

# Appropriations Report Language: Overview of Development and Components

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# Appropriations Report Language: Overview of Development and Components

Congressional reports accompany appropriations measures when they are reported by the House and Senate Appropriations Committees or when the House and Senate use a conference committee to resolve differences between the versions of an appropriations measure as passed by their respective chambers. If a method other than a conference committee is used to negotiate the final version of an appropriations measure, an explanatory text may be printed or entered in the *Congressional Record*. Although the language contained in these reports is not considered binding in the same manner as the statutory language of appropriations acts, report language plays an essential role in the congressional consideration of appropriations measures and affects how federal agencies interpret and obligate the funds provided in those measures. The House and Senate Appropriations Committees have developed specific components and committee practices related to report language that differ in important ways from how other committees draft and use congressional reports. In addition, chamber rules require the inclusion of specific types of information about the contents of appropriations measures in order to facilitate their congressional consideration. This report provides an overview of how the House and Senate Appropriations Committees develop appropriations report language as well as its key components.

In current practice, appropriations report language has a number of components. Much of the language is devoted to a “section-by-section” analysis of the accounts within each of the corresponding appropriation bills. It also includes tables that provide a “comparative statement of new budget authority” between what is provided in the bill, the prior year’s appropriation, and the amounts requested in the President’s budget. Report language also typically includes directives to the agencies funded in the bill. These directives can address the form of budget justifications, other reporting guidelines and committee initiatives, “program, project, or activity” (PPA) definitions, reprogramming and other notification guidelines, and specific programmatic requests. The Congressional Budget Act of 1974 also requires that House and Senate Appropriations Committee reports for regular and supplemental appropriations measures include a statement comparing levels in the measure to the applicable 302(b) suballocations. House and Senate rules also mandate that committee reports for general appropriations measures provide lists of appropriations not authorized by law and the disclosure of congressionally directed spending or community project funding items (commonly referred to as “earmarks”). In addition, the House requires that rescissions and transfers, as well as language changing existing law, be listed in committee reports accompanying general appropriations measures.

## Contents

Introduction .....	1
Appropriations Report Language Development.....	2
Agency, Public, and Member Input.....	2
Committee and Initial Floor Consideration.....	3
Resolving Differences .....	4
Continuing Resolutions .....	5
Appropriations Report Language Components .....	5
Overview of Accounts, Funding Allocations, and Other Directives .....	6
Overview of Accounts (“Section-by-Section” Summaries).....	6
Funding Allocations .....	6
Other Directives .....	7
Comparative Statement of New Budget Authority.....	9
Directives Related to Budget Preparation and Execution .....	11
Form of Budget Justifications .....	11
Other Reporting Guidelines and Committee Initiatives.....	12
“Program, Project, or Activity” Definitions.....	12
Reprogramming Guidelines .....	13
Comparison with the Budget Resolution .....	15
Language Changing Existing Law .....	17
Appropriations Not Authorized by Law .....	19
Rescissions and Transfers .....	24
Disclosure of Congressionally Directed Spending and Community Project Funding (“Earmarks”) .....	25

## Figures

Figure 1. Detailed Funding Allocation .....	7
Figure 2. Comparative Statement of New Budget Authority .....	10
Figure 3. Specification of Programs, Projects, and Activities .....	13
Figure 4. Comparison with the Budget Resolution .....	17
Figure 5. Changes in the Application of Existing Law.....	19
Figure 6. Senate List of Appropriations Not Authorized by Law.....	21
Figure 7. House List of Appropriations Not Authorized by Law .....	23
Figure 8. Rescissions and Transfers .....	25
Figure 9. Disclosure of Earmarks and Congressionally Directed Spending .....	27
Figure 10. Statement Declaring No Earmarks or Congressionally Directed Spending Items Included in Bill or Accompanying Report.....	28

## Contacts

Author Information.....	28
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## Introduction

Since the first Congress, the congressional appropriations process has involved the annual consideration of measures to fund the activities of most federal agencies and departments.<sup>1</sup> The process currently assumes the consideration of 12 regular appropriations bills to provide discretionary budget authority for the upcoming fiscal year.<sup>2</sup> If some or all of the regular appropriations measures are not enacted before the beginning of the new fiscal year on October 1, one or more continuing resolutions (CRs) may be enacted to provide temporary appropriations until either regular appropriations are enacted or the fiscal year ends. Congress may also consider supplemental appropriations to provide additional funds in the current fiscal year, typically to address emergency or other additional funding needs.<sup>3</sup>

A number of internal and external institutional factors influence Congress's consideration of appropriations measures. Long-standing congressional rules and practices encourage the separation of policy and funding decisions ("authorizations" and "appropriations," respectively) as well as constraints on the overall level of appropriations based on previously agreed-upon fiscal policies and goals, such as a budget resolution or statutory spending caps. External considerations, which largely derive from the relationship between Congress and the agencies funded through the annual appropriations process, include the degree of flexibility granted to agencies for determining how funds should be spent and congressional oversight of agencies' use of appropriated funds.

The House and Senate Appropriations Committees primarily use report language associated with regular appropriations measures for two broad purposes. First, report language explains the provisions of an appropriations measure to the Representatives and Senators who will subsequently consider the accompanying measure. Second, Congress uses report language to communicate with the federal agencies receiving the appropriations by providing supplementary information and an explanation of the measure's legislative intent, which often includes a range of directives to the agency.

Although report language itself does not meet the bicameralism and presentment requirements of Article I, Section 7 of the Constitution—and therefore does not bind agencies in the same manner as statutory appropriations language—agencies are generally expected to comply with a report's directives. One congressional scholar observed, "The criticisms and suggestions carried in the reports accompanying each bill are expected to influence the subsequent behavior of the agency. Committee reports are not the law, but it is expected that they be regarded almost as seriously."<sup>4</sup> Additionally, Congress may choose to incorporate certain provisions of the appropriations

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<sup>1</sup> An *appropriation* is a type of *budget authority* that provides the legal authority for agencies to incur financial *obligations* and to make payments (or *outlays*) from the Treasury for specific purposes. For a further explanation of these terms, see U.S. Government Accountability Office (GAO), *A Glossary of Terms Used in the Federal Budget Process*, GAO-05-734SP, September 2005, pp. 20-23, <https://www.gao.gov/assets/gao-05-734sp.pdf>.

<sup>2</sup> The congressional budget process distinguishes between *discretionary* spending, which is controlled through appropriations acts under the jurisdiction of the House and Senate Appropriations Committees, and *direct (or mandatory)* spending, which is controlled through legislation under the jurisdiction of the legislative committees of Congress. For more information, see CRS Report R46240, *Introduction to the Federal Budget Process*, by James V. Saturno.

<sup>3</sup> For more information on the congressional appropriations process, see CRS Report R47106, *The Appropriations Process: A Brief Overview*, by James V. Saturno and Megan S. Lynch.

<sup>4</sup> Richard Fenno, *The Power of the Purse: Appropriations Politics in Congress* (Boston: Little, Brown and Company, 1966), p. 18.

committee reports into the text of appropriations measures via statutory reference. That is, the text of an appropriations measure may explicitly provide that specific language from the accompanying report be considered statutory.<sup>5</sup> For these reasons, congressional interest in the appropriations process also includes the development of the report language that accompanies those measures.

Report language is typically used at two stages of the legislative process to supplement the legislative text of an appropriations measure. First, written reports may accompany the version of a bill reported by the House or Senate Appropriations Committee to its respective parent chamber. The House requires that written reports accompany bills reported by all committees, first implementing such a requirement in 1880.<sup>6</sup> While Senate rules do not require them, written reports generally accompany or are otherwise associated with measures reported by committees. Second, when the House and Senate have resolved the differences between their separate versions of a measure, they provide an explanatory statement prior to final action by each chamber.

This report provides an overview of appropriations report language. The first section of the report summarizes how appropriations report language is developed. The second section explains the origins, purposes, and forms of common or required report language components that are particular to appropriations measures, with illustrative examples.

## Appropriations Report Language Development

### Agency, Public, and Member Input

In general, the language in a report accompanying an appropriations measure is developed by the appropriations subcommittee responsible for drafting that measure before being approved by the full committee in each chamber. While it is a committee product, it has significant importance for the congressional consideration of the appropriations measure it accompanies as well as agency budget execution once the measure becomes law. When drafting reports, the appropriations subcommittees engage in certain formal and informal practices through which they may receive input on report language from a range of stakeholders—both within and outside of Congress. For example, information from an agency’s budget justification submitted to the appropriations committees after the President’s budget request may inform the subcommittees’ prospective funding allocations and report directives.<sup>7</sup> Other communications between the subcommittees and agencies, both before and after the President’s budget submission, may also help inform the language that is ultimately included in the reports. In addition, stakeholders and other interested groups outside of Congress may communicate their report language and other appropriations preferences to the appropriations committees through letters or other communications.

Members of the House and Senate may also communicate to the appropriations subcommittees their preferences with regard to each of the 12 annual appropriations bills and accompanying

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<sup>5</sup> For an example of this type of statutory incorporation by reference, see p. 651 of the FY2021 Consolidated Appropriations Act (P.L. 116-260). For more information, see CRS Report R46899, *Regular Appropriations Acts: Selected Statutory Interpretation Issues*, by Sean M. Stiff.

<sup>6</sup> Charles W. Johnson, John V. Sullivan, and Thomas J. Wickham Jr., *House Practice: A Guide to the Rules, Precedents, and Procedures of the House*, 115<sup>th</sup> Cong., 1<sup>st</sup> sess. (Washington: GPO, 2017), ch. 11, sec. 28. The current requirement for committees to file reports is codified in House Rule XIII, clause 2.

