Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 3106. Elements of the defense acquisition system: performance goals

(a) PERFORMANCE GOALS UNDER GOVERNMENT PERFORMANCE AND RESULTS ACT OF 1993.—The annual performance plan prepared by the Department of Defense pursuant to section 1115 of title 31 shall include appropriate performance goals for elements of the defense acquisition system.

(b) REPORTING REQUIREMENT.—The annual report prepared by the Secretary of Defense pursuant to section 1116 of title 31 shall address the Department's success in achieving performance goals established pursuant to such section for elements of the defense acquisition system.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1808(c)(1), Jan. 1, 2021, 134 Stat. 4160.)

Editorial Notes

REFERENCES IN TEXT

The Government Performance and Results Act of 1993, referred to in subsec. (a), is Pub. L. 103–62, Aug. 3, 1993, 107 Stat. 285, which enacted section 306 of Title 5, Government Organization and Employees, sections 1115 to 1119, 9703, and 9704 of Title 31, Money and Finance, and sections 2801 to 2805 of Title 39, Postal Service, amended section 1105 of Title 31, and enacted provisions set out as notes under sections 1101 and 1115 of Title 31. For complete classification of this Act to the Code, see Short Title of 1993 Amendment note set out under section 1101 of Title 31 and Tables.

CODIFICATION

The text of subsecs. (d) and (e) of section 2548 of this title, which were transferred first to section 3105(d) and (e) of this title and then to this section, redesignated as subsecs. (a) and (b), respectively, and amended by Pub. L. 116–283, § 1808(a)(2), (c)(1), was based on Pub. L. 111–383, div. A, title VIII, § 861(a), Jan. 7, 2011, 124 Stat. 4289; amended Pub. L. 112–239, div. A, title X, § 1076(d)(5), (f)(30)(B), (C), Jan. 2, 2013, 126 Stat. 1951, 1953; Pub. L. 115–91, div. A, title X, § 1081(a)(41), Dec. 12, 2017, 131 Stat. 1596.

AMENDMENTS

2021—Pub. L. 116–283, § 1808(c)(1)(B), redesignated subsecs. (d) and (e) of section 3105 of this title as subsecs. (a) and (b), respectively, of this section.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

CHAPTER 207—BUDGETING AND APPROPRIATIONS

Sec.
3131. Availability of appropriations.
3132. Availability of appropriations for procurement of technical military equipment and supplies.
3133. Contracts for periods crossing fiscal years: severable service contracts; leases of real or personal property.
3134. Allocation of appropriations.
3135. Comparable budgeting for common procurement weapon systems.
3136. Defense Modernization Account.
3137. Procurement of contract services: specification of amounts requested in budget.[1]
3138. Obligations for contract services: reporting in budget object classes.

Editorial Notes

PRIOR PROVISIONS

A prior chapter 207 ''BUDGETING AND APPROPRIATIONS MATTERS'', as added by Pub. L. 115–232, div. A, title VIII, § 801(a), Aug. 13, 2018, 132 Stat. 1826, and consisting of reserved section 3101, was repealed by Pub. L. 116–283, div. A, title XVIII, § 1809(a), Jan. 1, 2021, 134 Stat. 4160.

§ 3131. Availability of appropriations

(a) Funds appropriated to the Department of Defense for research and development remain available for obligation for a period of two consecutive years.

(b) Funds appropriated to the Department of Defense for research and development may be used—

(1) for the purposes of section 4141 of this title; and

(2) for purposes related to research and development for which expenditures are specifically authorized in other appropriations of the Department of Defense.

(Added Pub. L. 97–258, § 2(b)(3)(B), Sept. 13, 1982, 96 Stat. 1052, § 2361; renumbered § 2351 and amended Pub. L. 100–370, § 1(g)(1), July 19, 1988, 102 Stat. 846; renumbered § 3131 and amended Pub. L. 116–283, div. A, title XVIII, §§ 1809(b), 1883(b)(2), Jan. 1, 2021, 134 Stat. 4161, 4294; Pub. L. 117–81, div. A, title XVII, § 1701(d)(1), Dec. 27, 2021, 135 Stat. 2136.)

HISTORICAL AND REVISION NOTES

1982 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2361	31:649c(2).	Aug. 10, 1956, ch. 1041, § 40(2), 70A Stat. 636; Nov. 17, 1971, Pub. L. 92–156, § 201(b), 85 Stat. 424.

The words ''Unless otherwise provided in the appropriation Act concerned'' are omitted as unnecessary and for consistency. The word ''Funds'' is substituted for ''moneys'' for consistency in title 10.

1988 ACT

Subsection (a) is based on section 2361 of this title.

Subsection (b) is based on Pub. L. 99–190, § 101(b) [title VIII, § 8015], Dec. 19, 1985, 99 Stat. 1185, 1205.

Editorial Notes

AMENDMENTS

2021—Pub. L. 116–283, § 1809(b), renumbered section 2351 of this title as this section.

Subsec. (b)(1). Pub. L. 117–81, which directed the substitution of ''section 4141'' for ''section 2353'', could not

[1] Section omitted by Pub. L. 117–81 without corresponding amendment of chapter analysis.

be executed because of the intervening amendment by Pub. L. 116–283, § 1883(b)(2). See note below.

Pub. L. 116–283, § 1883(b)(2), substituted ''section 4141'' for ''section 2353''.

