



Memorandum

March 6, 2006

SUBJECT: Earmarks in FY2006 Appropriations Acts**FROM:** CRS Appropriations Team

This memorandum originally was prepared in response to a request for CRS to quantify earmarks in regular annual appropriations acts. With the consent of the original requester, our research is being released for distribution to all congressional offices because of the continuing interest within Congress concerning earmarking.

As explained more fully below, there is no single definition of the term earmark, nor is there a standard earmarking practice across all appropriations bills. Thus, we have not attempted to provide a total number of earmarks for the combined 11 regular appropriations bills. This memorandum does not distinguish between earmarks that originated in the Executive Branch or in Congress. Further, only earmarks in the 11 regular appropriations bills (and accompanying joint explanatory statements) have been estimated in this memorandum; we did not address earmarks in other legislation, such as authorization, revenue, or supplemental appropriations bills.

For FY2006, we reviewed the 11 regular, enacted appropriations bills to estimate the number of earmarks included in the bill text and the joint explanatory statement of the conference committee, the estimated dollar value of the earmarks, and the dollar value of earmarks as a percentage of the total appropriation in each bill. In general, across-the-board rescissions are not reflected because these documents do not provide the calculation for individual discretionary accounts.

Within each entry is a discussion of how the term *earmark* is defined for the analysis of that particular appropriations bill, a disclaimer section highlighting particular issues with measuring earmarks in a given appropriations bill and why the estimates should not be regarded as definitive, a statement on the origin of earmarks, estimates of the number and dollar value of earmarks and the proportion of total funding represented, and which agencies were funded in the bill for FY2006. Each of the 11 sections includes a table summarizing FY2006 earmarks.

Origin of Earmarks. We generally have included earmarks regardless of their origin. That is, earmarks usually are included regardless of whether they were requested by the

President or added by the House, the Senate, or the conference committee.¹ Further, we generally have included earmarks regardless of whether they were provided for authorized purposes or for on-going purposes. Special circumstances requiring exceptions to these generalities are noted in the pertinent sections for the individual bills.

Administration budget justifications tend to vary among agencies as to whether they contain earmarks, and the number and kind of earmarks requested. In some cases, the justifications contain earmarks for agency projects and activities generally. For instance, in FY2006, the bulk of the Administration's annual budget submission for military construction lists specific requests within accounts for individual construction projects at particular locations. Likewise, the FY2006 budget request for the Army Corps of Engineers typically specifies funding in the water accounts for particular projects, locations, or institutions. In other cases, the justifications do not appear to generally earmark funds, such as those for the Health Resources and Services Administration (in the Department of Health and Human Services) and the National Endowment for the Humanities. Still other budget justifications earmark funds for one or more programs or activities. For example, in the National Park Service budget justification for FY2006, funding for specific sites is earmarked for activities including federal land acquisition and construction.

Earmark Definition Issues. One of the principal challenges to measuring earmarks in appropriations bills is defining the term and applying it consistently to the analysis. There is not a single definition of the term *earmark* accepted by all practitioners and observers of the appropriations process, nor is there a standard earmark practice across all appropriations bills. In the broadest definition, according to Congressional Quarterly's *American*

¹ Defense appropriations is the primary exception. With regard to the FY2006 Defense Appropriations Act, the term earmark is used to mean congressional additions of funds at a level of specificity below the normal line item level.

Congressional Dictionary, “virtually every appropriation is earmarked.”² In practice, however, earmarks generally are defined more narrowly, often reflecting procedures established over time that may differ from one appropriations bill to another. For some bills, an earmark may refer to funds set aside within an account for a specified program, project, activity, institution, or location. In others, the application may reflect a more narrow set of directives to fund *individual* projects, locations, or institutions.³ The Office of Management and Budget (OMB) has used a different definition of earmarks, namely specified funds for projects, activities, or institutions not requested by the executive, or add-ons to requested funds which Congress directs for specific activities.

Because of the varying ways that earmarks are defined and applied in appropriations bills, we have not attempted to combine and summarize earmarks across the 11 appropriations bills covered. Rather, separate entries for each bill define, for the purpose of that bill only, how earmarks are counted and discuss other characteristics that are pertinent to the practice of earmarking in the individual bill. To the greatest extent possible, we have maintained a consistent definition of earmarks *within each entry*, so that even in the absence of universally accepted terminology, the data for a particular bill were collected using common methodology. Nevertheless, we realize that other assessments would likely reach different conclusions because of the uncertainties over definitions and methodology. It is important to note that we have not aggregated the data presented for the 11 appropriations bills, because the varying definitions and methodologies applied could render such a total invalid.

Coverage of Relevant Documents. Some earmarks are included in the text of appropriations measures, floor amendments, and bill text in conference reports on such measures, according to CRS report 98-518, *Earmarks and Limitations in Appropriations Bills*. If enacted, these earmarks are legally binding. Many earmarks, however, are included in the Senate and House Appropriations Committees' reports explaining a measure as reported, as well as the managers' joint explanatory statement that accompanies the conference report.⁴ Earmarks that appear in committee reports and the statements of managers do not legally bind agencies, unless text in a statute provides that they shall have the force of law. In the absence of such language, departments and agencies generally are not legally bound by their declarations.⁵ These documents do, however, explain congressional intent and frequently have effect because “an agency that fails to ‘keep faith’ with the Congress may find its next appropriation reduced or limited by line-item restrictions.”⁶

² Congressional Quarterly, *American Congressional Dictionary*. Available on February 16, 2006 at [<http://www.crs.gov/products/guides/glossary/e.shtml>].

³ CRS Report 98-518, *Earmarks and Limitations in Appropriations Bills*, by Sandy Streeter.

⁴ A conference report on an appropriations bill typically provides the text of an amendment in the nature of a substitute that is the compromise between the House and Senate positions on the measure. The managers' joint explanatory statement is attached to the conference report and provides a more detailed explanation of the compromises.

⁵ CRS Report 98-518, *Earmarks and Limitations in Appropriations Bills*, by Sandy Streeter.

⁶ Principles of Federal Appropriations Law, Second Edition, Vol. II, GAO/OGC-92-13, p. 6-159–6-160.

In general, for each bill we systematically reviewed only the enacted appropriations bill and the joint explanatory statement of the conference committee. This approach might have the effect of understating earmark totals in some cases. For some bills, a number of earmarks may be included only in the House and Senate Appropriations Committee reports issued prior to floor debate in the separate chambers. In some cases, the Appropriations Committees expect executive agencies to adhere to House and Senate directives in the committee reports unless stated otherwise in the joint explanatory statement or the statutory language. Because of the historical use of House and Senate Appropriations Committee reports for earmarks for some agencies of the U.S. Department of Agriculture, the entry for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations includes such earmarks in its estimates.⁷ The entry for Foreign Operations, Export Financing, and Related Programs Appropriations also notes the significance of House and Senate Appropriations Committee reports for earmarks.

Other Limitations. Beyond the issues of varying definitions and incomplete coverage, other limiting factors should be noted.

- In a number of cases, imprecise or unclear language in the enacted bill or joint explanatory statement required a subjective decision concerning whether to include an earmark, and at what amount. Generally, in such instances an agency is likely to consult with the relevant Appropriations subcommittee to determine congressional intent.
- By examining only the enacted bills and the joint explanatory statements, steps in the legislative process were not taken into account. For example, subsequent rescissions or supplementals could have altered an earmark included in the regular appropriations bill before it was implemented.
- Funding ceilings, using terms such as “up to” a specified amount, can be considered in some cases, depending on the context, as an earmark, and in other cases as a limitation. The decision whether to include such items in the estimates varied among the bills depending on the circumstances and practices of the particular act.
- Dollar amounts of total appropriations and earmarks are stated in current year dollars. Therefore, caution should be used when comparing dollar values of earmarks over time, since they do not take into account the effects of inflation. Perhaps a more useful measure of comparison over time would be the percentage of the total appropriation represented by earmarks.

Summary. In sum, this analysis should be regarded as an illustrative estimate of the number and dollar amount of earmarks for FY2006. Each section sets out the earmark definition and methodology used. The results would be different with alternative definitions, methodologies, and items included. Nevertheless, we have strived to apply consistent standards within each entry. Thus, the data may provide useful information about the practice of earmarking in individual appropriations bills. For additional information on

⁷ For instance, for the U. S. Department of Agriculture’s (USDA) Animal and Plant Health Inspection Service (APHIS), the conference report on the FY2006 appropriations bill contains 53 projects totaling \$30.1 million. If the House and Senate Appropriations Committee reports also are consulted, an additional 17 earmarks totaling \$7.2 million are found. This results in a total of 70 earmarks with a dollar value of \$37.3 million. Thus, using the House and Senate Committee reports as an additional source increased the number of earmarks for this agency by 32% and the dollar value of the earmarks by 24%.

earmarks, contact the authors listed at the end of each entry. For information on appropriations activity generally, see “Appropriations” on the CRS website at [<http://www.crs.gov/>].

Earlier Research. Earlier CRS research estimated the number and dollar value of earmarks for FY1994, FY1996, FY1998, FY2000, FY2002, FY2004, and FY2005.⁸ That research was based on the former structure of appropriations bills that existed for most of the period examined. This memorandum for FY2006 is based on the current number and jurisdictions of appropriations bills. As such, it reflects changes that were first effective for the FY2006 appropriations process, as well as recent prior changes. For instance, it includes a section on the Homeland Security Appropriations, which received its first appropriation in FY2004.