<sup>7</sup> For more on agency budget justifications, see CRS Report R47090, *Executive Agency Justification of the President’s Budget: In Brief*, by Dominick A. Fiorentino.

report language. While such communications might occur throughout the budget cycle, the committees encourage Members to express their preferences for the upcoming fiscal year in the beginning stages of the annual appropriations process. Through this process, Members may submit “programmatic and language requests,” as well as requests for congressionally directed spending or community project funding items (commonly referred to as “earmarks”).

Programmatic requests are to fund an account in the bill or report at a specified level. Language requests are for specific bill or report language intended to encourage or direct some action be taken—or not taken—by an agency. All of these requests are usually required to be submitted to the appropriations subcommittees shortly after the President’s budget request has been presented to Congress, generally in the late winter or early spring.<sup>8</sup> The parameters for these requests may vary for each appropriations bill and are typically specified through “Dear Colleague” letters or other communications from the subcommittees.

Once programmatic, language, and earmark requests for a bill are submitted, each appropriations subcommittee must decide whether to include the requested language in the bill or accompanying report, include a modified version of the request, or not include the request at all. In some instances, if language is requested for inclusion in the bill, the subcommittee might decide to include a version of that language in the committee report instead.

## **Committee and Initial Floor Consideration**

Each regular appropriations bill reported from the appropriations committees is usually accompanied by a written committee report. Subcommittee and committee preparation of an appropriations bill for a markup also includes developing a draft of the committee report that will accompany it. When the House or Senate Appropriations Committee or their subcommittees meet to mark up each appropriations bill, amendments to the draft report may also be offered and considered. In the House, the final version of the House Appropriations Committee’s written report is filed at the same time the bill is reported to the House. In the Senate, it is typically filed at the same time the bill is reported or soon thereafter. Regular appropriations measures that are not reported from the Senate Appropriations Committee are often associated with draft committee report text that is released in the context of negotiations to resolve differences.<sup>9</sup>

Since the report is a product of that committee’s deliberations rather than a legislative measure itself, it is not directly amendable during the subsequent floor consideration of the appropriations measure. However, Members have previously offered floor amendments that would have the effect of directly or indirectly superseding the directives or funding allocations in the committee report language.<sup>10</sup>

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<sup>8</sup> For more, see CRS Report R47031, *The House Appropriations Process: Opportunities for Member Participation*, by Megan S. Lynch. Because supplemental appropriations measures are considered on an as-needed basis, there is not a formal process for making programmatic requests to the Appropriations Committees.

<sup>9</sup> For example, the Senate Appropriations Committee did not report any of the FY2023 regular appropriations bills. Instead, the committee chair issued a press release in July 2022 containing draft bill text and explanatory statements for all 12 regular appropriations bills. See Senate Appropriations Committee, “Chairman Leahy Releases Fiscal Year 2023 Senate Appropriations Bills,” press release, July 28, 2022, <https://www.appropriations.senate.gov/news/majority/breaking-chairman-leahy-releases-fiscal-year-2023-senate-appropriations-bills>.

<sup>10</sup> For example, during the 117<sup>th</sup> Congress, the House Appropriations Committee report for the FY2022 Energy and Water Development appropriations bill contained a provision that allocated \$20 million for the Office of Economic Impact and Diversity within the Department of Energy’s “Departmental Administration” account. Subsequently, an amendment (Amendment 94 in H.Rept. 117-109, considered and disposed en bloc in H.Amdt. 83, to H.R. 4502 [117<sup>th</sup> Cong.]; House debate, *Congressional Record*, vol. 167, no. 131 [July 27, 2021], pp. H4071-H4074) was offered on the House floor that proposed making none of the funds appropriated in the act available for the Office of Economic

## Resolving Differences

When congressional negotiators resolve differences between the House and Senate versions of an appropriations measure, those negotiators are appointed from among the membership of the House and Senate Appropriations Committees.<sup>11</sup> In addition to producing a final version of the measure, these negotiators also agree to further report language in the form of a Joint Explanatory Statement (JES) or other explanatory text. If a conference committee is used to resolve the differences between the chambers, the conference report is filed with the House and printed as a House numbered report, and it is accompanied by the JES. If another method is used to negotiate the final version of an appropriations measure, the explanatory text may be printed in some other form or it may be entered in the *Congressional Record*. In such instances, a provision in the measure usually indicates that the explanatory text is to be treated by the agencies in the same way as a formal JES.<sup>12</sup> This explanatory text is usually considered the most authoritative source of congressional intent with regard to that measure. Once the final version of the legislative text has been agreed to by the House and Senate, there are no further formal opportunities to make changes to the accompanying report.

The explanatory text may be used to reconcile any differences reflected in the House and Senate Appropriations Committees' reports. For example, the House and Senate committee report language may address an issue in ways that are difficult to reconcile harmoniously. In these instances, the explanatory text normally seeks to clarify how the affected agency is to proceed. In other cases, one committee might have included language in its report that addresses an issue on which the other committee's report is silent. If disagreement exists between the committees with regard to this report language, the explanatory statement might clarify what action the agency should take. On the other hand, if the original committee report language is not in conflict or is ultimately acceptable to both committees, the explanatory statement might be silent due to an expectation that the agency will follow the original directive.

In current practice, the explanatory statement accompanying the final version of an appropriations measure usually instructs explicitly how the explanatory text relates to the language contained in any applicable appropriations committee reports. For example, the explanatory statement accompanying the FY2023 Consolidated Appropriations Act (P.L. 117-328), which included all 12 of the FY2023 regular appropriations acts (Divisions A-L), contained such instructions as part of the explanation of each of the 12 acts. The following instruction was for the Department of Agriculture, Rural Development, and Food and Drug Administration regular appropriations act (Division A of P.L. 117-328):

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Impact and Diversity. Had that amendment been adopted and become law as part of the measure, it would have prevented the \$20 million in set-aside funds from being spent for the office's activities outlined in the committee report.

<sup>11</sup> For more information on procedures related to resolving differences between the chambers, see CRS Report 98-696, *Resolving Legislative Differences in Congress: Conference Committees and Amendments Between the Houses*, by Elizabeth Rybicki.

<sup>12</sup> For example, during the 117<sup>th</sup> Congress, differences between the chambers with regard to H.R. 2617, an omnibus measure containing all 12 regular appropriations bills for FY2023, were resolved using an amendment exchange and not a conference report. On December 20, 2022, explanatory text related to that omnibus measure was entered into the *Congressional Record* (vol. 168, no.198, December 20, 2022, pp. S7819-S8551). Section 4 of H.R. 2617 provided that "the explanatory statement regarding this Act, printed in the Senate section of the Congressional Record on or about December 19, 2022, and submitted by the chair of the Committee on Appropriations of the Senate, shall have the same effect with respect to the allocation of funds and implementation of divisions A through L of this Act as if it were a joint explanatory statement of a committee of conference."



The explanatory statement accompanying this division is approved and indicates congressional intent. Unless otherwise noted, the language set forth in H.Rept. 117-392 carries the same weight as language included in this joint explanatory statement and should be complied with unless specifically addressed to the contrary in this joint explanatory statement. While some language is repeated for emphasis, it is not intended to negate the language referred to above unless expressly provided herein.<sup>13</sup>

As a consequence of these interactions between a JES (or other such explanatory text) and committee reports, the committee reports that accompany the bills initially reported by the House and Senate Appropriations Committees might also provide an important indication of congressional intent even after an appropriations measure has been enacted.

## Continuing Resolutions

In recent years, appropriations measures that provide continuing appropriations (commonly referred to as a “continuing resolution” or “CR”) based on a funding formula have typically not been accompanied by report language, even when such appropriations are for the remainder of the fiscal year.<sup>14</sup> For example, for the FY2013 Consolidated and Further Continuing Appropriations Act (P.L. 113-6), which contained both regular appropriations for certain agencies and full-year continuing appropriations for others, detailed explanatory text was provided only for the accounts that received regular appropriations.<sup>15</sup> For full-year CRs, the committee report language from the current fiscal year that accompanies the regular appropriations covered by that CR may provide some indication of congressional intent.<sup>16</sup> The funding provided via the CR’s formula may be difficult to reconcile with the allocations and directives in the relevant committee reports, however, and may in turn limit those reports’ applicability. Furthermore, the lack of relevant explanatory text accompanying the CR may further limit the effectiveness of the directives in the current year House and Senate committee reports when they appear to conflict.

## Appropriations Report Language Components

The components of report language that are specific to appropriations measures have evolved in the context of both internal and external congressional factors. In many cases, the House and Senate Appropriations Committees developed components and related practices to better enable their oversight of federal agencies. Other components originated as a result of chamber rules requiring the inclusion of certain information to aid the congressional consideration of appropriations measures. In response to these various needs, certain categories of report language are used each fiscal year in many or all of the appropriations committee reports and, in some cases, a JES (or other explanatory text) that resolves differences between House and Senate committee reports. This section describes the origin, purpose, and current form of report language components and provides illustrative examples of each.

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<sup>13</sup> *Congressional Record*, vol. 168, no. 198 (December 20, 2022), p. S7820.

<sup>14</sup> Although not current practice, the Appropriations Committees have previously considered CRs in committee and developed accompanying report language as recently as the 102<sup>nd</sup> Congress (see, for example, H.Rept. 102-216 and H.Rept. 102-266). As the form of appropriations in CRs usually differs from regular and supplemental appropriations measures, many of the report language components for the committee reports accompanying those CRs also differ from those that are discussed in this report.

