



Memorandum

February 23, 2007

TO: Honorable E. Benjamin Nelson
~~Attention: Kate Howard~~

FROM: Clinton T. Brass
Analyst in American National Government
Government and Finance Division

SUBJECT: CRS Questionnaire Regarding Financial Administration of Appropriations-related Earmarks: Selected Information from Executive Department Responses in Tabular Format

This memorandum responds to your request for presentation of selected information, in tabular format, regarding the extent to which executive branch departments use funding for appropriations-related earmarks (focusing primarily on FY2005, but also including prior multi-year and no-year funds) to pay for administrative expenses or other purposes. As discussed, this memorandum supersedes the previous version of the memorandum, dated February 12, 2007, by including information that could not be included in the previous version due to time constraints.

The information in **Table 1** (at the end of this memorandum) was drawn from two sources: (1) a congressional distribution memorandum dated January 26, 2007, that supplied, in narrative format, most of the information that is contained in this memorandum; and (2) two sets of attachments to that memorandum that include departmental responses to a CRS questionnaire that was sent to the departments in January 2006, and that provided the research basis for the congressional distribution memorandum.¹ The congressional distribution memorandum explained how the survey was administered, analyzed department responses, and discussed many caveats regarding interpretation of the department responses. To avoid duplication, this memorandum contains — in addition to the table — only a summary of the caveats that were discussed in the previous January 26, 2007, congressional

¹ CRS Congressional Distribution Memorandum, “To What Extent Do Executive Departments Use Funding for Appropriations-related Earmarks to Pay for Administrative Expenses or Other Purposes?”, Jan. 26, 2007, by Clinton T. Brass. The congressional distribution memorandum is attached for reference. As explained in the congressional distribution memorandum, the first set of attachments contains a complete set of letters from CRS to departments (30 pages) and the departments’ responses received through July 13, 2006 (143 pages). The second set contains departments’ responses received after July 13, 2006 (seven pages). Both sets of attachments are available in electronic PDF format.

distribution memorandum, and therefore should be read in conjunction with that memorandum.

In summary, **Table 1** provides information on whether, and the extent to which, 12 executive branch departments (or their component agencies) charge an assessment or fee to appropriations-related earmarks to pay for administrative or other expenses. The other three departments did not supply information in response to the CRS questionnaire.² Of the 12 responding departments, 6 (the Departments of Education, Housing and Urban Development, Justice, Labor, State, and Veterans Affairs) reported that they do not retain any earmark funds. Six other departments (the Departments of Agriculture, Commerce, Energy, Health and Human Services, Interior, and Transportation) reported varying assessments or fees for some earmark areas (i.e., groups of related earmarks).

Caveats in Interpretation

The information contained in **Table 1** should be interpreted in light of several caveats. First, the table presents information as it was presented by responding departments. CRS did not verify or validate department responses to ensure their accuracy or comprehensiveness. Therefore, it is possible that some of the data are inaccurate or were provided based on a misinterpretation of the CRS questionnaire. In addition, it is possible that an agency omitted certain information in its response to the questionnaire. For example, a department's response might have omitted a citation of statutory authorization for withholding a percentage fee or assessment of an appropriations-related earmark. In such a case, the lack of citation would not necessarily indicate that the agency had no statutory or other authorization to withhold the fee or assessment. Any such determinations of accuracy or comprehensiveness would require further research and analysis.

Second, this memorandum does not define the term *earmark*. Because the definition of the term is a subject of ongoing debate, the CRS questionnaire dealt with this complication by asking departments to define and use the term in the way typically used by an agency's or program's appropriators in Congress, as appropriate. As a result, the information that departments provided presents an implicit variety in definitions of the term. In addition, some departments appeared to provide their own definitions, as opposed to the definitions used by appropriators. This memorandum does not reflect any actions thus far in the 110th Congress by the House or Senate, which have considered various definitional issues.