1988—Pub. L. 100–370 renumbered section 2361 of this title as section 2351, designated such provisions as subsec. (a), and added subsec. (b).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 117–81 to take effect immediately after the amendments made by title XVIII of Pub. L. 116–283 have taken effect, see section 1701(a)(3) of Pub. L. 117–81, set out in a note preceding section 3001 of this title and note below.

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 3132. Availability of appropriations for procurement of technical military equipment and supplies

Funds appropriated to the Department of Defense for the procurement of technical military equipment and supplies remain available until spent.

(Added Pub. L. 97–258, § 2(b)(4)(B), Sept. 13, 1982, 96 Stat. 1052, § 2394; renumbered § 2395 and amended Pub. L. 97–295, § 1(28)(A), Oct. 12, 1982, 96 Stat. 1291; renumbered § 3132, Pub. L. 116–283, div. A, title XVIII, § 1809(c), Jan. 1, 2021, 134 Stat. 4161.)

HISTORICAL AND REVISION NOTES

1982 ACT (PUB. L. 97–258)

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2394	31:649c(1).	Aug. 10, 1956, ch. 1041, § 40(1), 70A Stat. 636; Nov. 17, 1971, Pub. L. 92–156, § 201(b), 85 Stat. 424.

The words ''Unless otherwise provided in the appropriation Act concerned'' are omitted as unnecessary and for consistency. The word ''Funds'' is substituted for ''moneys'' for consistency in title 10. The word ''military'' is added before ''public'' for clarity. The words ''including moneys appropriated to the Department of the Navy for the procurement and construction of guided missiles'' are omitted as included in ''technical military equipment''.

1982 ACT (PUB. L. 97–295)

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2395	10:2394.	Sept. 13, 1982, Pub. L. 97–258, § 2(b)(4)(B), 96 Stat. 1053.

This redesignates 10:2394 (enacted by Pub. L. 97–258) as 10:2395 because of the enactment of another 10:2394 by Pub. L. 97–214, § 6(a)(1), July 12, 1982, 96 Stat. 171, and amends the section generally to eliminate the words ''and the construction of military public works'' because of section 10(b)(5) of the Military Construction Codification Act (Pub. L. 97–214, July 12, 1982, 96 Stat. 176) which struck corresponding words from the source statute for 10:2394 subsequent to Apr. 15, 1982, the cutoff date prescribed by section 4(a) of Pub. L. 97–258, section 2(b)(4)(B) of which enacted 10:2394.

Editorial Notes

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2395 of this title as this section.

1982—Pub. L. 97–295 struck out ''and the construction of military public works'' after ''supplies''.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 3133. Contracts for periods crossing fiscal years: severable service contracts; leases of real or personal property

(a) AUTHORITY.—(1) The Secretary of Defense, the Secretary of a military department, or the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, may enter into a contract for a purpose described in paragraph (2) for a period that begins in one fiscal year and ends in the next fiscal year if (without regard to any option to extend the period of the contract) the contract period does not exceed one year.

(2) The purpose of a contract described in this paragraph is as follows:

(A) The procurement of severable services.

(B) The lease of real or personal property, including the maintenance of such property when contracted for as part of the lease agreement.

(b) OBLIGATION OF FUNDS.—Funds made available for a fiscal year may be obligated for the total amount of a contract entered into under the authority of subsection (a).

(Added Pub. L. 100–370, § 1(h)(2), July 19, 1988, 102 Stat. 847, § 2410a; amended Pub. L. 102–190, div. A, title III, § 342, Dec. 5, 1991, 105 Stat. 1343; Pub. L. 104–324, title II, § 214(b), Oct. 19, 1996, 110 Stat. 3915; Pub. L. 105–85, div. A, title VIII, § 801(a), Nov. 18, 1997, 111 Stat. 1831; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 108–136, div. A, title X, § 1005(a), (b)(1), Nov. 24, 2003, 117 Stat. 1584; renumbered § 3133, Pub. L. 116–283, div. A, title XVIII, § 1809(d), Jan. 1, 2021, 134 Stat. 4161.)

HISTORICAL AND REVISION NOTES

Section is based on Pub. L. 99–190, § 101(b) [title VIII, § 8005(e), (h), (*l*)], Dec. 19, 1985, 99 Stat. 1185, 1202.

Editorial Notes

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2410a of this title as this section.

2003—Pub. L. 108–136, § 1005(b)(1), amended section catchline generally, substituting ''Contracts for periods crossing fiscal years: severable service contracts; leases of real or personal property'' for ''Severable service contracts for periods crossing fiscal years''.

Subsec. (a). Pub. L. 108–136, § 1005(a), inserted ''(1)'' before ''The Secretary of Defense'', substituted ''for a purpose described in paragraph (2)'' for ''for procurement of severable services'', and added par. (2).

2002—Subsec. (a). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1997—Pub. L. 105–85 amended section generally. Prior to amendment, section related to availability of appropriated funds for payments under contracts for various types of maintenance, leases, and operations and authorized Secretary of Transportation to enter into contracts for procurement of severable services.

1996—Pub. L. 104–324 designated existing provisions as subsec. (a) and added subsec. (b).

1991—Par. (1). Pub. L. 102–190, § 342(1), inserted '', equipment,'' after ''tools''.

Par. (4). Pub. L. 102–190, § 342(2), added par. (4).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–136, div. A, title X, § 1005(c), Nov. 24, 2003, 117 Stat. 1585, provided that: ''The amendments made by this section [amending this section] shall not apply to funds appropriated for a fiscal year before fiscal year 2004.''