<sup>15</sup> Consolidated and Further Continuing Appropriations Act, 2013, 127 Stat. 198-437.

<sup>16</sup> CRs typically fund activities identified with reference to appropriations measures for a previous fiscal year or un-enacted appropriations measures for the current fiscal (or budget) year. These referenced measures or laws are the CR’s “coverage.” For more, see CRS Report R46595, *Continuing Resolutions: Overview of Components and Practices*.



## Overview of Accounts, Funding Allocations, and Other Directives

### Overview of Accounts (“Section-by-Section” Summaries)

The basic unit of appropriations bills is the account, which generally includes similar programs, projects, or other related budgetary items (such as salaries and employee expenses or research and development activities). Larger agencies typically receive appropriations to multiple accounts, while smaller agencies may receive all of their funding through a single account.

The bulk of the House and Senate reports accompanying regular appropriations bills provide an overview of each account in the bill. This practice derives from the more general practice that congressional reports accompanying legislation summarize each section or title of the measure. These descriptions are often referred to as “section-by-section” (or “title-by-title”) summaries. Appropriations bills are organized by unnumbered headings, with each heading generally corresponding to an account. As a result, section-by-section summaries of appropriations bills are organized by account and also include short descriptions of other provisions included in the bill that are not part of the appropriations accounts. Such provisions may include “administrative provisions” specific to particular accounts or agencies, as well as “general provisions” more broadly applicable to all funds in the bill (or a specified title of the bill).<sup>17</sup>

Account-by-account summaries provide an explanation of the purpose of each of the bill’s accounts and describes the programs and activities funded in the bill. These descriptions are typically framed as a justification of the funding levels proposed for that account, as compared to those provided the previous fiscal year and proposed in the President’s budget request. These committee explanations and justifications of recommended funding levels provide context for Members as they evaluate the measure and any potential floor amendments.

### Funding Allocations

In many instances, report language includes a more detailed allocation of funds within each account than provided in the bill itself. For example, the FY2023 Departments of Labor, Health and Human Services, and Education appropriations bill reported by the House Appropriations Committee (H.R. 8295) contained the “Birth Defects, Developmental Disabilities, Disabilities and Health” account within the Department of Health and Human Services’ Health Resources and Services Administration. The bill provided a lump-sum appropriation of \$225,060,000 with no further allocation of the funds in the statute. The accompanying committee report (H.Rept. 117-403), shown in **Figure 1**, recommended that the account’s overall appropriation be divided into the following specific allocations for certain purposes:

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<sup>17</sup> Some reports also include policy or program highlights that address multiple accounts or the entire bill prior to the account-by-account summary. See, for example, H.Rept. 116-447, pp. 2-5, and S.Rept. 115-289, pp. 8-20.

**Figure I. Detailed Funding Allocation**

H.Rept. 117-403 accompanying the FY2023 Departments of Labor, Health and Human Services, and Education appropriations bill, as reported by the House Appropriations Committee (H.R. 8295)

Budget Activity	FY 2023 Committee
Birth Defects .....	\$19,000,000
Fetal Death .....	1,900,000
Fetal Alcohol Syndrome .....	12,000,000
Folic Acid .....	3,150,000
Infant Health .....	8,650,000
Autism .....	33,100,000
Disability & Health .....	49,000,000
Tourette Syndrome .....	2,500,000
Early Hearing Detection and Intervention .....	10,760,000
Muscular Dystrophy .....	7,500,000
Attention Deficit Hyperactivity Disorder .....	1,900,000
Fragile X .....	2,000,000
Spina Bifida .....	7,500,000
Congenital Heart .....	8,250,000
Public Health Approach to Blood Disorders .....	10,900,000
Hemophilia Activities .....	3,500,000
Hemophilia Treatment Centers .....	5,100,000
Thalassemia .....	2,100,000
Neonatal Abstinence Syndrome .....	3,250,000
Surveillance for Emerging Threats to Mothers and Babies .....	33,000,000

Source: H.Rept. 117-403, p. 83.

Although funding and other directives that appear only in report language do not establish a statutory requirement, the Appropriations Committees generally expect that the agencies will adhere to them.<sup>18</sup> The following statement from the report accompanying the FY2021 Commerce, Justice, Science, and Related Agencies regular appropriations bill reported by the House Appropriations Committee (H.Rept. 116-55, accompanying H.R. 7667) illustrates one way that the Appropriations Committees might respond to a recalcitrant agency:

In the absence of comity and respect for the prerogatives of the Appropriations Committees and the Congress in general, the Committee may opt to include specific program limitations and details in legislation and remove language providing the flexibility to reallocate funds. Under these circumstances, programs, projects, and activities become absolutes and the Executive Branch shall lose the ability to propose changes in the use of appropriated funds except through legislative action.<sup>19</sup>

## Other Directives

The appropriations committees also use the section-by-section summaries to provide additional directives to the agencies. These directives are primarily used to explain the committees' intent for how the instructed agencies should use a particular appropriation during the upcoming fiscal

<sup>18</sup> Although there is no systematic review available about agency compliance with report directives, an analysis of the Food and Drug Administration found that the agency complied with the majority of the Appropriations Committees' report directives. See Laura E. Dolbow, "Agency Adherence to Legislative History," *Administrative Law Review*, vol. 70, no. 3 (Summer 2018), pp. 569-628. Past analysis of the appropriations process has also found strong anecdotal evidence that agencies sought to comply with report directives. See Fenno, *The Power of the Purse*, pp. 291-293; and Michael W. Krist, *Government Without Passing Laws: Congress' Nonstatutory Techniques for Appropriations Control* (Chapel Hill: University of North Carolina Press, 1969), pp. 64-82.

<sup>19</sup> H.Rept. 116-455, p. 11.

year and to make other administrative requests of the agencies. Most committee reports typically include a large number of directives, ranging from general suggestions and warnings to precise instructions and exhortations. Despite their number and variety, the appropriations committees have developed a general phraseology to differentiate more suggestive report directives from those that provide precise and prescriptive instructions to an agency.<sup>20</sup> As one budget process scholar noted:

[Appropriations committee] report language is carefully crafted and sometimes negotiated with the affected agency. The reports frequently use words such as *assumes*, *notes*, *requests*, *expects*, *directs*, and *requires*. These words are not synonymous—each has its own nuance and intent. However, even the most permissive words offer guidance that agencies do not lightly disregard.<sup>21</sup>

The following examples show how this phraseology has been used in recent appropriations committee reports. Both examples are taken from the House Appropriations Committee’s report (H.Rept. 117-392) that accompanied the FY2023 Department of Agriculture, Rural Development, and Food and Drug Administration regular appropriations bill reported by the committee (H.R. 8239).

In cases where the Appropriations Committees wish to provide a higher degree of flexibility to an agency, report directives will typically use words such as *supports*, *encourages*, *urges*, or *may*. For example, the report language corresponding to the Agricultural Research Service (ARS) “Salaries and Expenses” account included the following directive:

Food Safety and Food Defense Research. – The Committee supports research in food safety to enhance food defense and security, and encourages ARS to develop new technologies and capabilities in food safety that will reduce and eliminate threats to the food and agriculture supply chain.<sup>22</sup>

The Appropriations Committees often make requests of an agency to take a more specific action. Such report directives typically use words such as *directs*, *instructs*, and *shall*. The following directive was included in the report’s summary of the Food and Drug Administration (FDA) “Salaries and Expenses” account:

Blood Donor Procedures. - The Committee continues to recognize the need for scientifically sound, evidence-based policy relative to FDA blood donor recommendations. The Committee expects the FDA to complete review of the evidence obtained from the ADVANCE study and encourages FDA to issue updated evidence-based blood donor recommendations. The Committee directs FDA to report to Congress no later than 180 days after enactment of this Act, including on the status of its ongoing review, on the data

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<sup>20</sup> A survey of congressional staff found that attorneys from the House and Senate Offices of Legislative Counsel participate in the drafting of appropriations committee report language, which is not the typical practice of other House and Senate committees. The authors of the survey noted:

Whereas almost all of the Legislative Counsels whom we interviewed told us that they do not draft legislative history—that is, they draft only the text to be enacted—the one exception, we were told, is the appropriations context. The Legislative Counsels assigned to appropriations legislation do draft the legislative history—a clear recognition of the text-like importance of legislative history in this unique context (p. 980).

For more information, see Abbe R. Gluck and Lisa Schultz Bressman, “Statutory Interpretation from the Inside—An Empirical Study of Congressional Drafting, Delegation, Drafting, and the Canons: Part I,” *Stanford Law Review*, vol. 65, no. 5 (January 2013), pp. 979-982.

<sup>21</sup> Allen Schick, *The Federal Budget: Politics, Policy, Process*, 3<sup>rd</sup> ed. (Washington, DC: Brookings Institution, 2007), p. 271.

<sup>22</sup> H.Rept. 117-392, p. 16.

it is using or has used to update guidelines, and its outreach and education to blood donation centers relating to its updated recommendations.<sup>23</sup>

Although the committees have developed relatively consistent phraseology to convey their expectations to agencies funded through the annual appropriations process, the interpretation of these directives ultimately depends on the specific context of a particular directive and the relationships between the Appropriations Committees and the instructed agency. These particular contextual differences notwithstanding, however, the general expectation of the Appropriations Committees is that agencies will pay careful attention to all of the directives included in the Appropriations Committees' reports.<sup>24</sup>

## Comparative Statement of New Budget Authority

Tables in appropriations reports that summarize the appropriations in the bill, the budgetary effects of other provisions, and certain additional allocations in the report have been in use for at least the past century.<sup>25</sup> These tables assist with the congressional evaluation of the amounts in the bill, as well as some of the additional funding allocations of those amounts in the report.<sup>26</sup> In current practice, the specific categories of information displayed and compared in the summary table depend on the chamber and stage of legislative action but may include amounts for

- the prior fiscal year,
- the President's budget request (or "budget estimate"), and
- the committee's recommendation.