⁸ This research is contained in a congressional distribution memorandum entitled *Earmarks in Appropriations Acts: FY1994, FY1996, FY1998, FY2000, FY2002, FY2004, FY2005*, by the CRS Appropriations Team.

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Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations

Methodology. Additional information on the origin of earmarks, earmark definition issues, coverage of relevant documents, and other limitations regarding identifying earmarks is provided in the introduction to this memorandum.

Scope. The FY2006 Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act (P.L. 109-97) funds all of the U.S. Department of Agriculture (except the Forest Service, which is funded through the Interior Appropriations Act), the Food and Drug Administration (within the Department of Health and Human Services), and the Commodity Futures Trading Commission. For general information on agriculture appropriations and related issues for FY2006, see CRS Report RL32904, *Agriculture and Related Agencies: FY2006 Appropriations*, coordinated by Jim Monke.

Origin of Earmarks. Our data include the number and dollar value of earmarks funded by Congress, whether or not the earmark was requested by the Administration. In general, most of the earmarks in the FY2006 Agriculture Appropriations Act identified in this memorandum originated in Congress. While the Administration did request some earmarks in its annual budget request, some of which Congress included in the final act, most of the Administration's requests are not so specific in nature (e.g., institution or location) as to be counted as earmarks for this memorandum.

Definition and Criteria. For the purpose of this analysis, an earmark is defined as any designation in the FY2006 appropriations act or accompanying joint explanatory statement of the conference committee, House Appropriations Committee report, or Senate Appropriations Committee report that allocates a portion of the discretionary appropriation for a specific project, location, or institution. In FY2006 and other recent years, the agriculture appropriations conference report has stated that any items addressed in either chamber's committee report, but not changed or resolved in the conference report, are approved by the conference committee.

The vast majority of earmarks in the FY2006 Agriculture Appropriations Act is found in approximately 12 accounts within the following USDA agencies: 1) USDA's agricultural research agencies (Agricultural Research Service, and Cooperative State Research, Education and Extension Service); 2) USDA's Natural Resources Conservation Service (NRCS); 3) various USDA rural development agencies (particularly the Rural Community Advancement Program (RCAP)); and 4) USDA's Animal and Plant Health Inspection Service (APHIS).

An exception to the above earmark definition is the figure included for the Agricultural Research Service (ARS) salaries and expenses account. Conference and committee reports refer to earmarks in this account but do not detail the total amounts available for each project. Consequently, data provided by the ARS budget office are used as a proxy for ARS earmarks. In addition, the NRCS data were provided by the NRCS budget office.

Estimates. Using the above definition of an earmark, the FY2006 Agriculture Appropriations Act is estimated to contain approximately 689 earmarks totaling \$504.9 million. This represents about 3.0% of the discretionary spending in the act. About half of the total number of earmarks and 40% of the dollar value are for agricultural research at

USDA or in universities. Another third of the earmarks and about 40% of the value are for conservation projects.

The number and dollar amount of earmarks in FY2006 are relatively close to the levels in FY2005 and FY2004. The value of FY2006 earmarks is 1% higher than FY2005, but the number is 2% fewer. However, compared to FY2000, the FY2006 earmarks are 86% higher in value and 92% greater in number. As a percentage of discretionary spending, earmarks in the Agriculture Appropriations Act comprised approximately 1% to 2% of discretionary spending from FY1994 to FY2000. That share rose to 3.5% in FY2002, but fell slightly to 3% of discretionary spending in FY2004-FY2006.

Disclaimer. While an attempt has been made to comprehensively capture earmarks in accordance with the definition and methodology outlined, the figures reported here should not be regarded as definitive. Factors such as the possibility of using different definitions and methodologies for identifying earmarks, and the lack of clarity of some of the language in the documents consulted, could contribute to different research results.

Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Summary of Estimated Earmarks (millions of current dollars)

Fiscal Year	Total (Discretionary) Appropriation ^a	Estimated Total \$ Value of Earmarks	Earmarks as % of Total (Discretionary) Appropriation	Number of Earmarks Identified ^b
2006	\$17,031	\$504.9	3.0%	689

Sources: Earmarks were derived from the FY2006 Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act (P.L. 109-97) and the joint explanatory statement of the conference committee (H.Rept. 109-255) as well as the related House and Senate Appropriations Committee reports. Data for earmarks to the Agricultural Research Service (ARS) salaries and expenses could not be derived directly from bill or report language. Thus, the ARS budget office provided the number and dollar value of specific projects funded by Congress, whether or not requested by the Administration. Figures for the Natural Resources Conservation Service (NRCS) were provided by the NRCS budget office.

Notes: Earmarks are defined as any designation in the FY2006 Agriculture appropriations act or accompanying joint explanatory statement of the conference committee, House Appropriations Committee report, or Senate Appropriations Committee report that allocates a portion of the discretionary appropriation for a specific project, location, or institution.

a. Virtually all earmarks are from discretionary spending, hence this figure represents the total discretionary spending in the FY2006 Agriculture Appropriations Act. Mandatory spending represents about 83% of the funds in the act. Specifically, the total appropriation in the FY2006 act is \$100,099 million, comprised of \$17,031 million in discretionary appropriations and \$83,068 in mandatory appropriations.

b. Of the 689 earmarks identified, 5 are in the text of the law; all 5 are duplicated in the joint explanatory statement of the conference committee. Another 585 are in the joint explanatory statement, and the remaining 99 are in the House and/or Senate Appropriations Committee report but not in the joint explanatory statement.

Contributors

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Defense Appropriations

Methodology. Additional information on the origin of earmarks, earmark definition issues, coverage of relevant documents, and other limitations regarding identifying earmarks is provided in the introduction to this memorandum.

Scope. The FY2006 Department of Defense Appropriations Act (P.L. 109-148) provides funds for military activities of the Department of Defense (DOD), including pay and benefits of military personnel, operation and maintenance of weapons and facilities, weapons procurement, and research and development, as well as for other purposes. Most of the funding in the law is for programs administered by the Department of Defense. The law also provides relatively small, unclassified amounts for the Central Intelligence Agency retirement fund and intelligence community management; classified amounts for national intelligence activities administered by the National Intelligence Director, the CIA, and by other agencies as well as by DOD; and very small amounts for some other agencies. For general information on FY2006 defense appropriations, see CRS Report RL32924, *Defense: FY2006 Authorization and Appropriations*, by Stephen Daggett.

Origin of Earmarks. In the defense appropriations bill, *earmarks* generally are defined as congressional additions of funds for specific projects or activities, and the analysis used in this memorandum follows the general usage (as detailed below). Administration defense requests are accompanied by budget justification documents that show in detail how the Defense Department plans to spend appropriated funds if Congress does not make changes. In a sense, therefore, the Administration's defense request could be said to earmark virtually all of the defense budget. Congress typically makes some changes to the way the Administration has requested that Congress earmark the funds.

Definition and Criteria. Conference committee reports on defense appropriations bills allocate funds to particular programs in detail, specifying, for example, how many weapons of what types are to be procured and how much money is available for recruiting. If earmarking is defined broadly, therefore, virtually all funds in defense bills are fully earmarked. Usually, however, in the case of defense-related legislation, the term *earmark* is used to mean congressional additions of funds at a level of specificity below the normal line item level. Understood in this way, a congressional committee would not be said to earmark funds if it adds money to buy additional fighter aircraft, for example, but would be said to earmark funds if it specifies that a particular kind of radar is to be incorporated into an aircraft upgrade program. This assessment uses the more narrow definition of an earmark. Within military personnel and operation and maintenance accounts, statutory provisions or language in the joint explanatory statement that allocates funding to specific locations, institutions, or activities are counted as earmarks. Within Procurement and within Research, Development, Test, and Evaluation (RDT&E) accounts, congressional additions at the *project* level are identified as earmarks, provided the project level changes did not involve solely adding items to be procured or accelerating the pace of an ongoing research program.

Estimates. For FY2006 defense appropriations, the number of congressional earmarks — as defined above — totaled 2,847, with a dollar value of \$9.427 billion, which is 2.36% of the total provided in the law. This dollar value does not take account of the 1% across-the-board cut in all defense and non-defense appropriations bills assessed in Division B of the defense appropriations bill. If the 1% cut were to be assessed against each

earmarked project, the dollar value of earmarks would total \$9.333 billion, which is 2.34% of the bill total.

The number of earmarks in defense appropriations laws has grown from about 587 in FY1994 to about 2,847 in FY2006. The amount of money earmarked also has increased over the same period, from about \$4.2 billion to \$9.4 billion. The amount earmarked as a percentage of the total in the defense appropriations bill has correspondingly increased from about 1.8% in FY1994 to approximately 2.4% in FY2006. No one factor appears to explain the overall increase.

