



Statement of

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Chairman Kilmer, Vice-Chairman Graves, and members of the select committee, my name is Megan Lynch, and I am a Specialist on Congress and the Legislative Process at the Congressional Research Service (CRS). Thank you for inviting me to testify today on behalf of CRS.

As requested, I will provide a brief overview of two subjects: (1) the work of the 2018 Joint Select Committee on Budget and Appropriations Process Reform, and (2) congressional rules and practices related to the earmarking process.

The Joint Select Committee on Budget and Appropriations Process Reform

The Joint Select Committee on Budget and Appropriations Process Reform was created in February 2018 by the Bipartisan Budget Act of 2018 (P.L. 115-123). The act charged the Joint Select Committee with developing recommendations and legislative language that would “significantly reform the budget and appropriations process.”¹

The act required that the Joint Select Committee’s composition, as well as its recommendations, be bipartisan. The act required that the committee consist of 16 Members from the House and Senate—four chosen by each of the chambers’ party leaders. In addition, the act required the report and the proposed legislative language to be approved by a majority of each of (1) the committee members appointed by the Speaker of the House and the majority leader of the Senate and (2) the committee members appointed by the House and Senate minority leaders.

The Joint Select Committee had approximately nine months to conduct its work. It held its initial organizational meeting in early March 2018 and was directed by the statute to report by the end of November 2018. The Joint Select Committee held five public hearings, two closed briefings, and many formal and informal meetings.²

These deliberations resulted in a package of legislative language (called a “co-chair’s mark”) that was ultimately considered by the Joint Select Committee in a markup which spanned three days in late November. The co-chair’s mark included several recommendations, and additional recommendations were added via bipartisan amendments adopted during the markup. The Joint Select Committee ultimately did not meet the voting threshold required to report recommendations to the House and Senate.³

The co-chair’s mark, as amended, included recommendations related almost solely to the budget resolution and the structure and work of the House and Senate Budget Committees.⁴

On the budget resolution, the recommendations included moving to biennial budget resolutions (as opposed to the current requirement for an annual budget resolution). Under this biennial budgeting proposal, revisions to the budget resolution would be permitted in the second year. In addition, budget reconciliation would be allowed in each of the two years of the budget cycle. The Joint Select

¹ For more information, see CRS Report R45111, *The Joint Select Committee on Budget and Appropriations Process Reform*, by Megan S. Lynch and James V. Saturno ; and U.S. Congress, House Committee on the Budget, *Legislative History of the Joint Select Committee on Budget and Appropriations Process Reform*, committee print, 115th Cong., 2nd sess., December 19, 2018, H.Prt. 115-15.

² U.S. Congress, House Committee on the Budget, *Legislative History of the Joint Select Committee on Budget and Appropriations Process Reform*, committee print, 115th Cong., 2nd sess., December 19, 2018, H.Prt.115-15.

³ Ibid.

⁴ For the text of the draft co-chair’s mark, as amended, see pages 16-38, U.S. Congress, House Committee on the Budget, *Legislative History of the Joint Select Committee on Budget and Appropriations Process Reform*, committee print, 115th Cong., 2nd sess., December 19, 2018, H.Prt.115-15.

Committee's recommendations also established an optional bipartisan biennial budget resolution with specific procedures for Senate consideration.

The Joint Select Committee's recommendations included a revised timeline for certain budget actions that would have allowed more time for Congress to develop and consider a budget resolution. Under this proposal, the Administration would have been required to submit certain budget totals to Congress earlier, and committees would also be required to submit their views and estimates to the Budget Committees earlier than is now required. Additionally, the target date for adoption of the budget resolution would be pushed back from April 15 to May 1.

Regarding the Budget Committees, the Joint Select Committee's recommendations proposed to remove the term limits for Budget Committee members that currently exist in House rules.⁵ The Joint Select Committee further recommended including the chair and ranking members of the Senate Committee on Finance and the Senate Committee on Appropriations in the membership of the Senate Budget Committee. Lastly, the Joint Select Committee's recommendations would have required the House and Senate Budget Committees to hold a joint hearing on the "fiscal state of the nation" each year.

The Rules and Practices Related to Congressional Earmarking

The Joint Select Committee considered and debated many potential budget and appropriations process reforms, such as altering the congressional earmarking process.