Additionally, the JES will list the final funding levels for the relevant accounts and other activities agreed to when differences between the House and Senate were resolved on the measure.

The example in **Figure 2** is from the Senate Appropriations Committee report accompanying the FY2020 Department of Defense appropriations bill (S.Rept. 116-103, accompanying S. 2724). It includes all of the categories of information listed above.

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<sup>23</sup> H.Rept. 117-392, p. 87.

<sup>24</sup> For more information on how committee report directives influence agency budget implementation, see CRS Report RL33151, *Committee Controls of Agency Decisions*, by Louis Fisher (this report is archived and can be provided to congressional clients upon request).

<sup>25</sup> For some early examples of these tables, see H.Rept. 59-1106, pp. 1-3; H.Rept. 59-927, pp. 3-4; H.Rept. 59-2171, pp. 11-26; and S.Rept. 59-1782, pp. 2-3. In current practice, these tables have had various titles, including "Comparative Statement of New Budget Authority," "Comparative Statement of Budget Authority," or "Comparative Statement of New (Obligational) Budget Authority."

<sup>26</sup> In some cases, the table might also list budgetary resources that are made available to the agency outside the annual appropriations process to provide additional context. For example, see the amounts for "fee accounts" listed for the U.S. Customs and Border Protection in S.Rept. 113-198, p. 178.

## Figure 2. Comparative Statement of New Budget Authority

S.Rept. 116-103 accompanying the FY2020 Department of Defense Appropriations Bill, as reported by the Senate Appropriations Committee (S. 2724)

COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AUTHORITY FOR FISCAL YEAR 2019 AND BUDGET ESTIMATES AND AMOUNTS RECOMMENDED IN THE BILL FOR FISCAL YEAR 2020					
[In thousands of dollars]					
Item	2019 appropriation	Budget estimate	Committee recommendation	Senate Committee recommendation compared with (+ or -)	
				2019 appropriation	Budget estimate
TITLE I					
MILITARY PERSONNEL					
Military Personnel, Army .....	42,690,042	43,347,472	42,968,799	+ 278,757	- 378,673
Military Personnel, Navy .....	30,164,481	31,831,199	31,763,263	+ 1,598,782	- 67,936
Military Personnel, Marine Corps .....	13,779,038	14,175,211	14,088,775	+ 309,737	- 86,436
Military Personnel, Air Force .....	30,074,691	31,284,959	31,261,759	+ 1,187,068	- 23,200
Reserve Personnel, Army .....	4,836,947	4,964,671	4,920,866	+ 83,919	- 43,805
Reserve Personnel, Navy .....	2,049,021	2,123,947	2,121,507	+ 72,486	- 2,440
Reserve Personnel, Marine Corps .....	782,390	838,854	837,854	+ 55,464	- 1,000
Reserve Personnel, Air Force .....	1,860,406	2,038,040	2,022,340	+ 161,934	- 15,700
National Guard Personnel, Army .....	8,600,945	8,808,305	8,912,605	+ 311,660	+ 104,300
National Guard Personnel, Air Force .....	3,699,080	4,063,845	4,086,045	+ 386,965	+ 22,200
Total, title I, Military Personnel .....	138,537,041	143,476,503	142,983,813	+ 4,446,772	- 492,690

**Source:** S.Rept. 116-103, p. 299.

## Directives Related to Budget Preparation and Execution

In addition to the directives discussed above, appropriations reports may also contain instructions related to budget preparation and budget execution. Such directives, which typically relate to many or all of the accounts in the bill, are usually located in the first pages of the report. The most common forms of these directives may specify the form of budget justifications for future fiscal years, other reporting guidelines and committee initiatives, “program, project, or activity” definitions, and reprogramming guidelines.

### Form of Budget Justifications

Agencies’ congressional budget justifications supplement the President’s budget request with additional information for the Appropriations Committees. Agencies provide this information to the committees soon after the President’s budget request has been submitted.<sup>27</sup> The budget justifications’ descriptions of budgetary accounts are more detailed than the President’s budget submission and provide the Appropriations Committees with detailed information about how agencies plan to use the funds within each account.<sup>28</sup> This additional information helps the Appropriations Committees evaluate the budgetary resources requested for the upcoming fiscal year.<sup>29</sup>

The form of an agency’s budget justification and the information contained therein is generally the result of consultations between the agency and the appropriations committees. Instructions from the appropriations committees as to the content of budget justifications for future fiscal years are often included in report language. These instructions may specify to agencies the level of detail that should be provided for each account, as well as specific directions for certain programs or activities.<sup>30</sup> In some instances, the agencies funded in the bill may be told how to address certain informational deficiencies in the future, such as by providing more detail about grants or staffing changes.<sup>31</sup> Report language may also generally direct an agency to coordinate the content of certain analytical materials with the committee in advance of the submission.<sup>32</sup> For example, the following directives were included in the Senate committee report that accompanied the FY2020 Departments of Transportation, Housing and Urban Development, and Related Agencies appropriations bill reported by the Committee (S.Rept. 116-109, accompanying S. 2520):

[T]he Committee directs that justifications submitted with the fiscal year 2021 budget request by agencies funded under this act contain the customary level of detailed data and explanatory statements to support the appropriations requests at the level of detail contained in the funding table included at the end of the report. Among other items, agencies shall provide a detailed discussion of proposed new initiatives, proposed changes in the agency’s financial plan from prior year enactment, and detailed data on all programs

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<sup>27</sup> Agency budget justifications are also typically made available on agency websites. For more information on recent budget justifications, see CRS Report R43470, *Selected Agency Budget Justifications for FY2023*, by Justin Murray.

<sup>28</sup> For more information on agency budget justifications, see CRS Report R47090, *Executive Agency Justification of the President’s Budget: In Brief*, by Dominick A. Fiorentino.

<sup>29</sup> The Office of Management and Budget (OMB) has generally instructed agencies to consult with the committees ahead of modifications to the form of the budget justifications. See OMB Circular A-11, *Preparation, Submission, and Execution of the Budget*, July 2016, §§22.6 and 240.4.

<sup>30</sup> For example, see H.Rept. 116-100, p. 77.

<sup>31</sup> For example, see H.Rept. 116-453, pp. 56, 95.

<sup>32</sup> For example, see H.Rept. 116-452, pp. 3-4.



and comprehensive information on any office or agency restructurings. At a minimum, each agency must also provide adequate justification for funding and staffing changes for each individual office and materials that compare programs, projects, and activities that are proposed for fiscal year 2021 to the fiscal year 2020 enacted level.<sup>33</sup>

## **Other Reporting Guidelines and Committee Initiatives**

Although reporting requirements for specific accounts are primarily located in the relevant account summaries, language elsewhere in committee reports may provide general guidance about the timing or form of agency reports to be provided. For example, the House Appropriations Committee report accompanying the FY2023 Financial Services and General Government appropriations bill reported by the committee included the following instructions related to agency reports (H.Rept. 117-393, accompanying H.R. 8254):

Reports. – Agencies funded by this Act that currently provide separate copies of periodic reports and correspondence to the chairs and ranking members of the House and Senate Appropriations Committees and Subcommittees on Financial Services and General Government are directed to use a single cover letter jointly addressed to the chairs and ranking members of the Committees and Subcommittees of both the House and Senate. To the greatest extent feasible, agencies should include in the cover letter a reference or hyperlink to facilitate electronic access to the report and provide the documents by electronic mail delivery. These measures will help reduce costs, conserve paper, expedite agency processing, and ensure that consistent information is conveyed concurrently to the majority and minority committee offices of both chambers of Congress.<sup>34</sup>

## **“Program, Project, or Activity” Definitions**

A “program, project, or activity” (PPA) is an element within a budget account.<sup>35</sup> For annually appropriated accounts, these budget accounts generally correspond to the paragraph headings in appropriations acts. Such accounts generally provide a lump sum for the purposes of the account and may also “set aside” specific amounts within that lump sum for certain purposes. In addition to those statutory set-asides, it has been the practice for a number of decades that specific elements in these budget accounts, including PPAs, have been identified in report language (and also in the congressional budget justifications that correspond to that act).<sup>36</sup> For example, the House Appropriations Committee report (H.Rept. 116-446) accompanying the FY2021 Department of Agriculture, Rural Development, and Food and Drug Administration appropriations bill reported by the committee (H.R. 7610) shown in **Figure 3** identified several PPAs in the National Institute of Food and Agriculture’s (NIFA)’s “Integrated Activities” account.<sup>37</sup>

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<sup>33</sup> S.Rept. 116-109, p. 5.

<sup>34</sup> H.Rept. 117-393, pp. 8-9.

<sup>35</sup> GAO, *A Glossary of Terms Used in the Federal Budget Process*, p. 80.

<sup>36</sup> OMB Circular A-11, §22.6.

<sup>37</sup> These PPAs had also been identified in the NIFA’s congressional budget justification, pp. 21-23, available at <https://www.usda.gov/sites/default/files/documents/19nifa2021notes.pdf>.