Third, as discussed in the January 26, 2007, congressional distribution memorandum, departments and agencies appear to use a variety of funding mechanisms for administrative expenses corresponding to earmarks. Any determination of whether a funding mechanism has been appropriately or inappropriately used (e.g., from the legal, accountability, or operational perspectives) would require detailed research into specific earmarks and agencies. Furthermore, without this research, an attempt to alter a funding mechanism could possibly have unanticipated or adverse consequences.

² One department (Department of Defense) said it was "unable to comply" with our request for information. Two departments have not yet replied to the CRS questionnaire (the Departments of Homeland Security and the Treasury).

Table Headings

Table 1 provides selected information about earmark areas in five columns: (1) name or category of department earmark area(s); (2) the percentage rate or dollar amount of any fees or assessments on earmarks; (3) any explanation of how assessments or fees are used; (4) statutory or other authority that the department cited for charging assessments or fees; and (5) other explanations of authority or reasons for assessments or fees (e.g., nonstatutory direction from a congressional committee). Narratives in quotation marks were drawn from department responses to the CRS questionnaire. Detailed explanations of the agency responses can be found in the January 26, 2007, memorandum and its PDF attachments, as cited earlier. Detailed explanations of the questions to which agencies originally responded can be found in **Appendix A** of the congressional distribution memorandum.

I trust that this memorandum is responsive to your request. Please feel free to call me at 7-4536 if I can be of further assistance regarding this, or any other, matter.

Table 1. Department Responses Regarding Financial Administration of Appropriations-related Earmarks

Name or Category of Earmark Area(s)	Fee or Assessment Percentage Rate or Dollar Amount	Explanation of How Fees or Assessments Are Used	Cited Statutory Authority	Other Explanation(s) of Authority or Reasons for Fee or Assessment
Department of Agriculture (USDA)				
Agricultural Research Service (ARS)	“10 percent on all base and new appropriations”	“... to finance management costs associated with the conduct of our nationwide research programs.”		“ARS does not have a separate budget line item to cover management support.”
Animal and Plant Health Inspection Service (APHIS)	“Departmental charges (approximately 2.5% this year, but this percentage varies each year)”	“... to cover expenses related to implementing the President’s Management Agenda (e.g., E-Gov initiatives), Occupational Workers Compensation Act claims and postage, among other things.”		
	“Agency Assessment (approximately 8%)”	“... to cover expenses related to APHIS support units for traditional administrative functions, such as procurement, personnel, budget, travel management, auditing, and cooperative agreement functions. [The Assessment] also includes costs associated with providing automated information technology, economic analysis, regulatory drafting, and public awareness and education.”		“The appropriations structure does not specifically provide for these types of fixed expenses, so they are implicit in each budget request and in the ultimate appropriation.”
	“... program assessment ... ranges between 2.5% to 9%, depending on the size of the program and their available funding ...”	“... to support overall program direction and leadership as well as operational support at the national, regional, and local levels.”		“Again, the appropriations structure does not specifically provide for these types of fixed expenses, so they are implicit in each budget request and in the ultimate appropriation.”

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Name or Category of Earmark Area(s)	Fee or Assessment Percentage Rate or Dollar Amount	Explanation of How Fees or Assessments Are Used	Cited Statutory Authority	Other Explanation(s) of Authority or Reasons for Fee or Assessment
Cooperative State Research, Education, and Extension Service (CSREES)	"4% administrative set-aside"	"... to cover staff and other costs of administering CSREES programs."	"Section 1469 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, P.L. 95-113, as amended"	
	"2.5% set-aside for the Small Business Innovation Research Program (SBIR)"	"... used to fund the SBIR program. This set-aside applies to all research earmarks administered by CSREES."	"Small Business Innovation Development Enhancement Act of 1992, P.L. 102-564"	
	"2% set-aside for the Biotechnology Risk Assessment Program"	"... funds used by the Department of Agriculture for research on biotechnology are used to fund the Biotechnology Risk Assessment program. This set aside applies to a portion of research earmarks administered by CSREES."	"Section 1668 of the Food, Agriculture Conservation and Trade Act of 1990, P.L. 101-624, as amended"	
Forest Service, State and Private Forestry	For "Economic Action Programs," sometimes "\$20,000-\$30,000 per project"	"The Agency makes every effort to direct the entire appropriation to the earmarked projects. However, in certain circumstances, the unit managing the project will retain [funds] in order to cover administrative expenses."		