Disclaimer. For Procurement and RDT&E accounts, earmarks, defined narrowly, can be identified in a straightforward manner, since appropriations conference report language specifically lists congressional changes to budget requests at the project level. For other accounts, however, different analysts, even using a narrow definition of earmarks, might count some items differently. This analysis did not count as an earmark congressional additions of funds for a broad category, such as depot maintenance or real property maintenance, if language in the law or joint explanatory statement did not further specify how funding would be allocated. It did count an addition as an earmark, however, if increased funding specifically was provided for increased depot maintenance for a particular weapon system or for real property maintenance at a particular facility. Perhaps most importantly, this analysis did not count congressional additions of funds at the line item level as earmarks, although others might choose to do so. If such additions are counted as earmarks, a much larger amount of money would appear to be earmarked each year.

Defense Appropriations
Summary of Estimated Earmarks
(millions of current dollars)

Fiscal Year	Total Appropriation	Estimated Total \$ Value of Earmarks	Earmarks as % of Total Appropriation	Number of Earmarks Identified ^b
2006 ^a	\$399,462	\$9,427.0	2.36%	2,847

Sources: Earmarks were derived from the FY2006 Department of Defense Appropriations Act (P.L. 109-148) and the joint explanatory statement of the conference committee (H.Rept. 109-359).

a. Does not include emergency appropriations for Iraq, Afghanistan, Katrina-related operations, and other purposes provided in Title IX and in Division B of the law.

b. Of the 2,847 earmarks identified, 46 are in the text of the law, including 4 that are duplicated in the joint explanatory statement of the conference committee. The remaining 2,801 are in the joint explanatory statement only.

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Energy and Water Development Appropriations

Methodology. Additional information on the origin of earmarks, earmark definition issues, coverage of relevant documents, and other limitations regarding identifying earmarks is provided in the introduction to this memorandum.

Scope. The FY2006 Energy and Water Development Appropriations Act (P.L. 109-103) includes funding for civil works projects of the Army Corps of Engineers (Corps), the Department of the Interior's Bureau of Reclamation (BOR), the Department of Energy (DOE), and a number of independent agencies. The FY2006 Energy and Water Development law is not comparable to those of previous years, because it includes all DOE programs, some of which (e.g., energy conservation) had previously been funded by the Interior and Related Agencies Appropriations law. For general information on the law, see CRS Report RL32852, *Energy and Water Development: FY2006 Appropriations*, coordinated by Carl E. Behrens.

Origin of Earmarks. The FY2006 Energy and Water Development Appropriations Act and accompanying joint explanatory statement identify funding levels for the numerous programs, projects, activities, and subactivities of the agencies. In addition, tables in the explanatory statement identify specific funding levels for individual projects, locations, and institutions. The term earmark typically refers to set-asides within an account for individual projects, locations, or institutions. Using this definition, some energy accounts and most water accounts are earmarked, as funds typically are specified for particular projects, locations, or institutions. This practice is followed in the Administration's budget justification documents as well as in the Congress. Earmarks are included in this section regardless of whether they were requested by the President; added by the House, the Senate, or the conference committee; provided for authorized purposes; or provided for ongoing purposes.

Definition and Criteria. An attempt was made in compiling the data to exclude funding for general programs and activities. The difficulty, however, in distinguishing these categories in many cases from projects, locations, and institutions makes any such distinction somewhat subjective. In cases where program funding would be directed to individual projects, locations, or institutions by the law or joint explanatory statement, the item is included as an earmark.

The reported figures for FY2006 do not reflect any earmarks that may be included in sources other than the statutory text and accompanying joint explanatory statement (e.g., supplemental appropriations laws or emergency supplemental laws). Similarly, they do not reflect other budgetary actions that may bear on the earmarked levels (e.g., rescissions of funds). In the case of DOE, the explanatory statement of the FY2006 conference report (H.Rept. 109-275) specifically lists "congressionally directed projects" within most major DOE appropriations accounts and states that DOE earmarks in the House and Senate Appropriations Committee reports are superseded by the conference language. These congressionally directed projects are included as earmarks in the totals presented here, along with additional items that appear to fit the definition described above. For non-DOE programs, the explanatory statement considers House and Senate Appropriations Committee report language to be approved if it is not contradicted by the other house or by the conference. The totals presented here do not include items in individual committee report language that may meet that standard.

Estimates. The FY2006 energy and water development appropriations law and joint explanatory statement contain numerous earmarks. The explanatory statement explains the intent of the bill language for the guidance of executive agency decisions and courts. Some tables in the explanatory statement include hundreds of line items listing funding for specific projects, programs, and activities. Our examination of the FY2006 Energy and Water Development Appropriations law shows that approximately 19.4% of the funding was directed to individual projects, institutions, and locations by 2,436 individual earmarks.

Considerably different findings are likely to result when using different definitions of an earmark. For example, preliminary analysis of one agency's appropriation for FY2002 showed a vast range of results derived under varied definitions and methodologies. Initial research on the BOR for FY2002 revealed a possible range in earmarks from 5% to 78%, depending on how the term *earmark* is defined. Similarly, initial research on the Corps' appropriation for that year showed a range of 9% to 78%, and on Title III of the bill (Department of Energy), the same analysis yielded a range of 2% to 17%. For the bill as a whole,⁹ the resulting range was between 3% and 30%. Another important variable is whether the water projects in the Energy and Water Development bill are counted as earmarks. The table below includes \$5,387.4 million for water projects, which are counted as 2,053 individual earmarks.

The number and dollar value of earmarks in Energy and Water Development appropriations laws and the percent of the total appropriation earmarked appear to have fluctuated from FY1994-FY2006. Moreover, as noted above, the FY2006 earmark figures are not directly comparable to those for earlier years because of the addition of certain DOE programs to the FY2006 law.

Disclaimer. While an attempt has been made to comprehensively capture earmarks in accordance with the definition and methodology outlined, the figures reported here should not be regarded as definitive. Factors such as the possibility of using different definitions of earmarks and methodologies to identify them, and the lack of clarity of some of the language in the documents consulted could contribute to different research results.

Energy and Water Development Appropriations **Summary of Estimated Earmarks** (millions of current dollars)

Fiscal Year	Total Appropriation	Estimated Total \$ Value of Earmarks^a	Earmarks as % of Total Appropriation	Number of Earmarks Identified^{a,b}
2006	\$30,488	\$5,922.5	19.4%	2,436

Sources: Earmarks were derived from the FY2006 Energy and Water Development Appropriations Act (P.L. 109-103) and the joint explanatory statement of the conference committee (H.Rept. 109-275).

a. Reflects earmarks for projects, institutions, and locations.

b. Of the 2,436 earmarks identified, 22 are in the text of the law; all 22 are duplicated in the joint explanatory statement of the conference committee. Another 2,414 are in the joint explanatory statement only.

⁹ Because of its small size in relation to the rest of the bill, Title IV (Independent Agencies) is not included in these figures. Its inclusion would likely alter the results minimally.

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Foreign Operations, Export Financing, and Related Programs Appropriations

Methodology. Additional information on the origin of earmarks, earmark definition issues, coverage of relevant documents, and other limitations regarding identifying earmarks is provided in the introduction to this memorandum.

Scope. The Foreign Operations appropriations bill is the primary legislative vehicle through which Congress reviews and votes on the U.S. foreign assistance budget and influences Executive Branch foreign policy-making generally. The FY2006 Foreign Operations, Export Financing, and Related Programs Appropriations Act (P.L. 109-102) funds all U.S. bilateral development assistance programs, managed mostly by the U.S. Agency for International Development (USAID), together with several smaller independent foreign aid agencies, such as the Peace Corps and the Inter-American and African Development Foundations. Beginning in FY2004, the measure has included funding for the State Department's Global AIDS Initiative and the Millennium Challenge Corporation, two new bilateral economic aid programs. Most humanitarian aid activities are funded within Foreign Operations, including USAID's disaster program and the State Department's refugee relief support. Foreign Operations for FY2006 and prior years throughout the 1990s included separate accounts for aid programs in the former Soviet Union and Central/Eastern Europe, activities that are jointly managed by USAID and the State Department.

Another part of the Foreign Operations spending measure is security assistance (economic and military aid), administered largely by the State Department in conjunction with USAID and the Defense Department. Funding for the Iraq Relief and Reconstruction Fund (IRRF), now managed by the State Department, also falls under the jurisdiction of the Foreign Operations Subcommittee, although nearly all appropriations to date for the IRRF have come in supplemental measures and not the regular annual appropriations bill reviewed for this study. U.S. contributions to the World Bank and regional multilateral development banks, managed by the Treasury Department, and voluntary payments to international organizations, handled by the State Department, also are funded in the Foreign Operations law. Finally, the FY2006 law includes appropriations for three export promotion agencies: the Overseas Private Investment Corporation (OPIC), the Export-Import Bank, and the Trade and Development Agency. Details on funding, legislation, and issues for FY2006 are provided in CRS Report RL32919, *Foreign Operations (House)/State, Foreign Operations, and Related Programs (Senate)*, by Larry Nowels.

Origin of Earmarks. Foreign Operations budget justifications provided by the State Department, USAID, and other agencies contain detailed justifications for each account, including illustrative tables for how the agencies would allocate money among some 120 countries and regional programs for each account if Congress approved the full request. The budget justification tables include complete listings for country aid allocations, but only partial listings of activity allocations. The Executive Branch does not ask Congress to specify or direct amounts below the account level for individual activities or aid recipient countries. These illustrative tables regarding country and activity funding distribution plans by the Executive Branch could also be considered as Administration earmarks of the appropriation account request. Agencies note, however, that specific allocations are subject to modification depending on changing circumstances and overall resource availability at the time the final distribution is made, decisions that take place a year or more after the initial budget submission.

