

1961, 1962, 2016, substituted “Defense Industrial Base” for “Buy American Requirements” in item for chapter 148, substituted “Property Records and Report of Theft or Loss of Certain Property” for “Property Records” in item for chapter 161, and added item for chapter 171.

Pub. L. 100-370, §§1(e)(2), 2(a)(2), 3(a)(2), July 19, 1988, 102 Stat. 845, 854, 855, added items for chapters 134, 146, and 148.

1987—Pub. L. 100-26, §7(c)(1), Apr. 21, 1987, 101 Stat. 280, substituted “Acquisition and Cross-Servicing Agreements with NATO Allies and Other Countries” for “North Atlantic Treaty Organization Acquisition and Cross-Servicing Agreements” in item for chapter 138, substituted “Major Defense Acquisition Programs” for “Oversight of Cost Growth in Major Programs” and “2430” for “2431” in item for chapter 144, and substituted “2721” for “2701” in item for chapter 161.

1986—Pub. L. 99-661, div. A, title XIII, §1343(a)(22), Nov. 14, 1986, 100 Stat. 3994, substituted “2341” for “2321” in item for chapter 138.

Pub. L. 99-499, title II, §211(a)(2), Oct. 17, 1986, 100 Stat. 1725, added item for chapter 160.

Pub. L. 99-433, title VI, §605(b), Oct. 1, 1986, 100 Stat. 1075a, added item for chapter 144.

1984—Pub. L. 98-525, title XII, §1241(a)(2), Oct. 19, 1984, 98 Stat. 2606, added item for chapter 142.

1982—Pub. L. 97-295, §1(50)(E), Oct. 12, 1982, 96 Stat. 1300, added item for chapter 167.

Pub. L. 97-214, §2(b), July 12, 1982, 96 Stat. 169, added item for chapter 169.

1980—Pub. L. 96-323, §2(b), Aug. 4, 1980, 94 Stat. 1019, added item for chapter 138.

#### CHAPTER 131—PLANNING AND COORDINATION

Sec.  
2201. Apportionment of funds: authority for exemption; excepted expenses.  
2202. Regulations on procurement, production, warehousing, and supply distribution functions.  
2203. Budget estimates.  
2204. Obligation of appropriations.  
2205. Reimbursements.  
2206. Disbursement of funds of military department to cover obligation of another agency of Department of Defense.  
2207. Expenditure of appropriations: limitation.  
2208. Working-capital funds.  
2209. Management funds.  
2210. Proceeds of sales of supplies: credit to appropriations.  
2211. Reimbursement for equipment, material, or services furnished members of the United Nations.  
2212. Obligations for contract services: reporting in budget object classes.  
2213. Limitation on acquisition of excess supplies.  
2214. Transfer of funds: procedure and limitations.  
2215. Transfer of funds to other departments and agencies: limitation.  
2216. Defense Modernization Account.  
[2216a. Repealed.]  
2217. Comparable budgeting for common procurement weapon systems.  
2218. National Defense Sealift Fund.  
[2219. Renumbered.]  
2220. Performance based management: acquisition programs.  
[2221. Repealed.]  
2222. Defense business systems: architecture, accountability, and modernization.  
2223. Information technology: additional responsibilities of Chief Information Officers.  
2223a. Information technology acquisition planning and oversight requirements.  
2224. Defense Information Assurance Program.  
2224a. Information security: continued applicability of expiring Governmentwide requirements to the Department of Defense.

Sec.  
2225. Information technology purchases: tracking and management.  
2226. Contracted property and services: prompt payment of vouchers.  
2227. Electronic submission and processing of claims for contract payments.  
2228. Office of Corrosion Policy and Oversight.  
2229. Strategic policy on prepositioning of materiel and equipment.  
2229a. Annual report on prepositioned materiel and equipment.

#### AMENDMENTS

2011—Pub. L. 111-383, div. A, title VIII, §805(a)(2), Jan. 7, 2011, 124 Stat. 4259, added item 2223a.

2008—Pub. L. 110-181, div. A, title III, §§352(b), 371(f), Jan. 28, 2008, 122 Stat. 72, 81, added items 2228 and 2229a and struck out former item 2228 “Military equipment and infrastructure: prevention and mitigation of corrosion”.

2006—Pub. L. 109-364, div. A, title III, §351(b), Oct. 17, 2006, 120 Stat. 2160, added item 2229.

2004—Pub. L. 108-375, div. A, title III, §332(a)(2), title VI, §651(f)(2), Oct. 28, 2004, 118 Stat. 1854, 1972, struck out item 2219 “Retention of morale, welfare, and recreation funds by military installations: limitation” and added item 2222.

2002—Pub. L. 107-314, div. A, title X, §§1004(h)(1), 1052(b)(2), 1067(a)(2), Dec. 2, 2002, 116 Stat. 2631, 2649, 2658, struck out item 2222 “Annual financial management improvement plan” and added items 2224a and 2228.

2001—Pub. L. 107-107, div. A, title X, §1009(b)(3)(B), Dec. 28, 2001, 115 Stat. 1209, substituted “Annual” for “Biennial” in item 2222.

