bringing the earmark system back with full force. President Trump, who has repeatedly promised to "drain the swamp," has also been a proponent of reversing the earmark ban. In 2017, House leadership decided not to lift the moratorium immediately, but did task the House Rules Committee with holding hearings on reinstating the system.¹⁸ At the time, House Speaker Paul Ryan (R-WI) said that the purpose of the hearings was to ensure that if earmarks were brought back, it would be done in a transparent and deliberate way.¹⁹ Past

attempts at transparency have failed, though. Both Presidents George W. Bush and Obama sought to make the process more transparent. Congress largely ignored those attempts.

Now, the Joint Select Committee on Budget and Appropriations Process Reform is seriously considering reversing the ban as one option for facilitating a better budget process. Here are some examples of the arguments that proponents of earmarks make—and why those arguments are not convincing:

■ **Earmarks make it easier to pass legislation.**

One of the main reasons that politicians, specifically those in leadership, are interested in bringing earmarks back is the political currency that it provides them. Oftentimes votes, especially on complex and controversial pieces of legislation, come down to minuscule margins. Earmarks provide congressional leaders with a method to incentivize Members who may be on the fence about a bill to come over to their side. This is true whether the goal is conservative or liberal.²⁰

In the context of budget process reform, some lawmakers believe that earmarks would make it easier to pass 12 appropriations bills through regular order before the start of each fiscal year. The evidence does not suggest that this is true. The last time Congress passed 12 individual appropriations bills on time was in 1994.²¹ In fiscal year (FY) 2006, the year that earmark spending peaked, only the Interior/Environment and legislative branch appropriations bills were passed before the start of the fiscal year. Three continuing resolutions were enacted that year and all

14. Kimberly Kindy, "After Earmarks Ban, Lawmakers Try to Direct Money to Hundreds of Pet Projects," *The Washington Post*, November 29, 2011, https://www.washingtonpost.com/politics/after-earmark-ban-lawmakers-try-to-direct-money-to-hundreds-of-pet-projects/2011/11/29/gIQA2L2WAO_story.html?utm_term=.3fa5cb483174 (accessed August 8, 2018).
15. Rules of the House of Representatives, 115th Cong., 2017.
16. Romina Boccia and Jonathan Iwaskiw, "Congressional Ban on Earmarks Hasn't Stopped Pork-Barrel Spending," *The Daily Signal*, February 1, 2017, <https://www.dailysignal.com/2017/02/01/congressional-ban-on-earmarks-hasnt-stopped-pork-barrel-spending/>.
17. Citizens Against Government Waste, "2018 Congressional Pig Book."
18. Loffman, "The Bipartisan Movement to Bring Back Earmarks in Congress."
19. Russell Berman, "How Republicans Plan to Revive a Once-Reviled Practice," *The Atlantic*, January 12, 2018, <https://www.theatlantic.com/politics/archive/2018/01/republicans-trump-earmarks-congress/550313/> (accessed September 12, 2018).
20. Jonathan Rauch, "Earmarks: The One Thing Trump Gets Right About Congress," The Brookings Institution, January 17, 2018, <https://www.brookings.edu/blog/fixgov/2018/01/17/earmarks-the-one-thing-trump-gets-right-about-congress/> (accessed August 8, 2018).
21. Ryan Alexander, "The Congress That Couldn't Shoot Straight," *U.S. News & World Report*, July 2, 2013, <https://www.usnews.com/opinion/blogs/economic-intelligence/2013/07/02/get-ready-for-more-congressional-budget-ineptitude> (accessed August 8, 2018).

appropriations were not finalized until December 30.²² Since the moratorium went into effect, Congress has been only slightly less successful at passing appropriations bills before October 1 than it was in the previous 10 years.²³

Passing all appropriations bills before the start of the fiscal year is a worthy goal, and Congress should follow regular order to the best of its ability each year. However, the goal of the process should not be to hand out money to everyone involved.²⁴ Unless Congress enacts and complies with strong fiscal restraints, earmarks would continue to propel the country down an unsustainable spending path.

■ **The earmark ban limits congressional power.**

Another argument for reversing the earmark ban is that it has forced Congress to cede too much of its Article I power to the executive branch and non-elected bureaucrats. Proponents of earmarks argue that banning earmarks has taken bargaining power away from elected officials and placed it in the hands of government employees.²⁵

The argument is not without merit: Time and time again failures and scandals have plagued the federal bureaucracy. Recent examples include the Department of Veterans Affairs (VA) scandal of veterans not receiving medical care, the disastrous rollout of the Obamacare website, and the IRS targeting of conservative groups.²⁶ Are these the people who should control federal funding?

