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## Integrity of Nonprofit Groups at Stake in Congressional Earmark Process



*Richard White/Chronicle of Philanthropy*

*By Pablo Eisenberg*

Congressional earmarks have always been a thorny issue for nonprofits.

Many government-watchdog groups worry that earmarks are simply a way for members of Congress to steer money to their pet projects and should be outlawed. But plenty of other nonprofit organizations have long sought earmarks themselves as a means to get desperately needed government aid that is difficult to obtain through traditional competitive bidding.

Lawmakers themselves are also divided about the wisdom of earmarks. The House Appropriations Committee in March tried to slow the process when it banned lawmakers from earmarking money to for-profit entities.

But it clearly has not succeeded entirely in dissuading colleagues from earmarks.

As two reporters at *The New York Times* revealed last month, House members were not at all stymied by the ban. Some for-profit companies simply created new charitable entities for the sole purpose of accepting federal earmark money. Others were more subtle: They channeled money to businesses via established nonprofit organizations like universities, which for many years have served as recipients of federal grants for joint corporate and academic research.

According to *The Times*, which analyzed dozens of earmarks proposed by numerous lawmakers, at least 11 companies created new nonprofit groups or used old ones to become eligible for federal aid.

Among the beneficiaries of this approach was Imaging Systems Technology, a small defense contractor in Toledo, Ohio, that established a nonprofit group, the Great Lakes Research Center, to perform the same kind of work the for-profit company does. The creation of the nonprofit group allowed Rep. Marcy Kaptur, an Ohio Democrat, to put forward a request for a \$10.4-million earmark.

Vicki Kurtz, executive director of the center, said the organization has registered as a nonprofit group but has not yet applied to the IRS for tax-exempt status.

Though the family that owns the firm, as well as its lobbyists, has been longtime contributors to Ms. Kaptur's political campaigns, the lawmaker says their contributions have been only a very small portion of the political money she has raised.

Representative Kaptur defended her approach to the *Times* reporters by saying that such earmarks are legal and that she had been open about her communication to institutions that had requested earmarks. On March 11, a day after the ban was passed by the House Appropriations Committee, she e-mailed her prospective earmark applicants to warn private companies that they would now need to submit all their proposals through a nonprofit organization.

Ms. Kaptur publicly had praised the ban on earmarks to for-profit companies, saying that it struck an appropriate balance between legislative prerogatives to support good projects and the need to avoid abuses. Yet by seeking to steer federal money to for-profit corporations in her district through nonprofit groups, she may well have prompted some of the very abuses she said she was concerned about.

When I talked to her about whether her actions and those of her colleagues in the House had been an effort to get around the spirit of the ban, she pointed out that federal funds traditionally have been granted to universities for joint projects with for-profit entities and that in many of those cases, money had gone to private companies. She was less certain about whether creating nonprofit groups like the Great Lakes Research Center solely to receive earmark funds was so wise, and she felt both the Internal Revenue Service and Congress needed to explore the idea further.

Ms. Kaptur has had an admirable record in Congress, but her approach to getting earmarks to her constituents, while legal, may well leave a stain on her reputation and may disappoint many of her supporters.

The House Appropriations Committee has taken the ban seriously. For example, it did not approve money for the Great Lakes Research Center or other nonprofit groups created by for-profit companies. To ensure that for-profit companies are not masquerading as nonprofit groups, the committee has asked the inspectors general at federal agencies to audit at random a select number of earmark projects. Yet it has not taken any action on the major culprits: the existing nonprofit groups that either pass through or contract out a very substantial amount of earmark funds to for-profit companies.

One might have expected the Internal Revenue Service to be upset about lawmakers who encourage the use of nonprofit groups to skirt the earmark ban, but it has said nothing publicly during the five months since the earmark ban went into effect, according to tax experts who follow the agency. So far, my attempts to get the IRS to explain its views have been unsuccessful.

If the intent of the ban is really to limit earmarks to nonprofit groups, then both Congress and the IRS must set and enforce standards that define the amount of funds that universities and other nonprofit groups can pass on to for-profit companies. Should universities or other nonprofit organizations be required to conduct at least two-thirds, half, or a third of a joint project to be an acceptable recipient of an earmark? How heavily involved should permanent university staff members be in earmark projects?

Clearly, nonprofit groups that channel an enormous portion of their earmarks to profit-making entities do not comply with the intent of the ban.

It's about time that Congress and the Internal Revenue Service speak out about this—and make clear that nonprofit groups are to be created only to promote the public interest, not just as receptacles to accept government aid for corporate interests.

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