2000—Pub. L. 106-398, §1 [[div. A], title VIII, §812(a)(2), title X, §§1006(a)(2), 1008(a)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A-214, 1654A-247, 1654A-250, added items 2225, 2226, and 2227.

1999—Pub. L. 106-65, div. A, title X, §1043(b), Oct. 5, 1999, 113 Stat. 761, added item 2224.

1998—Pub. L. 105-261, div. A, title III, §331(a)(2), title IX, §§906(f)(1), 911(a)(2), title X, §1008(b), Oct. 17, 1998, 112 Stat. 1968, 2096, 2099, 2117, added item 2212, struck out items 2216a “Defense Business Operations Fund” and 2221 “Fisher House trust funds”, and added item 2223.

1997—Pub. L. 105-85, div. A, title X, §1008(a)(2), Nov. 18, 1997, 111 Stat. 1871, added item 2222.

1996—Pub. L. 104-201, div. A, title X, §1074(a)(10), Sept. 23, 1996, 110 Stat. 2659, redesignated item 2216 “Defense Business Operations Fund” as 2216a.

Pub. L. 104-106, div. A, title III, §371(a)(2), title IX, §§912(a)(2), 914(a)(2), Feb. 10, 1996, 110 Stat. 279, 410, 412, added two items 2216 and item 2221.

1994—Pub. L. 103-355, title II, §2454(c)(3)(A), title III, §3061(b), title V, §5001(a)(2), Oct. 13, 1994, 108 Stat. 3326, 3336, 3350, substituted “Regulations on procurement, production, warehousing, and supply distribution functions” for “Obligation of funds: limitation” in item 2202, struck out item 2212 “Contracted advisory and assistance services: accounting procedures”, and added item 2220.

Pub. L. 103-337, div. A, title III, §373(b), div. B, title XXVIII, §2804(b)(2), Oct. 5, 1994, 108 Stat. 2736, 3053, substituted “Reimbursements” for “Availability of reimbursements” in item 2205 and added item 2219.

1993—Pub. L. 103-160, div. A, title XI, §1106(a)(2), Nov. 30, 1993, 107 Stat. 1750, added item 2215.

1992—Pub. L. 102-484, div. A, title X, §1024(a)(2), Oct. 23, 1992, 106 Stat. 2488, added item 2218.

1991—Pub. L. 102-190, div. A, title III, §317(b), Dec. 5, 1991, 105 Stat. 1338, added item 2213.

1990—Pub. L. 101-510, div. A, title XIII, §1331(2), title XIV, §§1482(c)(2), 1484(i)(6), Nov. 5, 1990, 104 Stat. 1673, 1710, 1718, struck out item 2213 “Cooperative military airlift agreements”, added item 2214, and struck out items 2215 “Reports on unobligated balances” and 2216 “Annual report on budgeting for inflation”.

1988—Pub. L. 100-370, §1(d)(4), July 19, 1988, 102 Stat. 843, added items 2201, 2212, and 2217.

1986—Pub. L. 99-661, div. A, title XIII, §1307(a)(2), Nov. 14, 1986, 100 Stat. 3981, added items 2215 and 2216.

1982—Pub. L. 97-252, title XI, §1125(b), Sept. 8, 1982, 96 Stat. 758, added item 2213.

Pub. L. 97-214, §10(a)(1), July 12, 1982, 96 Stat. 174, struck out item 2212 “Transmission of annual military construction authorization request”.

1978—Pub. L. 95-356, title VIII, §802(a)(2), Sept. 8, 1978, 92 Stat. 585, added item 2212.

1962—Pub. L. 87-651, title II, §207(b), Sept. 7, 1962, 76 Stat. 523, added items 2203 to 2211.

1958—Pub. L. 85-599, §3(c), Aug. 6, 1958, 72 Stat. 516, struck out item 2201 “General functions of Secretary of Defense”.

#### STRATEGIC MANAGEMENT PLAN

Pub. L. 110-181, div. A, title IX, §904(d), (e), Jan. 28, 2008, 122 Stat. 275, provided that:

“(d) STRATEGIC MANAGEMENT PLAN REQUIRED.—

“(1) REQUIREMENT.—The Secretary of Defense, acting through the Chief Management Officer of the Department of Defense, shall develop a strategic management plan for the Department of Defense.

“(2) MATTERS COVERED.—Such plan shall include, at a minimum, detailed descriptions of—

“(A) performance goals and measures for improving and evaluating the overall efficiency and effectiveness of the business operations of the Department of Defense and achieving an integrated management system for business support areas within the Department of Defense;

“(B) key initiatives to be undertaken by the Department of Defense to achieve the performance goals under subparagraph (A), together with related resource needs;

“(C) procedures to monitor the progress of the Department of Defense in meeting performance goals and measures under subparagraph (A);

“(D) procedures to review and approve plans and budgets for changes in business operations, including any proposed changes to policies, procedures, processes, and systems, to ensure the compatibility of such plans and budgets with the strategic management plan of the Department of Defense; and

“(E) procedures to oversee the development of, and review and approve, all budget requests for defense business systems.