In general, the practice of earmarking in Foreign Operations appropriations applies to congressional directives for allocating funds to specific countries or activities below the account level, and is the definition used in this analysis to estimate the number of earmarks and the proportion of funds in the bill that are earmarked. Some observers define earmarks in a more limited way, identifying only provisions that direct spending for items not requested by the Administration or in excess of levels proposed for activities or countries. Although many Foreign Operations earmarks fall within this more narrow definition, congressional directives specifying spending amounts that are the same as shown in the Administration's illustrative listing for country distributions also are regarded as earmarks. Annual earmarks for economic and military aid to Israel and Egypt are examples of such directives. The Foreign Operations bill may specify amounts for these and perhaps several other countries at levels proposed by the Administration, but include no directive regarding how the balance of funds appropriated within the account should be distributed for 20 or 30 other countries. If Congress reduces the total account level, as it has done frequently, the earmarks for a few countries, even at the amounts requested, require the Administration to cut funds to the non-earmarked countries disproportionate to the overall reduction to the account. This has been a consistent source of tension between the two branches for many years in the discussion of earmarking in Foreign Operations.¹⁰

Definition and Criteria. The practice of congressional earmarking in Foreign Operations has continued for many years. Annual appropriations also usually include General Provisions addressing several issues related to earmarks, including how earmarks apply to the definition of a "program, project, and activity," rules for reprogramming earmarked funds, and how earmarks in the current law are not applicable to subsequent Foreign Operations acts.

Several special characteristics of the practice of earmarking in Foreign Operations laws are worth noting. One characteristic of the Foreign Operations appropriations that differs from other spending bills is the distinction between so-called "hard" and "soft" earmarks. Hard earmarks, whether stated in the act or the joint explanatory statement, require the Administration to spend a specified or "not less than" amount for a certain activity, organization, or country program, using words such as *shall*, *directs*, or *allocates*. A soft earmark, on the other hand, is an expression using terms such as *should*, *urges*, *endorses*, or *recommends*. Since both hard and soft earmarks are an expression of congressional intent, some argue that there is little if any distinction between the two, and the Administration must treat each with equal weight.

Regardless of how the Administration deals with hard and soft earmarks, the practice of earmarking in Foreign Operations bills over the past 25 years suggests that a distinction should be recognized between the two types of earmarks. House Foreign Operations Subcommittee leaders, especially in the last decade, have argued strongly for the reduction of hard earmarks in bills and accompanying House and conference reports. It has been common for House-Senate conference committees to change Senate-passed hard earmarks to soft earmarks in the enacted bill or statement of managers. This has not resulted

¹⁰ As noted below, however, congressional practice in recent years has been to allocate or earmark funds in several key Foreign Operations accounts for all or most countries and activities receiving assistance under these accounts. This avoids the situation where partial earmarking for only selected countries has an indirect but significant impact on non-earmarked countries and activities. Nevertheless, this technique of fully earmarking several large accounts increases the number of earmarks and their value, as was again the case for FY2006.

necessarily, however, in more extensive executive branch flexibility in allocating appropriated funds.

Soft earmarks, including those in the statute, joint explanatory statement, and Appropriations Committee reports, are compiled by executive agencies, and, when they seek modifications to congressional targets, Administration officials conduct extensive consultations with the subcommittees in order to reach consensus. It is widely recognized that soft earmarks carry significant weight, if not the same weight, in directing Administration funding allocation decisions. However, because House and Senate Foreign Operations Subcommittees routinely make a distinction between a hard and soft earmark, and imply some greater degree of flexibility for the latter, the table below presents earmarks in two categories: hard earmarks and soft earmarks.

A related issue concerns the relative weight assigned to recommendations set out in House and Senate Appropriations Committee reports. In this analysis, we examined only the enacted bill and the joint explanatory statement of the conference committee. For Foreign Operations, however, many directives and recommendations are added in the House and Senate Appropriations Committee reports, and the committees expect the Administration to be guided by these report statements. If calculated, these would add to the number of earmarks drawn from the enacted bill and the joint explanatory statement, and shown in the table below.¹¹

A further Foreign Operations characteristic is the practice of setting ceilings, or specifying an amount up to which the agencies can fund an activity or country. There appears to be some dispute over whether these ceilings also represent earmarks. USAID officials, for example, assert that in some cases they consider these ceilings as an indication of congressional intent to fund the activity at the maximum level, and that if they propose a reduction below the ceiling, agency staff consult extensively with the committees. Some ceilings, however, appear driven more by Congress' intent to limit amounts the Administration might spend on a given activity than on the desire by Congress to specify a precise amount. Because of the various ways ceilings can be interpreted — as possibly an earmark or a limitation — plus the fact that from a legal standpoint an agency retains discretion over how much to allocate up to the specified ceiling, this type of legislative and conference report language is not included as an earmark in this analysis.

Estimates. Using the definition specified, the FY2006 Foreign Operations Appropriations Act (P.L. 109-102, H.Rept. 109-265) contained approximately 233 hard earmarks and 160 soft earmarks for specific countries, recipients, and activities. Funds associated with these earmarks represented 60.2% and 14.4%, respectively, of the total Foreign Operations funds appropriated.

While similar to the number and percentage of earmarks enacted for FY2005, these totals for FY2006 are among the largest in selected years since FY1994. In FY1998, for

¹¹ For example, several FY2005 earmarks in the Child Survival and Development Assistance accounts included in House and Senate Appropriations Committee reports were not repeated in the conference report. Included among these were earmarks for the Vaccine Fund (\$65 million), iodine deficiency disorders (\$3 million), micronutrients (\$30 million), blind children (\$1.7 million), and collaborative research support programs (\$28 million). Combined, these five selected earmarks not mentioned in the conference agreement would add \$127.7 million to other earmarks set out by the conference committee.

example, the Foreign Operations appropriation included 31 hard earmarks and 50 soft earmarks, accounting for 52% and 12% of the total appropriation, respectively. The number and volume of earmarks in Foreign Operations has grown since, with 254 hard earmarks and 173 soft earmarks approved for FY2005, representing 53% and 20% of total funding. Although FY2006 earmarks in the Foreign Operations appropriation are somewhat fewer than the previous year, the percentage they represent of total funds in the bill is slightly larger than FY2005. In broad terms, the trend for Foreign Operations has been a moderate increase since FY1994 in the percentage of the total funding level earmarked, as well as a substantial rise in the number of both hard and soft earmarks.

A major factor explaining why both the number of earmarks and the proportion of the total appropriation represented by earmarks has been relatively high the past three years is that beginning with FY2004, the conference reports have included a series of tables itemizing amounts for individual countries and programs for several major accounts in the Foreign Operations bill: Child Survival and Health Programs Funds; Economic Support Fund; Assistance for East European and the Baltic States; Assistance to the Independent States of the Former Soviet Union (FY2005 and FY2006 only); Andean Counternarcotics Initiative (FY2005 and FY2006 only); Global HIV/AIDS Initiative (FY2005 and FY2006 only); Non-Proliferation, Anti-terrorism, Demining, and Related Programs; Foreign Military Financing (FY2005 and FY2006 only); and International Organizations and Programs. This was not the case in earlier years that were previously analyzed by CRS.

For FY2006, when several accounts were mostly or completely earmarked, the total number of earmarks remained large — 166 total in these accounts — while the dollar volume increased to \$10.57 billion. Moreover, the FY2006 appropriation includes a general provision, first added in FY2005, explicitly making the account allocations hard earmarks — stating that amounts “shall be made available for programs and countries” as allocated in conference report tables. This resulted in a sharp rise in the number of hard earmarks for FY2005 and FY2006.

The Foreign Operations appropriation for FY2006 also includes conference report language specifically “endorsing” the lists of university project proposals recommended in House and Senate Appropriations Committee reports, thereby adding 89 soft earmarks that were not included in years prior to FY2005 when a similar provision was first added. Because House and Senate Committees do not assign a dollar amount for suggested university projects, however, this did not affect the value of total earmarks.

Another reason why such a large portion of Foreign Operations is earmarked, not only in FY2006, but generally for the past 27 years, is the inclusion of provisions each year earmarking economic and military aid for Israel and Egypt. These earmarks alone accounted for \$5.1 billion in FY1994, FY1996, and FY1998, \$4.9 billion in FY2000, \$4.7 billion in FY2002, \$4.6 billion in FY2004, \$4.4 billion in FY2005, and \$4.3 billion in FY2006, representing between 34% and 95% of the total amount of hard earmarks. The United States is nearing the end of a 10-year plan to reduce aid to Israel and Egypt by \$100 million annually, thus accounting for the declining value of the earmarks since FY1998.

Disclaimer. While an attempt has been made to comprehensively capture earmarks in accordance with the definition and methodology outlined, the figures reported here should not be regarded as definitive. Factors such as the possibility of using different definitions and methodologies for identifying earmarks, and the lack of clarity of some of the language in the documents consulted, could contribute to different research results.

