



Memorandum

June 19, 2008

SUBJECT: Number and Dollar Value of Items in FY2008 “Earmark Disclosure Lists” and Number of Items in Those Lists Identified in Text of FY2008 Appropriations Laws

FROM: CRS Appropriations Team

This memorandum responds to congressional interest in knowing the number and dollar value of “earmarks” in FY2008 appropriations bills. It further responds to congressional interest in determining the number of “earmarks” that are contained in the *text* of the FY2008 appropriations laws.

The Appropriations Committees published explanatory statements on the FY2008 appropriations bills. These statements included “earmark disclosure lists” and detailed funding tables. The analysis in this memorandum is based on these lists and tables in the explanatory statements. Specifically, for the Department of Defense Appropriations Act for FY2008, the earmark disclosure list and detailed funding table were included in the joint explanatory statement of the conference committee in H.Rept. 110-134, the conference report on H.R. 3222 (enacted as P.L. 110-116). For the other 11 FY2008 appropriations acts, the earmark disclosure lists and detailed funding tables were contained in the explanatory statement as published in the Committee Print of the House Committee on Appropriations, Consolidated Appropriations Act, 2008, H.R. 2764/Public Law 110-161.¹ The explanatory statement specified that it included “congressional earmarks” as defined in House Rule XXI, clause 9, and “congressionally directed spending items,” with the identical definition in Senate Rule XLIV. Section 4 of the text of the Consolidated Appropriations Act specified that the explanatory statement would have the same effect regarding the allocation of funds and implementation of the Consolidated Appropriations Act as if it were a joint explanatory statement of a

¹ The Committee Print, which was published in January 2008, is available on the web at: [<http://www.gpoaccess.gov/congress/house/appropriations/08conapro.html>]. It states (p. VI) that for the convenience of users, it is organized in accordance with the divisions of the Consolidated Appropriations Act, with the legislative text paired with the applicable portion of the explanatory statement. An earlier version of the bill text and the explanatory statement was published in the *Congressional Record* of December 17, 2007. This memorandum is based on the versions of the bill text and explanatory statement in the Committee Print, as they contain corrections to the versions published earlier in the *Congressional Record*.

conference committee.² Table 2 also is based on the text of the two FY2008 appropriations laws.

Table 1

Table 1 provides the number and dollar value of items in the FY2008 earmark disclosure lists. The CRS counts of the items in the disclosure lists are presented in column 2, entitled “Number of Items in Disclosure List” and our sums of their dollar values are provided in column 3, entitled “Dollar Value of Items in Disclosure List.” Our counts of items, and our sums of their dollar values, reflect all items in the disclosure lists regardless of what information is provided for each entry. For instance, we did not draw distinctions based on the indicated sponsor/requester. Some of the items identify the sponsor/requester as one or more Members, others note only the President, while still others indicate the President and Members. Similarly, we included in our counts of items in the disclosure lists those items for which no funding level was indicated.

Six of the 11 bills in the Consolidated Appropriations Act contained an across-the-board reduction;³ all but one of those bills contained a disclosure list.⁴ For those five bills, the reductions were not reflected in the dollar figures in the disclosure lists in the explanatory statements. For instance, the disclosure list for Interior, Environment, and Related Agencies (Division F of the Consolidated Appropriations Act) states that the “amounts displayed do not reflect the 1.56 percent reduction that will be applied to all activities in the bill by sec. 437.”⁵ Accordingly, our sums of the dollar values of the lists for those bills (column 3) do not reflect the across-the-board cuts.

² The explanatory statement originally was published in the *Congressional Record* as the “Explanatory Statement Submitted by Mr. Obey, Chairman of the House Committee on Appropriations, Regarding the Consolidated Appropriations Amendment of the House of Representatives to the Senate Amendment to H.R. 2764.” It was not published as part of a conference report because agreement on the bill was reached through an exchange of amendments between the House and Senate, rather than through a conference committee. For information on the legislative history, structure, and content of the Consolidated Appropriations Act, see CRS Report RL34298, *Consolidated Appropriations Act for FY2008: Brief Overview*, by Robert Keith.

