

# Community Project Funding: House Rules and Committee Protocols

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## Community Project Funding: House Rules and Committee Protocols

On February 26, 2021, the House Committee on Appropriations announced that it will accept Member requests for Community Project Funding in appropriations bills for the upcoming fiscal year (FY2022). In addition, the committee announced initial protocols governing requests for Community Project Funding, which include various requirements and restrictions. Individual subcommittees of the House Committee on Appropriations have also released subsequent guidance and restrictions governing Community Project Funding as it relates to specific appropriations bills.

As noted by the committee, Community Project Funding requests will also be subject to the House rules and restrictions governing earmarks. This report summarizes House rules and recent committee protocols related to earmarks, including requirements for Members submitting earmarks, as well as the requirements of committees in disclosing earmarks.

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## Introduction

On February 26, 2021, the House Committee on Appropriations announced that it will accept Member requests for Community Project Funding in appropriations bills for the upcoming fiscal year (FY2022).<sup>1</sup> In addition, the committee announced initial protocols governing requests for Community Project Funding, which include various requirements and restrictions. Individual subcommittees of the House Committee on Appropriations have also released subsequent guidance and restrictions governing Community Project Funding as it relates to specific appropriations bills.<sup>2</sup>

As noted by the committee, Community Project Funding requests will also be subject to the House rules and restrictions governing earmarks. This report summarizes House rules and recent committee protocols related to earmarks, including requirements for Members submitting an earmark, as well as the requirements of committees in disclosing earmarks.

## House Earmark Rules

In the 110<sup>th</sup> Congress (2007-2008), the House and Senate codified earmark disclosure requirements into their respective chamber rules with the stated intention of bringing more transparency to the earmarking process. Although Congress began observing an “earmark moratorium” or “earmark ban” in the 112<sup>th</sup> Congress (2011-2012), the earmark disclosure rules in

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<sup>1</sup> While no formal definition of *Community Project Funding* has been provided, the committee notes that Community Project Funding will “allow Members to put their deep, first-hand understanding of the needs of their communities to work to help the people we represent.” The committee also stated that “Community Project Funding is a critical reform that will make Congress more responsive to the people.” U.S. Congress, House Committee on Appropriations, “DeLauro Announces Community Project Funding in Fiscal Year 2022,” 117<sup>th</sup> Cong., 1<sup>st</sup> sess., February 26, 2021, <https://appropriations.house.gov/news/press-releases/delauro-announces-community-project-funding-in-fiscal-year-2022>. Appropriations bills are enacted annually and provide funding to discretionary spending programs. The appropriations committees have jurisdiction over appropriations bills, while authorizing committees have jurisdiction over authorizations of appropriations. For more information, see CRS Report R42388, *The Congressional Appropriations Process: An Introduction*, coordinated by James V. Saturno.

<sup>2</sup> See the following Dear Colleague letters from the individual subcommittees of the House Committee on Appropriations: Subcommittee on Agriculture, Rural Development, Food and Drug Administration, and Related Agencies: <https://e-dearcolleague.house.gov/Home/Preview?DCID=322568> (March 10, 2021); Subcommittee on Commerce, Justice, Science, and Related Agencies: <https://e-dearcolleague.house.gov/Home/Preview?DCID=322500> (March 9, 2021); Subcommittee on Defense: <https://e-dearcolleague.house.gov/Home/Preview?DCID=322437> (March 9, 2021); Subcommittee on Energy and Water Development, and Related Agencies: <https://e-dearcolleague.house.gov/Home/Preview?DCID=322490> (March 9, 2021); Subcommittee on Financial Services and General Government: <https://e-dearcolleague.house.gov/Home/Preview?DCID=322457> (March 9, 2021); Subcommittee on Homeland Security: <https://e-dearcolleague.house.gov/Home/Preview?DCID=322471> (March 9, 2021); Subcommittee on Interior, Environment, and Related Agencies: <https://e-dearcolleague.house.gov/Home/Preview?DCID=322463> (March 9, 2021); Subcommittee on Labor, Health and Human Services, Education, and Related Agencies: <https://e-dearcolleague.house.gov/Home/Preview?DCID=322492> (March 9, 2021); Subcommittee on Legislative Branch: <https://e-dearcolleague.house.gov/Home/Preview?DCID=322498> (March 9, 2021); Subcommittee on State, Foreign Operations, and Related Programs: <https://e-dearcolleague.house.gov/Home/Preview?DCID=322495> (March 9, 2021); Subcommittee on Military Construction: <https://e-dearcolleague.house.gov/Home/Preview?DCID=322436> (March 9, 2021); Subcommittee on Transportation, Housing and Urban Development, and Related Agencies: <https://e-dearcolleague.house.gov/Home/Preview?DCID=322629> (March 10, 2021). These letters are also available at <https://appropriations.house.gov/appropriations-requests>.