Foreign Operations, Export Financing, and Related Programs Appropriations

Summary of Estimated Earmarks (millions of current dollars)

Fiscal Year	Total Appropriation ^a	Estimated Total \$ Value of Earmarks	Earmarks as % of Total Appropriation	Number of Earmarks Identified ^b
2006				
Hard earmarks	\$21,043	\$12,667.4	60.2%	233
Soft earmarks	\$21,043	\$3,033.8	14.4%	160

Sources: Earmarks were derived from the FY2006 Foreign Operations, Export Financing, and Related Programs Appropriations Act (P.L. 109-102) and the joint explanatory statement of the conference committee (H.Rept. 109-265).

Note: Hard earmarks refer to requirements for the Administration to spend specified or “not less than” amounts for a certain activity, organization, or country program, using words in the legislation or joint explanatory statement such as shall, directs, or allocates. A soft earmark is expressed in the legislation or joint explanatory statement using terms such as should, urges, endorses, or recommends.

a. This total does not include a mandatory appropriation of \$41.7 million for the USAID Foreign Service Retirement and Disability Fund.

b. Of the 393 total earmarks identified, 103 are in the text of the law, including 85 that are duplicated in the joint explanatory statement of the conference committee. The remaining 290 are in the joint explanatory statement only. Many of those in the joint explanatory statement, however, are indirectly referenced in the law. Section 596 of P.L. 109-102 states that “funds provided in this Act for the following accounts shall be made available for programs and countries in the amounts contained in the respective tables included in the report accompanying this Act.” Section 596 also lists several accounts that are fully or mostly earmarked in the accompanying tables. Of the 290 earmarks set out in the joint explanatory statement, 157 were included in the tables referenced by Section 596. Some might assert that these 157 earmarks are also directed by the act itself, and not just the joint explanatory statement.

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Homeland Security Appropriations

Methodology. Additional information on the origin of earmarks, earmark definition issues, coverage of relevant documents, and other limitations regarding identifying earmarks is provided in the introduction to this memorandum.

Scope. The FY2006 Department of Homeland Security Appropriations Act (P.L. 109-90) provides funds for the agencies, programs, and activities of the Department of Homeland Security (DHS). DHS was created with the enactment of P.L. 107-296, which combined into one department the functions and account lines of 22 agencies with homeland security responsibilities. General information on funding and other issues regarding the FY2006 Department of Homeland Security appropriations act is provided in CRS Report RL32863, *Homeland Security Department: FY2006 Appropriations*, coordinated by Jennifer E. Lake and Blas Nuñez-Neto.

Origin of Earmarks. Over the course of DHS's four year existence, the Department's budget justifications have become more detailed each fiscal year. As the level of specificity in the budget documents has increased, a number of earmarks have been identified within the justification. While this does not appear to be a common practice, specific earmarks do exist in several different accounts within the Department's various agencies. For this memorandum, funds for specific projects and activities are identified as earmarks regardless of their origin or current status. That is, earmarks are included regardless of whether they were provided for projects listed in authorizing legislation; requested in the Administration budget; added by the House, Senate, or conference committee; or provided for on-going purposes.

Definition and Criteria. For the purposes of this memorandum, an earmark associated with the FY2006 DHS Appropriations Act is defined as: funds set aside within an account for a specific project, activity, or institution in a specific location (state or locale), which were provided in the appropriations act or the joint explanatory statement. In addition, the term earmark is applied where allocations are being made at a level of specificity below the normal account line item level.

Estimates. Using the above definition of an earmark, the FY2006 DHS Appropriations Act contains 21 earmarks amounting to \$232.4 million, or 0.7% of the \$31.9 billion appropriation. FY2004 marked the first appropriation for DHS, and we also have endeavored to identify earmarks for that year and FY2005 from the pertinent appropriations act and accompanying joint explanatory statement of the conference committee. For each of FY2004 and FY2005, nine earmarks were identified. In FY2004, the nine earmarks amounted to approximately \$44 million, or 0.1% of the \$30.4 billion total appropriation for that year. In FY2005, the nine earmarks amounted to approximately \$33 million, or 0.1% of the \$30.6 billion total appropriation.

Disclaimer. While an attempt has been made to comprehensively capture earmarks in accordance with the definition and methodology outlined, the figures reported here should not be regarded as definitive. Factors such as the possibility of using different definitions of earmarks and methodologies to identify them, and the lack of clarity of some of the language in the documents consulted could contribute to different research results.

Homeland Security Appropriations
Summary of Estimated Earmarks
(millions of current dollars)

Fiscal Year	Total Appropriation	Estimated Total \$ Value of Earmarks	Earmarks as % of Total Appropriation	Number of Earmarks Identified ^a
2006	\$31,860	\$232.4	0.7%	21

Sources: Earmarks were derived from the FY2006 Department of Homeland Security Appropriations Act (P.L. 109-90) and the joint explanatory statement of the conference committee (H.Rept. 109-241).

a. Of the 21 earmarks identified, 3 are in the text of the law; all 3 are duplicated in the joint explanatory statement of the conference committee. The remaining 18 earmarks are in the joint explanatory statement only.

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Interior, Environment, and Related Agencies Appropriations

Methodology. Additional information on the origin of earmarks, earmark definition issues, coverage of relevant documents, and other limitations regarding identifying earmarks is provided in the introduction to this memorandum.

Scope. The FY2006 Department of the Interior, Environment, and Related Agencies Appropriations Act (P.L. 109-54) includes funding for agencies in three separate federal departments, as well as numerous related agencies and bureaus. The law provides funding for agencies of the Department of the Interior (DOI), except for the Bureau of Reclamation), many of which manage land and other natural resource or regulatory programs. The law also provides funds for agencies in two other departments: the Forest Service in the Department of Agriculture and the Indian Health Service in the Department of Health and Human Services. Further, the FY2006 law includes funding for arts and cultural agencies, such as the Smithsonian Institution, National Gallery of Art, National Endowment for the Arts, and National Endowment for the Humanities. It also contains funding for the Environmental Protection Agency (EPA) and for numerous other entities and agencies. At the outset of the 109th Congress, jurisdiction over appropriations for EPA (and several smaller entities) was transferred to the House and Senate Appropriations subcommittees covering Interior and related agencies. At the same time, appropriations for several activities within the Department of Energy (DOE) were transferred from subcommittees covering Interior appropriations to the subcommittees covering energy and water, to consolidate jurisdiction over DOE. For general information on FY2006 Interior appropriations and related issues, see CRS Report RL32893, *Interior, Environment, and Related Agencies: FY2006 Appropriations*, coordinated by Carol Hardy Vincent and Susan Boren.

Origin of Earmarks. The FY2006 Administration budget justifications for agencies covered by this bill vary as to whether they contain earmarks, and the number and kind of earmarks requested. Some of the justifications do not appear to generally earmark funds, such as those for the National Endowment for the Arts and the National Endowment for the Humanities. Other justifications earmark funds for one or more programs, as in the case of the National Park Service (NPS). For example, in the NPS budget justification for FY2006, funding for specific sites is earmarked under the federal land acquisition program as well as in the construction account. In this memorandum, we have included earmarks regardless of whether they were requested by the administration or added by Congress.

Definition and Criteria. The annual Interior and related agencies appropriations law and accompanying joint explanatory statement of the conference committee identify funding levels for numerous programs, activities, and subactivities of the agencies. In addition, they contain provisions that identify the level of funds for individual projects, locations, or institutions, henceforth referred to as earmarks.¹² An examination of the regular, annual Interior and related agencies appropriations laws over recent years reveals that earmarks are relatively rare in the text of the bills themselves. However, the accompanying joint explanatory statements of the conference committee generally contain numerous additional earmarks. The explanatory statements provide explanations of the

¹² This definition is derived from CRS Report 98-518, *Earmarks and Limitations in Appropriations Bills*, by Sandy Streeter.

intent of the bill language for the guidance of executive branch agencies. For FY2006, the public law as well as the joint explanatory statement contain earmarks for individual projects, locations, and institutions.

Many of the earmarks are set out in lists, included in the joint explanatory statements, of individual construction and other projects for the four land management agencies (National Park Service, Bureau of Land Management, Fish and Wildlife Service, and Forest Service). For instance, the FY2006 joint explanatory statement contains lists of National Park Service funds for 57 construction projects (\$217.8 million), 87 historic preservation “Save America’s Treasures” projects (\$16.8 million), and 24 heritage areas (\$13.4 million). In addition, in FY2006 there were 336 earmarks for the EPA. In contrast, some other agencies (e.g., the Smithsonian Institution) funded by the FY2006 Department of the Interior, Environment, and Related Agencies Appropriations Act have relatively few or no earmarks in the joint explanatory statement or in the law itself.

We have included as earmarks funds for projects, locations, or institutions regardless of whether they were provided for authorized or on-going purposes. We also have included funding increases, specified in the joint explanatory statement, for particular projects, locations, and institutions where a total dollar amount is not specified in that source. An attempt was made in compiling the data to exclude funding for general programs and activities, and to delineate projects that directly specify locations and/or institutions. The difficulty, however, in distinguishing general program categories from projects, locations, and institutions makes any such distinction somewhat subjective.