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

§ 3134. Allocation of appropriations

(a) Appropriations available for procurement by an agency named in section 3063 of this title may, through administrative allotment, be made available for obligation for procurement by any other agency in amounts authorized by the head of the allotting agency and without transfer of funds on the books of the Department of the Treasury.

(b) A disbursing official of the allotting agency may make any disbursement chargeable to an allotment under subsection (a) upon a voucher certified by an officer or civilian employee of the procuring agency.

(Aug. 10, 1956, ch. 1041, 70A Stat. 132, § 2309; Pub. L. 97–258, § 2(b)(1)(B), Sept. 13, 1982, 96 Stat. 1052; renumbered § 3134 and amended Pub. L. 116–283, div. A, title XVIII, § 1809(e), Jan. 1, 2021, 134 Stat. 4161; Pub. L. 117–81, div. A, title XVII, § 1701(b)(3), Dec. 27, 2021, 135 Stat. 2132.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2309(a)	41:159 (2d sentence).	Feb. 19, 1948, ch. 65, § 10 (less 1st sentence), 62 Stat. 25.
2309(b)	41:159 (less 1st and 2d sentences).	

In subsection (a), the words ''an agency named in section 2303 of this title'' are substituted for the words ''any such agency''.

In subsection (b), the words ''an allotment under subsection (a)'' are substituted for the words ''such allotments''.

Editorial Notes

AMENDMENTS

2021—Pub. L. 116–283, § 1809(e)(1), renumbered section 2309 of this title as this section.

Subsec. (a). Pub. L. 116–283, § 1809(e)(2)(A), substituted ''named in section 3063'' for ''named in section 2303''.

Subsec. (c). Pub. L. 116–283, § 1809(e)(2)(B), which directed adding subsec. (c), was repealed by Pub. L. 117–81, § 1701(b)(3).

1982—Subsec. (b). Pub. L. 97–258 substituted ''disbursing official'' for ''disbursing officer''.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 117–81 applicable as if included in the enactment of title XVIII of Pub. L. 116–283 as enacted, see section 1701(a)(2) of Pub. L. 117–81, set out in a note preceding section 3001 of this title and note below.

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 3135. Comparable budgeting for common procurement weapon systems

(a) MATTERS TO BE INCLUDED IN ANNUAL DEFENSE BUDGETS.—In preparing the defense budget for any fiscal year, the Secretary of Defense shall—

(1) specifically identify each common procurement weapon system included in the budget;

(2) take all feasible steps to minimize variations in procurement unit costs for any such system as shown in the budget requests of the different armed forces requesting procurement funds for the system; and

(3) identify and justify in the budget all such variations in procurement unit costs for common procurement weapon systems.

(b) COMPTROLLER.—The Secretary shall carry out this section through the Under Secretary of Defense (Comptroller).

(c) DEFINITIONS.—In this section:

(1) The term ''defense budget'' means the budget of the Department of Defense included in the President's budget submitted to Congress under section 1105 of title 31 for a fiscal year.

(2) The term ''common procurement weapon system'' means a weapon system for which two or more of the Army, Navy, Air Force, Marine Corps, and Space Force request procurement funds in a defense budget.

(Added Pub. L. 100–370, § 1(d)(3)(A), July 19, 1988, 102 Stat. 843, § 2217; amended Pub. L. 104–106, div. A, title XV, § 1503(a)(20), Feb. 10, 1996, 110 Stat. 512; renumbered § 3135 and amended Pub. L. 116–283, div. A, title IX, § 924(b)(1)(N), title XVIII, § 1809(f)(1), Jan. 1, 2021, 134 Stat. 3820, 4161.)

HISTORICAL AND REVISION NOTES

Section is based on Pub. L. 99–500, § 101(c) [title X, § 955], Oct. 18, 1986, 100 Stat. 1783–82, 1783–173, and Pub. L. 99–591, § 101(c) [title X, § 955], Oct. 30, 1986, 100 Stat. 3341–82, 3341–173; Pub. L. 99–661, div. A, title IX, formerly title IV, § 955, Nov. 14, 1986, 100 Stat. 3953, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273.

Editorial Notes

AMENDMENTS

2021—Pub. L. 116–283, § 1809(f)(1), renumbered section 2217 of this title as this section.

Subsec. (c)(2). Pub. L. 116–283, § 924(b)(1)(N), substituted ''Marine Corps, and Space Force'' for ''and Marine Corps''.

1996—Subsec. (b). Pub. L. 104–106 substituted ''Under Secretary of Defense (Comptroller)'' for ''Comptroller of the Department of Defense''.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by section 1809(f)(1) of Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 3136. Defense Modernization Account

(a) ESTABLISHMENT.—There is established in the Treasury an account to be known as the ''Defense Modernization Account''.

(b) FUNDS AVAILABLE FOR ACCOUNT.—The Defense Modernization Account shall consist of the following:

(1) Amounts appropriated to the Defense Modernization Account for the costs of projects described in subsection (d)(1), and amounts reimbursed to the Defense Modernization Account under subsection (c)(1)(B)(ii) out of savings derived from such projects.

(2) Amounts transferred to the Defense Modernization Account under subsection (c).

(c) TRANSFERS TO ACCOUNT.—(1)(A) Upon a determination by the Secretary of a military department, or the Secretary of Defense with respect to Defense-wide appropriations accounts, of the availability and source of funds described in subparagraph (B), the Secretary concerned may transfer to the Defense Modernization Account during any fiscal year any amount of funds available to the Secretary described in that subparagraph. Such funds may be transferred to that account only after the Secretary concerned notifies the congressional defense committees in writing of the amount and source of the proposed transfer.