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Name or Category of Earmark Area(s)	Fee or Assessment Percentage Rate or Dollar Amount	Explanation of How Fees or Assessments Are Used	Cited Statutory Authority	Other Explanation(s) of Authority or Reasons for Fee or Assessment
Forest Service, National Forest System, Capital Improvement and Maintenance, and Land Acquisition	For Capital Improvement and Maintenance projects, “[a]dministrative expenses are included within the total cost of each project.” (Percentage or dollar amount not specified.)	“Capital Improvement and Maintenance projects are earmarked at the full implementation cost of the project, an amount that includes indirect costs, contract preparation, and contract administration costs.”		“Any capability statements, hearing testimony, or Congressional Q’s and A’s consistently portray costs of projects that have Congressional interest in this manner.”
	For National Forest System earmarks, “in certain circumstances, the administrative costs are retained by the unit administering the project.” (Percentage or dollar amount not specified.)	“The Agency makes every effort to direct the entire funding amount [to] National Forest System earmarked projects. However, in certain circumstances, the administrative costs are retained by the unit administering the project.”		
Grain Inspection, Packers, and Stockyards Administration (GIPSA)	GIPSA “sometimes retains a portion of [an] earmarked amount for administrative expenses.” (Percentage or dollar amount not specified.)	“The reason for using a portion of the earmarked funds is to cover staff costs of administering the earmark.”		

Name or Category of Earmark Area(s)	Fee or Assessment Percentage Rate or Dollar Amount	Explanation of How Fees or Assessments Are Used	Cited Statutory Authority	Other Explanation(s) of Authority or Reasons for Fee or Assessment
Natural Resources Conservation Service (NRCS)	"NRCS does retain some portion of some earmark funds, but for activities and costs that support the overall purposes." (Percentage or dollar amount not specified.)	"Since direct charge has been implemented[,] the agency is being held accountable for demonstrating that the work performed is in line with the account or program that receives benefits of the services provided. Costs for administering earmarks vary depending upon negotiations of work to be performed between the State Conservationist and the earmark recipient. During the contract developed with the recipient, deliverables and costs are negotiated and identified in the contract. Some examples include contract development, contract payment, administration and oversight."		
Department of Commerce (DOC)				
DOC bureaus generally	"[DOC] bureaus do not always send the full earmarked amount to the recipient. In some cases, the bureau retains a portion of the earmarked funding..."	"... for: General administration of the programs within earmark areas; Direct costs associated with administering/processing the earmark; Activities conducted in partnership with the external earmark recipient."		

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Name or Category of Earmark Area(s)	Fee or Assessment Percentage Rate or Dollar Amount	Explanation of How Fees or Assessments Are Used	Cited Statutory Authority	Other Explanation(s) of Authority or Reasons for Fee or Assessment
National Oceanic and Atmospheric Administration (NOAA)	"[Sometimes]... NOAA and the [earmark] recipient agree to share the available earmark funding to conduct a collaborative activity."			"... Congress or the earmark recipient sometimes want NOAA to play an active role in carrying out the intent of the earmark."
NOAA	"In most years prior to and after 2004, administrative assessments against earmarks were commonplace, although not universal, throughout NOAA. Historically, the application of administrative assessments by NOAA varies from year to year, and from earmark to earmark."			DOC explained that the absence of a separate Salaries and Expenses (S&E) in these years made "administrative assessments" of earmarks necessary in order to cover earmark-related costs.
NOAA earmarks funded with "no-year" money and NOAA/National Ocean Service (NOS) "construction projects" funded with "no-year" money	"... any administrative charges on earmarks intended for external recipients in years prior to FY 2004 would not have exceeded 5 percent."			