The term *earmark* generally encompasses any congressionally directed spending, tax, or tariff provisions that would benefit a specific entity or locality other than through a statutory or administrative formula or competitive award process.⁶ Beginning in 2006, the House adopted several rules with the stated intention of bringing more transparency to the congressional earmarking process. Those rules, which still exist today, generally require that (1) legislation be accompanied by a list of earmarks in the bill or a statement that the legislation contains no earmarks,⁷ (2) committees compile and preserve earmark requests,⁸ and (3) Members requesting an earmark disclose information about the earmark's purpose and recipient. In addition the Member must certify that they and their spouse have no financial interest in the earmark.⁹

During the same period, the House also adopted several practices related to earmarks which include policies and protocols articulated by the House Appropriations Committee, party leadership, and party conference rules.¹⁰ Some policies sought to bring even greater transparency to the earmarking process. For example, the House Appropriations Committee required Members requesting earmarks to post information on their personal websites, including the purpose of the earmarks and a statement as to why the earmark was a valuable use of taxpayer funds.¹¹ Some policies sought to restrict the purposes and recipients of earmarks, for example, by prohibiting earmarks for projects named after the Member of Congress requesting the earmark and earmarks directed to for-profit entities.¹²

⁵ House Rule X, clause 5(a)(2)(B).

⁶ For more information, see CRS Report RS22866, *Earmark Disclosure Rules in the House: Member and Committee Requirements*, by Megan S. Lynch.

⁷ House Rule XXI, clause 9.

⁸ House Rule XXIII, clause 17(b).

⁹ House Rule XXIII, clause 17(a).

¹⁰ For more information, see CRS memorandum, *Timeline and Summary of House Rules and Practices Related to Earmarks and the "Earmark Moratorium"*, by Megan S. Lynch. Available from the author upon request.

¹¹ House and Senate Appropriations Committees, "House and Senate Appropriations Committees Announce Additional Reforms in Committee Earmark Policy," press release, January 6, 2009.

¹² David Clarke, "Several Bills Contain Money for Kentucky Institute," *CQ Today Online News*, August 26, 2009; Richard

Some policies also sought to limit the overall dollar amount that might be spent on earmarks. For example, the House Appropriations Committee reportedly limited "total funding for non-project based earmarks" to no more than 1% of the total discretionary budget.¹³

In the 112th Congress (2011-2012), the House and Senate began observing what has been referred to as an earmark "moratorium" or "ban." The moratorium does not exist in law, nor does it exist in House or Senate chamber rules. Instead, the moratorium has been established by party rules and committee protocols and is enforced by chamber and committee leadership through their agenda-setting power.¹⁴

Some Members have advocated for a reexamination of the current earmark moratorium and the 116th Congress may examine what changes, if any, are needed in the area of earmark policy. Congress may choose to keep the earmark moratorium in place but insert it into formal chamber rules. Alternatively, Congress might choose to lift the earmark moratorium but institute any number of policies or restrictions to govern the use of congressional earmarks. Just as in the past, these policies or restrictions might be instituted through formal amendments to House and Senate standing rules or by enacting new provisions in law. Restrictions could also be instituted through party rules, leadership and committee practices and protocols, or standing order.

Such policies or restrictions might accomplish a number of goals. For example, some policies could seek to add additional transparency to the earmarking process. Congress could also restrict the purposes for which an earmark might be used, prohibit certain entities from receiving earmarks, or limit the amount that may be spent on earmarks. Such a limit could apply to each specific earmark or to the total cost of all earmarks.

Congress could also choose to conduct further research into the practice of earmarking generally. This might involve employing the assistance of the legislative agencies to perform research or creating a select committee to study earmarks and recommend new policies or restrictions.

This concludes my prepared remarks. Thank you for the opportunity to testify, and I look forward to answering any questions you may have.

Simon and Kate Linthicum, "Maxine Waters Job-Training Center Caught in Funding Ban," *Los Angeles Times*, July 4, 2009. In early 2008, House Republican leadership issued a ban on earmarks that were popularly characterized as "monuments to me," according to a press release. Office of the Speaker of the House, "Boehner, Cantor Urge Democratic Leaders to Follow Suit by Naming Their Own 10 Members to the Panel Before the Beginning of the New Congress Next Month," press release, December 18, 2008, House Committee on Appropriations, "Appropriations Committee Bans For-Profit Earmarks," press release, March 10, 2010.

¹³ Congressman David R. Obey, "Pelosi, Hoyer and Obey Announce Further Earmark Reforms," press release, March 11, 2009.

¹⁴ For more information, see CRS Report R45429, *Lifting the Earmark Moratorium: Frequently Asked Questions*, by Megan S. Lynch.