³ These bills contained across-the-board reductions of varying amounts. For an identification of the bills and the amounts of the reductions, see CRS Report RL34298, *Consolidated Appropriations Act for FY2008: Brief Overview*, by Robert Keith.

⁴ The disclosure section of the explanatory statement for the Department of State, Foreign Operations and Related Programs Appropriations Act states that neither the text nor the explanatory statement contains congressional earmarks or congressionally directed spending items (Committee Print of the House Committee on Appropriations, p. 2,211).

⁵ This statement is contained in the heading of each page of the disclosure list for the Interior, Environment, and Related Agencies Appropriations bill. See, for example, page 1,288 of the Committee Print of the House Committee on Appropriations.

Table 1 also provides the total appropriations in each FY2008 bill, and the portion of that appropriation that is non-mandatory in nature. The “Total Appropriations in Bill” are provided in column 4, while the “Non-Mandatory Appropriations in Bill” are provided in column 6. The total appropriations figures, taken from the funding tables in the explanatory statements, generally reflect all funding in the bills; they might include, for example, regular appropriations, emergency appropriations, and rescissions. Further, for bills containing across-the-board reductions, these totals appear to reflect those reductions.⁶ The non-mandatory figures are a subset of the total appropriations amounts; they reflect the total funding in the bills aside from any mandatory funding.

In addition, the table contains the dollar value of the items in the disclosure list as a percent of the total appropriations in the respective bill (column 5), and as a percent of the non-mandatory appropriations in the respective bill (in column 7). For the five bills containing an across-the-board reduction and a disclosure list, we have compared the dollar value of the items in the disclosure list *without the across-the-board reduction* to total appropriations and non-mandatory appropriations *with the across-the-board reduction*.⁷ However, this inconsistency does not appear to significantly affect the percentages reported in columns 5 and 7. This is primarily because the sizes of the across-the-board cuts were relatively small.⁸

Table 2

Table 2 provides the number of items in the disclosure lists that were included in the text of the FY2008 appropriations laws. For Defense, we examined the text of P.L. 110-116, Division A, to see if the items in the disclosure list were included in the text of the law. For the other 11 appropriations laws, we examined P.L. 110-161, the Consolidated Appropriations Act for FY2008. The number of items in the disclosure lists that we identified in the text of these laws is presented in column 3 of Table 2, entitled “Number of Items in Disclosure List Identified in Text of Appropriations Law.”

⁶ The Office of Management and Budget (OMB) subsequently calculated the effect of the across-the-board cuts for five of the six bills (all but Legislative Branch) as directed in P.L. 110-161. These calculations were slightly different (at least in some cases) from those identifiable in the funding tables of the Committee Print of the House Committee on Appropriations (and reflected in this memorandum). The OMB calculations are in a document, dated January 25, 2008, on the OMB website at [<http://www.whitehouse.gov/omb/legislative/>].

⁷ For these bills, in general directly comparable figures were neither provided in the Committee Print of the House Committee on Appropriations, on which this memorandum is based, nor possible for CRS to calculate with certainty.

⁸ An illustration might clarify this point. In the case of the Interior, Environment, and Related Agencies Appropriations Act, the dollar value of the items in the disclosure list is estimated at \$624.9 million (column 3). This represents 2.324% of the total appropriation in the bill (column 5). If the bill’s across-the-board cut of 1.56% were to be applied to the \$624.9 million, the dollar value of the items in the disclosure list would be reduced to \$615.1million. This would represent 2.287% of the total appropriations in the bill. Thus, both percentages would round to 2.3%. This example is hypothetical, because it assumes that the 1.56% cut would be applied to the total dollar value of the items in the disclosure list.