**Figure 3. Specification of Programs, Projects, and Activities**

H.Rept. 116-446 accompanying the FY2021 Department of Agriculture, Rural Development, and Food and Drug Administration appropriations bill, as reported by the House Appropriations Committee (H.R. 7610)

NATIONAL INSTITUTE OF FOOD AND AGRICULTURE—INTEGRATED ACTIVITIES				
[Dollars in Thousands]				
Program/Activity	Authorization	FY 2020 enacted	FY 2021 estimate	Committee provision
Methyl Bromide Transition Program .....	7 U.S.C. 7626 .....	\$2,000	\$2,000	\$2,000
Organic Transition Program .....	7 U.S.C. 7626 .....	6,000	6,000	7,000
Regional Rural Development Centers .....	7 U.S.C. 450i(c) .....	2,000	2,000	2,000
Food and Agriculture Defense Initiative ..	7 U.S.C. 3351 .....	8,000	8,000	8,000
Crop Protection/Pest Management Program.	7 U.S.C. 7626 .....	20,000	20,000	20,000
Total, Integrated Activities .....	.....	\$38,000	\$38,000	\$39,000

**Source:** H.Rept. 116-446, p. 33.

As with other funding allocations in report language, the PPAs identified for each account allow Congress to provide direction as to the amounts to be expended for particular agency activities. The PPAs are also significant for “reprogramming,” which is discussed further in the report section titled “Reprogramming Guidelines.”

The PPAs identified for each account have historically been the basis for the application of the budget enforcement mechanism known as “sequestration.” This mechanism was established by the Balanced Budget and Emergency Deficit Control Act of 1985 (BBEDCA; P.L. 99-177) and can result in an across-the-board cancellation of budgetary resources for non-exempt accounts.<sup>38</sup> The BBEDCA, as amended, further requires that these reductions be proportionately implemented by the agencies, within each affected account, at the level of its PPAs.<sup>39</sup> Sequestration for discretionary spending was in effect to enforce statutory discretionary spending controls in place from FY1988 to FY2002 and again from FY2012 to FY2021.<sup>40</sup>

## Reprogramming Guidelines

Agencies are generally required to carry out the terms of appropriations acts as enacted, including the statutory allocation of funds therein. Both report language and the congressional budget justifications further allocate funds within annually appropriated accounts into PPAs. In general, when funds are moved between PPAs within the same account, this is referred to as a

<sup>38</sup> For more on sequestration, see CRS Report R42972, *Sequestration as a Budget Enforcement Process: Frequently Asked Questions*, by Megan S. Lynch.

<sup>39</sup> BBEDCA, §256(k) (2 U.S.C. §906).

<sup>40</sup> Sequestration procedures for discretionary spending under the BBEDCA were first in effect in FY1988. Congress modified and extended these procedures several times during the 1980s and 1990s, and as a result, sequestration procedures were in place that could affect the amount of discretionary appropriations available to agencies from FY1988 to FY2002. For more information on these procedures, see CRS Report R41901, *Statutory Budget Controls in Effect Between 1985 and 2002*, by Megan S. Lynch. More recently, the Budget Control Act of 2011 (P.L. 112-25) further amended sequestration procedures under the BBEDCA, establishing enforceable discretionary spending limits for FY2012-FY2021. These statutory limits were modified several times by subsequent legislation and expired after FY2021. For more on the Budget Control Act, see CRS Report R44874, *The Budget Control Act: Frequently Asked Questions*, by Grant A. Driessen and Megan S. Lynch.

“reprogramming” of funds.<sup>41</sup> Agencies are generally permitted to reprogram funds, subject to restrictions in law. This is in contrast to a “transfer”—moving funds between accounts—which requires statutory authority.

The level of statutory detail regarding the purposes and amounts for funds in annual appropriations acts has changed considerably over time. Prior to the early 20<sup>th</sup> century, the statutory language for appropriations accounts tended to include numerous line items specifying particular purposes and amounts therein. During World War I, the Appropriations Committees determined that certain agencies required more budgetary flexibility to respond to pressing demands of the war.<sup>42</sup> Perhaps as a consequence of the frequent use of lump-sum appropriations, the Appropriations Committees began to rely more extensively on detailed funding allocations generally being provided through non-statutory means such as report language.<sup>43</sup> As Congress provided accounts with larger lump-sum appropriations rather than more numerous and detailed line-item appropriations, an informal understanding was reached that agencies would consult with the Appropriations Committees on matters related to reprogramming.

In current practice, statutory restrictions on reprogramming are usually located in the general or administrative provisions of appropriations acts. These restrictions often prohibit reprogramming that meets certain criteria or require that agencies notify the appropriations committees before reprogramming amounts above a certain spending threshold. For example, the FY2021 State-Foreign Operations Appropriations Act (Division K of P.L. 116-260)<sup>44</sup> prohibits reprogramming that

- augments or changes existing PPAs;
- relocates an existing office or employees;
- reduces by 10% funding for any existing PPA, or numbers of personnel by 10% as approved by Congress; or
- results from any general savings, including savings from a reduction in personnel, that would result in a change in existing PPAs approved by Congress.

Section 7015(b) of P.L. 116-260 further provided that such reprogramming is allowable if the Appropriations Committees are notified 15 days in advance of an obligation. Once appropriations are enacted for a fiscal year, agencies typically submit a “spending” or “operating” plan to the Appropriations Committees to establish a baseline for the application of reprogramming and transfer authorities for that fiscal year.<sup>45</sup>

In addition to the requirements in appropriations acts, report language often provides guidance on the specific reprogramming procedures that agencies are to follow. Such guidance could include:

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<sup>41</sup> For more on reprogramming, see CRS Report R43098, *Transfer and Reprogramming of Appropriations: An Overview of Authorities, Limitations, and Procedures*, by Michelle D. Christensen.

<sup>42</sup> Stephen Horn, *Unused Power: The Work of the Senate Committee on Appropriations* (Washington, DC: Brookings Institution, 1970), pp. 192-198. Additionally, see Louis Fisher, *Presidential Spending Power* (Princeton, NJ: Princeton University Press, 1975), pp. 59-74.

<sup>43</sup> Allen Schick, *Legislation, Appropriations, and Budgets: The Development of Spending Decision-Making in Congress*, Congressional Research Service, May 1984, p. 31 (available to congressional clients upon request).

<sup>44</sup> P.L. 116-260, Division K, Title VII, §7015(b).

<sup>45</sup> See, for example, H.R. 7668 (116<sup>th</sup> Cong.), Section 608, for a statutory requirement for an operation plan and additional specifications as to the contents. Such requirements and specifications may also be provided by report language. See H.Rept. 116-452, pp. 2-3; H.Rept. 116-444, pp. 5-6; and H.Rept. 116-111, pp. 5-6.

- the level of detail that triggers notification requirements or special procedures for certain accounts,<sup>46</sup>
- the form of notification and approval,
- the information that the committee requires from the agency in order to evaluate the reprogramming request, and
- a final deadline for all such requests during the fiscal year.<sup>47</sup>

For example, the House Appropriations Committee’s report (H.Rept. 116-444) that accompanied the FY2021 State-Foreign Operations bill reported by the committee (H.R. 7608) included the following instructions that supplemented the statutory guidance discussed above:

The Committee recommendation grants limited reprogramming authorities to ensure that funds are devoted to the highest priorities, particularly due to changes in circumstances of countries facing unrest, terrorism, and violence. The Committee notes that reprogramming notifications must be submitted subject to the regular notification procedures of the Committees on Appropriations. For the purposes of this Act and report, “regular notification procedures” means notification must be provided at least 15 days in advance of obligation of funds unless otherwise specified. The Committee continues to permit the waiver of such notification procedures, pursuant to section 7015(e) of this Act, only if failure to do so would pose a substantial risk to human health or welfare. The Committee expects the use of this authority to be extremely rare and directs the Secretary of State and the USAID Administrator to use this authority judiciously. Additional notification requirements are added in fiscal year 2021 to ensure appropriate Congressional oversight of funds.<sup>48</sup>

Additional guidance in report language may be provided annually or on a standing basis.

## **Comparison with the Budget Resolution**

The Congressional Budget Act of 1974 (the Budget Act) provides for the adoption of a concurrent resolution on the budget (commonly referred to as a “budget resolution”) to serve as an agreement between the House and Senate on a fiscal framework for the upcoming fiscal year.<sup>49</sup> As a means of enforcing the top-line spending levels adopted in the budget resolution, the Budget Act requires that enforceable allocations be made to committees with jurisdiction over spending legislation.<sup>50</sup> Through this process, the Appropriations Committees receive a procedural limit on the amount of discretionary budget authority for the upcoming fiscal year, which is referred to as a “302(a)” allocation.<sup>51</sup> Each Appropriations Committee is required to further divide this allocation among its 12 subcommittees, which are referred to as “302(b)” suballocations.<sup>52</sup> The 302(b) suballocation for a subcommittee limits the level of budget authority available for the agencies, projects, and activities within its jurisdiction, effectively acting as a procedural cap on the amount of budget authority in each of the 12 regular appropriations bills. The 302(a)

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<sup>46</sup> See, for example, H.Rept. 116-452, pp. 2-3; and H.Rept. 116-445, pp. 10-11.

<sup>47</sup> See, for example, H.Rept. 116-101, pp. 5-6; and H.Rept. 116-122, pp. 5-7.

<sup>48</sup> H.Rept. 116-444, p. 5.

<sup>49</sup> The Congressional Budget Act of 1974 (P.L. 93-344; 88 Stat. 297; 2 U.S.C. §§601-688).

<sup>50</sup> For more, see CRS Report R47388, *Enforceable Spending Allocations in the Congressional Budget Process: 302(a)s and 302(b)s*, by Drew C. Aherne.

<sup>51</sup> Congressional Budget Act, §302(a) (2 U.S.C. §633).