both the House and Senate have remained in place.<sup>3</sup> The administrative responsibilities associated with earmark disclosure rules vary by chamber.<sup>4</sup>

While the term *earmark* has been used historically to describe various types of directed congressional spending actions, House rules generally define *earmark* as a congressionally directed spending, tax, or tariff policy that would benefit a specific entity or locality other than through a statutory or competitive award process. See below for the formal definition included in House Rule XXI, clause 9.<sup>5</sup>

#### House Earmark Definition

Congressional earmark- a provision or report language included primarily at the request of a Member, Delegate, Resident Commissioner, or Senator providing, authorizing or recommending a specific amount of discretionary budget authority, credit authority, or other spending authority for a contract, loan, loan guarantee, grant, loan authority, or other expenditure with or to an entity, or targeted to a specific State, locality or congressional district, other than through a statutory or administrative formula driven or competitive award process.

**Source:** House Rule XXI, clause 9(e).

Limited tax benefit- (1) any revenue-losing provision that (A) provides a federal tax deduction, credit, exclusion, or preference to 10 or fewer beneficiaries under the Internal Revenue Code of 1986, and (B) contains eligibility criteria that are not uniform in application with respect to potential beneficiaries of such provision; or (2) any federal tax provision which provides one beneficiary temporary or permanent transition relief from a change to the Internal Revenue Code of 1986.

Limited tariff benefit- a provision modifying the Harmonized Tariff Schedule of the United States in a manner that benefits 10 or fewer entities.

**Source:** House Rule XXI, clause 9(f) and (g).

House Rule XXI, clause 9(a), generally requires that certain types of measures be accompanied by either (1) a list of congressional earmarks, limited tax benefits, or limited tariff benefits that are included in the measure or its report or (2) a statement that the proposition contains no earmarks. Depending upon the type of measure, the list or statement is to be either included in the measure's accompanying report or printed in the *Congressional Record*.

House Rule XXI, clause 9(b), requires that a conference report to accompany a regular general appropriation bill include either (1) an earmark disclosure statement listing all congressional earmarks and limited tax and tariff benefits that were neither committed to the conference by either House nor contained in a report of a committee of either House on such bill or companion measure or (2) a statement that the conference report contains no such provisions.<sup>6</sup>

To enforce these requirements, if either the disclosure list of earmarks or the statement that no earmark exists in the measure is absent, any Member may raise a point of order against the

<sup>3</sup> The earmark moratorium was not at any time formalized in law or in House or Senate rules. Instead, the moratorium has been established by party rules and committee protocols and has been enforced by chamber and committee leadership through their agenda-setting power. For more information on the earmark moratorium, see CRS Report R45429, *Lifting the Earmark Moratorium: Frequently Asked Questions*, by Megan S. Lynch.

<sup>4</sup> For information on Senate disclosure rules, see CRS Report RS22867, *Earmark Disclosure Rules in the Senate: Member and Committee Requirements*, by Megan S. Lynch.