(B) This subsection applies to the following funds that have been appropriated for fiscal years after fiscal year 2016 and are available to the Secretary concerned:

(i) Unexpired funds in appropriations accounts that are available for new obligations and that, as a result of economies, efficiencies, and other savings achieved in carrying out an acquisition program, are excess to the requirements of that program.

(ii) Unexpired funds in appropriations accounts that are available for procurement or operation and maintenance of a system, if and to the extent that savings are achieved for such accounts through reductions in life cycle costs of such system that result from one or more projects undertaken with respect to such systems with funds made available from the Defense Modernization Account under subsection (b)(1).

(C) Any transfer under subparagraph (A) shall be made under regulations prescribed by the Secretary of Defense.

(2) Funds referred to in paragraph (1) may not be transferred to the Defense Modernization Account if the balance of funds in the account, after transfer of funds to the account, would exceed $1,000,000,000.

(3) Amounts deposited in the Defense Modernization Account shall remain available for transfer and obligation until the end of the third fiscal year that follows the fiscal year in which the amounts are deposited in the account.

(d) AUTHORIZED USE OF FUNDS.—Funds in the Defense Modernization Account may be used for the following purposes:

(1) For paying the costs of any project that, in accordance with criteria prescribed by the Secretary concerned, is undertaken by the Secretary of a military department or the head of a Defense Agency or other element of the Department of Defense to reduce the life cycle cost of a new or existing system.

(2) For increasing, subject to subsection (e), the quantity of items and services procured under an acquisition program in order to achieve a more efficient production or delivery rate.

(3) For research, development, test, and evaluation, for procurement, and for sustainment activities necessary for paying costs of unforeseen contingencies that are approved by the milestone decision authority concerned, that could prevent an ongoing acquisition program from meeting critical schedule or performance requirements.

(4) For paying costs of changes to program requirements or system configuration that are approved by the configuration steering board for a major defense acquisition program.

(5) For procuring and integrating available commercial technologies and services to satisfy a joint urgent operational need, joint emergent operational need, or a validated service requirement.

(6) For providing infrastructure to support Department goals of accelerating the fielding and adoption of new capabilities.

(e) LIMITATIONS.—(1) Funds in the Defense Modernization Account may not be used to increase the quantity of an item or services procured under a particular acquisition program to the extent that doing so would—

(A) result in procurement of a total quantity of items or services in excess of—

(i) a specific limitation provided by law on the quantity of the items or services that may be procured; or

(ii) the requirement for the items or services as approved by the Joint Requirements Oversight Council and reported to Congress by the Secretary of Defense; or

(B) result in an obligation or expenditure of funds in excess of a specific limitation provided by law on the amount that may be obligated or expended, respectively, for that acquisition program.

(2) Funds in the Defense Modernization Account may not be used for a purpose or program for which Congress has not authorized appropriations, unless the procedures for initiating a new start program are complied with.

(3) Funds may not be transferred from the Defense Modernization Account in any year for the purpose of—

(A) making an expenditure for which there is no corresponding obligation; or

(B) making an expenditure that would satisfy an unliquidated or unrecorded obligation arising in a prior fiscal year.

(f) TRANSFER OF FUNDS.—(1) The Secretary of a military department, or the Secretary of Defense with respect to Defense-wide appropriations accounts, may transfer funds in the Defense Modernization Account to appropriations available for purposes set forth in subsection (d).

(2) Funds in the Defense Modernization Account may not be transferred under paragraph (1) until 30 days after the date on which the Secretary concerned notifies the congressional defense committees in writing of the amount and purpose of the proposed transfer.

(3) The total amount of transfers from the Defense Modernization Account during any fiscal year under this subsection may not exceed $500,000,000.

(g) AVAILABILITY OF FUNDS BY APPROPRIATION.—In addition to transfers under subsection (f), funds in the Defense Modernization Account may be made available for purposes set forth in subsection (d), but only to the extent authorized in an Act other than an appropriations Act. Funds deposited in the Defense Modernization Account shall remain available for obligation until the end of the third fiscal year that follows the fiscal year in which the amounts are deposited in the account.

(h) SECRETARY TO ACT THROUGH COMPTROLLER.—(1) The Secretary of Defense shall carry out this section through the Under Secretary of Defense (Comptroller), who shall be authorized to implement this section through the issuance of any necessary regulations, policies, and procedures after consultation with the General Counsel and Inspector General of the Department of Defense.

(2) The regulations prescribed under paragraph (1) shall, at a minimum, provide for—

(A) the establishment and management of subaccounts for each of the military departments and Defense Agencies concerned for the use of funds in the Defense Modernization Account, consistent with each military department's or Defense Agency's deposits in the Account;

(B) the submission of proposals by the Secretaries concerned or heads of Defense Agencies or other elements of the Department of Defense to the Comptroller for the use of Defense Modernization Account funds for purposes set forth in subsection (d);

(C) the use of a competitive process for the evaluation of such proposals and the selection of programs, projects, and activities to be funded out of the Defense Modernization Account and subaccounts from among those proposed for such funding; and

(D) the calculation of—

(i) the savings to be derived from projects described in subsection (d)(1) that are to be funded out of the Defense Modernization Account; and

(ii) the amounts to be reimbursed to the Defense Modernization Account out of such savings pursuant to subsection (c)(1)(B)(ii).