“(3) UPDATES.—The Secretary of Defense, acting through the Chief Management Officer, shall update the strategic management plan no later than July 1, 2009, and every two years thereafter and provide a copy to the Committees on Armed Services of the Senate and the House of Representatives.

“(e) REPORT.—Not later than 180 days after the date of the enactment of this Act [Jan. 28, 2008], the Secretary of Defense shall provide to the Committees on Armed Services of the Senate and the House of Representatives a report on the implementation of this section and a copy of the strategic management plan required by subsection (d).”

#### § 2201. Apportionment of funds: authority for exemption; excepted expenses

(a) EXEMPTION FROM APPORTIONMENT REQUIREMENT.—If the President determines such action to be necessary in the interest of national defense, the President may exempt from the provisions of section 1512 of title 31 appropriations, funds, and contract authorizations available for military functions of the Department of Defense.

(b) AIRBORNE ALERTS.—Upon a determination by the President that such action is necessary, the Secretary of Defense may provide for the cost of an airborne alert as an excepted expense under section 6301(a) and (b)(1)–(3) of title 41.

(c) MEMBERS ON ACTIVE DUTY.—Upon a determination by the President that it is necessary to increase (subject to limits imposed by law) the number of members of the armed forces on active duty beyond the number for which funds are provided in appropriation Acts for the Department of Defense, the Secretary of Defense may provide for the cost of such additional members as an excepted expense under section 6301(a) and (b)(1)–(3) of title 41.

(d) NOTIFICATION TO CONGRESS.—The Secretary of Defense shall immediately notify Congress of the use of any authority under this section.

(Added Pub. L. 100-370, §1(d)(1)(A), July 19, 1988, 102 Stat. 841; amended Pub. L. 106-65, div. A, title X, §1032(a)(1), Oct. 5, 1999, 113 Stat. 751; Pub. L. 111-350, §5(b)(4), Jan. 4, 2011, 124 Stat. 3842.)

#### HISTORICAL AND REVISION NOTES

Section is based on Pub. L. 99-190, §101(b) [title VIII, §8009], Dec. 19, 1985, 99 Stat. 1185, 1204.

In two instances, the source law to be codified by the bill includes provisions that on their face require that the Department of Defense notify Congress of certain actions. These notification requirements were terminated by section 602 of the Goldwater-Nichols Department of Defense Reorganization Act of 1986 (Public Law 99-433), which terminated all recurring reporting requirements applicable to the Department of Defense except for those requirements that were specifically exempted in that section. The source law sections are sections 8009(c) and 8005(j) (proviso) of the FY86 defense appropriations Act (Public Law 99-190), enacted December 19, 1985, which would be codified as section 2201 of title 10 (by section 1(d) of the bill) and section 7313(a) of title 10 (by section 1(m) of the bill). In codifying the authorities provided the Department of Defense by these two provisions of law, the committee believes that it is appropriate to reinstate the congressional notification requirements that go with those authorities. These sections were recurring annual appropriation provisions for many years and were made permanent only months before the enactment of the 1986 Reorganization Act. It is the committee's belief that the failure to exempt these provisions from the general reports termination provision was inadvertent and notes that the notification provisions had in fact previously applied to the Department of Defense for many years. The action of the committee restores the status quo as it existed before the Reorganization Act.

#### PRIOR PROVISIONS

A prior section 2201, act Aug. 10, 1956, ch. 1041, 70A Stat. 119, prescribed the general functions of the Secretary of Defense, prior to repeal by Pub. L. 85-599, §3(c), Aug. 6, 1958, 72 Stat. 516. See section 113 of this title.

#### AMENDMENTS

2011—Subsec. (b). Pub. L. 111-350, §5(b)(4)(A), substituted “section 6301(a) and (b)(1)–(3) of title 41” for “section 3732(a) of the Revised Statutes (41 U.S.C. 11(a))”.

Subsec. (c). Pub. L. 111-350, §5(b)(4)(B), substituted “section 6301(a) and (b)(1)–(3) of title 41” for “section 3732(a) of the Revised Statutes (41 U.S.C. 11(a))”.

1999—Subsec. (d). Pub. L. 106-65 substituted “Defense” for “Defense—”, struck out par. (1) designation, substituted “this section.” for “this section; and”, and struck out par. (2) which read as follows: “shall submit monthly reports to Congress on the estimated obligations incurred pursuant to subsections (b) and (c).”

**§ 2202. Regulations on procurement, production, warehousing, and supply distribution functions**

The Secretary of Defense shall prescribe regulations governing the performance within the Department of Defense of the procurement, production, warehousing, and supply distribution functions, and related functions, of the Department of Defense.

(Aug. 10, 1956, ch. 1041, 70A Stat. 120; Pub. L. 100-180, div. A, title XII, §1202, Dec. 4, 1987, 101 Stat. 1153; Pub. L. 103-355, title III, §3061(a), Oct. 13, 1994, 108 Stat. 3336.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
2202 .....	41:162.	July 10, 1952, ch. 630, §638, 66 Stat. 537.

