

House of Representatives

New Earmark Rules

The House Rules adopted at the beginning of the 110th Congress include a new provision in the Code of Official Conduct regarding earmarks.

This provision requires that Members who request earmarks or limited tax or tariff benefit to provide certain information regarding the request and its purpose to the committee of jurisdiction, including a certification that neither the Member nor the Member's spouse has a financial interest in the provision.

Below is an advisory memorandum issued by the House Committee on Standards of Official Conduct on March 27, 2007. The memorandum is intended to provide general guidance based on questions the Committee received concerning the new certification requirement.

Summary:

House Rule XXIII, clause 17 imposes a disclosure requirement on a Member who "requests a congressional earmark, a limited tax benefit, or a limited tariff benefit in any bill or joint resolution or in any conference report on a bill or joint resolution."

The committees with jurisdiction over earmark requests shall determine whether any particular spending provision constitutes an earmark or a "request" for an earmark.

A Member who requests an earmark or other provision must provide a written statement to the chairman and ranking member of the committee of jurisdiction of the bill, resolution, or report that contains the following information:

- The name of the Member;
- In the case of an earmark, the name and address of the intended recipient or if there is no intended recipient, the location of the activity;
- In the case of a limited tax or tariff benefit, the name of the beneficiary;

- The purpose of the earmark or limited tax or tariff benefit; and
- A certification that both the Member and the Member's spouse have no financial interest in the earmark or limited tax or tariff benefit.

The application of the rule turns on a number of key terms, including "financial interest," "earmark," "limited tax benefit," and "limited tariff benefit." The latter three terms are defined in House Rule XXI, clause 9(d),(e), and (f).

What is Financial Interest?

House Rule XXII, clause 17(a)(5) requires a Member who represents an earmark to certify that the Member and his or her spouse have "no financial interest in such congressional earmark." Whether a Member or a Member's spouse has a financial interest in an earmark will most frequently depend on the specific facts and circumstances regarding both the proposed provision and the personal financial circumstances of the Member and spouse.

In the great majority of cases, Members should readily be able to determine whether they have a financial interest in an earmark.

Members are encouraged to consult the Standards Committee for guidance with any fact-specific questions they have.

Guidelines

A financial interest would exist in an earmark when it would be reasonable to conclude that the provisions would have a direct and foreseeable effect on the pecuniary interests of the Member or the Member's spouse.

Such interests may relate to one's financial assets, liabilities, or other interests of the Member and spouse, such as ownership of certain financial instruments or investments in stocks, bonds, mutual funds, or real estate.

A financial interest may also derive from a salary, indebtedness, job offer, or other similar interest. Many of these interests are required to be reported on the Member's annual Financial Disclosure Statement.

A financial interest would not include remote, inconsequential, or speculative interests. For example, if a Member proposed an earmark benefiting a certain company, the Member generally would not be considered to have a financial interest in the provision by owning shares in a diversified mutual fund, employee benefit plan, or pension plan that, in turn, holds stock in the company.

As a general matter, a contribution to a Member's principal campaign committee or leadership PAC **does not** constitute the type of "financial interest" referred to in the rule.