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U.S. House of Representatives

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ROBERT L. SIMMONS, II, STAFF DIRECTOR

May 17, 2011

Guidelines for Submitting Amendments to the FY2012 National Defense Authorization Act in Compliance with House Majority Earmark Rules

Dear Colleague:

In order to assist Members with drafting amendments for floor consideration of the National Defense Authorization Act (NDAA) for Fiscal Year 2012 (FY12), I wanted to provide you with the earmark guidance given to the members of the Armed Services Committee in preparation for committee mark-up. When I testify before the Rules Committee next week, I will be asking the Committee to exclude amendments from consideration that violate this earmark guidance. This is consistent with the earmark policy adopted by the House majority.

Definition of an "Congressional Earmark"

As part of its rules for the 111th and 112th Congress, the House Republican Conference adopted standing orders establishing an earmark moratorium, prohibiting members of their conference from making congressional earmark requests. Further, during the 112th Congress, the House Republican Leadership has announced plans to implement an earmark moratorium that will affect all legislation that is brought before the House. The House Armed Services Committee bill contains no congressional earmarks. Moreover, I will not support any amendments for congressional earmarks during consideration of the National Defense Authorization Act for Fiscal Year 2012 on the House floor.

The definition of a "congressional earmark" has not changed in the 112th Congress. Clause 9 of rule XXI of the Rules of the House of Representatives defines "congressional earmark" as "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." While there may be more than one way to interpret rule XXI as it relates to bill and report language associated with the national defense authorization bill, please be advised that I interpret the definition of what constitutes a

'congressional earmark' conservatively. As chairman of the House Armed Services Committee, I will apply the attached guidance to each amendment to ensure that such proposals conform to both the text of rule XXI and the spirit of the moratorium.

Budgetary Amendments Defined

A budgetary amendment is a proposal that would make specific funding additions and reductions to the NDAA, in order to assert congressional priorities in the conduct of U.S. defense policy. Be advised that a budgetary amendment is NOT a congressional earmark pursuant to House rule XXI. Additional guidance and examples of budgetary amendments are discussed in more detail below.

Guidance for Drafting Budgetary Amendments

1. **Request a specific amount of additional, discretionary budget authority.** As long as the other criteria are met, it is permissible to request a specific amount be authorized for some national security purpose.

2. **The request may not direct funds with or to an entity/locality.** A request for additional funds may not be drafted in such a way that a federal agency is directed to expend the funds with (or award a contract to) a specific entity or within a specific locality. Therefore, a budgetary amendment should request funds at an appropriation level which would not force a federal agency to expend funds in such a manner. For example:
    a. A budgetary amendment may request $5.0 million for DDG Modernization in Other Procurement, Navy but may not specify the intended use of the additional funding (or direct funding to procurement of a specific piece of equipment) in bill or report language;
    b. A budgetary amendment may request $5.0 million for the Defense Research Projects Agency, Program Element 0602716E: Electronics Technology but may not specify the intended use of the additional funding in bill or report language;
    c. A budgetary amendment may request $3.0 million for cold weather clothing and equipment in Operation & Maintenance, Marine Corps Budget Activity 01, Operating Forces, but may not specify the intended vendor or type of clothing/equipment to be purchased with additional funding in bill or report language.

3. **Funds must be awarded in one of two ways.** In addition to the aforementioned criteria, a budgetary amendment should clearly state that the amounts authorized must be awarded: (a) consistent with a statutorily declared policy of Congress regarding merit-based procedures, or (b) through a competitive award process.
    a. *Consistent with merit-based selection procedures.* Amendments should clearly state that funds should be awarded consistent with a declared policy of Congress regarding merit-based procedures (unless funds are to be awarded competitively, in which case see below). The amendment should state that funds must be awarded in accordance with the policy in 10 USC 2304(k) or 10 USC 2374, OR

b. *Through a competitive award process.* In the case of a budgetary amendment that authorizes funds for an effort that has not been, but will be competed, amendments should clearly state that funds should be awarded through competitive procedures.

Again, thank you for your interest in the National Defense Authorization Act for Fiscal Year 2012.

Sincerely,

Howard P. "Buck" McKeon
Chairman
House Armed Services Committee