(i) DEFINITIONS.—In this section:

(1) The term ''major defense acquisition program'' has the meaning given the term in section 4201 of this title.

(2) The term ''unexpired funds'' means funds appropriated for a definite period that remain available for obligation.

(Added Pub. L. 104–106, div. A, title IX, § 912(a)(1), Feb. 10, 1996, 110 Stat. 407, § 2216; amended Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 108–136, div. A, title X, §§ 1008(a)–(f)(1), 1043(b)(8), Nov. 24, 2003, 117 Stat. 1586, 1587, 1611; Pub. L. 109–364, div. A, title X, § 1071(a)(16), Oct. 17, 2006, 120 Stat. 2399; Pub. L. 113–66, div. A, title X, § 1084(a)(2), Dec. 26, 2013, 127 Stat. 871; Pub. L. 114–328, div. A, title VIII, § 804, Dec. 23, 2016, 130 Stat. 2250; Pub. L. 116–92, div. A, title XVII, § 1731(a)(30), Dec. 20, 2019, 133 Stat. 1814; renumbered § 3136 and amended Pub. L. 116–283, div. A, title XVIII, §§ 1809(g)(1), 1883(b)(2), Jan. 1, 2021, 134 Stat. 4161, 4294; Pub. L. 117–263, div. A, title VIII, § 813, Dec. 23, 2022, 136 Stat. 2707; Pub. L. 118–159, div. A, title X, § 1003(a), Dec. 23, 2024, 138 Stat. 2047.)

Editorial Notes

AMENDMENTS

2024—Subsec. (d)(5), (6). Pub. L. 118–159 added pars. (5) and (6).

2022—Subsec. (j). Pub. L. 117–263 struck out subsec. (j). Text read as follows:

''(1) The authority under subsection (c) to transfer funds into the Defense Modernization Account terminates at the close of September 30, 2022.

''(2) Three years after the termination date specified in paragraph (1), the Defense Modernization Account shall be closed and any remaining balance in the account shall be canceled and thereafter shall not be available for any purpose.''

2021—Pub. L. 116–283, § 1809(g)(1), renumbered section 2216 of this title as this section.

Subsec. (i)(1). Pub. L. 116–283, § 1883(b)(2), substituted ''section 4201 of this title'' for ''section 2430(a) of this title''.

2019—Subsec. (b)(1). Pub. L. 116–92 substituted ''subsection (c)(1)(B)(ii)'' for ''subsection (c)(1)(B)(iii)''.

2016—Subsec. (b)(1). Pub. L. 114–328, § 804(a), struck out ''commencing'' before ''projects described''.

Subsec. (c)(1)(A). Pub. L. 114–328, § 804(b)(1), substituted '', or the Secretary of Defense with respect to Defense-wide appropriations accounts,'' for ''or the Secretary of Defense with respect to Defense-wide appropriations accounts'' and ''the Secretary concerned'' for ''that Secretary'' before ''may transfer''.

Subsec. (c)(1)(B). Pub. L. 114–328, § 804(b)(2)(A), in introductory provisions, inserted ''that have been appropriated for fiscal years after fiscal year 2016 and are'' after ''following funds''.

Subsec. (c)(1)(B)(i). Pub. L. 114–328, § 804(b)(2)(B), substituted ''or new obligations'' for ''for procurement'', ''an acquisition program'' for ''a particular procurement'', and ''that program'' for ''that procurement''.

Subsec. (c)(1)(B)(ii), (iii). Pub. L. 114–328, § 804(b)(2)(C), (D), redesignated cl. (iii) as (ii) and struck out former cl. (ii) which read as follows: ''Unexpired funds that are available during the final 30 days of a fiscal year for support of installations and facilities and that, as a result of economies, efficiencies, and other savings, are excess to the requirements for support of installations and facilities.''

Subsec. (c)(2). Pub. L. 114–328, § 804(b)(3), struck out '', other than funds referred to in subparagraph (B)(iii) of such paragraph,'' after ''Funds referred to in paragraph (1)'' and substituted ''if the balance of funds'' for ''if—

''(A) the funds are necessary for programs, projects, and activities that, as determined by the Secretary,

have a higher priority than the purposes for which the funds would be available if transferred to that account; or

''(B) the balance of funds''.

Subsec. (c)(3). Pub. L. 114–328, §804(b)(4), substituted ''deposited in'' for ''credited to'' in two places and inserted ''and obligation'' after ''available for transfer''.

Subsec. (c)(4). Pub. L. 114–328, §804(b)(5), struck out par. (4) which read as follows: ''The period of availability of funds for expenditure provided for in sections 1551 and 1552 of title 31 may not be extended by transfer into the Defense Modernization Account.''

Subsec. (d)(1). Pub. L. 114–328, §804(c)(1), struck out ''commencing'' before ''any project'' and substituted ''Secretary concerned'' for ''Secretary of Defense''.

Subsec. (d)(2). Pub. L. 114–328, §804(c)(2), substituted ''an acquisition program'' for ''a procurement program''.

Subsec. (d)(3). Pub. L. 114–328, §804(c)(3), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''For research, development, test, and evaluation and for procurement necessary for modernization of an existing system or of a system being procured under an ongoing procurement program.''

Subsec. (d)(4). Pub. L. 114–328, §804(c)(4), added par. (4).

Subsec. (e)(1). Pub. L. 114–328, §804(d)(1), substituted ''acquisition program'' for ''procurement program'' in introductory provisions and subpar. (B).