<sup>5</sup> For the purposes of this report, from this point forward the term *earmark* includes any congressionally directed spending, limited tax benefit, or limited tariff benefit.

<sup>6</sup> House Rule XXI, clause 9(b). Such a point of order would be disposed of by a question of consideration, which is debatable for 20 minutes. House Rule XXI, clause 9(c).

measure's floor consideration.<sup>7</sup> The point of order applies only in the absence of such a list or statement and does not speak to the completeness or the accuracy of either document.<sup>8</sup>

## Requirements and Procedures for House Members Submitting Community Project Funding Requests

### Existing Requirements Under House Rules

Under the House Code of Official Conduct (House Rule XXIII, clause 17(a)), a Member, Delegate, or Resident Commissioner requesting a congressional earmark is required to provide a written statement to the chair and ranking minority member of the committee of jurisdiction that includes

- the Member's name;
- the name and address of the intended earmark recipient (if there is no specific recipient, the location of the intended activity should be included);
- in the case of a limited tax or tariff benefit, identification of the individual or entities reasonably anticipated to benefit to the extent known to the Member;
- the purpose of the earmark; and
- a certification that the Member or Member's spouse has no financial interest in such an earmark.<sup>9</sup> (See below for the House Appropriations Committee's requirement that the certification cover the Member's immediate family as well.)

The House Committee on Appropriations has made available on its website a template for the letter and certification required under House Rule XXIII, clause 17(a).<sup>10</sup>

### New Requirements and Procedures Under House Committee on Appropriations Announced Protocols

In the announcement released on February 26, 2021,<sup>11</sup> the House Committee on Appropriations noted that it would require Members submitting Community Project Funding requests to do the following:

- Submit no more than 10 Community Project Funding requests. Specifically, the committee stated, "The Committee will accept a maximum of 10 community

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<sup>7</sup> In addition, House Rule XXI, clause 9(c), prohibits the consideration of a special rule reported from the House Committee on Rules that would waive the disclosure requirements described above. Any point of order raised under House Rule XXI, clause 9(c), would be disposed of by a question of consideration, which is debatable for 20 minutes.

<sup>8</sup> House Rule XXI, clause 9(d). U.S. Congress, House, *Constitution, Jefferson's Manual, and Rules of the House of Representatives of the United States, 115<sup>th</sup> Congress*, H.Doc. 115-177 (Washington: GPO, 2019), §1068d.

<sup>9</sup> Guidance and clarification in determining a financial interest is available in U.S. Congress, House Committee on Standards of Official Conduct, *The House Ethics Manual*, 110<sup>th</sup> Cong., 2<sup>nd</sup> sess., 2008 (Washington: GPO, 2008), pp. 238-239. Available also at [http://ethics.house.gov/Media/PDF/2008\\_House\\_Ethics\\_Manual.pdf](http://ethics.house.gov/Media/PDF/2008_House_Ethics_Manual.pdf).

<sup>10</sup> <https://appropriations.house.gov/appropriations-requests>.

<sup>11</sup> U.S. Congress, House Committee on Appropriations, "DeLauro Announces Community Project Funding in Fiscal Year 2022," 117<sup>th</sup> Cong., 1<sup>st</sup> sess., February 26, 2021, <https://appropriations.house.gov/news/press-releases/delauro-announces-community-project-funding-in-fiscal-year-2022>.

project requests from each member, though only a handful may actually be funded.”<sup>12</sup>

- Post all requests online, presumably on the Member’s website. Specifically, the committee stated, “Members are required to post every Community Project Funding request online simultaneously with their submission to the Committee.” The committee noted that “the website must be searchable.”
- Demonstrate community support. Specifically, the committee stated, “Members must provide evidence of community support that were compelling factors in their decision to select the requested projects.”
- Submit only requests for state or local governmental grantees or for eligible nonprofits. Specifically, the committee stated, “There is a ban on directing Community Project Funding to for-profit grantees. Members may request funding for State or local governmental grantees and for eligible non-profits.”
- Certify that the Member, the Member’s spouse, and the Member’s immediate family have no financial interest in the Community Project Funding request. The committee notes, “This is an expansion beyond the underlying requirements in House Rules in order to cover immediate families of Members.”