<sup>52</sup> Congressional Budget Act, §302(b) (2 U.S.C. §633).

allocation and 302(b) suballocations can be enforced through Budget Act points of order raised during floor consideration of appropriations bills.<sup>53</sup>

The Budget Act was intended to provide a framework whereby Congress could evaluate the future effects of past budgetary decisions, as well as those that were currently under consideration. To support this end, the Budget Act required the inclusion of certain information in reports accompanying any legislation “providing new budget authority or tax expenditures” that would be relevant to making such budgetary decisions.<sup>54</sup> In addition to these general requirements, the Budget Act mandates that committee reports accompanying regular and supplemental appropriations measures (but not CRs) include a statement comparing the funding provided in the measure to the applicable 302(b) suballocation.<sup>55</sup> This statement must also be included in a conference report, if available in a timely manner, after consultation with the Congressional Budget Office.<sup>56</sup>

The information required by the Budget Act is usually provided in a separate section of House and Senate appropriations reports, as illustrated in **Figure 4** from the report (H.Rept. 117-392) accompanying the FY2023 Agriculture, Rural Development, Food and Drug Administration, and Related Agencies appropriations bill reported by the House Appropriations Committee (H.R. 8239).

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<sup>53</sup> Primarily, these allocations are enforced through points of order under the Congressional Budget Act, Sections 302(f) and 311. For more information, see CRS Report R47413, *Points of Order in the Congressional Budget Process*, by James V. Saturno and Megan S. Lynch.

<sup>54</sup> For example, whenever a committee reports a measure providing new budget authority or tax expenditures, the committee must include in the accompanying report certain budgetary information, including an estimate by the Congressional Budget Office (CBO) of the five-year outlay projections associated with the budget authority in the bill. Congressional Budget Act, §308(a)(1)(B) [2 U.S.C. §639].

<sup>55</sup> Congressional Budget Act, §308(a)(1)(A) (2 U.S.C. §639).

<sup>56</sup> The House reiterated this Budget Act requirement in Rule XIII, clause 3(c)(2).

**Figure 4. Comparison with the Budget Resolution**

H.Rept. 117-392 accompanying the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Bill, 2023, as reported by the House Appropriations Committee (H.R. 8239)

COMPARISON WITH BUDGET RESOLUTION

Pursuant to clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a)(1)(A) of the Congressional Budget Act of 1974, the following table compares the levels of new budget authority provided in the bill with the appropriate allocation under section 302(b) of the Budget Act.

[In millions of dollars]

	302(b) Allocation		This Bill	
	Budget Authority	Outlays	Budget Authority	Outlays
Comparison of amounts in the bill with Committee allocations to its subcommittees: Subcommittee on Agriculture, Rural Development, Food and Drug Administration, and Related Agencies				
Discretionary .....	27,200	30,800	27,200	<sup>1</sup> 30,751
Mandatory .....	189,364	179,563	189,364	<sup>1</sup> 179,563

<sup>1</sup> Includes outlays from prior-year budget authority.

Source: H.Rept. 117-392, p. 156.

## Language Changing Existing Law

Both the House and Senate have internal rules and long-standing practices that promote the separation of money and policy decisions. These rules and practices are derived from the principle that the debates and decisions about the activities of the federal government should be distinct from the debates and decisions about the level at which those activities should be funded. As a result, Congress has created distinct processes for authorizing—which establishes and controls government entities, activities, or programs in law—and appropriating—which provides funding for those entities, activities, and programs.

One aspect of Congress separating the authorizing and appropriating functions is that the House and Senate have rules that generally prohibit legislative provisions from being included in appropriations measures. House Rule XXI, clause 2, generally prohibits including legislative provisions in general appropriations bills and amendments thereto.<sup>57</sup> Senate Rule XVI, paragraph 2, prohibits amendments to general appropriations measures that propose legislative language not contained in existing law, except under certain circumstances.<sup>58</sup>

<sup>57</sup> The House does allow certain limited exceptions. For example, see CRS Report R44736, *The Holman Rule (House Rule XXI, Clause 2(b))*, by James V. Saturno. It should also be noted that the House defines *general appropriations bills* as the annual appropriations acts (or any combination thereof) and any supplemental appropriations acts that cover more than one agency. CRs are not considered to be general appropriations bills. See Johnson, Sullivan, and Wickham, *House Practice*, ch. 4, §3.

<sup>58</sup> For example, if the House includes legislative language in an appropriations bill, Senate precedent allows for any germane modification. The Senate defines *general appropriations bills* as the annual appropriations acts (or any combination thereof) and any supplemental or continuing appropriations acts that cover more than one agency or purpose. See Floyd M. Riddick and Alan S. Frumin, *Riddick's Senate Procedure: Precedents and Practices*, 101<sup>st</sup>



This prohibition, however, is distinct from “limitation” provisions, which restrict either the purpose, amount, or availability of appropriated funds without changing existing or creating new law. Because they affect only how an agency may use appropriated funds, limitation provisions are distinct from legislative provisions and are allowed under House and Senate rules. These provisions can limit the ability of agencies to spend funds for specified purposes.<sup>59</sup>

Beginning in the 1930s, a number of the House Appropriations subcommittees began to include either lists of legislation and limitations in appropriations measures (or statements to the effect that the measure contained no new legislative provisions or limitations) in their accompanying committee reports.<sup>60</sup> However, the form and level of detail in those lists was highly variable. To provide the House with more consistent information about the legislation that the House Appropriations Committee was including in general appropriations measures, the House added a requirement in 1974 that Appropriations Committee reports include “a concise statement describing the effect of any provision of the accompanying bill that directly or indirectly changes the application of existing law.”<sup>61</sup> This requirement, which encompasses legislative language, is currently codified in House Rule XIII, clause 3(f)(1)(A).<sup>62</sup> **Figure 5** shows an excerpt of such a list provided in the report (H.Rept. 117-402) accompanying the FY2023 Departments of Transportation, Housing and Urban Development, and Related Agencies appropriations bill reported by the House Appropriations Committee (H.R. 8294).

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Cong., 2<sup>nd</sup> sess., S.Doc. 101-28 (Washington: GPO, 1992), p. 159.

<sup>59</sup> For more information, see CRS Report R41634, *Limitations in Appropriations Measures: An Overview of Procedural Issues*, by James V. Saturno.

<sup>60</sup> For early examples of these lists, see H.Rept. 73-1195, pp. 17-21; H.Rept. 73-335, p. 15; and H.Rept. 73-449, pp. 27-28.

<sup>61</sup> H.Res. 988, 93<sup>rd</sup> Cong. For further information on the purpose of this requirement, see House debate, *Congressional Record*, vol. 120, part 26 (October 8, 1974), pp. 34416-34419.

<sup>62</sup> In addition to the requirement for a summary of changes in existing law, House Rule XIII, clause 3(e)(1)—sometimes referred to as the “Ramseyer Rule”—requires that all committee reports include a comparative print of language in the bill “proposing to repeal or amend a statute or part thereof.” Any legislative language that would repeal or amend existing law would also be included in that comparative display.

**Figure 5. Changes in the Application of Existing Law**

H.Rept. 117-402 accompanying the FY2023 Departments of Transportation, Housing and Urban Development appropriations bill, as reported by the House Appropriations Committee (H.R. 8294)

**CHANGES IN THE APPLICATION OF EXISTING LAW**

Pursuant to clause 3(f)(1)(A) of rule XIII of the Rules of the House of Representatives, the following statements are submitted describing the effect of provisions in the accompanying bill that directly or indirectly change the application of existing law.

**TITLE I—DEPARTMENT OF TRANSPORTATION**

Language is included under Office of the Secretary, ‘Salaries and Expenses’ specifying certain amounts for individual offices of the Office of the Secretary and official reception and representation expenses, specifying transfer authority among individual offices of the Office of the Secretary, allowing up to \$2,500,000 in user fees to be credited to the account, and preventing funds for certain activities.

Language is included under the Office of the Secretary, ‘Research and Technology’ which limits the availability of funds, changes the availability of funds, provides funds for specified activities, allows funds received from other entities to be credited to the account, and deems the title of the office.

**Source:** H.Rept. 117-402, p. 476.

In the Senate, there is no similar rule that requires the Senate Appropriations Committee to include in committee reports a list or description of legislative provisions in the appropriations measures or committee amendments reported from the committee. However, Senate Rule XXVI, paragraph 12, sometimes referred to as the “Cordon Rule,” requires that the committee report include a comparative print of language “repealing or amending any statute or part thereof.” Any legislative language that would directly repeal or amend existing law would be included in that comparative display in the Senate Appropriations Committee’s report.

**Appropriations Not Authorized by Law**

One way in which the rules of the House and Senate distinguish between authorizations and appropriations is to prohibit appropriations for expenditures not previously authorized by law. Authorizing legislation may include language authorizing subsequent appropriations explicitly (i.e., “there is hereby authorized to be appropriated”), or such authority may be implied by the statutory authority that creates and governs the entity.<sup>63</sup> An appropriation is said to be “unauthorized” when such authorization (explicit or implicit) has never been enacted or, if previously enacted, has terminated or expired.

<sup>63</sup> For more on the relationship between authorizations and appropriations, see CRS Report R46497, *Authorizations and the Appropriations Process*, by James V. Saturno.