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Name or Category of Earmark Area(s)	Fee or Assessment Percentage Rate or Dollar Amount	Explanation of How Fees or Assessments Are Used	Cited Statutory Authority	Other Explanation(s) of Authority or Reasons for Fee or Assessment
International Trade Administration (ITA), "Textiles" earmarks	\$237,000 (out of \$12.8 million)	"... for administrative overhead, to cover the direct costs related to administering earmarks."		
Department of Defense (DOD)				
	Unknown; DOD said "we regret that we are unable to comply" [with the request for information].	DOD provided this explanation: "The magnitude of your request outstrips our ability to provide you with the extensive amount of data in the format that you desired. With nearly 3000 line items, the amount of time and effort necessary to meet your request would far exceed the staff and time available."		
Department of Education (ED)				
	"The Department does not withhold or otherwise retain any portion of any earmark for administrative or other unrelated purposes."			

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Name or Category of Earmark Area(s)	Fee or Assessment Percentage Rate or Dollar Amount	Explanation of How Fees or Assessments Are Used	Cited Statutory Authority	Other Explanation(s) of Authority or Reasons for Fee or Assessment
Department of Energy (DOE)				
	<p>“The policy of the Department of Energy is to award the full amount of the Congressional earmark unless otherwise indicated by legislation...”</p>			<p>DOE cited two examples of legislation that require assessments be taken from earmarks: the “Small Business Innovation Research Program Reauthorization Act of 2000” (SBIR) and the “Small Business Technology Transfer Program Reauthorization Act of 2001” (STTR).</p>
Science	<p>\$2.3 million (out of nearly \$80 million)</p>		<p>“SBIR/STTR Assessment on R&D”</p>	
Department of Health and Human Services (HHS)				
<p>Health Resources and Services Administration (HRSA): Public Health Improvement (Facilities and Other Purposes)</p>	<p>“Up to 1% is allocated ...”</p>	<p>“... for administrative expenses.”</p>		<p>“The conferees specifically permit this in House Report 108-792, <u>Conference Report to Accompany HR 4818 – Consolidated Appropriations Act, 2005 (p. 1157).</u>”</p>
HRSA: Denali Commission	<p>\$100,000 (out of \$40 million)</p>	<p>“... used for technical assistance.”</p>		

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Name or Category of Earmark Area(s)	Fee or Assessment Percentage Rate or Dollar Amount	Explanation of How Fees or Assessments Are Used	Cited Statutory Authority	Other Explanation(s) of Authority or Reasons for Fee or Assessment
Administration on Aging (AOA): Program Innovations	"Up to 1.3% is withheld ..."	" ... to cover costs related to grant peer review as well as unexpected costs (e.g., payments for canceled obligations, Secretarial transfers, etc.)."		
Food and Drug Administration (FDA): Food Technology Evaluation	"None by FDA. The Army, which handles the payment for FDA, charges a 6% administrative fee."			
Department of Homeland Security (DHS) [<i>Response not yet received from department.</i>]				

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Name or Category of Earmark Area(s)	Fee or Assessment Percentage Rate or Dollar Amount	Explanation of How Fees or Assessments Are Used	Cited Statutory Authority	Other Explanation(s) of Authority or Reasons for Fee or Assessment
Department of Housing and Urban Development (HUD)				
	<p>“All earmarked funds are obligated for the purposes authorized by Congress. HUD does not retain any portion of earmarked funds for other purposes, unless other purposes are specifically provided for in the appropriation act or conference report, or subsequently approved in the Department’s Operating Plan or Technical Assistance Plan.”</p>			