The figures reflect items in the disclosure lists that appeared to be included in the law in either of two ways: explicitly or by cross reference. In some cases, the purpose and dollar amount of the item is explicitly specified in the text of the pertinent law. In other cases, the item appears to be referred to in the law by cross reference to the explanatory statement. In these latter instances, the text of the law typically provides a dollar amount for a particular purpose or activity, and states that the funds are to be available in accordance with the explanatory statement. Varied language is used in these circumstances, including that the funding is to be available under the terms and conditions of the explanatory statement, or for the projects and in the amounts specified in the explanatory statement, or for activities specified in the explanatory statement. In the table, we have noted where there are items that appear to be referred to in the law by cross reference to the explanatory statement.

Several caveats about our research deserve mention. For items in the disclosure lists for which no funding level was indicated, we attempted to determine whether their purpose was contained in the text of the law. In the table, we have noted these cases. In a few other instances, the disclosure lists identified both the purpose and the dollar amount for a project or activity but the text of the law contained only the purpose. We did not include these items in our counts of items identified in the law.

Additionally, in determining whether the items were included in the text of the laws, we did not attempt to ascertain whether the purpose of, or funds for, the projects or activities had been previously authorized. For instance, we did not seek to determine whether a project or activity had been specifically authorized in prior law or would fall under more general authorities. Such information would likely be impossible for us to determine for all items in the disclosure lists.

Finally, it is not possible for us to state definitively whether each of the items we have counted as included in the text of the law would have the force of law. Similarly, it is not possible for us to state authoritatively whether each of the items that we did not identify as included in the text would lack statutory force. For instance, there may be other provisions in the laws we examined that would require specific agency actions or activities, or requirements in still other laws for specific agency actions or activities. Questions regarding the legal effect of earmark language are handled by the American Law Division of CRS.⁹

⁹ For information on non-statutory earmarks, especially on Executive Order 13,457 pertaining to agency treatment of these earmarks, see CRS Report RL34373, *Earmarks Executive Order: Legal Issues*, by Thomas J. Nicola and T.J. Halstead.

Table 1. Number and Dollar Value of Items in FY2008 Disclosure Lists

FY2008 Appropriations Law	Number of Items in Disclosure List^a	Dollar Value of Items in Disclosure List (in millions)^b	Total Approps. in Bill (in millions)^c	Dollar Value of Items in Disclosure List as % of Total Approps. in Bill^d	Non-Mandatory Approps. in Bill (in millions)^e	Dollar Value of Items in Disclosure List as % of Non-Mandatory Approps. in Bill^f
Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act (Division A, P.L. 110-161)	623	\$402.4	\$91,027.7 ^r	0.4%	\$19,526.0 ^r	2.1%
Commerce, Justice, Science, and Related Agencies Appropriations Act (Division B, P.L. 110-161)	1,728	\$823.1	\$53,735.0	1.5%	\$53,506.7 ^m	1.5%
Department of Defense Appropriations Act (Division A, P.L. 110-116)	2,049	\$4,982.3	\$460,303.5	1.1%	\$460,041.0	1.1%
Energy and Water Development and Related Agencies Appropriations Act (Division C, P.L. 110-161)	2,427	\$6,595.3	\$31,465.9 ^q	21.0%	\$31,465.9 ^q	21.0%
Financial Services and General Government Appropriations Act (Division D, P.L. 110-161)	234	\$1,001.4	\$43,280.6	2.3%	\$20,599.0	4.9%
Department of Homeland Security Appropriations Act (Division E, P.L. 110-161)	131	\$423.7	\$38,746.6	1.1%	\$37,561.9	1.1%
Department of the Interior, Environment, and Related Agencies Appropriations Act (Division F, P.L. 110-161)	651	\$624.9	\$26,891.1 ^s	2.3%	N/A ^j	N/A ^j
Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act (Division G, P.L. 110-161)	2,241	\$1,027.1	\$603,917.3 ⁿ	0.2%	\$148,651.8 ⁿ	0.7%