Subsec. (e)(2). Pub. L. 114–328, §804(d)(2), substituted ''authorized appropriations, unless the procedures for initiating a new start program are complied with'' for ''authorized appropriations''.

Subsec. (f)(1). Pub. L. 114–328, §804(e), substituted ''Secretary of a military department, or the Secretary of Defense with respect to Defense-wide appropriations accounts,'' for ''Secretary of Defense''.

Subsec. (g). Pub. L. 114–328, §804(f), struck out ''in accordance with the provisions of appropriations Acts'' after ''subsection (d)'' and inserted at end ''Funds deposited in the Defense Modernization Account shall remain available for obligation until the end of the third fiscal year that follows the fiscal year in which the amounts are deposited in the account.''

Subsec. (h)(2)(A), (B). Pub. L. 114–328, §804(g)(1), (2), added subpar. (A) and redesignated former subpar. (A) as (B). Former subpar. (B) redesignated (C).

Subsec. (h)(2)(C). Pub. L. 114–328, §804(g)(1), (3), redesignated subpar. (B) as (C) and inserted ''and subaccounts'' after ''Account''. Former subpar. (C) redesignated (D).

Subsec. (h)(2)(D). Pub. L. 114–328, §804(g)(1), redesignated subpar. (C) as (D).

Subsec. (h)(2)(D)(ii). Pub. L. 114–328, §804(g)(4), substituted ''subsection (c)(1)(B)(ii)'' for ''subsection (c)(1)(B)(iii)''.

Subsec. (i)(1). Pub. L. 114–328, §804(h), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''The term 'Secretary concerned' includes the Secretary of Defense with respect to Defense-wide appropriations accounts.''

Subsec. (j)(1). Pub. L. 114–328, §804(j), substituted ''terminates at the close of September 30, 2022'' for ''terminates at the close of September 30, 2006''.

2013—Subsecs. (i) to (k). Pub. L. 113–66 redesignated subsecs. (j) and (k) as (i) and (j), respectively, and struck out former subsec. (i) which related to an annual report submitted by the Secretary of Defense to the congressional defense committees and the Committee on Governmental Affairs of the Senate and the Committee on Government Reform and Oversight of the House of Representatives.

2006—Subsec. (b)(1). Pub. L. 109–364 substituted ''subsection (c)(1)(B)(iii)'' for ''subsections (c)(1)(B)(iii)''.

2003—Subsec. (b). Pub. L. 108–136, §1008(a)(3), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 108–136, §1008(a)(1), (2), redesignated subsec. (b) as (c) and struck out heading and text of former subsec. (c). Text read as follows: ''Funds transferred to the Defense Modernization Account from funds appropriated for a military department, Defense Agency, or other element of the Department of Defense shall be available in accordance with subsections (f) and (g) only for transfer to funds available for that military department, Defense Agency, or other element.''

Subsec. (c)(1)(B)(iii). Pub. L. 108–136, §1008(c)(1), added cl. (iii).

Subsec. (c)(2). Pub. L. 108–136, §1008(c)(2), inserted '', other than funds referred to in subparagraph (B)(iii) of such paragraph,'' after ''Funds referred to in paragraph (1)''.

Subsec. (d). Pub. L. 108–136, §1008(b), substituted ''in the Defense Modernization Account'' for ''available from the Defense Modernization Account pursuant to subsection (f) or (g)'' in introductory provisions, added par. (1), and redesignated former pars. (1) and (2) as (2) and (3), respectively.

Subsec. (h). Pub. L. 108–136, §1008(d), designated existing provisions as par. (1) and added par. (2).

Subsec. (i). Pub. L. 108–136, §1008(e)(1), substituted ''Annual Report'' for ''Quarterly Reports'' in heading.

Subsec. (i)(1). Pub. L. 108–136, §1008(e)(1), (2), substituted ''fiscal year'' for ''calendar quarter'' in introductory provisions and ''fiscal year'' for ''quarter'' in subpars. (A) to (C).

Subsec. (j)(3). Pub. L. 108–136, §1043(b)(8), struck out par. (3) which read as follows: ''The term 'congressional defense committees' means—

''(A) the Committee on Armed Services and the Committee on Appropriations of the Senate; and

''(B) the Committee on Armed Services and the Committee on Appropriations of the House of Representatives.''

Subsec. (k). Pub. L. 108–136, §1008(f)(1), added subsec. (k).

1999—Subsec. (j)(3)(B). Pub. L. 106–65 substituted ''Committee on Armed Services'' for ''Committee on National Security''.

Statutory Notes and Related Subsidiaries

Effective Date of 2024 Amendment

Pub. L. 118–159, div. A, title X, §1003(b), Dec. 23, 2024, 138 Stat. 2047, provided that: ''Paragraphs (5) and (6) of subsection (d) of section 3136 of title 10, United States Code, as added by subsection (a), shall apply only with respect to funds made available, and transferred to the Defense Modernization Account, on or after the date of the enactment of this Act [Dec. 23, 2024].''

Effective Date of 2021 Amendment

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

Effective Date

Pub. L. 104–106, div. A, title IX, §912(b), Feb. 10, 1996, 110 Stat. 410, provided that: ''Section 2216 of title 10, United States Code [now 10 U.S.C. 3136] (as added by subsection (a)), shall apply only to funds appropriated for fiscal years after fiscal year 1995.''