Name or Category of Earmark Area(s)	Fee or Assessment Percentage Rate or Dollar Amount	Explanation of How Fees or Assessments Are Used	Cited Statutory Authority	Other Explanation(s) of Authority or Reasons for Fee or Assessment
<p>Department of the Interior (DOI)</p> <p>DOI earmarks, generally</p>				<p>“While the vast majority of pass-through earmarks go fully to the recipient, depending on how indirect costs are funded within a Bureau’s budget structure, there are situations where [sic] the full amount of earmarked may not be made available to direct program/project activities;” “... the Department has emergency transfer authority to address wildland fire and other disasters. This authority is enacted annually in general provisions 101 and 102 of the Interior [appropriations] bill. The borrowings related to these transfers are not always replenished. Also, in recent years, Congress has often funded new land acquisition and construction projects through prior-year unobligated balances. These acts sometimes effect [sic] construction and land acquisition earmarks...”</p>

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Name or Category of Earmark Area(s)	Fee or Assessment Percentage Rate or Dollar Amount	Explanation of How Fees or Assessments Are Used	Cited Statutory Authority	Other Explanation(s) of Authority or Reasons for Fee or Assessment
Fish and Wildlife Service (FWS), construction (no-year funding)	\$195,000 (out of over \$15 million)	"... for project management, engineering service, and refuge review."		
FWS, land acquisition (no-year funding)	\$1.4 million (out of nearly \$34.7 million)	"... to support administrative overhead..."		
Minerals Management Service (MMS) (no-year funding)	\$229,000 (out of nearly \$4.8 million)	"administrative costs"	Minerals Resources Research Act of 1996	
United States Geological Survey (USGS)	\$3,000 (out of \$98,000)	"... to cover administrative costs."		
Department of Justice (DOJ)				
	DOJ reported that three components having earmarks pertaining to the CRS questionnaire do not retain any earmarked funding.			

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Name or Category of Earmark Area(s)	Fee or Assessment Percentage Rate or Dollar Amount	Explanation of How Fees or Assessments Are Used	Cited Statutory Authority	Other Explanation(s) of Authority or Reasons for Fee or Assessment
Department of Labor (DOL)				
	<p>“In general, DOL awards the entire earmarked amount to the identified recipient, without deducting an amount for administrative expenses.”</p>			
Department of State (State)				
	<p>“As a matter of practice, the Department passes the full amount of any congressional earmark, less any rescission required by law, to the organization identified in the bill or corresponding statement of managers.”</p>			

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Name or Category of Earmark Area(s)	Fee or Assessment Percentage Rate or Dollar Amount	Explanation of How Fees or Assessments Are Used	Cited Statutory Authority	Other Explanation(s) of Authority or Reasons for Fee or Assessment
Department of Transportation (DOT)				
Federal Transit Administration (FTA), Bus and Bus Facilities program	“FTA reduces each earmark by the one percent allowed by statute for oversight if the entire program is earmarked. If all funds are not earmarked, then FTA uses the amount above the earmarked projects or reduces the set-aside from each project to ensure that the one percent is available for oversight of the program funds.”	“Oversight and project management oversight includes activities to oversee the construction of a major project, activities to review and audit the safety and security, procurement, management, and financial compliance of a recipient or subrecipient of funds for specific programs under the transit title.”	49 U.S.C. § 5327	
Department of the Treasury (Treasury) [<i>Response not yet received from department.</i>]				

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Name or Category of Earmark Area(s)	Fee or Assessment Percentage Rate or Dollar Amount	Explanation of How Fees or Assessments Are Used	Cited Statutory Authority	Other Explanation(s) of Authority or Reasons for Fee or Assessment
Department of Veterans Affairs (VA)				
	<p>“VA consistently carries out Congressional directives, as outlined in our appropriations act. The Department does not charge an administrative fee for processing earmarked funds.”</p>			