The words “an officer or agency \* \* \* may \* \* \* only” are substituted for the words “no officer or agency \* \* \* shall \* \* \* except”. The word “of”, before the words “the Department”, is substituted for the words “in or under”. The words “under regulations prescribed” are substituted for the words “in accordance with regulations issued”. The words “after the effective date of this section” and 41:162(b) are omitted as executed. The words “or equipment” are omitted as covered by the definition of “supplies” in section 101(26) of this title.

AMENDMENTS

1994—Pub. L. 103-355 amended heading and text generally. Prior to amendment, text read as follows:

“(a) Notwithstanding any other provision of law, an officer or agency of the Department of Defense may obligate funds for procuring, producing, warehousing, or distributing supplies, or for related functions of supply management, only under regulations prescribed by the Secretary of Defense. The purpose of this section is to achieve the efficient, economical, and practical operation of an integrated supply system to meet the needs of the military departments without duplicate or overlapping operations or functions.

“(b) Except as otherwise provided by law, the availability for obligation of funds appropriated for any program, project, or activity of the Department of Defense expires at the end of the three-year period beginning on the date that such funds initially become available for obligation unless before the end of such period the Secretary of Defense enters into a contract for such program, project, or activity.”

1987—Pub. L. 100-180 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103-355, see section 10001 of Pub. L. 103-355, set out as a note under section 2302 of this title.

**§ 2203. Budget estimates**

To account for, and report, the cost of performance of readily identifiable functional programs and activities, with segregation of operating and capital programs, budget estimates of the Department of Defense shall be prepared, presented, and justified, where practicable, and authorized programs shall be administered, in such form and manner as the Secretary of Defense, subject to the authority and direction of the President, may prescribe. As far as practicable, budget estimates and authorized programs of the military departments shall be uni-

form and in readily comparable form. The budget for the Department of Defense submitted to Congress for each fiscal year shall include data projecting the effect of the appropriations requested for materiel readiness requirements. The Secretary of Defense shall provide that the budget justification documents for such budget include information on the number of employees of contractors estimated to be working on contracts of the Department of Defense during the fiscal year for which the budget is submitted. Such information shall be set forth in terms of employee-years or such other measure as will be uniform and readily comparable with civilian personnel of the Department of Defense.

(Added Pub. L. 87-651, title II, §207(a), Sept. 7, 1962, 76 Stat. 520; amended Pub. L. 97-295, §1(21), Oct. 12, 1982, 96 Stat. 1290; Pub. L. 99-661, div. A, title III, §311, Nov. 14, 1986, 100 Stat. 3851.)

HISTORICAL AND REVISION NOTES  
1956 ACT

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
2203 .....	5:172b.	July 26, 1947, ch. 343, §403; added Aug. 10, 1949, ch. 412, §11 (5th and 6th pars.), 63 Stat. 586.

The word “prescribe” is substituted for the word “determine”. 5 U.S.C. 172b(b) is omitted as executed.

1982 ACT

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
2203 (last sentence).	10:2203 (note).	July 30, 1977, Pub. L. 95-79, §812 (last sentence), 91 Stat. 336.

The words “for fiscal year 1979” are omitted as executed. The words “for each fiscal year” are substituted for “subsequent fiscal years” for consistency.

AMENDMENTS

1986—Pub. L. 99-661 inserted provisions that budget justification documents include information on number of employees estimated to be working during the fiscal year, such information to be set forth in terms of employee-years or other measure as is uniform and comparable with civilian personnel of the Department of Defense.

1982—Pub. L. 97-295 inserted provision requiring that the budget for the Department of Defense submitted annually to Congress include data projecting the effect of the appropriations requested for materiel readiness requirements.

PRESIDENTIAL RECOMMENDATIONS RESPECTING  
MODIFICATIONS IN CRUISE MISSILE PROGRAM

Pub. L. 95-184, title II, §203, Nov. 15, 1977, 91 Stat. 1382, provided that in authorizing funds under that Act [Pub. L. 95-184], Congress was asserting its readiness to consider, in accordance with the processes set forth in the Congressional Budget and Impoundment Control Act of 1974 [2 U.S.C. 621 et seq.] and the Budget and Accounting Act, 1921 [31 U.S.C. 1101 et seq.], such modifications in the United States cruise missile programs as the President might recommend to facilitate either negotiation or agreement in arms limitation or reduction talks.

REPORT TO CONGRESSIONAL COMMITTEES ON MATERIAL  
READINESS REQUIREMENTS FOR ARMED FORCES

Pub. L. 95-79, title VIII, §812, July 30, 1977, 91 Stat. 336, as amended by Pub. L. 97-295, §6(b), Oct. 12, 1982, 96

Stat. 1314, directed Secretary of Defense to submit to Congress, not later than February 15, 1978, a report setting forth quantifiable and measurable material readiness requirements for the Armed Forces, including the Reserve components thereof, monthly readiness status of the Armed Forces, including the reserve components thereof, during fiscal year 1977, and any changes in such requirements and status projected for fiscal years 1978 and 1979 and in the five-year defense program, and to inform Congress of any subsequent changes in the aforementioned materiel readiness requirements and the reasons for such changes.