Congressional concerns about providing appropriations not authorized by law are long-standing.<sup>64</sup> House Rule XXI, clause 2, prohibits appropriations not previously authorized by law in general appropriations measures and amendments thereto except to continue appropriations for public works and objects already in progress. In contrast, the prohibition on unauthorized appropriations in Senate Rule XVI, paragraph 1, applies in a more narrow set of circumstances and, most significantly, to amendments offered by individual Senators during consideration of general appropriations measures that would increase unauthorized funding already in the bill or add a new item of appropriation that is not authorized.<sup>65</sup>

Despite these rules, appropriations not authorized by law have been provided for certain purposes. In response to concerns that information about such appropriations was lacking during their congressional consideration, both the House and Senate adopted rules requiring that committee reports for general appropriations measures identify the unauthorized appropriations contained therein. In the Senate, these requirements were initially adopted in 1970 and are currently in Senate Rule XVI, paragraph 7.<sup>66</sup> This rule provides that the Senate Appropriations Committee report must identify each amendment containing an appropriation that “is not made to carry out the provisions of an existing law, a treaty stipulation, or an act or resolution previously passed by the Senate during that session.” Even when the Senate Appropriations Committee reports an original Senate bill and not an amendment (or amendments) to a House-passed appropriations bill, the committee’s report usually includes a list of unauthorized appropriations included in the bill. **Figure 6** shows an excerpt of this Senate list provided in the report (S.Rept. 116-127) accompanying the FY2020 Departments of Commerce, Justice, Science, and Related Agencies appropriations bill reported by the committee (S. 2584).

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<sup>64</sup> For a summary of congressional practices related to the form of authorizations and their effect on the occurrence and frequency of unauthorized appropriations, see CRS Report R43862, *Changes in the Purposes and Frequency of Authorizations of Appropriations*, by Jessica Tollestrup.

<sup>65</sup> For more information, see CRS Report R42098, *Authorization of Appropriations: Procedural and Legal Issues*, coordinated by Edward C. Liu.

<sup>66</sup> S.Res. 413, 91<sup>st</sup> Cong. For an explanation of the specific context that led to the adoption of this rule, see *Congressional Record*, vol. 116, part 25 (September 25, 1970), p. 33785.

**Figure 6. Senate List of Appropriations Not Authorized by Law**

S.Rept. 116-127 accompanying the FY2020 Departments of Commerce, Justice, Science, and Related Agencies appropriations bill, as reported by the Senate Appropriations Committee (S. 2584)

COMPLIANCE WITH PARAGRAPH 7, RULE XVI OF THE STANDING RULES OF THE SENATE	
<p>Rule XVI, paragraph 7 requires that every report on a general appropriation bill filed by the Committee must identify items of appropriation not made to carry out the provisions of an existing law, a treaty stipulation, or an act or resolution previously passed by the Senate during that session.</p> <p>The Committee recommends funding for the following programs or activities that currently lack an authorization for fiscal year 2020, either in whole or in part, and therefore fall under this rule:</p>	
APPROPRIATIONS NOT AUTHORIZED BY LAW—FISCAL YEAR 2020	
Agency/program	Last year of authorization
Department of Commerce:	
International Trade Administration:	
Export Promotion .....	1996
Bureau of Industry and Security:	
Export Administration .....	1994
Economic Development Administration:	
Salaries and Expenses .....	2008
Economic Development Assistance Programs:	
Public Works and Economic Development .....	2008
National Telecommunications and Information Administration:	
Salaries and Expenses .....	1993
National Institute of Standards and Technology:	
Scientific and Technical Research and Services .....	2013
Industrial Technology Services .....	2013
Construction of Research Facilities .....	2013
National Oceanic and Atmospheric Administration:	
Operations, Research, and Facilities:	
National Ocean Service .....	1993
Integrated Ocean Observatory System Regional Observatory .....	2013
Coral Reef Conservation .....	2004
Coastal Zone Management .....	1999
Title IX Fund .....	2019
Marine Protection, Research, Preservation & Sanctuaries .....	2005
Species Recovery Grants .....	1992
National Marine Fisheries Service:	
Marine Mammal Protection .....	1999
NOAA Marine Fisheries Program .....	2000
Interjurisdictional Fisheries .....	2012
Magnuson-Stevens Fishery Conservation and Management .....	2013
Oceanic and Atmospheric Research:	
National Sea Grant College Program .....	2014
Climate Laboratories and Cooperative Institutes .....	1993
Ocean Exploration Research .....	2015
Ocean Acidification .....	2012
Procurement, Acquisition and Construction:	
National Ocean Service:	
Marine Protection, Research, Preservation & Sanctuaries .....	2005

Source: S.Rept. 116-127, p. 181.



In 1995, at the beginning of the 104<sup>th</sup> Congress, the House amended its rules to explicitly require that House Appropriations Committee reports accompanying regular appropriations bills include a separate list of appropriations not currently authorized by law.<sup>67</sup> At the beginning of the 107<sup>th</sup> Congress, this rule was expanded to require more detailed information, including:<sup>68</sup>

- the last year for which such appropriations were authorized,
- the level of appropriations authorized for that year,
- the actual level of appropriations for that year, and
- the level of appropriations in the bill.

This requirement is currently codified in House Rule XIII, clause 3(f)(1)(B). A recent example of the House Appropriations Committee's list of Appropriations Not Authorized by Law is provided in the report accompanying the FY2023 Commerce, Justice, and Science appropriations bill reported by the committee (H.Rept. 117-395, accompanying H.R. 8256), which is excerpted in **Figure 7**.

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<sup>67</sup> H.Res. 6, 104<sup>th</sup> Cong. The requirements in this rule do not apply to classified intelligence or national security PPAs.

<sup>68</sup> H.Res. 5, 107<sup>th</sup> Cong.

### Figure 7. House List of Appropriations Not Authorized by Law

H.Rept. 117-395 accompanying the FY2023 Commerce, Justice, Science, and Related Agencies appropriations bill, as reported by the House Appropriations Committee (H.R. 8256)

UNAUTHORIZED APPROPRIATIONS [in thousands of dollars]				
Program	Last year of authorization	Authorization level in year of authorizations	Appropriations in last year of authorization	Appropriations in this bill
Department of Commerce:				
International Trade Administration:				
Operations and Administration:				
Export Promotion Activities .....	1996	such sums .....	264,885	*
Bureau of Industry and Security:				
Operations and Administration .....	1994	such sums .....	34,747	191,389
Economic Development Administration:				
Salaries and Expenses .....	2008	Such sums .....	30,832	65,000
Economic Development Assistance Programs .....		Various .....		445,000
Public Works and Economic Development Act Programs .....	2008	500,000 .....	349,100	(120,500)
Economics and Statistics Administration:				
Salaries and Expenses .....	n/a	n/a .....	n/a	132,320
National Telecommunications and Information Administration:				
Salaries and Expenses .....	1993	17,900 .....	17,900	62,000
National Institute of Standards and Technology:				
Scientific and Technical Research and Services .....	2013	676,700 .....	579,771	953,000
Industrial technology services .....	2013	241,709 .....	133,574	230,000
Manufacturing extension partnerships .....	2013	(165,100) .....	(123,000)	(212,000)
Construction of research facilities .....	2013	121,300 .....	55,970	291,181

Source: H.Rept. 117-395, p. 199.



## Rescissions and Transfers

A rescission is a provision of law that cancels previously enacted budget authority. Such provisions are used to cancel funds for programs or projects. Rescissions of unexpired budget authority carried in appropriations acts may also serve to offset increases in funding elsewhere in the bill.<sup>69</sup>

Transfers occur when funds are moved between accounts and require explicit statutory authority in order to occur. Such transfer authority—that is, the provision in law that authorizes an agency to transfer funds (usually limited to a certain amount or percentage of an appropriation)—may be provided in authorizing laws or in annual appropriations acts. Transfer provisions may also mandate that a transfer occur in a specified amount or at a minimum (“no less than”) budgetary level.

Rescissions and transfer authority are considered to be legislative because they change existing law.<sup>70</sup> Although the House Appropriations Committee does not generally have jurisdiction over legislative language,<sup>71</sup> the Committee Reform Amendments of 1974 added jurisdiction over transfers and rescissions of funds previously provided in appropriations acts. This expansion was intended to provide more flexibility to the committee.<sup>72</sup> To provide greater transparency to Congress as to the extent to which rescissions and transfers were being proposed by the House Appropriations Committee, the House adopted a new rule requiring that appropriations bills and joint resolutions have separate headings for “Rescissions” and “Transfers of Unexpended Balances.”<sup>73</sup> That rule also requires that the committee reports accompanying those bills have a separate section that lists all such proposed rescissions and transfers. These requirements are currently codified in House Rule XIII, clause 3(f)(2).

For example, the following lists in **Figure 8** were included in the report (H.Rept. 117-400) accompanying the FY2023 Department of the Interior, Environment, and Related Agencies appropriations bill reported by the House Appropriations Committee (H.R. 8262):

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<sup>69</sup> For more on the budgetary scorekeeping of rescissions, see scorekeeping rule 8 in H.Rept. 105-217.

<sup>70</sup> *Rules of the House of Representatives, One Hundred Sixteenth Congress*, H.Doc. 115-177, 115<sup>th</sup> Cong., 2<sup>nd</sup> sess., compiled by Thomas J. Wickham, Parliamentarian (Washington: GPO, 2019), §1063, pp. 905-906.

<sup>71</sup> House Rule X, clause 1(b).

<sup>72</sup> H.Res. 988, 93<sup>rd</sup> Cong. The rationale for this change is discussed more extensively in H.Rept. 93-916, part II, pp. 29-30.

<sup>73</sup> H.Res. 988, 93<sup>rd</sup> Cong., H.Rept. 93-916, part II, pp. 29-30.