While it is true that Congress has ceded some of its Article I power to the executive branch, it is not the result of the earmark ban. The ban is just one of any number of ways that the legislative branch has transferred authority to the executive branch. The primary factor is the breakdown of any semblance of a normal budget process, which has led to a perpetual cycle of funding by crisis. A large contributor to the loss of Article I power is the growth of unauthorized “zombie” appropriations. Last year, Congress provided over \$700 billion to programs with expired or expiring authorizations. Congress’ failure to authorize agencies and programs and pass appropriations bills in a timely manner means that many funding decisions are left to bureaucrats by default.²⁷

When considering which reforms to pursue in order to regain more Article I power, Congress should think of the totality of the ways in which it has ceded this power. Bringing back earmarks would represent a marginal policy change that would not have good policy outcomes.

■ **Army Corps of Engineers earmarks are necessary to complete important projects.** One approach to restoring earmarks is to bring them back in a limited form, specifically for Army Corps of Engineers projects.²⁸ The Corps manages over 1,000 ports and 25,000 miles of inland waterways that serve over 40 states.²⁹

22. Congressional Research Service, “Appropriations for Fiscal Year 2006,” <https://www.congress.gov/resources/display/content/Appropriations+for+Fiscal+Year+2006> (accessed August 14, 2018).
23. Desilver, “Congress Has Long Struggled to Pass Spending Bills on Time,” Pew Research Center, January 16, 2018, <http://www.pewresearch.org/fact-tank/2018/01/16/congress-has-long-struggled-to-pass-spending-bills-on-time/> (accessed August 14, 2018).
24. Winfree, “Joint Select Committee Should Focus on Improving Budget Transparency,” The Daily Signal, April 17, 2018, <https://www.dailysignal.com/2018/04/17/joint-select-committee-should-focus-on-improving-budget-transparency/> (accessed August 8, 2018).
25. Trent Lott and John Breaux, “Want a Functioning Legislative Branch? Bring Back Earmarks,” The Washington Post, January 25, 2018, https://www.washingtonpost.com/opinions/want-a-functioning-legislative-branch-bring-back-earmarks/2018/01/24/981b1672-0089-11e8-8acf-ad2991367d9d_story.html?utm_term=.ec075a38b04d (accessed August 8, 2018).
26. “The Congressional Earmark Ban: The Real Bridge to Nowhere,” CQ Rollcall, July 20, 2014, https://www.rollcall.com/news/the_congressional_earmark_ban_the_real_bridge_to_nowhere_commentary-235380-1.html (accessed August 8, 2018).
27. Justin Bogie, “Earmarks Won’t Fix Washington’s Budgeting Dysfunction,” The Hill, January 29, 2018, <http://thehill.com/opinion/finance/370929-earmarks-wont-fix-washingtons-budgeting-dysfunction> (accessed August 8, 2018).
28. Stephen Dinan, “Paul Ryan Plows into Pork-Barrel Spending as Part of Sweeping Budget Reform,” The Washington Times, January 9, 2018, <https://www.washingtontimes.com/news/2018/jan/9/paul-ryan-confirms-gop-talking-about-earmark-reviv/> (accessed September 4, 2018).
29. Thomas Rooney, “Zero-Cost Solution to U.S. Infrastructure Woes,” Charlotte Sun, April 13, 2017, <https://rooney.house.gov/zero-cost-solution-to-us-infrastructure-woes> (accessed September 4, 2018).

Many lawmakers are upset with the lack of progress on water infrastructure projects since the moratorium went into effect. This frustration is not without merit. Prior to the earmarks ban, most water infrastructure funding priorities were determined through the appropriations process. Now, Members of Congress can submit project funding requests to the Corps, though it is ultimately up to the Corps to determine which projects receive funding.³⁰

Instead of Congress choosing the projects, the Corps presents a list of project authorization requests to Congress for approval. In 2016, local project sponsors submitted 114 project requests to the Corps of Engineers. Only 19 of those projects were included in the authorization request that the Corps submitted to Congress. In response, lawmakers expressed concern about the process that the Corps uses to determine which projects receive funding.³¹

Lack of congressional input on this selection process has had an unintended negative consequence: more emergency spending. In response to hurricanes and natural disasters in 2017, the Corps received an additional \$12.1 billion in funding, much of which did not meet the definition of emergency spending.³²