FY2008 Appropriations Law	Number of Items in Disclosure List^a	Dollar Value of Items in Disclosure List (in millions)^b	Total Approps. in Bill (in millions)^c	Dollar Value of Items in Disclosure List as % of Total Approps. in Bill^d	Non-Mandatory Approps. in Bill (in millions)^e	Dollar Value of Items in Disclosure List as % of Non-Mandatory Approps. in Bill^f
Legislative Branch Appropriations Act (Division H, P.L. 110-161)	4 ^g	\$0.4	\$3,969.9 ^o	<0.1% ^k	N/A ^k	N/A ^k
Military Construction and Veterans Affairs and Related Agencies Appropriations Act (Division I, P.L. 110-161)	573	\$10,043.6	\$108,391.3	9.3%	\$63,903.0	15.7%
Department of State, Foreign Operations and Related Programs Appropriations Act	0	\$0	\$35,342.6 ^p	—	\$35,183.7 ^p	—
Transportation, Housing and Urban Development, and Related Agencies Appropriations Act (Division K, P.L. 110-161)	2,149 ⁱ	\$2,953.9	\$103,578.7	2.9%	N/A ^l	N/A ^l

N/A = Not Available

^a The figures in this column were determined by totaling the items in disclosure lists prepared and published by the Appropriations Committees. Specifically, the figure for the Department of Defense was derived from the disclosure list on pages 371-486 of H.Rept. 110-134, the conference report on the Department of Defense Appropriations Act for FY2008 (H.R. 3222, enacted as P.L. 110-116). The figures for the other 11 Appropriations Acts were determined from the disclosure lists in the Committee Print of the House Committee on Appropriations, Consolidated Appropriations Act, 2008, H.R. 2764/Public Law 110-161 (hereafter referred to as the Committee Print of the House Committee on Appropriations). These disclosure lists, included in the explanatory statements on the bills, are contained on the following pages:

Agriculture, Rural Development, Food and Drug Administration, and Related Agencies: pp. 105-140;
 Commerce, Justice, Science, and Related Agencies: pp. 326-437;
 Energy and Water Development and Related Agencies: pp. 618-781;
 Financial Services and General Government: pp. 923-939;
 Department of Homeland Security: pp. 1,109-1,119;
 Department of the Interior, Environment, and Related Agencies: pp. 1,287-1,335;
 Departments of Labor, Health and Human Services, and Education, and Related Agencies: pp. 1,619-1,772;
 Legislative Branch: pp. 1,893-1,894;
 Military Construction and Veterans Affairs and Related Agencies: pp. 1,993-2,026;
 Department of State, Foreign Operations and Related Programs: p. 2,211 and
 Transportation, Housing and Urban Development, and Related Agencies: pp. 2,458-2,588.

^b The figures in this column represent the total dollar value of the items in disclosure lists prepared by the Appropriations Committees and published in the Committee Print of the House Committee on Appropriations.

^c The figures in this column reflect the total appropriations in each bill when enacted, including any emergency funding. They are derived from the Committee Print of the House Committee on Appropriations.

^d The figures in this column represent the percent of each bill's total appropriations (Column 3) that is included in the total dollar value of the items in the disclosure lists (Column 2).

^e The figures in this column reflect the non-mandatory appropriations in each bill when enacted, including any emergency funding. They are a subset of the figures in Column 3, and are derived from the Committee Print of the House Committee on Appropriations.

^f The figures in this column represent the percent of each bill's non-mandatory appropriations (Column 5) that is included in the total dollar value of the items in the disclosure lists (Column 2).

^g The earmark disclosure statement in the Committee Print of the House Committee on Appropriations contains a table with four items. It also contains a statement that this table was inadvertently omitted from the version of the explanatory statement published in the *Congressional Record* of December 17, 2007 (on p. H16373-H16374).