Not reflected are any earmarks that may be included in sources other than the regular annual FY2006 Interior appropriations law and the joint explanatory statement of the conference committee (e.g., any supplemental appropriations laws). Similarly, we did not seek to reflect other budgetary actions that may bear on the earmarked levels (e.g., rescissions of funds). There has been no extensive examination of the House and Senate Appropriations Committee reports on the measure enacted into law. Generally, these reports may contain additional provisions that could be treated as earmarks that are not expressly stated in the conference report. It is worth noting that the explanatory statement seeks to incorporate by reference language included in these House and Senate Appropriations Committee reports. The explanatory statement provides that report language and allocations in either the House or Senate committee report that are not changed by the conference committee are approved by the conference committee. It elaborates that while the conference report repeats some of the language in the House and Senate committee reports for emphasis, the conference report does not negate the language unless a change is expressly stated. In FY2006, some of the earmarks in the joint explanatory statement provide a comparison between the figures in the House-passed, Senate-passed, and conference versions of the bill.

Estimates. Using the definition provided above, in the FY2006 Department of the Interior, Environment, and Related Agencies Appropriations Act there are 825 earmarks. These earmarks have a total dollar value of \$895.4 million or 3.4% of the total funding in the FY2006 law. Most of the earmarks identified for FY2006 were for relatively small dollar amounts. There are a few relatively large amounts for single earmarks. For example, under National Park Service Construction, \$25.0 million was earmarked for the Everglades National Park for the modified water delivery system.

The FY2006 earmark figures are not directly comparable to those for earlier years because of the changes in the agencies and programs covered by the Interior appropriations

law. In particular, the total number of earmarks in the FY2006 Interior appropriations law may be higher than in FY2005 and recent earlier years in large part due to the inclusion of EPA. However, it is worth noting that earmarks for EPA alone declined in FY2006 from the FY2005 level. In general, however, the trend over the past several years in earmarks in Interior appropriations laws has been a relatively large number of earmarks, but a relatively small percent of funds earmarked in terms of the total appropriation.

Disclaimer. While an attempt has been made to comprehensively capture earmarks in accordance with the definition and methodology outlined, the figures reported here should not be regarded as definitive. Factors such as the possibility of using different definitions of earmarks and methodologies to identify them, and the lack of clarity of some of the language in the documents consulted, could contribute to different research results.

Interior, Environment, and Related Agencies Appropriations
Summary of Estimated Earmarks
(millions of current dollars)

Fiscal Year	Total Appropriation	Estimated Total \$ Value of Earmarks^{a,b}	Earmarks as % of Total Appropriation	Number of Earmarks Identified^{a,b,c}
2006	\$26,202	\$895.4	3.4%	825

Sources: Earmarks were derived from the FY2006 Department of the Interior, Environment, and Related Agencies Appropriations Act (P.L. 109-54) and the joint explanatory statement of the conference committee (H.Rept. 109-188).

a. Earmarks are for projects, institutions, and locations, including projects that directly specify locations and/or institutions. The number of earmarks in FY2006 is significantly higher than in previous years examined in part because EPA was added to the Interior appropriations bill.

b. Most of the earmarks identified were for relatively small dollar amounts. The largest was \$25.0 million for the Everglades National Park for the modified water delivery system in NPS construction.

c. Of the 825 earmarks identified, 5 are in the text of the law; all 5 are duplicated in the joint explanatory statement of the conference committee. The remaining 820 earmarks are in the joint explanatory statement only.

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Labor, Health and Human Services, and Education, and Related Agencies Appropriations

Methodology. Additional information on the origin of earmarks, earmark definition issues, coverage of relevant documents, and other limitations regarding identifying earmarks is provided in the introduction to this memorandum.

Scope. The FY2006 Departments of Labor, Health and Human Services, and Education, and Related Agencies (L-HHS-ED) Appropriations Act (P.L. 109-149) provides most of the discretionary appropriations for three federal departments — the Department of Labor (DOL), the Department of Health and Human Services (HHS), and the Department of Education (ED) — as well as the Social Security Administration (SSA) and 13 other related agencies. Of the various annual appropriations bills, the L-HHS-ED bill historically has represented the largest single source of discretionary funds for domestic federal programs; the Defense bill has been the largest source of discretionary funds among all federal programs. Details for FY2006 L-HHS-ED appropriations, legislation, and issues may be found in CRS Report RL32952, *Labor, Health and Human Services, and Education: FY2006 Appropriations*, by Paul M. Irwin.

Origin of Earmarks. Some — but not all — of the L-HHS-ED earmarks for FY2006 were requested initially by the relevant agency as part of the budget materials that were submitted with the President's FY2006 budget request. Earmarks are included in this section regardless of whether they were requested by the President; added by the House, the Senate, or the conference committee; or provided for ongoing purposes.

Definition and Criteria. This summary uses a definition for earmark that is limited to “funds set aside within an account for a specific organization or location, either in the appropriations act or the joint explanatory statement of the conference committee.” For the most part, the general purpose for each earmark is identified in an authorizing statute, such as projects for “the improvement of postsecondary education,” but the specific recipient is not designated by any legislation outside of the appropriations act or the explanatory statement in which the earmark is made. Such designations generally bypass the usual competitive distribution of awards by a federal agency, but otherwise require recipients to follow standard federal financial and other administrative procedures regarding their use of earmarked funds.

Estimates. Using the above definition, there were an estimated eight L-HHS-ED earmarks funded in aggregate at \$28.5 million in FY2006, out of a total appropriation of about \$602 billion. These earmarks occurred in five accounts — one in HHS, three in ED, and one for the Corporation for National and Community Service, which is one of the L-HHS-ED related agencies. The table below places these earmarks in the context of the FY2006 L-HHS-ED appropriations.

FY2006 represents a dramatic change from the L-HHS-ED earmark practice in the period from FY2000 through FY2005. In FY2005, for example, there were approximately 3,014 earmarks with an estimated funding level of \$1.2 billion, which was 0.24% of the total L-HHS-ED appropriation of approximately \$501 billion. The FY2005 earmarks were included in many parts of the bill and the explanatory statement, and were identified in 17 accounts: two at DOL; seven at HHS; seven at ED; and one for the Institute of Museum and Library Services, another of the L-HHS-ED related agencies.

Disclaimer. The above estimates and the summary table below should not be regarded as definitive of either the number of earmarks or the funding involved. Despite a comprehensive effort to provide a reliable count, the possible ambiguities in the documents used, plus differences in definitions and counting methods, will produce different estimates of unknown variability. Not reflected in the estimates are report language of the House and Senate Appropriations Committees, floor statements, communications between the Administration and committees, agency budget justifications, statutory authorization language, and supplemental appropriations or rescissions.

**Labor, Health and Human Services, and Education, and Related
Agencies Appropriations
Summary of Estimated Earmarks
(millions of current dollars)**

Fiscal Year	Total Appropriation	Estimated Total \$ Value of Earmarks	Earmarks as % of Total Appropriation	Number of Earmarks Identified^a
2006	\$601,643	\$28.5	0.005%	8

Sources: Earmarks were derived from the FY2006 Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act (P.L. 109-149) and the joint explanatory statement of the conference committee (H.Rept. 109-337). For estimated earmarks for L-HHS-ED from previous years, see CRS Report RL32952, *Labor, Health and Human Services, and Education: FY2006 Appropriations*.

a. Of the 8 earmarks identified, 4 are in the text of the law, including 3 that are duplicated in the joint explanatory statement of the conference committee. The remaining 4 are in the joint explanatory statement only.

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Legislative Branch Appropriations

Methodology. Additional information on the origin of earmarks, earmark definition issues, coverage of relevant documents, and other limitations regarding identifying earmarks is provided in the introduction to this memorandum.

Scope. The FY2006 Legislative Branch Appropriations Act (P.L. 109-55) contains discretionary appropriations in 11 accounts for the House of Representatives, the Senate, joint items (entities governed by both the House and Senate), the Capitol Police, the Office of Compliance, the Congressional Budget Office, the Architect of the Capitol, the Library of Congress, the Government Printing Office, the General Accounting Office, and the Open-World Leadership Center. For current information on legislative branch budget requests, appropriations, legislation, and issues, see CRS Report RL32819, *Legislative Branch: FY2006 Appropriations*, by Paul E. Dwyer.

Origin of Earmarks. Earmarks are included in this section regardless of whether they were added by the House, the Senate, or the conference committee; provided for authorized purposes; or provided for ongoing purposes.

Definition and Criteria. The definition of an earmark for this analysis applies to provisions that direct funding to individual projects and organizations in specific locations. Earmarks are distinguished from language which limits the amount of appropriations that may be spent on an agency's activities, or that limits the purposes for which funds are to be used. While some provisions in the legislative appropriations act explicitly direct how money should be spent, most provisions are internal directives and not equivalent to earmarks that would appear in an executive branch agency appropriations act. For example, the earmark figure does not include funds for Capitol projects provided in directives from the Appropriations Committees to the Architect of the Capitol for certain building repairs. Also excluded for the same reason are funds for the construction of the Capitol Visitor Center. Due to the way in which the legislative branch appropriations bill is drafted, there are few earmarks.

Estimates. When using the definition specified above, the Legislative Branch Appropriations Act contains four earmarks in FY2006. These earmarks have a dollar value of \$1.35 million, which represents 0.04% of the total appropriation in the law. For earlier years examined since FY1994, the number and dollar value of earmarks in Legislative Branch Appropriations Acts have been similarly small.

