



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

THE DIRECTOR

January 25, 2007

M-07-09

MEMORANDUM FOR THE HEADS OF DEPARTMENTS AND AGENCIES

FROM: Rob Portman 
Director, Office of Management and Budget

PURPOSE: Collection of information on earmarks

On January 3, 2007, the President called on the Congress to enact earmark reform, including reducing the number and cost of earmarks by at least half. To provide a transparent baseline from which the cut-in-half goal will be measured, agencies will be required to:

- 1) identify and catalogue earmarks in all appropriations bills and certain authorization bills, including report language;
- 2) submit that data to OMB; and
- 3) provide rapid analysis of the earmarks in each bill as they move through the legislative process in order to facilitate the development of an Administration position on the bill.

Definition

For the purposes of this data collection the definition of an earmark is as follows:

Earmarks are funds provided by the Congress for projects or programs where the congressional direction (in bill or report language) circumvents the merit-based or competitive allocation process, or specifies the location or recipient, or otherwise curtails the ability of the Administration to control critical aspects of the funds allocation process.

Laws and Years Covered by Baseline Earmark Data Collection

Appropriations Acts. Agencies should plan to provide earmark information for all enacted appropriations bills in FY 2005. All earmarks should be reported that were encompassed by those bills including those in any congressional report. Agencies should prioritize their data collection to focus first on the appropriations bills, since legislative

action on those bills is likely to commence this spring. (As has been reported, Congress has indicated they do not intend to include additional earmarks in the Continuing Resolution expected for the Appropriations bills that were not enacted for the remainder of FY 2007.)

Authorization and Other Legislation. Agencies should also plan on providing information on earmarks in authorizing and other bills that are identified based on consultation with OMB. These bills will likely include the Department of Defense FY 2007 Authorization Act and the Farm Security and Rural Investment Act of 2002.

Timeline

- **January-February** – Agencies collect relevant data.
- **Early February** – OMB distributes final guidance on developing the baseline data and makes the data application available for updating.
- **February 28** – Agencies complete data entry.
- **March 7** – OMB completes review of data.
- **March 12** – OMB posts information to the public Internet.

Attachment A: Expected data elements

Attachment B: Additional guidance on the definition of an earmark

Expected Data Elements

Agencies should begin assembling the following information for each earmark:

- Recipient, including –
 - Name,
 - Address, and
 - Type of entity (e.g., Federal, State government, locality, for-profit, non-profit, private educational institution, public educational institution, etc.).
- Cost, including whether the amount provided is sufficient to complete the project, if applicable;
- Brief description of project;
- Whether this is a first-time or continuing item;
- Budget information such as account name and Treasury account, and whether the earmark is funded through discretionary or mandatory funding;
- Whether the earmark is in statutory language, report language, or other; and
- The citation for the earmark, including a transcript, PDF or scanned copy of the relevant statutory language, report language, or other communication of congressional intent.

Earmark Data Collection Workgroup

The E-gov Budget Formulation and Execution Line of Business (BFE LoB) Task Force is forming a workgroup to help guide this effort. All agencies with significant earmarks, especially those with some form of internal earmark tracking system of their own, are encouraged to participate. Contact your agency's Task Force representative, or the BFE LoB Program Management Office at the Department of Education (Sandi McCabe, 202-401-1847, BUDGETLOB@Ed.gov).

Additional Guidance on the Definition of an Earmark

As discussed in the main body of the memo, for the purposes of this data collection the definition of an earmark is as follows¹ :

Earmarks are funds provided by the Congress for projects or programs where the congressional direction (in bill or report language) circumvents the merit-based or competitive allocation process, or specifies the location or recipient, or otherwise curtails the ability of the Administration to control critical aspects of the funds allocation process.

- **Earmarks vs. Unrequested Funding.** At the broadest level, unrequested funding is any additional funding provided by the Congress -- in either bill or report language -- for activities/projects/programs not requested by the Administration. Earmarks are a subset of unrequested funding. The distinction between earmarks and unrequested funding is programmatic control or lack thereof of in the allocation process.
- **Earmarks and Programmatic "Control."** If the congressional direction accompanying a project/program/funding in an appropriations bill or report or other communication purports to affect the ability of the Administration to control critical aspects of the awards process for the project/program/funding, this IS an earmark. Note: The definition of "control critical aspects" includes specification of the location or recipient or otherwise circumventing the merit-based or competitive allocation process and may be program specific. However, if the Congress adds funding and the Administration retains control over the awards process for the project/program/funding, it is NOT an earmark; it is unrequested funding.
- **Earmarks Include:**
 - A) **Add-ons.** If the Administration asks for \$100 million for formula grants, for example, and Congress provides \$110 million and places restrictions (such as site-specific locations) on the additional \$10 million, the additional \$10 million is counted as an earmark.
 - B) **Carve-outs.** If the Administration asks for \$100 million and Congress provides \$100 million but places restrictions on some portion of the funding, the restricted portion is counted as an earmark.
 - C) **Funding provisions that do not name grantee, but are so specific that only one grantee can qualify for funding.**

¹ OMB has used this definition to gather data on earmarks in appropriations bills in previous Budget Data Requests. This definition is equivalent to the definition that the Congress recently developed for disclosing earmarks in spending legislation (H. Res. 6 and the Senate-passed version of S. 1).