How the Corps is prioritizing money is questionable. For example, the New Madrid Levee and pumping project in southeast Missouri cost \$150 million and is designed to protect just a handful of large farming operations from seasonal flooding. The problem is that the land is located directly in a floodway, which the Corps intentionally floods periodically to protect upstream communities

from flooding. There are also numerous examples of beach replenishment projects, some of which extend as long as 50 years, which have little national interest.³³

There is no concrete evidence that earmarks would solve these problems. They might make it possible for more projects to receive funding, but lawmakers are also prone to fund unnecessary and wasteful projects. Instead of providing earmarks for the Army Corps of Engineers, Congress should reform the process that the Corps uses to select projects. Any selection process used by the Corps should ensure scientific and economic merit and weigh the costs and benefits of proposals. Moreover, Congress should also exercise oversight.

- **Earmarks are inconsequential in the scope of the total federal budget.** About two-thirds of the federal budget consists of mandatory “auto-pilot” spending, meaning that most spending happens outside the annual appropriations process with little influence from Congress. Earmarks are projected to account for around 1 percent of the federal government’s discretionary budget in 2018.³⁴ In the grand scheme of things this is a small amount, so why does it matter?

Though a few billion dollars in annual earmarks may not seem like much in the context of a \$4 trillion-plus budget, it still has negative effects. First of all, earmarks take away money from Congress’ previously agreed upon priorities. Even if they do not technically add new spending, earmarks take money away from a project that might have been approved and received funding based on its merits.³⁵

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30. George Cahlink and Ariel Wittenberg, “House Opens Door to Ending Ban on Earmarks,” *E&E News*, January 16, 2018, <https://www.eenews.net/stories/1060071011> (accessed September 4, 2018).
 31. Ibid.
 32. Nicole Carter and Charles Stern, “Army Corps Supplemental Appropriations: History, Trends, and Policy Issues,” Congressional Research Service, January 3, 2018, <https://fas.org/sgp/crs/natsec/R42841.pdf> (accessed September 13, 2018).
 33. Ryan Alexander, “The Army Corps of Engineers Excels at Wasting Money,” *U.S. News & World Report*, March 27, 2013, <https://www.usnews.com/opinion/blogs/economic-intelligence/2013/03/27/the-army-corps-of-engineers-excels-at-wasting-money> (accessed September 4, 2018).
 34. Calculations by Heritage Foundation analysts based on data from Citizens Against Government Waste and the Congressional Budget Office.
 35. Citizens Against Government Waste, “Myths and Realities: Earmarks,” January 11, 2018, <https://www.cagw.org/thewastewatcher/myths-and-realities-earmarks> (accessed August 8, 2018).

It should not matter that earmarks make up only a small portion of the federal budget. Federal debt held by the public is already 77 percent of gross domestic product and is projected to rise to over 96 percent in the next 10 years.³⁶ The Congressional Budget Office (CBO) projects that in just over 20 years, spending on Medicaid, Medicare, Social Security, and interest payments on the national debt will consume all federal revenues.³⁷ The point is that the federal government has a limited amount of resources that it must carefully prioritize each year. Earmarks often divert those limited resources to projects that help only a small number of people.

Why Earmarks Are Bad

- **Earmarks waste money.** In January, Representative Ted Budd (R-NC) wrote that “the notion Congress can just waste small amounts of money is how I suspect the federal government got into the habit of wasting large amounts of money.”³⁸ A clear example of this is the infamous “bridge to nowhere.” The project secured by Representative Don Young (R-AK) directed \$223 million for the construction of a bridge between a small Alaskan town and an even smaller island. By the time the project was eventually cancelled, nearly \$400 million had already been spent.³⁹ Regardless of how large or small earmarks are as a share of the total budget, Congress has a duty to taxpayers to only spend money on necessary projects and to ensure appropriate use of federal funds.
- **Earmarks spawn corruption.** Earmarks are inherently corrupt because of the notion that those receiving funds will vote a certain way in return. Former Senator Tom Coburn (R-OK), a champion in the fight against wasteful spending, says that he observed earmarks being “abused as a form of currency to buy and sell votes of politicians and reward political supporters.”⁴⁰
- There are numerous examples of corruption in the earmarking process. In 2004, Howard Marlowe, owner of Marlowe and Co., which sought Army Corps of Engineer funding for “beach nourishment” projects, claimed that he had secured 172 earmarks for his clients.⁴¹ Jack Abramoff, a well-known Washington lobbyist, was convicted and served four years in jail for bribing lawmakers and White House officials to provide earmarks and favors to his clients in the casino and gambling business.⁴²
- **Earmarks undermine state and local government priorities.** Transportation is perhaps the most heavily earmarked area of the federal government. The Transportation Equity Act for the 21st Century, signed into law by President Bill Clinton in 1998, contained 1,850 earmarks for specific projects and locations. Most earmarks, especially transportation earmarks, divert resources from high-priority projects to those favored by influential constituents.⁴³ Florida challenged the earmarks claiming that the funding did not address the state’s actual transportation needs, but the U.S. Department of Transportation overruled those objections.