^h The disclosure section of the explanatory statement for the Department of State, Foreign Operations and Related Programs Appropriations Act states that neither the text nor the explanatory statement contains congressional earmarks or congressionally directed spending items (Committee Print of the House Committee on Appropriations, p. 2,211).

ⁱ Of the 2,149 items in the disclosure list, 51 are extensions of availability or clarifications of funds provided in previous appropriations acts.

^j Nearly all of the appropriations in this bill are non-mandatory, but the portions that are mandatory and non-mandatory were not specified in the documentation on the bill as enacted. The amount of mandatory appropriations in the bill has been estimated subsequently by the House Appropriations Committee to be roughly \$60 million.

^k The dollar value of items in the disclosure list is 0.01% of the total appropriation in the bill, indicated in the table as <0.1%. Also, the documentation on the bill as enacted did not indicate that any of the funding was mandatory.

^l The documentation on the bill as enacted did not specify mandatory and non-mandatory appropriations. Subsequent documentation from the House Appropriations Committee indicates that all of the funding in the bill was non-mandatory.

^m The documentation on the bill as enacted did not specify mandatory and non-mandatory appropriations. Subsequent information from the House Appropriations Committee indicates that \$228.3 million was mandatory.

ⁿ This figure includes an across-the-board reduction of 1.747% as detailed in §528 of Division G of P.L. 110-161. Without the reduction, the total appropriation is \$605,921.4 million, and the non-mandatory appropriation is \$150,655.9 million. Further, this figure reflects the total in the bill, not the current year total.

^o This figure includes an across-the-board reduction of 0.25% as detailed in §210 of Division H of P.L. 110-161.

^p This figure includes an across-the-board reduction of 0.81% as detailed in §699P of P.L. 110-161.

^q This figure includes across-the-board reductions of 1.6% and 0.91% as detailed in §312 of Division C of P.L. 110-161.

^r This figure includes an across-the-board reduction of 0.7% as detailed in §752 of Division A of P.L. 110-161. The Committee Print of the House Committee on Appropriations (p. 161) identifies the amount of the reduction as \$89.1 million.

^s This figure includes an across-the-board reduction of 1.56% as detailed in §437 of Division F of P.L. 110-161. The Committee Print of the House Committee on Appropriations (p. 1,388) identifies the amount of the reduction as \$425.0 million.

Table 2. Number of Items in Disclosure Lists Identified in Text of FY2008 Appropriations Laws

FY2008 Appropriations Law	Number of Items in Disclosure List^a	Number of Items in Disclosure List Identified in Text of Approps. Law^b
Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act (Division A, P.L. 110-161)	623	3 ^e
Commerce, Justice, Science, and Related Agencies Appropriations Act (Division B, P.L. 110-161)	1,728	6
Department of Defense Appropriations Act (Division A, P.L. 110-116)	2,049	10 ^f
Energy and Water Development and Related Agencies Appropriations Act (Division C, P.L. 110-161)	2,427	16
Financial Services and General Government Appropriations Act (Division D, P.L. 110-161)	234	216 ^g
Department of Homeland Security Appropriations Act (Division E, P.L. 110-161)	131	7 ^h
Department of the Interior, Environment, and Related Agencies Appropriations Act (Division F, P.L. 110-161)	651	288 ⁱ
Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act (Division G, P.L. 110-161)	2,241	2,078 ^j
Legislative Branch Appropriations Act (Division H, P.L. 110-161)	4 ^c	3
Military Construction and Veterans Affairs and Related Agencies Appropriations Act (Division I, P.L. 110-161)	573	0
Department of State, Foreign Operations and Related Programs Appropriations Act (Division J,	0	0
Transportation, Housing and Urban Development, and Related Agencies Appropriations Act (Division K, P.L. 110-161)	2,149 ^k	1,936 ^k
Total	12,810	4,563