[§ 3137. Omitted]

Editorial Notes

Codification

Pub. L. 116–283, div. A, title XVIII, §1809(h)(1), Jan. 1, 2021, 134 Stat. 4162, directed the transfer of section 235 of this title to this section, which was to take effect Jan. 1, 2022. However, Pub. L. 117–81, div. A, title VIII, §815(b)(1), Dec. 27, 2021, 135 Stat. 1825, subsequently repealed section 235 of this title effective Dec. 27, 2021, effectively eliminating that transfer and omitting this section before it took effect.

§ 3138. Obligations for contract services: reporting in budget object classes

(a) LIMITATION ON REPORTING IN MISCELLANEOUS SERVICES OBJECT CLASS.—The Secretary of Defense shall ensure that, in reporting to the Office of Management and Budget (pursuant to OMB Circular A–11 (relating to preparation and submission of budget estimates)) obligations of the Department of Defense for any period of time for contract services, no more than 15 percent of the total amount of obligations so reported is reported in the miscellaneous services object class.

(b) DEFINITION OF REPORTING CATEGORIES FOR ADVISORY AND ASSISTANCE SERVICES.—In carrying out section 1105(g) of title 31 for the Department of Defense (and in determining what services are to be reported to the Office of Management and Budget in the advisory and assistance services object class), the Secretary of Defense shall apply to the terms used for the definition of ''advisory and assistance services'' in paragraph (2)(A) of that section the following meanings (subject to the authorized exemptions):

(1) MANAGEMENT AND PROFESSIONAL SUPPORT SERVICES.—The term ''management and professional support services'' (used in clause (i) of section 1105(g)(2)(A) of title 31) means services that provide engineering or technical support, assistance, advice, or training for the efficient and effective management and operation of organizations, activities, or systems. Those services—

(A) are closely related to the basic responsibilities and mission of the using organization; and

(B) include efforts that support or contribute to improved organization or program management, logistics management, project monitoring and reporting, data collection, budgeting, accounting, auditing, and administrative or technical support for conferences and training programs.

(2) STUDIES, ANALYSES, AND EVALUATIONS.—The term ''studies, analyses, and evaluations'' (used in clause (ii) of section 1105(g)(2)(A) of title 31) means services that provide organized, analytic assessments to understand or evaluate complex issues to improve policy development, decisionmaking, management, or administration and that result in documents containing data or leading to conclusions or recommendations. Those services may include databases, models, methodologies, and related software created in support of a study, analysis, or evaluation.

(3) ENGINEERING AND TECHNICAL SERVICES.—The term ''engineering and technical services'' (used in clause (iii) of section 1105(g)(2)(A) of title 31) means services that take the form of advice, assistance, training, or hands-on training necessary to maintain and operate fielded weapon systems, equipment, and components (including software when applicable) at design or required levels of effectiveness.

(c) PROPER CLASSIFICATION OF ADVISORY AND ASSISTANCE SERVICES.—Before the submission to the Office of Management and Budget of the proposed Department of Defense budget for inclusion in the President's budget for a fiscal year pursuant to section 1105 of title 31, the Secretary of Defense, acting through the Under Secretary of Defense (Comptroller), shall conduct a review of Department of Defense services expected to be performed as contract services during the fiscal year for which that budget is to be submitted in order to ensure that those services that are advisory and assistance services (as defined in accordance with subsection (b)) are in fact properly classified, in accordance with that subsection, in the advisory and assistance services object class.

(d) REPORT TO CONGRESS.—The Secretary shall submit to Congress each year, not later than 30 days after the date on which the budget for the next fiscal year is submitted pursuant to section 1105 of title 31, a report containing the information derived from the review under subsection (c).

(e) ASSESSMENT BY COMPTROLLER GENERAL.—(1) The Comptroller General shall conduct a review of the report of the Secretary of Defense under subsection (d) each year and shall—

(A) assess the methodology used by the Secretary in obtaining the information submitted to Congress in that report; and

(B) assess the information submitted to Congress in that report.

(2) Not later than 120 days after the date on which the Secretary submits to Congress the report required under subsection (d) for any year, the Comptroller General shall submit to Congress the Comptroller General's report containing the results of the review for that year under paragraph (1).

(f) DEFINITIONS.—In this section:

(1) The term ''contract services'' means all services that are reported to the Office of Management and Budget pursuant to OMB Circular A–11 (relating to preparation and submission of budget estimates) in budget object classes that are designated in the Object Class 25 series.

(2) The term ''advisory and assistance services object class'' means those contract services constituting the budget object class that is denominated ''Advisory and Assistance Service'' and designated (as of October 17, 1998) as Object Class 25.1 (or any similar object class established after October 17, 1998, for the reporting of obligations for advisory and assistance contract services).

(3) The term ''miscellaneous services object class'' means those contract services constituting the budget object class that is denominated ''Other Services (services not otherwise specified in the 25 series)'' and designated (as of October 17, 1998) as Object Class 25.2 (or any similar object class established after October 17, 1998, for the reporting of obligations for miscellaneous or unspecified contract services).

(4) The term ''authorized exemptions'' means those exemptions authorized (as of October 17, 1998) under Department of Defense Directive 4205.2, captioned ''Acquiring and Managing Contracted Advisory and Assistance Services (CAAS)'' and issued by the Under Secretary of Defense for Acquisition and Technology on February 10, 1992, such exemptions

being set forth in Enclosure 3 to that directive (captioned ''CAAS Exemptions'').

