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Earmarks and Limitations in Appropriations Bills

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Earmarks and limitations are two devices regularly used in annual appropriations acts to direct and restrict, respectively, the availability of funds for specified activities. Sometimes an earmark or a limitation may generate more interest or controversy than the appropriations act. See [http://www.crs.gov/products/guides/guidehome.shtml] for more information on federal budget process.

Earmarks

There is not a single specific definition of the term *earmark* accepted by all practitioners and observers of the appropriations process, nor is there a standard earmark practice across all 13 regular appropriations bills. According to the *Congressional Quarterly's American Congressional Dictionary*, under the broadest definition "virtually every appropriation is earmarked."[1] In practice, however, earmarks are generally defined more narrowly, often reflecting procedures established over time that may differ from one appropriation bill to another. For one bill, an earmark may refer to a certain level of specificity within an account.[2] For other bills, an earmark may refer to funds set aside within an account for individual projects, locations, or institutions.[3]

Regarding the latter use of the term, some of these earmarks are included in the text of appropriations measures, floor amendments, and conference reports to such measures. If enacted, these earmarks are legally binding.

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[1] Walter Kravitz, *Congressional Quarterly's American Congressional Dictionary: Third Edition* (Washington: Congressional Quarterly, Inc., 2001), pp. 87-88, available at [http://www.crs.gov/products/guides/glossary/e.shtml], visited Dec. 6, 2004.

[2] An annual appropriations act is generally made up of separate paragraphs, each of which generally corresponds to a unique *account* and provides appropriations for multiple programs, projects, and activities as a single lump sum.

[3] Such earmarks might also provide spending floors for individual projects, locations, or institutions.

Most of these earmarks, however, are included in the Senate and House Appropriations Committees' reports explaining a measure as reported. These earmarks are also frequently included in the managers' joint explanatory statement (or managers' statement) that accompanies the conference report. Committee reports and managers' statements do not have statutory force; departments and agencies are not legally bound by their declarations. These documents do, however, explain congressional intent and frequently have effect because departments and agencies must justify their budget requests annually to the Appropriations Committees.

Limitations

A *limitation* places a restriction on the expenditure of funds provided in an appropriations bill, either by setting a spending ceiling, or by prohibiting the use of funds for a specified purpose(s). Congress is not required to provide funds for every agency or purpose authorized by law. It may provide funds for some activities or projects under an agency, but not others. Precedents require that the language be phrased in the negative, for example, that none of the funds provided in this paragraph (typically an account) shall be used for a specified activity.[4]

Limitations may apply to a single account, several accounts, a title, or a bill. They may be included in appropriations bills, floor amendments, and conference reports. Limitations are also included in committee reports and managers' statements. As with earmarks, limitations included in the text of the legislation are legally binding; limitations provided only in the committee reports and managers' statements are not legally binding, but may have effect.

Under Senate and House rules, limitations, as well as other language in the text of appropriations legislation, cannot change existing law (paragraphs 2 and 4 of Senate Rule XVI and clause 2(b) and (c) of House Rule XXI). That is, they cannot amend or repeal existing law nor create new law (referred to as *legislation* or *legislation on an appropriations bill*). Limitations also may not extend beyond the fiscal year for which an appropriation is provided.

In the House, these prohibitions apply to committee-reported regular appropriations bills and supplementals, which provide funds for more than one purpose or agency, as well as amendments and conference reports to such measures. The rule does not apply to continuing resolutions or amendments and conference reports to such resolutions. In the Senate, these prohibitions apply only to amendments, including committee amendments, to regular appropriations bills, supplementals, which provide funds for more than one purpose or agency, as well as continuing resolutions.

In the House, the rule may be waived by adoption of a special rule. Under Senate precedents, an amendment, which contains legislation to a House-passed appropriations measure, may be considered if it is germane to language in that measure. Amendments to original Senate bills are not afforded such protection.

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[4] Walter Kravitz, *Congressional Quarterly's American Congressional Dictionary: Third Edition*, pp. 139-140.

Under House rules, limitation amendments generally must be considered after all the other amendments have been considered (clause 2(c) of House Rule XXI). Only the majority leader (or his designee) may prevent consideration of permissible limitation amendments by making a motion to "rise and report," effectively ending consideration of a measure. If a majority votes for the motion, no more amendments may be considered. If the motion fails, the majority leader may again propose it after a limitation amendment is voted on (clause 2(d) of House Rule XXI). No similar procedure restricts the consideration of limitation amendments in the Senate.