^a The figures in this column were determined by totaling the items in disclosure lists prepared and published by the Appropriations Committees. Specifically, the figure for the Department of Defense was derived from the

disclosure list on pages 371-486 of H.Rept. 110-134, the conference report on the Department of Defense Appropriations Act for FY2008 (H.R. 3222, enacted as P.L. 110-116). The figures for the other 11 Appropriations Acts were determined from the disclosure lists in the Committee Print of the House Committee on Appropriations, Consolidated Appropriations Act, 2008, H.R. 2764/Public Law 110-161 (hereafter referred to as the Committee Print of the House Committee on Appropriations). These disclosure lists, included in the explanatory statements on the bills, are contained on the following pages:

Agriculture, Rural Development, Food and Drug Administration, and Related Agencies: pp. 105-140;
 Commerce, Justice, Science, and Related Agencies: pp. 326-437;
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 Department of Homeland Security: pp. 1,109-1,119;
 Department of the Interior, Environment, and Related Agencies: pp. 1,287-1,335;
 Departments of Labor, Health and Human Services, and Education, and Related Agencies: pp. 1,619-1,772;
 Legislative Branch: pp. 1,893-1,894;
 Military Construction and Veterans Affairs and Related Agencies: pp. 1,993-2,026;
 Department of State, Foreign Operations and Related Programs: p. 2,211 and
 Transportation, Housing and Urban Development, and Related Agencies: pp. 2,458-2,588.

^b The figures in this column reflect the number of items in the disclosure lists that were identified in the text of the FY2008 appropriations laws. For Defense, the relevant law is P.L. 110-116, Division A. For the other 11 appropriations laws, the relevant law is P.L. 110-161.

The figures include items for which the specific purpose and dollar amount are contained in the text of the law. The figures also include items which appear to be referred to in the law by cross reference to the explanatory statement. In these cases, the text of the law typically provides a dollar amount for a particular purpose or activity, and states that the funds are to be available in accordance with the explanatory statement. Different language is used in these circumstances, including that the funding is to be available under the terms and conditions of the explanatory statement, or for the projects and in the amounts specified in the explanatory statement, or for activities specified in the explanatory statement.

^c The earmark disclosure statement in the Committee Print of the House Committee on Appropriations contains a table with four items. It also contains a statement that this table was inadvertently omitted from the version of the explanatory statement published in the *Congressional Record* of December 17, 2007 (on p. H16373-H16374).

^d The disclosure section of the explanatory statement for the Department of State, Foreign Operations and Related Programs Appropriations Act states that neither the text nor the explanatory statement contains congressional earmarks or congressionally directed spending items (Committee Print of the House Committee on Appropriations, p. 2,211).

^e Includes one item for which the dollar amount but not the specific purpose is included in the law.

^f Includes one item that did not specify a dollar amount in the disclosure list, but for which a dollar amount is specified in the text of the law. Also includes one item for which the amount specified in the disclosure list is different than the amount specified in the text of the law.

^g Includes 190 items that appear to be referred to in the law by cross reference to the explanatory statement. Also includes two items in the disclosure list that did not specify a dollar amount, and that are mentioned in the bill text also without a dollar amount.

^h Includes four items in the disclosure list that did not specify a dollar amount. While all four are mentioned in the bill text, only one specifies a dollar amount in the text.

ⁱ Includes 280 items that appear to be referred to in the law by cross reference to the explanatory statement.

^j Includes 2,063 items that appear to be referred to in the law by cross reference to the explanatory statement.

^k Of the 2,149 items in the disclosure list, 51 are extensions of availability or clarifications of funds provided in previous appropriations acts. Of the 1,936 items identified in the law, 1,851 appear to be referred to in the law by cross reference to the explanatory statement. Approximately 85 of the 1,936 are specified in the text of the law. Of these 85 items, 24 are extensions of availability or clarifications of funds provided in previous appropriations acts. The disclosure list does not specify a dollar amount for these 24 items; however, there is a dollar amount specified for some of them in the text of the law.