MODIFICATIONS IN UNITED STATES STRATEGIC ARMS PROGRAMS ON RECOMMENDATION OF PRESIDENT

Pub. L. 95-79, title VIII, §813, July 30, 1977, 91 Stat. 337, provided that in authorizing procurement under section 101 of that Act and research and development under section 201 of that Act, Congress was asserting its readiness to consider, in accordance with the processes set forth in the Congressional Budget and Impoundment Control Act of 1974 [2 U.S.C. 621 et seq.] and the Budget and Accounting Act, 1921 [31 U.S.C. 1101 et seq.], such modifications in United States strategic arms programs as the President might recommend to facilitate either negotiation or agreement in the Strategic Arms Limitation Talks.

§ 2204. Obligation of appropriations

To prevent overdrafts and deficiencies in the fiscal year for which appropriations are made, appropriations made to the Department of Defense or to a military department, and reimbursements thereto, are available for obligation and expenditure only under scheduled rates of obligation, or changes thereto, that have been approved by the Secretary of Defense. This section does not prohibit the Department of Defense from incurring a deficiency that it has been authorized by law to incur.

(Added Pub. L. 87-651, title II, §207(a), Sept. 7, 1962, 76 Stat. 520.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
2204 .....	5:172c.	July 26, 1947, ch. 343, § 404; added Aug. 10, 1949, ch. 412, § 11 (7th par.), 63 Stat. 587.

The words "on and after the beginning of the next fiscal year following August 10, 1949," are omitted as executed. The last sentence is substituted for the proviso in 5 U.S.C. 172c.

§ 2205. Reimbursements

(a) AVAILABILITY OF REIMBURSEMENTS.—Reimbursements made to appropriations of the Department of Defense or a department or agency thereof under sections 1535 and 1536 of title 31, or other amounts paid by or on behalf of a department or agency of the Department of Defense to another department or agency of the Department of Defense, or by or on behalf of personnel of any department or organization, for services rendered or supplies furnished, may be credited to authorized accounts. Funds so credited are available for obligation for the same period as the funds in the account so credited. Such an account shall be accounted for as one fund on the books of the Department of the Treasury.

(b) FIXED RATE FOR REIMBURSEMENT FOR CERTAIN SERVICES.—The Secretary of Defense and

the Secretaries of the military departments may charge a fixed rate for reimbursement of the costs of providing planning, supervision, administrative, or overhead services incident to any construction, maintenance, or repair project to real property or for providing facility services, irrespective of the appropriation financing the project or facility services.

(Added Pub. L. 87-651, title II, §207(a), Sept. 7, 1962, 76 Stat. 520; amended Pub. L. 96-513, title V, §511(71), Dec. 12, 1980, 94 Stat. 2926; Pub. L. 97-258, §3(b)(4), Sept. 13, 1982, 96 Stat. 1063; Pub. L. 103-337, div. B, title XXVIII, §2804(a), (b)(1), Oct. 5, 1994, 108 Stat. 3053.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
2205 .....	5:172g.	July 26, 1947, ch. 343, § 408; added Aug. 10, 1949, ch. 412, § 11 (23d par.), 63 Stat. 590.

5 U.S.C. 172g is restated to reflect more clearly its purpose to authorize the Department of Defense to operate as an integrated department by permitting supplies to be furnished and services to be rendered within and among agencies of the Department of Defense and provide that reimbursements therefor be credited to authorized accounts and be available for the same purpose and period as the accounts so credited. (See Senate Report No. 366, 81st Congress, pp. 23, 24.)

AMENDMENTS

1994—Pub. L. 103-337 substituted "Reimbursements" for "Availability of reimbursements" as section catchline, designated existing provisions as subsec. (a) and inserted subsec. heading, and added subsec. (b).

1982—Pub. L. 97-258 substituted "sections 1535 and 1536 of title 31" for "the Act of March 4, 1915 (31 U.S.C. 686)".

1980—Pub. L. 96-513 substituted "the Act of March 4, 1915 (31 U.S.C. 686)" for "section 686 of title 31".

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96-513, set out as a note under section 101 of this title.

§ 2206. Disbursement of funds of military department to cover obligation of another agency of Department of Defense

As far as authorized by the Secretary of Defense, a disbursing official of a military department may, out of available advances, make disbursements to cover obligations in connection with any function, power, or duty of another department or agency of the Department of Defense and charge those disbursements on vouchers, to the appropriate appropriation of that department or agency. Disbursements so made shall be adjusted in settling the accounts of the disbursing official.

(Added Pub. L. 87-651, title II, §207(a), Sept. 7, 1962, 76 Stat. 520; amended Pub. L. 97-258, §2(b)(1)(A), Sept. 13, 1982, 96 Stat. 1052.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
2206 .....	5:172h. 5:171n(a) (as applicable to 5:172h).	July 26, 1947, ch. 343, § 409; added Aug. 10, 1949, ch. 412, § 11 (24th par.), 63 Stat. 590.

