Center on Budget and Policy Priorities

820 First Street NE, Suite 510
Washington, DC 20002

Tel: 202-408-1080
Fax: 202-408-1056

center@cbpp.org
www.cbpp.org

September 14, 2006

HOUSE PROPOSAL TO REFORM EARMARKS EMPLOYS DOUBLE STANDARD, LARGELY EXEMPTING EARMARKS PACKAGED AS SPECIAL INTEREST TAX BREAKS

By Richard Kogan and Jim Horney

The House is about to consider a change in its rules that would require any committee that includes an "earmark" in legislation to report the name of the Member who sponsored the earmark.[1] One aspect of this proposal jumps out: while earmarked *funding* would be subject to this rule, earmarked special-interest *tax breaks* would be exempt from the rule, except for tax breaks that are limited to a *single* person or business. (The bill also contains loopholes allowing the rule to be evaded even for earmarked spending increases; see the box on page 2.)

Does the Proposed Rule Constitute "Earmark Reform"?

It is not clear whether the proposed rule would "reform" the earmarking process in any substantial way. As the description on the next page makes clear, the bill contains large escape hatches that would enable the House majority to evade the new rule and consider legislation that violated it.

Even if the rule were adhered to in all cases and the sponsors of earmarks were publicly identified, Scott Lilly, a former Staff Director of the House Appropriations Committee, has suggested that the proposal would do more harm than good, because it would allow Members who obtain earmarked goodies for their home districts the honor of achieving official recognition for their deeds. Most Members of Congress, Lilly observes, are proud of the amounts they can bring back home and want their successes highlighted.

The Exemption for Earmarks That Come in the Form of Special Interest Tax Breaks

Public discussion of the proposal has suggested it is aimed at all earmarks contained in any legislation, not just at appropriations bills. This is not the case. Any tax cut or tax break benefiting as few as two individuals or entities — such as two large multinational corporations — would be fully exempt.[2]

Thus, a special-interest provision designed to provide a tax loophole that would benefit only Exxon-Mobil and Amoco would not be considered a tax earmark, because two different oil companies would benefit. The sponsors of such special-interest tax breaks could continue to remain anonymous.

---

[1] House Resolution 1000, reported, with an amendment, by the Committee on Rules on September 14, 2006.

[2] The bills' definition of tax earmarks would be restricted to those measures that provide a tax break to a *single* beneficiary. A beneficiary could be a business, a partnership, a trust, a non-profit group, or a single taxpayer. (Note: the proposed legislation does not apply to exemptions from tariffs; such provisions would not be considered earmarks for purposes of the proposed rule, regardless of whether they benefit only a single business.)

Proposal Riddled with Exemptions

Under the proposed rule, a House committee would have to identify the sponsor of each earmark contained in legislation that it reports. Similarly, if a conference between the House and Senate added any new earmarks not passed by either the House or the Senate, the conference committee would have to identify the sponsors. However, a majority of the House could set aside the rule and decide to consider legislation even if the rule were violated. Furthermore, legislation that is not reported by a committee but rather is created on the floor as a "manager's amendment," or as an unreported bill brought to the floor by the Leadership, would be exempt from the proposed rule.

An appropriations earmark would be defined as funding provided to a specific non-federal entity, or allocated outside the normal competitive bidding process, or allocated outside of the normal distribution formula to an identifiable entity, state, or congressional district. The same definition would apply to earmarks in authorization legislation, including authorizations of subsequent appropriations.

In contrast, special-interest tax breaks would be subject to this rule only if they were limited to a single person or single entity. This definition is the same as, or similar to, the definition of "targeted tax benefits" contained in the so-called Line-Item Veto Act, which the House of Representatives passed on June 22. (The Administration's line-item veto bill and the 1996 Line-Item Veto law each defined "targeted tax benefits" as tax breaks benefiting up to 100 beneficiaries, rather than one beneficiary.)

This type of special treatment for tax cuts is part of a continuing pattern. The House-passed line-item veto legislation provides the same method of effectively exempting most or all special-interest tax breaks from the line-item veto authority.[3] Perhaps the clearest example of the one-sided nature of the House Leadership's approach to budgetary measures is its opposition — and the opposition of the Senate Leadership and the White House as well — to restoring the Pay-As-You-Go budget rule first established in 1990. That rule required any entitlement increase or tax cut to be offset by corresponding entitlement cuts or tax increases so that projected deficits would not be increased (or projected surpluses would not be eroded). The rule was evaded in 2001 and allowed to expire in 2002. The Leadership adamantly opposes its reinstatement unless tax cuts are exempted from it.

In the view of most budget watchdog organizations, budget rules should apply equally to budget increases and tax cuts, since each costs money and can worsen the nation's already grim long-term financial outlook.[4] The current proposal to provide especially lenient treatment for tax earmarks is the latest manifestation of the view that promoting tax cuts is more important than budget discipline.

---

[3] See "House 'Line-Item Veto' Proposal Invites Abuse By Executive Branch;" Center on Budget and Policy Priorities, June 19, 2006, at http://www.cbpp.org/6-19-06bud2.pdf.

[4] See, for example, "The Developing Crisis: Deficits Matter," a joint statement issued September 29, 2003, by the Committee for Economic Development, the Concord Coalition, and the Center on Budget and Policy Priorities, available at http://www.cbpp.org/9-29-03bud-stmt.pdf, and "Joint Statement on the Need for Pay-As-You-Go Discipline," issued June 23, 2005, by the Concord Coalition, the Committee for Economic Development, the Center on Budget and Policy Priorities, the Committee for a Responsible Federal Budget, and Centrists.org, available at http://www.cbpp.org/6-23-05bud.pdf.