## Additional Requirements and Procedures under Specific Subcommittee Protocols

Individual subcommittees of the House Committee on Appropriations have released additional guidance and restrictions governing Community Project Funding as it relates to specific appropriations bills.<sup>13</sup>

Some subcommittees have announced that they will not accept Community Project Funding requests (e.g., the Appropriations Subcommittee on Legislative Branch and the Appropriations Subcommittee on State, Foreign Operations, and Related Programs).<sup>14</sup>

Other subcommittees have identified the specific accounts for which Members may request Community Project Funding. For example, the Appropriations Subcommittee on Defense has stated that it will accept project requests for five accounts,<sup>15</sup> and the Subcommittee on Homeland Security has stated that it will accept project requests for three accounts.<sup>16</sup>

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<sup>12</sup> In various Dear Colleague letters released by the individual subcommittees of the House Committee on Appropriations (cited above), it has been stated that Members will be able to “priority rank” their submissions. For example, see U.S. Congress, House Committee on Appropriations, Subcommittee on Defense, *FY 2022 Defense Appropriations Requests*, 117<sup>th</sup> Cong., 1<sup>st</sup> Sess., March 9, 2021, <https://e-dearcolleague.house.gov/Home/Preview?DCID=322437>.

<sup>13</sup> See footnote 2 or <https://appropriations.house.gov/appropriations-requests>.

<sup>14</sup> U.S. Congress, House Committee on Appropriations, Subcommittee on Legislative Branch, *FY 2022 Legislative Branch Appropriations Requests*, 117<sup>th</sup> Cong., 1<sup>st</sup> Sess., March 9, 2021, <https://e-dearcolleague.house.gov/Home/Preview?DCID=322498>; and House Committee on Appropriations, Subcommittee on State, Foreign Operations, and Related Programs, *FY2022 Department of State, Foreign Operations, and Related Programs Appropriations Requests*, 117<sup>th</sup> Cong., 1<sup>st</sup> Sess., March 9, 2021, <https://e-dearcolleague.house.gov/Home/Preview?DCID=322495>.

<sup>15</sup> The subcommittee stated that the five accounts are the Research, Development, Test, and Evaluation accounts for the Army, Navy, Air Force, Space Force, and Defense Wide. U.S. Congress, House Committee on Appropriations, Subcommittee on Defense, *FY 2022 Defense Appropriations Requests*, 117<sup>th</sup> Cong., 1<sup>st</sup> Sess., March 9, 2021, <https://e-dearcolleague.house.gov/Home/Preview?DCID=322437>.

<sup>16</sup> The subcommittee stated that the three accounts are the Federal Emergency Management Agency, Federal Assistance

Subcommittees have also provided logistical information related to Community Project Funding, such as the method for submitting requests and the deadlines for such requests.<sup>17</sup>

## Requirements and Procedures for the House Committee on Appropriations

### Existing Requirements Under House Rules

Under House rules, the earmark disclosure responsibilities of House committees and conference committees fall into three major categories:<sup>18</sup>

1. Committees of jurisdiction use their discretion to decide what constitutes an earmark. Definitions in House rules, as well as past earmark designations, may provide guidance in determining if a certain provision constitutes an earmark.
2. House rules state that in the case of any reported bill or conference report, a list of included earmarks and their sponsors (or a statement declaring the absence of earmarks) must be included in the corresponding committee report or joint explanatory statement.<sup>19</sup> In the case of a measure not reported by a committee or a manager's amendment, the committee of initial referral must cause a list of earmarks and their sponsors, or a letter stating the absence of earmarks, to be printed in the *Congressional Record* before floor consideration is in order.<sup>20</sup> A conference report to accompany a regular appropriations bill must identify congressional earmarks in the conference report or joint explanatory statement that were neither committed to the conference by either House nor contained in a report of a committee of either House on such bill or companion measure.<sup>21</sup>