HISTORICAL AND REVISION NOTES—CONTINUED

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
		July 26, 1947, ch. 343, § 308(a) (as applicable to § 409), 61 Stat. 509.

The word “agency” is substituted for the word “organization”. The last sentence is substituted for the proviso in 5 U.S.C. 172h.

AMENDMENTS

1982—Pub. L. 97-258 substituted “official” for “officer” wherever appearing.

**§ 2207. Expenditure of appropriations: limitation**

(a) Money appropriated to the Department of Defense may not be spent under a contract other than a contract for personal services unless that contract provides that—

- (1) the United States may, by written notice to the contractor, terminate the right of the contractor to proceed under the contract if the Secretary concerned or his designee finds, after notice and hearing, that the contractor, or his agent or other representative, offered or gave any gratuity, such as entertainment or a gift, to an officer, official, or employee of the United States to obtain a contract or favorable treatment in the awarding, amending, or making of determinations concerning the performance, of a contract; and
- (2) if a contract is terminated under clause (1), the United States has the same remedies against the contractor that it would have had if the contractor had breached the contract and, in addition to other damages, is entitled to exemplary damages in an amount at least three, but not more than 10, as determined by the Secretary or his designee, times the cost incurred by the contractor in giving gratuities to the officer, official, or employee concerned.

The existence of facts upon which the Secretary makes findings under clause (1) may be reviewed by any competent court.

(b) This section does not apply to a contract that is for an amount not greater than the simplified acquisition threshold (as defined in section 134 of title 41).

(Added Pub. L. 87-651, title II, §207(a), Sept. 7, 1962, 76 Stat. 520; amended Pub. L. 104-106, div. A, title VIII, §801, Feb. 10, 1996, 110 Stat. 389; Pub. L. 111-350, §5(b)(5), Jan. 4, 2011, 124 Stat. 3842.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
2207 .....	5:174d.	June 30, 1954, ch. 432, §719, 68 Stat. 353.

The following substitutions are made: “spent” for “expended”; “United States” for “Government”; “if a contract is terminated under clause (1)” for “that in the event any such contract is so terminated”; and “has . . . that it would have had if” for “shall be entitled . . . to pursue . . . as it could pursue in the event of”. The word “official” is inserted for clarity. The words “entered into after June 30, 1954” are omitted as executed.

AMENDMENTS

2011—Subsec. (b). Pub. L. 111-350 substituted “section 134 of title 41” for “section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))”.

1996—Pub. L. 104-106 designated existing provisions as subsec. (a) and added subsec. (b).

**§ 2208. Working-capital funds**

(a) To control and account more effectively for the cost of programs and work performed in the Department of Defense, the Secretary of Defense may require the establishment of working-capital funds in the Department of Defense to—

- (1) finance inventories of such supplies as he may designate; and
- (2) provide working capital for such industrial-type activities, and such commercial-type activities that provide common services within or among departments and agencies of the Department of Defense, as he may designate.

(b) Upon the request of the Secretary of Defense, the Secretary of the Treasury shall establish working-capital funds established under this section on the books of the Department of the Treasury.

(c) Working-capital funds shall be charged, when appropriate, with the cost of—

- (1) supplies that are procured or otherwise acquired, manufactured, repaired, issued, or used, including the cost of the procurement and qualification of technology-enhanced maintenance capabilities that improve either reliability, maintainability, sustainability, or supportability and have, at a minimum, been demonstrated to be functional in an actual system application or operational environment; and
- (2) services or work performed;

including applicable administrative expenses, and be reimbursed from available appropriations or otherwise credited for those costs, including applicable administrative expenses and costs of using equipment.

(d) The Secretary of Defense may provide capital for working-capital funds by capitalizing inventories. In addition, such amounts may be appropriated for the purpose of providing capital for working-capital funds as have been specifically authorized by law.

(e) Subject to the authority and direction of the Secretary of Defense, the Secretary of each military department shall allocate responsibility for its functions, powers, and duties to accomplish the most economical and efficient organization and operation of the activities, and the most economical and efficient use of the inventories, for which working-capital funds are authorized by this section.

(f) The requisitioning agency may not incur a cost for supplies drawn from inventories, or services or work performed by industrial-type or commercial-type activities for which working-capital funds may be established under this section, that is more than the amount of appropriations or other funds available for those purposes.

(g) The appraised value of supplies returned to working-capital funds by a department, activity, or agency may be charged to that fund. The

proceeds thereof shall be credited to current applicable appropriations and are available for expenditure for the same purposes that those appropriations are so available. Credits may not be made to appropriations under this subsection as the result of capitalization of inventories under subsection (d).

(h) The Secretary of Defense shall prescribe regulations governing the operation of activities and use of inventories authorized by this section. The regulations may, if the needs of the Department of Defense require it and it is otherwise authorized by law, authorize supplies to be sold to, or services to be rendered or work performed for, persons outside the Department of Defense. However, supplies available in inventories financed by working capital funds established under this section may be sold to contractors for use in performing contracts with the Department of Defense. Working-capital funds shall be reimbursed for supplies so sold, services so rendered, or work so performed by charges to applicable appropriations or payments received in cash.