36. Congressional Budget Office, *The Budget and Economic Outlook: 2018 to 2028*, April 9, 2018, <https://www.cbo.gov/system/files?file=115th-congress-2017-2018/reports/53651-outlook.pdf> (accessed September 13, 2018).
37. Justin Bogie and Adam Michel, “Congress Should Pursue a 2019 Budget for Reconciliation,” Heritage Foundation Issue Brief No. 4859, May 23, 2018, <https://www.heritage.org/sites/default/files/2018-05/IB4859.pdf>.
38. Ted Budd, “Another Bridge to Nowhere? Earmarks Trying to Make a Comeback in Congress,” *The Charlotte Observer*, January 25, 2018, <https://www.charlotteobserver.com/opinion/op-ed/article196635534.html> (accessed August 8, 2018).
39. Romina Boccia and Toni-Anne Barry, “7 Reasons Earmarks Are a Very Bad Idea,” *The Daily Signal*, February 1, 2018, <https://www.dailysignal.com/2018/02/01/7-reasons-earmarks-bad-idea/> (accessed August 8, 2018).
40. Tom Coburn, “Earmarks Are Inherently Corrupt. Congress Has No Business Resurrecting Pork Barrel Politics,” *The Federalist*, January 11, 2018, <http://thefederalist.com/2018/01/11/earmarks-are-inherently-corrupt-congress-shouldnt-resurrect-them/> (accessed August 8, 2018).
41. Ronald Utt, “A Primer on Lobbyists, Earmarks, and Congressional Reform,” Heritage Foundation Backgrounder No. 1924, April 27, 2006, http://thf_media.s3.amazonaws.com/2006/pdf/bg1924.pdf.
42. Neil Lewis, “Abramoff Gets 4 Years in Prison for Corruption,” *The New York Times*, September 4, 2008, <https://www.nytimes.com/2008/09/05/washington/05abramoff.html> (accessed August 8, 2018).
43. The Heritage Foundation, “Reauthorization of TEA-21: A Primer on Reforming the Federal Highway and Transit Programs,” *Special Report*, April 7, 2003, https://www.heritage.org/transportation/report/reauthorization-tea-21-primer-reforming-the-federal-highway-and-transit?_ga=2.23523366.26400445.1533560710-272255319.1522762723.

State and local governments are generally more adept at meeting the needs of their residents and targeting money in the most efficient way. Re-establishing earmarks would lead to increased federal overreach and pre-emption of state and local decision making.⁴⁴

- **Earmarks favor the most powerful Members of Congress.** According to the CAGW, in the last session of Congress before the moratorium began, 61 percent of earmarked dollars came at the request of the 81 Members of the House and Senate Appropriations Committees—15 percent of Congress controlled nearly two-thirds of all earmarked funds. While some proponents argue that earmarks would give more lawmakers “skin in the game,” based on these statistics it appears that a limited few would be the beneficiaries of renewing earmarks. That is not what representative government looks like.⁴⁵

Recommendations for Congress

Ending the moratorium on earmarks would be a drastic and likely dangerous step to take in trying to fix the broken budget process. There is little evidence to support the claim that earmarks would improve the process. History does show that earmarks led to high-profile instances of government waste and corruption.

Earmarks may look like an easy way to get the appropriations process moving, but they come with many pitfalls—especially at a time when Congress’ commitment to fiscal discipline is uncertain.

When thinking about reforms, Congress should look at the totality of how the process has gone off course and the numerous ways it has given up power to the executive branch.