Disclaimer. In addition to language in an appropriations act and the joint explanatory statement of the conference committee, earmarks may be located in the reports of the House and Senate Appropriations Committees accompanying the bill, justifications of legislative branch agencies, prior year acts and reports (regular annual, supplemental(s), and rescissions), and current year supplemental appropriations and rescissions. For purposes of this research, we examined only the FY2006 regular annual appropriations act and the joint explanatory statement of the conference committee. Since the across-the-board rescission which reduced the overall funding for the legislative branch to \$3.765 million did not reflect the calculation in individual discretionary accounts, the data in this memorandum do not reflect these rescissions.

Legislative Branch Appropriations
Summary of Estimated Earmarks
(millions of current dollars)

Fiscal Year	Total Appropriation	Estimated Total \$ Value of Earmarks	Earmarks as % of Total Appropriation	Number of Earmarks Identified^a
2006	\$3,801	\$1.35	0.04%	4

Sources: Earmarks were derived from the FY2006 Legislative Branch Appropriations Act (P.L. 109-55) and the joint explanatory statement of the conference committee (H.Rept. 109-189).

a. Of the 4 earmarks identified, all 4 are in the text of the law and also in the joint explanatory statement of the conference committee.

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Military Construction, Military Quality of Life and Veterans Affairs Appropriations

Methodology. Additional information on the origin of earmarks, earmark definition issues, coverage of relevant documents, and other limitations regarding identifying earmarks is provided in the introduction to this memorandum.

Scope. The FY2006 Military Construction, Military Quality of Life and Veterans Affairs Appropriations Act (P.L. 109-114) provides benefits to veterans of military service, their dependents, and beneficiaries, including health care and cemeterial services. The law also contains funding for the maintenance of a defense infrastructure encompassing more than 40,000 square miles and \$500 billion in physical facilities. Further, the law funds construction projects and property maintenance of the active Army, Navy and Marine Corps, Air Force, and their reserve components (including both federal reserve and National Guard); additional defense-wide construction; U.S. contributions to the NATO Security Investment Program (NSIP, formerly known as the NATO Infrastructure Program); and military family housing operations and construction. The law also provides funding for Base Realignment and Closure (BRAC) accounts, which in FY2006 financed environmental cleanup at installations closed during the 1988, 1991, 1993, and 1995 closure rounds and the initial implementation of both 2005 BRAC Commission recommendations and preparations for the redeployment of U.S. forces from overseas garrisons to stateside bases. Details are found in CRS Report RL33017, *Military Quality of Life/VA (House) and Military Construction/VA (Senate): FY2006 Appropriations*, by Daniel H. Else, Paul J. Graney, and Sidath Viranga Panangala.

Origin of Earmarks. The bulk of the military construction portion of the Administration's annual budget submission lists specific requests within accounts for individual construction projects at particular locations.¹³ The House and Senate Appropriations Committees mirror the Administration by listing budget authority for these individual projects in detailed tables included in the joint explanatory statement accompanying the FY2006 enacted bill. Congress often adjusts Administration-requested funding and sometimes adds projects during the appropriations process. Earmarks are included in this section regardless of whether they were requested by the President; added by the House, the Senate, or the conference committee; provided for authorized purposes; or provided for ongoing purposes.

Definition and Criteria. Under a broad definition of *earmark* as "funds set aside within an account for a specified purpose," or even a more narrow definition of "set-asides for individual projects, locations, or institutions," most of the funds in the military construction portion of the law are earmarked. For the purposes of this research, we have used the broad definition of earmark.

Estimates. Both the Administration and the House and Senate Appropriations Committees deal with military construction at a level of detail that places a considerable

¹³ 10 USC 2802(a) states that "the Secretary of Defense and the Secretaries of the military departments may carry out such military construction projects as are authorized by law." This provision was added by the enactment of P.L. 97-214, Section 2(a) on July 12, 1982. This is generally interpreted as requiring that specific projects and the necessary appropriations be specified as individual line items in the appropriations request and the authorization and appropriations bills.

portion of the appropriation within the definition of an earmark. By contrast, very little of the Veterans Affairs appropriation, which comprises 85% of the total, is set aside. In an unusual move, Congress specified (thereby earmarking) \$2.2 billion dollars for specialty mental health care and \$15.0 million for Gulf War illness research within various VA health appropriations accounts for FY2006.

For FY2006, there are a total of 575 earmarks with a dollar value of \$16.1 billion. This comprises 19.6% of the total appropriation in the FY2006 law. These figures are not directly comparable to those compiled for earlier years because of changes in the composition of the FY2006 law. For instance, funding for veterans affairs and military construction formerly were provided in separate appropriations laws.

Disclaimer. While an attempt has been made to comprehensively capture earmarks in accordance with the definition and methodology outlined, the figures reported here should not be regarded as definitive. Factors such as the possibility of using different definitions and methodologies for identifying earmarks, and the lack of clarity of some of the language in the documents consulted, could contribute to different research results.

**Military Construction, Military Quality of Life and Veterans Affairs
Appropriations
Summary of Estimated Earmarks
(millions of current dollars)**

Fiscal Year	Total Appropriation	Estimated Total \$ Value of Earmarks	Earmarks as % of Total Appropriation	Number of Earmarks Identified ^a
2006	\$81,726.0	\$16,057.2	19.6%	575

Sources: Earmarks were derived from the FY2006 Military Construction, Military Quality of Life and Veterans Affairs Appropriations Act (P.L. 109-114) and the joint explanatory statement of the conference committee (H.Rept. 109-305).

a. Of the 575 earmarks identified, 13 are in the text of the law, including 5 that are duplicated in the joint explanatory statement of the conference committee. The remaining 562 are in the joint explanatory statement only.

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Science, State, Justice, Commerce, and Related Agencies Appropriations

Methodology. Additional information on the origin of earmarks, earmark definition issues, coverage of relevant documents, and other limitations regarding identifying earmarks is provided in the introduction to this memorandum.

Scope. The FY2006 Science, State, Justice, Commerce, and Related Agencies (SSJC) Appropriations Act (P.L. 109-108) includes funding for three major departments and two science agencies, plus appropriations for about 20 smaller independent agencies. FY2006 was the first year Congress enacted an appropriation for this combination of departments and agencies. Previously, the appropriation most similar to it was the Commerce, Justice, State and Related Agencies (CJS) appropriation. For more information on SSJC FY2006 appropriations and issues, see CRS Report RL32885, *Science, State, Justice, Commerce and Related Agencies (House)/Commerce, Justice, Science and Related Agencies (Senate): FY2006 Appropriations*, coordinated by Ian F. Fergusson and Susan B. Epstein.

Origin of Earmarks. Some of the earmarks in this section originated in the President's budget request, such as some of those for the State Department. Others were added by the House, the Senate, or the conference committee, such as some of those for the Justice Department. Whether they originated in the budget request or in Congress varies from one department/agency to another in the SSJC appropriation. Earmarks are included in this section regardless of whether they were requested by the President or added by Congress.

Definition and Criteria. Earmarks within the SSJC appropriations include any congressional set-aside for a specified program, project, activity, institution, or location. The largest number of earmarks, by far, are within Title I — the Department of Justice. In FY2006, Title I contains 1,392 earmarks valued at more than \$3.4 billion. Most of those earmarks are for the Office of Justice Programs and the Community Oriented Policing Services. Title II of the appropriations law contains 525 earmarks valued at \$5.5 billion for the Department of Commerce. As in the past, nearly 90% of the earmarks within the Department of Commerce title are for the National Oceanic and Atmospheric Administration (NOAA). Title III — Science — contains nearly 190 earmarks, mostly for the National Aeronautics and Space Administration, but a small number are for the National Science Foundation. The estimated value of the science earmarks is \$1.2 billion. Title IV — State Department and Related Agency — contains over 107 earmarks valued at \$2.8 billion, a significant increase over the 11 earmarks for State and international broadcasting in FY2005. Most of the FY2006 State Department and Related Agency earmarks are for public diplomacy activities. Title V — Related Agencies — contains about 180 earmarks with an estimated value of \$637 million, mostly for the Small Business Administration.

Estimates. P.L. 109-108 contains a total of approximately 2,394 earmarks worth nearly \$13.6 billion. This represents 22% of the SSJC enacted appropriation for FY2006. It is not possible to compare this earmark level with those of past years, since the combination of agencies and departments included in this appropriations law differs from that of past years.

Disclaimer. Unlike accounts and corresponding appropriations, not all earmarks for specific recipients are readily identifiable in an appropriations bill. Opinions can differ regarding a particular allocation as to whether it should be counted as an earmark or is rather a reservation of funds for an authorized program. For these estimates, we have limited our research to the public law and the corresponding joint explanatory statement of the conference committee. Making a more definitive determination would involve checking and comparing a series of other documents including the report language of the House and Senate Appropriations Committees, the agency budget justifications, similar documents from the preceding fiscal year, and possibly the statutory language for the given program.