(i) For provisions relating to sales outside the Department of Defense of manufactured articles and services by a working-capital funded Army industrial facility (including a Department of the Army arsenal) that manufactures large caliber cannons, gun mounts, recoil mechanisms, ammunition, munitions, or components thereof, see section 4543 of this title.

(j)(1) The Secretary of a military department may authorize a working capital funded industrial facility of that department to manufacture or remanufacture articles and sell these articles, as well as manufacturing, remanufacturing, and engineering services provided by such facilities, to persons outside the Department of Defense if—

(A) the person purchasing the article or service is fulfilling a Department of Defense contract or a subcontract under a Department of Defense contract, and the solicitation for the contract or subcontract is open to competition between Department of Defense activities and private firms; or

(B) the Secretary would advance the objectives set forth in section 2474(b)(2) of this title by authorizing the facility to do so.

(2) The Secretary of Defense may waive the conditions in paragraph (1) in the case of a particular sale if the Secretary determines that the waiver is necessary for reasons of national security and notifies Congress regarding the reasons for the waiver.

(k)(1) Subject to paragraph (2), a contract for the procurement of a capital asset financed by a working-capital fund may be awarded in advance of the availability of funds in the working-capital fund for the procurement.

(2) Paragraph (1) applies to any of the following capital assets that have a development or acquisition cost of not less than \$250,000:

(A) An unspecified minor military construction project under section 2805(c)(1) of this title.

(B) Automatic data processing equipment or software.

(C) Any other equipment.

(D) Any other capital improvement.

(l)(1) An advance billing of a customer of a working-capital fund may be made if the Secretary of the military department concerned submits to Congress written notification of the advance billing within 30 days after the end of the month in which the advanced billing was made. The notification shall include the following:

(A) The reasons for the advance billing.

(B) An analysis of the effects of the advance billing on military readiness.

(C) An analysis of the effects of the advance billing on the customer.

(2) The Secretary of Defense may waive the notification requirements of paragraph (1)—

(A) during a period of war or national emergency; or

(B) to the extent that the Secretary determines necessary to support a contingency operation.

(3) The total amount of the advance billings rendered or imposed for all working-capital funds of the Department of Defense in a fiscal year may not exceed \$1,000,000,000.

(4) In this subsection:

(A) The term “advance billing”, with respect to a working-capital fund, means a billing of a customer by the fund, or a requirement for a customer to reimburse or otherwise credit the fund, for the cost of goods or services provided (or for other expenses incurred) on behalf of the customer that is rendered or imposed before the customer receives the goods or before the services have been performed.

(B) The term “customer” means a requisitioning component or agency.

(m) CAPITAL ASSET SUBACCOUNTS.—Amounts charged for depreciation of capital assets shall be credited to a separate capital asset subaccount established within a working-capital fund.

(n) SEPARATE ACCOUNTING, REPORTING, AND AUDITING OF FUNDS AND ACTIVITIES.—The Secretary of Defense, with respect to the working-capital funds of each Defense Agency, and the Secretary of each military department, with respect to the working-capital funds of the military department, shall provide for separate accounting, reporting, and auditing of funds and activities managed through the working-capital funds.

(o) CHARGES FOR GOODS AND SERVICES PROVIDED THROUGH THE FUND.—(1) Charges for goods and services provided for an activity through a working-capital fund shall include the following:

(A) Amounts necessary to recover the full costs of the goods and services provided for that activity.

(B) Amounts for depreciation of capital assets, set in accordance with generally accepted accounting principles.

(2) Charges for goods and services provided through a working-capital fund may not include the following:

(A) Amounts necessary to recover the costs of a military construction project (as defined in section 2801(b) of this title), other than a minor construction project financed by the fund pursuant to section 2805(c)(1) of this title.

(B) Amounts necessary to cover costs incurred in connection with the closure or realignment of a military installation.

(C) Amounts necessary to recover the costs of functions designated by the Secretary of Defense as mission critical, such as ammunition handling safety, and amounts for ancillary tasks not directly related to the mission of the function or activity managed through the fund.

(P) PROCEDURES FOR ACCUMULATION OF FUNDS.—The Secretary of Defense, with respect to each working-capital fund of a Defense Agency, and the Secretary of a military department, with respect to each working-capital fund of the military department, shall establish billing procedures to ensure that the balance in that working-capital fund does not exceed the amount necessary to provide for the working-capital requirements of that fund, as determined by the Secretary.

(Q) ANNUAL REPORTS AND BUDGET.—The Secretary of Defense, with respect to each working-capital fund of a Defense Agency, and the Secretary of each military department, with respect to each working-capital fund of the military department, shall annually submit to Congress, at the same time that the President submits the budget under section 1105 of title 31, the following:

(1) A detailed report that contains a statement of all receipts and disbursements of the fund (including such a statement for each subaccount of the fund) for the fiscal year ending in the year preceding the year in which the budget is submitted.

(2) A detailed proposed budget for the operation of the fund for the fiscal year for which the budget is submitted.