Instead of taking a chance on earmarks, Congress should focus on reforms that would be more effective and less susceptible to abuse while allowing Con-

gress to reclaim some of its lost power of the purse. Congress should:

- **Enact permanent fiscal controls.** Spending controls are a key component of a well-functioning budget process. They provide motivation for Congress to prioritize spending among competing demands for resources. When combined with enforcement through sequestration, they can force Congress to take legislative action as an alternative to facing the prospect of across-the-board spending cuts.⁴⁶

In the short term, Congress should adopt a statutory spending cap on all non-interest spending. Because statutes can easily be amended, over the long term Congress should move toward adopting a balanced budget amendment. Not only would spending caps help the budget process, they would also curb long-term spending growth and ensure a sustainable budget.⁴⁷

- **Eliminate the use of CHIMPs in appropriations budgeting.** Changes in mandatory programs (CHIMPs) are the largest and most-often-used gimmick during the appropriations process. Essentially, a CHIMP is a rescission of mandatory funding that is then used to pay for unrelated discretionary spending. The problem is that the vast majority of CHIMPs are rescissions of funds that were never going to be spent in the first place. Thus the “savings” exist only on paper, and do not actually cover the costs of the programs to which they are being shifted.⁴⁸

The FY 2018 Omnibus Appropriations Act included \$17.5 billion in CHIMPs, \$17 billion of which produced no actual savings.⁴⁹ CHIMPs undermine fiscal accountability and transparency. Ending the use of these false savings would go a long way toward improving the appropriations process.

44. Boccia and Barry, “7 Reasons Earmarks Are a Very Bad Idea.”

45. Bogie, “Earmarks Won’t Fix Washington’s Budgeting Dysfunction,” *The Hill*, January 29, 2018, <http://thehill.com/opinion/finance/370929-earmarks-wont-fix-washingtons-budgeting-dysfunction> (accessed August 8, 2018).

46. The Heritage Foundation, *A Blueprint for Balance: A Federal Budget for 2019*, 2018, <https://www.heritage.org/blueprint-balance>.

47. Ibid.

48. Justin Bogie, “Budget Gimmicks Increase Federal Spending and Mask True Costs of Legislation,” Heritage Foundation Backgrounder No. 3234, July 26, 2017, <https://www.heritage.org/sites/default/files/2017-07/BG3234.pdf>.

49. Committee for a Responsible Federal Budget, “Omnibus Spends \$110 Billion Above New Spending Caps,” March 29, 2018, <http://www.crfb.org/blogs/omnibus-spends-110-billion-above-new-budget-caps> (accessed August 15, 2018).

- **Stop appropriations to unauthorized programs.** Before any agency receives an appropriation, it is required by statute to be authorized by Congress. Authorizations lay out how much money can be provided to an agency or programs, and how that money is to be spent.⁵⁰

In 2018, Congress provided over \$700 billion to programs that were already expired or would have expired this year. Authorizations are a key component of the budget process. They provide Congress with an opportunity to review and evaluate programs and determine whether they should continue to be a priority.⁵¹

There are several options for Congress to get unauthorized appropriations under control. Congress could withhold appropriations to agencies and programs that lack an authorization until Congress completes that process. An alternative would be to develop a sunset schedule for federal programs, forcing Congress to take action if it wants those programs to continue.

- **Increase oversight of agency actions.** An integral part of the budget and appropriations process should be to perform oversight of government agencies. The constant stream of continuing resolutions and omnibus appropriations bills of the past several decades has made oversight an afterthought, leading to numerous examples of bureaucratic waste and abuse. Lack of oversight contributed to highly publicized failures, such as the VA patient scheduling and treatment scandal and the IRS's targeted denial of tax-exemption applications from conservative groups.⁵²

Furthermore, the federal government has continually failed to heed the recommendations of its

own auditor. Each year, the Government Accountability Office (GAO) identifies actions that Congress could undertake to make federal agencies more efficient and save taxpayers billions of dollars annually. From 2011 to 2017, the GAO made 724 recommendations, only about half of which have been implemented.⁵³

The Joint Select Committee should propose legislation to force Congress to take action on GAO recommendations. The committee should also take steps to ensure that authorizing committees as well as the budget committees are actively engaged in their own oversight responsibilities.

