

Facts about “Earmarks” + Considerations for Your Organization or Membership

Overall Facts to Know

An [earmark](#) is any congressionally directed spending, tax or tariff benefit that goes to a specific entity or state, locality, or congressional district other than through a statutory or administrative formula (such as Library Services and Technology Act) or competitive award process (such as Innovative Approaches to Literacy). Congress has not provided earmarks in over a decade. Both the House and Senate Appropriations Committee have decided earmarks will be permitted in FY2022, with slightly different rules.

Earmarks in the House for FY2022

In 2021, the House Committee on Appropriations announced it would restore earmarks. The House Committee [announced](#) it would accept Member requests for “Community Project Funding” in appropriations bills for Fiscal Year (FY) 2022 and has set up [rules](#) to ensure earmarks are “dedicated to genuine need and not subject to abuse.”

House Appropriations Committee guidance on Community Project Funding for all agencies can be accessed [here](#). House Labor-HHS-Education Appropriations Subcommittee guidance on FY2022, which details the accounts and programs eligible for earmarks request, can be found [here](#); other subcommittees are also likely to consider education earmark proposals and their deadlines can be accessed [here](#). The deadline has closed for Members to submit their requests to the House Appropriations Committee.

House Earmarks Rules for FY2022

The following are highlights of the rules, the complete set of rules can be accessed [here](#).

- The process will allow public review of the requests made by members, with each request available online.
- There is a ban on for-profit recipients.
- Members must provide evidence of community support in their decision to select the requested projects.
- Participating Members are limited to 10 earmark requests across all appropriations subcommittee bills and must rank their requests. Not all requests will be funded.
- The total amount of money that can be spent on earmarks would be capped at 1 percent of total discretionary spending (which would likely be split between the House and Senate).
- The Committee will require a GAO audit of a sampling of funded projects.
- Each Member requesting Community Project Funding must certify in writing (made available to the public) that they and their spouse have no financial interest in the request.

Earmarks in the Senate for FY2022

The Senate Labor-HHS-Education Appropriations Subcommittee has decided to accept earmark requests and released (via the Senate's internal website) bipartisan guidance as to how requests can be made. Senate Appropriations Committee Chairman Patrick Leahy (D-VT) [announced this publicly on his website](#). The Senate Labor-HHS-Education Appropriations subcommittee deadline for Member earmark requests is July 8, 2021. [This Senate Appropriations Committee document](#) lists guidance for FY2022, including a list of subcommittee deadlines, as well as agencies and accounts eligible for earmarks. Member offices will decide on their own whether or not they will participate in requesting earmarks. As of this writing, senators who have stated that they are committed to a ban on earmarks and will not participate in the process include Sens. Michael Lee (R-UT), John Cornyn (R-TX), Ben Sasse (R-NE), Mitt Romney (R-UT), Pat Toomey (R-PA), Cynthia Lummis (R-WY), Mike Braun (R-IN), Josh Hawley (R-MO), Steve Daines (R-ND), Rick Scott (R-FL), Joni Ernst (R-IA), Marco Rubio (R-FL), Ron Johnson, (R-WI) Ted Cruz (R-TX) and Rand Paul (R-KY).

Senate Labor-HHS Education Earmarks Rules for FY2022

- There are no limitations on the number of earmarks a Member may request.
- There is a 1 percent cap on discretionary spending for congressionally directed spending items.
- For-profit entities cannot receive earmarks.
- In addition, recipients of earmarks cannot sub-grant to other organizations or agencies.
- Senators are required to publish their earmarks requests to their website as well as submit and make public a financial disclosure letter certifying that they do not have any financial interest in the items requested.
- The Committee will require a GAO audit of a sampling of funded projects.
- Each request must include a brief summary of the project, including its purpose, goals, history and current status, as well as the justification for the project (i.e., why funding is in the interest of taxpayers). The description should explain how the money will be spent (e.g., \$X for salaries; \$X for programming; \$X for equipment; etc.) The justification should also state what performance standards will be used to measure whether this project achieves its objectives.

Considerations for Your Organization or Membership As You Weigh This Opportunity

- **Scrutiny** - Due to the transparency embedded in the process, media, companies, campaigns and other organizations, such as government watchdog organizations, will have the earmark request information at their fingertips.
- **Timing and Uncertainty** - Earmarks remain beholden to the (sometimes lengthy) appropriations process that usually lasts well beyond the fiscal year and sometimes ends in a continuing resolution that only extends current programs and may not include any earmarks. Though the request submission process will be public, whether requests have been secured is not a certainty or public until the very end of this highly competitive process. Very public "winners" and "losers" stand to emerge from this process.
- **Capacity** - Engaging a Member to champion an earmark request requires dedicated staff and leadership time and energy as well as political capital from your organization in securing community support. Earmark requests will have to be carefully balanced with regular appropriations requests. Educating boards and membership on the complexities of earmarks may also require significant work.

- **Cost-effectiveness** - Consider the cost and effort to advocate for the funding request versus the amount of funding that may be received. In addition, each earmark is a one-time fund with a built-in funding cliff. Finally, consider whether the amount of funding allows demonstration of impact.
- **Equity** – Generally, earmarks favor proximity to power. Engaging in efforts to secure earmarks may also run counter to the collective advocacy ethos and capacity of many organizations or networks working in coalition. However, some argue that earmarks give opportunity to those without capacity for grant writing.

Questions You May Have

- **What types of projects are eligible for earmarks requests?**
 - This is the first earmark effort in 10 years under new rules, so we do not know what types of projects will be funded. To date, the [Labor-HHS-Education guidance](#) lays out which accounts are eligible for earmarks requests under its agencies. Community Project Funding guidance for other agencies can be accessed [here](#). The Senate Labor-HHS Education subcommittee’s guidance recommends projects to “create jobs, create opportunities, and/or save lives” with funds to jumpstart an activity, not sustain it over time.
- **What timing should my organization keep in mind if we are considering seeking an earmark?**
 - For the FY2022 cycle, the deadline for House Members to submit their requests to the Appropriations Committee was April 28, 2021. In the Senate, the deadline for requests is July 8, 2021. If meeting this timeline is too much of a rush but seeking an earmark is of interest overall, one option would be to watch the upcoming cycle unfold and then decide whether or not to participate in the FY2023 cycle.
- **Can Labor-HHS Education earmark funding be used to build or construct library or school buildings?**
 - No, the House Labor-HHS Education [guidance](#) states the funding cannot be used for this purpose but can be used for minor remodeling required as part of technology upgrades. Health facilities are the only construction projects that can be funded through earmarks. However, tools and materials for youth employment and training (e.g., as relates to construction) would be an allowable expense. In the Senate, except where specifically authorized and noted in law, earmarks funding cannot be used for construction (or the acquisition of property) or renovation of buildings. As in the House, health facilities projects would be allowed.