(Added Pub. L. 105–261, div. A, title IX, §911(a)(1), Oct. 17, 1998, 112 Stat. 2097, §2212; amended Pub. L. 106–65, div. A, title X, §1066(a)(17), Oct. 5, 1999, 113 Stat. 771; renumbered §3138, Pub. L. 116–283, div. A, title XVIII, §1809(i)(1), Jan. 1, 2021, 134 Stat. 4162.)

Editorial Notes

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2212 of this title as this section.

1999—Subsec. (f)(2), (3). Pub. L. 106–65 substituted ''as of October 17, 1998'' for ''as of the date of the enactment of this section'' and ''after October 17, 1998,'' for ''after the date of the enactment of this section''.

Subsec. (f)(4). Pub. L. 106–65, §1066(a)(17)(B), substituted ''as of October 17, 1998'' for ''as of the date of the enactment of this section''.

Statutory Notes and Related Subsidiaries

CHANGE OF NAME

Reference to Under Secretary of Defense for Acquisition and Technology deemed to refer to Under Secretary of Defense for Acquisition, Technology, and Logistics, pursuant to section 911(a)(1) of Pub. L. 106–65, formerly set out as a note under section 133 of this title.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

CHAPTER 209—OPERATIONAL CONTRACT SUPPORT

Subchapter		Sec.
I.	Joint Policies on Requirements Definition, Contingency Program Management, and Contingency Contracting ..	3151
II.	[Reserved]	

Editorial Notes

PRIOR PROVISIONS

A prior chapter 209 ''OPERATIONAL CONTRACT SUPPORT'', as added by Pub. L. 115–232, div. A, title VIII, §801(a), Aug. 13, 2018, 132 Stat. 1827, and consisting of reserved section 3151, was repealed by Pub. L. 116–283, div. A, title XVIII, §1810(a), Jan. 1, 2021, 134 Stat. 4162.

AMENDMENTS

2021—Pub. L. 117–81, div. A, title XVII, §1701(i)(2)(A), Dec. 27, 2021, 135 Stat. 2141, amended Pub. L. 116–283, div. A, title XVIII, §1810(a), Jan. 1, 2021, 134 Stat. 4162, which added this analysis, by substituting ''[Reserved]'' for ''Other Provisions Relating to Operational Contract Support'' in item for subchapter II.

Statutory Notes and Related Subsidiaries

RESPONSIBILITY WITHIN DEPARTMENT OF DEFENSE FOR OPERATIONAL CONTRACT SUPPORT

Pub. L. 112–239, div. A, title VIII, §843, Jan. 2, 2013, 126 Stat. 1845, provided that:

''(a) GUIDANCE REQUIRED.—Not later than one year after the date of the enactment of this Act [Jan. 2, 2013], the Secretary of Defense shall develop and issue guidance establishing the chain of authority and responsibility within the Department of Defense for policy, planning, and execution of operational contract support.

''(b) ELEMENTS.—The guidance under subsection (a) shall, at a minimum—

''(1) specify the officials, offices, and components of the Department within the chain of authority and responsibility described in subsection (a);

''(2) identify for each official, office, and component specified under paragraph (1)—

''(A) requirements for policy, planning, and execution of contract support for operational contract support, including, at a minimum, requirements in connection with—

''(i) coordination of functions, authorities, and responsibilities related to operational contract support, including coordination with relevant Federal agencies;

''(ii) assessments of total force data in support of Department force planning scenarios, including the appropriateness of and necessity for the use of contractors for identified functions;

''(iii) determinations of capability requirements for nonacquisition community operational contract support, and identification of resources required for planning, training, and execution to meet such requirements; and

''(iv) determinations of policy regarding the use of contractors by function, and identification of the training exercises that will be required for operational contract support (including an assessment [of] whether or not such exercises will include contractors); and

''(B) roles, authorities, responsibilities, and lines of supervision for the achievement of the requirements identified under subparagraph (A); and

''(3) ensure that the chain of authority and responsibility described in subsection (a) is appropriately aligned with, and appropriately integrated into, the structure of the Department for the conduct of overseas contingency operations, including the military departments, the Joint Staff, and the commanders of the unified combatant commands.''

COMPETITION AND REVIEW OF CONTRACTS FOR PROPERTY OR SERVICES IN SUPPORT OF A CONTINGENCY OPERATION

Pub. L. 112–81, div. A, title VIII, §844(a), (b), Dec. 31, 2011, 125 Stat. 1515, which authorized the Secretary of Defense to establish goals for competition in contracts for procurement of property or services to be used outside the United States in support of a contingency operation and to develop processes to measure and monitor such competition and required annual review of such contracts, was repealed by Pub. L. 118–159, div. A, title VIII, §811(a)(2)(A), Dec. 23, 2024, 138 Stat. 1979.

SUBCHAPTER I—JOINT POLICIES ON REQUIREMENTS DEFINITION, CONTINGENCY PROGRAM MANAGEMENT, AND CONTINGENCY CONTRACTING

Sec.
3151. Joint policy requirement.
3152. Requirements definition matters covered.
3153. Contingency program management matters covered.
3154. Contingency contracting matters covered.
3155. Training for personnel outside acquisition workforce.
3156. Mission readiness exercises.
3157. Definitions; applicability.

§3151. Joint policy requirement

The Secretary of Defense, in consultation with the Chairman of the Joint Chiefs of Staff, shall develop joint policies for requirements definition, contingency program management, and contingency contracting during combat operations and post-conflict operations.