- **Put a time limit on emergency-designated funding.** Since the passage of the Stafford Act in 1988, the number of declared disasters has been steadily increasing every year. Under President Ronald Reagan, the average number of disasters declared by the Federal Emergency Management Agency (FEMA) each year was 28. Under the Bush and Obama Administrations, that number soared to an average of 130. Because the number of declarations has risen so sharply, FEMA's Disaster Relief Fund has increasingly become depleted of funds before the end of a given year. When this happens, Congress has the authority to allocate additional funds outside the budget caps for disaster relief.⁵⁴

Over the past five years, the annual cap adjustment has averaged over \$8.3 billion. It has turned into another gimmick for Congress to repeatedly circumvent the BCA spending caps. Far too often, the funds have not been used for immediate response and disaster relief. Of the \$50 billion in recovery funds provided after Superstorm Sandy,

50. Justin Bogie, "Time to End 'Zombie' Appropriations," Heritage Foundation Issue Brief No. 4583, June 24, 2016, <https://www.heritage.org/budget-and-spending/report/time-end-zombie-appropriations>.

51. Bogie, "Earmarks Won't Fix Washington's Budgeting Dysfunction," *The Hill*, January 29, 2018, <http://thehill.com/opinion/finance/370929-earmarks-wont-fix-washingtons-budgeting-dysfunction> (accessed August 8, 2018).

52. Eric Yoder, "More Fallout from the VA, IRS Scandals Hitting Federal Employees," *The Washington Post*, September 16, 2014, https://www.washingtonpost.com/news/federal-eye/wp/2014/09/16/more-fallout-from-va-irs-scandals-hitting-federal-employees/?utm_term=.8445c0450f4c (accessed August 15, 2018).

53. Joel Gehrke, "GAO: Feds Ignoring Our Advice on How to Curb Waste," *The Washington Examiner*, April 26, 2017, <https://www.washingtonexaminer.com/gao-feds-ignoring-our-advice-on-how-to-curb-waste> (accessed August 15, 2018).

54. Justin Bogie, "A Primer on Disaster and Emergency Appropriations," Heritage Foundation Issue Brief No. 4524, March 2, 2016, <https://www.heritage.org/budget-and-spending/report/primer-disaster-and-emergency-appropriations>.

only \$17 billion were allocated to immediate and critical needs. Nearly six years after the storm, some of those funds remain unspent.⁵⁵

In order to reform the appropriations process for designated emergencies, Congress should adopt time limits and more specific limitations for how the funds can be used. Doing so would ensure that the funds are going toward true emergencies. Moreover, Congress should limit the use of emergency funds as a whole, and budget for recurring expenses within base agency budgets.

- **Require interest costs to be part of every CBO cost analysis.** To create a more complete view of the impact of legislation Congress should update current scorekeeping rules so that interest costs are incorporated into CBO analysis of all legislation. Under current practices, these costs are not reported unless a Member of Congress submits a separate request to the CBO.

By not accounting for changes in interest costs, current scorekeeping conventions are creating a discrepancy between the true costs of legislation and CBO estimates. This could result in Members of Congress having an incomplete picture of the costs of a bill, which could distort decision making in favor of greater spending and debt accumulation. It also encourages the use of other budget gimmicks in order to spend more immediately, by relying on savings that materialize over the 10-year budget window without accounting for the interest costs of the immediate deficit spending.

Congress should require that any cost estimates produced by the CBO or the Joint Committee on Taxation include estimates of the debt-service impact. Not including the interest costs of legislation being considered by Congress diminishes the magnitude of the fiscal impact at stake and presents an inaccurate accounting of the true costs.

Conclusion

Now is not the time to reverse the earmark ban. Earmarks are not an effective tool to coax Congress to do the things it should already be doing in order to run an effective government, such as authorizing federal agencies and programs and finishing appropriations bills on time. Broader considerations are necessary to realign the balance of power between the executive and legislative branches of government.⁵⁶

The BBA painted an uncertain future for spending controls and Congress' will to be fiscally responsible. Until strong and meaningful tools for fiscal restraint are in place, bringing back earmarks would be asking for uncontrolled wasteful spending and could usher in a new era of political corruption. Congress should focus on more effective reforms to fix the broken budget and appropriations process before it so much as thinks about bringing back earmarks.

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55. Justin Bogie, "In Hurricane Harvey Response, Congress Must Avoid the Mistakes of Sandy," The Daily Signal, August 30, 2017, <https://www.dailysignal.com/2017/08/30/hurricane-harvey-response-congress-must-avoid-mistakes-sandy/>.

56. Aspen Institute, "Earmarks: The Bad Word for Making Good Things Happen," September 28, 2017, <https://www.aspeninstitute.org/blog-posts/earmarks-bad-word-making-good-things-happen/> (accessed August 14, 2018).