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accounts of Pre-Disaster Mitigation Grants, Nonprofit Security Grants, and Emergency Operations Center Grants. U.S. Congress, House Committee on Appropriations, Subcommittee on the Department of Homeland Security, *FY 2022 Homeland Security Appropriations*, 117<sup>th</sup> Cong., 1<sup>st</sup> Sess., March 9, 2021, <https://e-dearcolleague.house.gov/Home/Preview?DCID=322471>.

<sup>17</sup> For example, the Appropriations Subcommittee on Interior, Environment, and Related Agencies stated that only requests received electronically will be considered, and it noted a deadline of April 16, 2021, for all such requests. U.S. Congress, House Committee on Appropriations, Subcommittee on Interior, Environment, and Related Agencies, *Appropriations Subcommittee on Interior, Environment, and Related Agencies*, 117<sup>th</sup> Cong., 1<sup>st</sup> Sess., March 9, 2021, <https://e-dearcolleague.house.gov/Home/Preview?DCID=322463>.

<sup>18</sup> House Rules XXI, clause 9, and House Rule XXIII, clause 17(b).

<sup>19</sup> House Rule XXI, clause 9(a)(1) and (4).

<sup>20</sup> House Rule XXI, clause 9(a)(2) and (3). A "manager's amendment," as defined in the rule and clarified in a letter from the House Parliamentarian to the chairman of the House Committee on Rules (*Congressional Record*, daily edition, vol. 153 [October 3, 2007], pp. H11184-H11185), is "an amendment offered at the outset of consideration for amendment by a member of a committee of initial referral under the terms of a special rule."

<sup>21</sup> House Rule XXI, clause 9(b). In previous years, it was the practice to identify such earmarks with asterisks. Note that the Senate defines items related to earmark disclosure somewhat differently. For more information, see CRS Report RS22867, *Earmark Disclosure Rules in the Senate: Member and Committee Requirements*, by Megan S. Lynch.



3. Each House committee and conference committee is responsible for “maintaining” all written requests for earmarks received—even those not ultimately included in the legislation or report.<sup>22</sup> Furthermore, those requests that were included in any measure reported by the committee must be not only “maintained” but also “open for public inspection.” Rule XXIII does not define these terms.

## **New Requirements and Procedures Under House Committee on Appropriations Announced Protocols**

In the announcement released on February 26, 2021,<sup>23</sup> the House Committee on Appropriations noted that it would do the following:

- Establish an online “one-stop” link to all House Members’ Community Project Funding requests.
- Disclose all Community Project Funding requests included in an appropriations bill before a full committee markup. Specifically, the committee stated, “To facilitate public scrutiny of Community Project Funding, the Committee will release a list of projects funded the same day as the Subcommittee markup, or 24 hours before full committee consideration if there was no Subcommittee markup.”
- Limit Community Project Funding to no more than 1% of discretionary spending.<sup>24</sup>
- Require the Government Accountability Office to audit a sample of enacted Community Project Funding and report its findings to Congress.

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<sup>22</sup> House Rule XXIII, clause 17(b).

<sup>23</sup> U.S. Congress, House Committee on Appropriations, “DeLauro Announces Community Project Funding in Fiscal Year 2022,” 117<sup>th</sup> Cong., 1<sup>st</sup> sess., February 26, 2021, <https://appropriations.house.gov/news/press-releases/delauro-announces-community-project-funding-in-fiscal-year-2022>.

<sup>24</sup> Presumably this limit applies to discretionary spending as a whole and does not apply to each individual appropriations bill, particularly as some subcommittees have announced that they will not accept Community Project Funding (i.e., the Subcommittee on Legislative Branch and the Subcommittee on State, Foreign Operations, and Related Programs).

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