



Pork-Lite, The New Way to Earmark

03.18.2021 | By **D. Michael Stroud Jr., Frederick T. Dombo III, Hon. Chris Carney, Ashley S. Walker**

Like that famous movie line, “Show me the money!,” Congress is sending money directly to certain community projects in a practice known as earmarking. The money and earmarking spigot in Washington, DC is about to turn on full-force, at least for those “Community Projects” that meet certain congressional reform criteria.

The U.S. House of Representatives Leadership, on a bipartisan basis, have agreed to allow earmarks to make a triumphant return. But, the new earmarking, or “pork-lite,” will come with some strings attached and hurdles to get over before Congress can show a project the money.

The House Appropriations Chair, incorporating many bipartisan reforms, provided a framework for the limited return of earmarks, or as it is now may be called, “Community Project Funding.” The Chair’s proposal specifies how earmarks would be limited in scope and size. All earmark requests must be:

- Made in writing and posted online via a one-stop link to show all House Members’ project requests (the one-stop link will be searchable);
- Released as soon as possible to provide public scrutiny of project requests;
- Accompanied by certifications by Members that the Member(s) and their spouse(s) supporting and requesting the project have no financial interest(s) in the projects;
- Made for the benefit of not-for-profit or governmental entities (no money to “for-profit” recipients);
- Limited in dollar amounts, not exceeding 1% of discretionary spending;
- No more than ten (10) project requests per Member;
- Subject to a possible Government Accountability Office (GAO) audit (GAO will audit a sample of the enacted funding requests and report back to Congress on its findings);
- Supported by evidence from the community supporting the funding request; and
- In compliance with existing House Rules regarding earmarks, such as requests being made in writing, identification in committee reports of Members requesting project funding and allowing procedural motions against new earmarks appearing in committee reports that did not appear in either the House or Senate bills.

Will the Streets Be Paved by Earmark Gold?

The next question is how Congress will enact meaningful infrastructure legislation to fix roads, bridges and other crumbling infrastructure. The answer may be that the streets might be paved by allowing the earmark “gold” to go towards Members’ specific projects. There is much anticipation that one of the early tests of the earmarking reforms will be included in upcoming infrastructure legislation. Historically, lawmakers have had the ability to provide earmarks in congressional funding legislation, including those that fund America’s highways, infrastructure, roads, rail, transit, water infrastructure and much more. If these and other sectors are allowed to seek earmarks, there might be bipartisan advancement of crucial legislation.

Given the discussion about including different types of infrastructure in the legislation, such as renewable and alternative energy like solar power, wind energy, biomass, nuclear, battery storage and other sources, there will be many more worthy projects clamoring for a limited amount of funding. Plus, there will likely be an increase in not-for-profit partnerships or public-private-partnerships to create broader community investment and support for languishing projects. Adding to this frenzy, with only 10 possible projects per Member, Members will have to work diligently to prioritize and determine which projects are deserving of their support and limited congressional funding.

Based on our collective experiences, here are our reflections on these recent developments in light of past earmark practices and past bans.

- Michael Stroud: I worked on these issues while on the Hill when the recent ban was started. This new system will be much more transparent than the vaguely worded requests we used to draft into bills. But, this will bring back a sophisticated level of engagement coordinated with local and grassroots support, with presence on the Hill to push the request.
- Fred Dombo: Having worked for a Member on the Appropriations Committee, I believe this new earmarking process will be a true test for the Members, many of whom have never served when earmarking was allowed. Overall, this will be a learn-as-you-go exercise for many Members and staff alike.
- Former Congressman Chris Carney: I handled these requests when in office and still maintain close relationships to several Members on the Appropriations Committee. These changes will allow Members to direct limited government funding to deserving projects; creating a voice for those projects to cut through all the noise of other projects will be the challenge. Knowing who to talk with and who to trust is critical.
- Ashley Walker: I work with many California-based public entities, such as municipalities, community college districts and water infrastructure, so I’ve seen how these efforts have played out in the past. With this new process, a team that is capable of working seamlessly from the federal to the state-level will be crucial to make sure a project is funded.

We will see how this process unfolds. Please look for future eAlerts discussing new updates and changes from Washington, DC and Sacramento.