**Figure 8. Rescissions and Transfers**

H.Rept. 117-400 accompanying the FY2023 Department of the Interior, Environment, and Related Agencies appropriations bill, as reported by the House Appropriations Committee (H.R. 8262)

RESCISSION OF FUNDS			
Pursuant to clause 3(f)(2) of rule XIII of the Rules of the House of Representatives, the following table is submitted describing the rescission recommended in the accompanying bill:			
Department and activity:			
There are no amounts recommended for rescission.			
TRANSFERS OF FUNDS			
Pursuant to clause 3(f)(2) of rule XIII of the Rules of the House of Representatives, the following table is submitted describing the transfer of funds in the accompanying bill.			
APPROPRIATION TRANSFERS RECOMMENDED IN THE BILL			
Account from which transfer is made	Amount (000's)	Account to which transfer is made	Amount (000's)
Department of the Interior, National Park Service.	not specified .....	Department of Transportation, Federal Highway Administration.	not specified
Department of the Interior, BIA, Operation of Indian Programs.	not specified .....	Indian forest land assistance accounts.	not specified
Department of the Interior, Bureau of Indian Affairs Construction.	not specified .....	Bureau of Reclamation .....	not specified
Office of the Special Trustee for American Indians.	not specified .....	Department of the Interior, BIA, Operation of Indian Programs; BIE, Operation of Indian Education Programs; Office of the Solicitor, Salaries and Expenses; Office of the Secretary, Departmental Operations.	not specified
Department of the Interior, Office of the Secretary.	not specified .....	Bureau of Indian Affairs, Bureau of Indian Education "Operation of Indian Programs", Office of the Special Trustee "Federal Trust Programs".	not specified

**Source:** H.Rept. 117-400, p. 190.

In the Senate, transfers and rescissions are also considered to be legislative language,<sup>74</sup> but only rescissions are in the jurisdiction of the Senate Appropriations Committee.<sup>75</sup> However, there is no requirement that such provisions be separately identified in the committee report accompanying an appropriations measure.

## Disclosure of Congressionally Directed Spending and Community Project Funding ("Earmarks")

The House and Senate have each adopted rules that require the disclosure of information related to items commonly referred to as "earmarks," currently known as "congressionally directed spending" in the Senate and "community project funding" in the House. Under both chambers'

<sup>74</sup> For more on rescissions, see *Riddick's Senate Procedure*, p. 176.

<sup>75</sup> Senate Rule XXV, paragraph 1(b).

rules, these terms are understood to mean a provision of a measure or an item in a committee report that either provides, authorizes, or recommends

- a specific amount of budgetary resources to a specific entity or targeted to a particular congressional district, locality, or state; and
- is included primarily at the request of a Member.<sup>76</sup>

The information about these spending items is included in committee reports accompanying appropriations measures reported by both the House and Senate Appropriations Committees as well as explanatory text accompanying measures not reported by the appropriations committees.<sup>77</sup>

With regard to appropriations measures reported from the appropriations committees, the practice of the committees is to include a table of congressional earmarks contained in such measures (and the measure's accompanying report) in the committee reports. House Rule XXI, clause 9, and Senate Rule XLIV also require the disclosure of earmarks contained in a conference report (or a JES), as well as additional types of measures and amendments.<sup>78</sup>

When the accompanying bill or report contains earmarks, such tables identify the following information about each item:

- the affected agency and appropriations account,
- the final recipient of the funds,
- the name of the project, the amount of earmarked funding provided, and
- the name of the Representative(s) or Senator(s) who submitted the request.

Such tables are also included in conference reports and explanatory statements.<sup>79</sup>

The following table in **Figure 9** from the report (H.Rept. 117-79) accompanying the FY2022 Financial Services and General Government regular appropriations bill (H.R. 4345), as reported by the House Appropriations Committee, provides an example of how committee reports are used to disclose associated earmarks:

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<sup>76</sup> The requested budgetary resources may take the form of “discretionary budget authority, credit authority, or other spending authority for a contract, loan, loan guarantee, or other expenditure.” Such budgetary resources also have to be provided outside of a “statutory or administrative formula-driven or competitive award process.” See House Rule XXI, clause 9(e), and Senate Rule XLIV, clause 5(a).

<sup>77</sup> Under House Rule XXI, clause 9, such disclosure is required to occur in either committee reports for measures reported by committees or JESs accompanying conference reports. For measures not reported by a committee, the chair of the applicable committee is required to provide a list of earmarks or a statement that the measure does not contain any earmarks.

Under Senate Rule XLIV, such disclosure is required to occur via “publicly accessible congressional website [for] each such item through lists, charts, or other similar means” for appropriations measures reported by committees, unreported measures, and conference reports. Paragraph 4(b) of Rule XLIV states that committee reports containing a list of congressionally directed spending items and the names of the Senators who requested them satisfies the requirements of Rule XLIV for a bill or joint resolution reported by a committee.

<sup>78</sup> For more information, see CRS Report RS22866, *Earmark Disclosure Rules in the House: Member and Committee Requirements*, by Megan S. Lynch; and CRS Report RS22867, *Earmark Disclosure Rules in the Senate: Member and Committee Requirements*, by Megan S. Lynch.

<sup>79</sup> See H.Rept. 111-366.

Additionally, House Rule XXI, clause 9(b), requires the disclosure of earmarks that were not committed by either house to a conference report nor contained in a committee report of either house on such bill or a companion measure. The practice is to denote such earmarks with an asterisk in the JES. For an example of this practice, see U.S. Congress, House Committee on Appropriations, *Consolidated Appropriations Act, 2008, Division C—Energy and Water Development and Related Agencies Appropriations Act, 2008*, committee print, 110<sup>th</sup> Cong., 1<sup>st</sup> sess., 2007, p. 621, <https://www.govinfo.gov/content/pkg/CPRT-110HPRT39564/pdf/CPRT-110HPRT39564-DivisionC.pdf>.

### Figure 9. Disclosure of Earmarks and Congressionally Directed Spending

H.Rept. 117-79 accompanying the FY2022 Financial Services and General Government appropriations bill, as reported by the House Appropriations Committee (H.R. 4345)

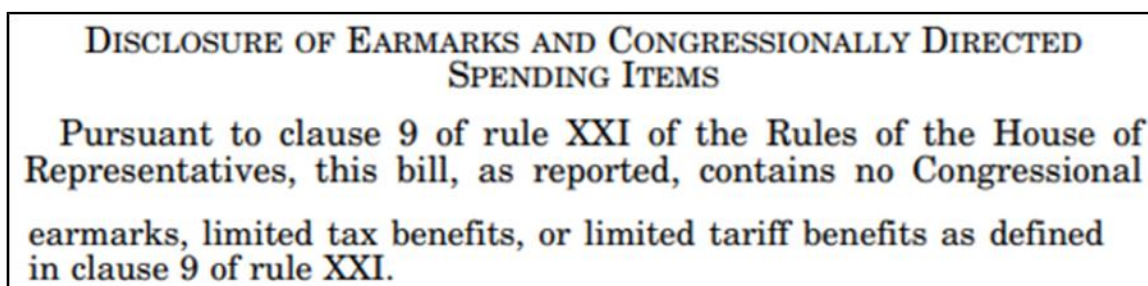
FINANCIAL SERVICES AND GENERAL GOVERNMENT [Community Project Funding Items]					
Agency	Account	Recipient	Project	Amount	Requestor(s)
Small Business Administration	Salaries and Expenses	Delaware State University, Dover, DE	Center for Urban Revitalization and Entrepreneurship	\$1,000,000	Blunt Rochester
Small Business Administration	Salaries and Expenses	Columbia County Economic Team, St. Helens, OR	Columbia County Small Business Resource Center	\$175,000	Bonamici
Small Business Administration	Salaries and Expenses	Gwinnett County University of Georgia Small Business Development Center, Lawrenceville, GA	Gwinnett County University of Georgia Small Business Development Center	\$100,000	Bourdeaux
Small Business Administration	Salaries and Expenses	Western Illinois University, Moline, IL	Business Ownership Lifecycle Initiatives	\$400,000	Bustos
Small Business Administration	Salaries and Expenses	The Greater Wilkes-Barre Chamber of Business and Industry, Wilkes-Barre, PA	Project Elevate	\$1,000,000	Cartwright
Small Business Administration	Salaries and Expenses	Institute for Native Pacific Education and Culture, Kapolei, HI	Leeward Community Small Business Incubator	\$500,000	Case
Small Business Administration	Salaries and Expenses	South Carolina State University, Orangeburg, SC	Small Business Research and Entrepreneurial Leadership Institute	\$1,000,000	Clyburn
Small Business Administration	Salaries and Expenses	Black Business Association of Memphis, Memphis, TN	Memphis ReStart Initiative	\$750,000	Cohen
Small Business Administration	Salaries and Expenses	Center for Inclusive Entrepreneurship, Mount Vernon, WA	North Cascades Community Enterprise Program	\$180,644	DelBene

Source: H.Rept. 117-79, p. 127.

When the bill or report contains no earmarks, committee reports from the House Appropriations Committee accompanying regular appropriations bills (as well as any JES) often include a statement indicating that neither the appropriations bill nor its accompanying committee report contains earmarks.<sup>80</sup> The report (H.Rept. 117-80) accompanying the FY2022 Legislative Branch regular appropriations bill, as reported by the House Appropriations Committee (H.R. 4346) provides an example of such a statement.

**Figure 10. Statement Declaring No Earmarks or Congressionally Directed Spending Items Included in Bill or Accompanying Report**

H.Rept. 117-80 accompanying the FY2022 Legislative Branch regular appropriations bill, as reported by the House Appropriations Committee (H.R. 4346)



**Source:** H.Rept. 117-80, p. 46.

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<sup>80</sup> Reports from the Senate Appropriations Committee have typically not included such statements.

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