Science, State, Justice, Commerce, and Related Agencies Appropriations

Summary of Estimated Earmarks (millions of current dollars)

Fiscal Year	Total Appropriation	Estimated Total \$ Value of Earmarks	Earmarks as % of Total Appropriation	Number of Earmarks Identified ^a
2006	\$61,797.1	\$13,585.7	22.0%	2,394

Sources: Earmarks were derived from the FY2006 Science, State, Justice, Commerce, and Related Agencies Appropriations Act (P.L. 109-108) and the joint explanatory statement of the conference committee (H.Rept. 109-272).

a. Of the 2,394 earmarks identified, 228 are in the text of the law, including 175 that are duplicated in the joint explanatory statement of the conference committee. The remaining 2,166 are in the joint explanatory statement only.

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Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations

Methodology. Additional information on the origin of earmarks, earmark definition issues, coverage of relevant documents, and other limitations regarding identifying earmarks is provided in the introduction to this memorandum.

Scope. The FY2006 Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act (TTHUD, P.L. 109-115) is the primary legislative vehicle through which Congress oversaw the budgets of these agencies.¹⁴ In addition to the agencies named in the title, the agencies covered by this act include the U.S. Postal Service (which is structured as a self-supporting government corporation, but under a statutory requirement, annual funding is required to replace forgone revenue); the General Services Administration (GSA); the Office of Personnel Management; the National Archives and Records Administration; and the Executive Office of the President. For general information on this FY2006 appropriations act, see CRS Report RL32905, *Transportation, the Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, the Executive Office of the President, and Independent Agencies: FY2006 Appropriations*, by David Randall Peterman and John Frittelli.

Origin of Earmarks. Funds for projects or organizations in specified locations that appear in the appropriations act or joint explanatory statement are identified as earmarks regardless of their origin or current status. That is, in general we have counted project designations as earmarks regardless of whether earmarked funds were provided for projects listed in authorizing legislation; requested in the Administration budget; added by the House, Senate, or conference committee; or provided for on-going purposes. In general, relatively few earmarks were contained in the FY2006 Administration's budget request.

Definition and Criteria. The FY2006 appropriations act and accompanying joint explanatory statement provide funding for the numerous programs and activities of the agencies. In addition, they contain provisions that direct funding to individual projects and organizations in specific locations, hereafter referred to as earmarks. Earmarks are relatively rare in the text of the act. However, the accompanying joint explanatory statement of the conference report contains numerous earmarks. The explanatory statement explains the intent of the bill language for the guidance of executive agencies and courts.

Apart from funding for the administrative costs of the federal agencies, most of the funding in this appropriations act is distributed to state and local recipients through grant programs. The grants may be distributed according to formulas established in authorizing

¹⁴ As a result of restructuring subcommittees of the Committee on Appropriations in the House and Senate, in FY2004 the Department of Transportation appropriations subcommittee was combined with the Department of the Treasury appropriations subcommittee. In FY2006, additional agencies were added to the subcommittee, now the Subcommittee on Transportation, Treasury, and Housing and Urban Development, The Judiciary, District of Columbia in the House. In the Senate, an appropriations subcommittee covers a similar group of agencies, except that the District of Columbia appropriations are handled by a separate subcommittee. The District of Columbia appropriations are included in this section.

legislation, or they may be distributed through discretionary grant programs. Decisions on how to spend formula funds are made at the state and local level, not by the Administration, although the recipients must abide by federal regulations regarding how the funds may be used. Decisions on how to spend discretionary grant funds are made by the federal agency, which typically uses a competitive process in which would-be recipients apply for funds, with the grants awarded at the discretion of the federal agency according to some criteria established in legislation or regulations. Most earmarks are placed under discretionary grant programs; often the entire amount of funding in the program is earmarked, leaving none to be distributed to applicants through the formal grant-making process.

The term earmark does not appear in the appropriations act or conference report reviewed for this memorandum. For the purposes of this memorandum, an earmark is defined as a directive to spend a specific amount of money (or up to a maximum level) for a specific project or on a specific organization, in a specific location (state or locale). For the most part, the purpose of each earmark is identified by its designation, and its authorization is similarly contained in the line providing the funds for the designee. Such earmark designations have been used in lieu of, or in addition to, administrative procedures for an agency's competitive distribution of funds. Cases where report language directs an agency to give priority to certain projects, but does not provide specific funding levels for the listed projects, are not counted as earmarks.

An attempt was made in compiling the data to exclude funding for general programs and activities (that is, programs and activities that take place in more than one state). The difficulty, however, in distinguishing these categories from projects and organizations in specific locations makes any such distinction subjective. The practical result may be a slight undercounting of earmarks, as a program that does take place in a specific state or locale, but whose locale was not specified in the text, would be counted as a general program and not as an earmark.

The figures reported here do not include earmarks that may be found in sources other than the FY2006 appropriations law and accompanying joint explanatory statement of the conference committee (e.g., authorizing legislation or supplemental appropriations laws).¹⁵ Similarly, they do not reflect other budgetary actions that may bear on the earmarked levels (e.g., rescissions of funds). In addition, there has been no examination of the House and Senate Appropriations Committee reports on the FY2006 appropriations bill. It is worth noting that the joint explanatory statement of the conference committee seeks to incorporate by reference language included in these House and Senate Appropriations Committee reports. The explanatory statement states that report language and allocations in either the House or Senate Appropriations Committee reports that are not changed by the conference committee are approved by the conference committee. Further, the statement says that while the conference report repeats some of the language in the Appropriations Committee reports for emphasis, the conference report does not negate the language in those reports unless a change is expressly stated. Thus, House and Senate Appropriations Committee reports may contain additional provisions that could be viewed as earmarks. As a result, the table below

¹⁵ Authorization acts can contain a significant number of earmarks. For example, the act reauthorizing the surface transportation programs of the DOT, which was enacted on August 10, 2005 (P.L. 109-59), contained an estimated 6,372 earmarks totaling about \$24.3 billion, covering the period FY2006-FY2009. These earmarks are acknowledged, but rarely repeated, in the FY2006 appropriations act and joint explanatory statement, and thus are not systematically included in this estimate of FY2006 appropriations earmarks.

may undercount the number of earmarks resulting from the appropriations act for FY2006. However, any such undercount is likely to be small, as the recent custom of the House and Senate appropriation conferees has been to earmark most if not all of the funding available in discretionary accounts in the conference bill and accompanying explanatory statement.

Estimates. We have identified 2,820 earmarks in the FY2006 TTHUD Appropriations Act and accompanying joint explanatory statement of the conference committee, representing approximately \$4.7 billion. These earmarks comprise approximately 3.4% of the total funding in the law. Two of the agencies covered by the act received the vast majority of the earmarks — the Department of Transportation and the Department of Housing and Urban Development. Thus they have been listed separately in the table below. The earmark data for the FY2006 law are not directly comparable to earmark data compiled for previous years because of a change in the coverage of the law. For instance, the FY2004 and FY2005 versions of the law did not include several of the agencies that are covered by the FY2006 law (e.g., the Department of Housing and Urban Development).

Disclaimer. While an attempt has been made to comprehensively capture earmarks in accordance with the definition and methodology outlined, the figures reported here should not be regarded as definitive. The possibility of using different definitions of earmarks and methodologies to identify them and the lack of clarity of some of the language in the documents consulted could contribute to different results for other attempts to count earmarks in this appropriations act and joint explanatory statement.

**Transportation, Treasury, Housing and Urban Development, the
Judiciary, the District of Columbia, and Independent Agencies
Appropriations
Summary of Estimated Earmarks
(millions of current dollars)**

FY2006 by Agency	Total Appropriation	Estimated Total \$ Value of Earmarks	Earmarks as % of Total Appropriation	Number of Earmarks Identified^a
Title I: Department of Transportation	\$60,677	\$3,241.8	5.3%	1,541
Title III: Department of Housing and Urban Development	\$33,974	\$360.0	1.1%	1,176
All Other Agencies	\$42,972	\$1,103.7	2.6%	103
Total	\$137,623	\$4,705.5	3.4%	2,820

Sources: Earmarks were derived from the FY2006 Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act (P.L. 109-115) and the joint explanatory statement of the conference committee (H. Rept. 109-307).

a. Of the 2,820 earmarks identified, 101 are in the text of the law; all 101 are duplicated in the joint explanatory statement of the conference committee. The remaining 2,719 are in the joint explanatory statement only. For several accounts, the text of the law refers to the projects or “terms and conditions” provided in the accompanying joint explanatory statement. Specifically, the law states, for surface transportation projects under DOT, “...\$600,000,000 shall be made available for surface transportation projects and \$25,000,000 shall be made available for highway priority projects as identified under this section in the statement of the managers accompanying this Act”; for the Community Development Fund under HUD, “...\$310,000,000 shall be available for grants for the Economic Development Initiative (EDI) to finance a variety of targeted economic investments in accordance with the terms and conditions specified in the statement of managers accompanying this Act” and “...\$50,000,000 shall be available for neighborhood initiatives ... [and] shall be provided in accordance with the terms and conditions specified in the statement of managers accompanying this Act”; and under Federal Payment to the Office of the Chief Financial Officer of the District of Columbia in the District of Columbia portion of the law, the funds provided “shall be available for the projects and in the amounts specified in the Statement of the Managers on the conference report accompanying this Act...” The joint explanatory statement lists approximately 1,767 projects under these accounts.

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