(3) A comparison of the amounts actually expended for the operation of the fund for the fiscal year referred to in paragraph (1) with the amount proposed for the operation of the fund for that fiscal year in the President's budget.

(4) A report on the capital asset subaccount of the fund that contains the following information:

(A) The opening balance of the subaccount as of the beginning of the fiscal year in which the report is submitted.

(B) The estimated amounts to be credited to the subaccount in the fiscal year in which the report is submitted.

(C) The estimated amounts of outlays to be paid out of the subaccount in the fiscal year in which the report is submitted.

(D) The estimated balance of the subaccount at the end of the fiscal year in which the report is submitted.

(E) A statement of how much of the estimated balance at the end of the fiscal year in which the report is submitted will be needed to pay outlays in the immediately following fiscal year that are in excess of the amount to be credited to the subaccount in the immediately following fiscal year.

(R) NOTIFICATION OF TRANSFERS.—(1) Notwithstanding any authority provided in this section to transfer funds, the transfer of funds from a working-capital fund, including a transfer to another working-capital fund, shall not be made under such authority unless the Secretary of De-

fense submits, in advance, a notification of the proposed transfer to the congressional defense committees in accordance with customary procedures.

(2) The amount of a transfer covered by a notification under paragraph (1) that is made in a fiscal year does not count toward any limitation on the total amount of transfers that may be made for that fiscal year under authority provided to the Secretary of Defense in a law authorizing appropriations for a fiscal year for military activities of the Department of Defense or a law making appropriations for the Department of Defense.

(Added Pub. L. 87-651, title II, §207(a), Sept. 7, 1962, 76 Stat. 521; amended Pub. L. 97-295, §1(22), Oct. 12, 1982, 96 Stat. 1290; Pub. L. 98-94, title XII, §1204(a), Sept. 24, 1983, 97 Stat. 683; Pub. L. 98-525, title III, §305, Oct. 19, 1984, 98 Stat. 2513; Pub. L. 100-26, §7(d)(2), Apr. 21, 1987, 101 Stat. 280; Pub. L. 101-510, div. A, title VIII, §801, title XIII, §1301(6), Nov. 5, 1990, 104 Stat. 1588, 1668; Pub. L. 102-172, title VIII, §8137, Nov. 26, 1991, 105 Stat. 1212; Pub. L. 102-484, div. A, title III, §374, Oct. 23, 1992, 106 Stat. 2385; Pub. L. 103-160, div. A, title I, §158(b), Nov. 30, 1993, 107 Stat. 1582; Pub. L. 105-85, div. A, title X, §1011(a), (b), Nov. 18, 1997, 111 Stat. 1873; Pub. L. 105-261, div. A, title X, §§1007(e)(1), 1008(a), Oct. 17, 1998, 112 Stat. 2115; Pub. L. 105-262, title VIII, §8146(d)(1), Oct. 17, 1998, 112 Stat. 2340; Pub. L. 106-65, div. A, title III, §§331(a)(1), 332, title X, §1066(a)(16), Oct. 5, 1999, 113 Stat. 566, 567, 771; Pub. L. 106-398, §1 [[div. A], title III, §341(f)], Oct. 30, 2000, 114 Stat. 1654, 1654A-64; Pub. L. 108-375, div. A, title X, §1009, Oct. 28, 2004, 118 Stat. 2037; Pub. L. 111-383, div. A, title XIV, §1403, Jan. 7, 2011, 124 Stat. 4410.)

HISTORICAL AND REVISION NOTES  
1956 ACT

Revised section	Source (U.S. Code)	Source (Statutes at Large)
2208(a) .....	5:172d(a).	July 26, 1947, ch. 343, §405; added Aug. 10, 1949, ch. 412, §11 (8th through 15th pars.), 63 Stat. 587.
2208(b) .....	5:172d(b).	
2208(c) .....	5:172d(c) (less 2d sentence).	
2208(d) .....	5:172d(d).	
2208(e) .....	5:172d(e).	
2208(f) .....	5:172d(f).	
2208(g) .....	5:172d(h).	
2208(h) .....	5:172d(g).	
2208(i) .....	5:172d(c) (2d sentence).	

In subsection (a)(1), (c)(1), (f), (g), and (h), the words “stores, . . . materials, and equipment” are omitted as covered by the word “supplies”, as defined in section 101(26) of title 10.

In subsection (c), the word “used” is substituted for the word “consumed”. The words “and costs of using equipment” are inserted to reflect an opinion of the Assistant General Counsel (Fiscal Matters), Department of Defense, February 2, 1960.

In subsection (d), the first sentence (less 1st 18 words) of 5 U.S.C. 172d(d) is omitted as executed.

In subsection (h), the following substitutions are made: “prescribe” for “issue”; and “persons” for “purchasers or users”. The word “shall” is substituted for the words “is authorized to” in the first sentence and for the word “may” in the last sentence to reflect the opinion of the Assistant General Counsel (Fiscal Matters), October 2, 1959, that the source law requires the action in question.

## 1982 ACT

Revised section	Source (U.S. Code)	Source (Statutes at Large)
2208(h) (3d sentence).	10:2208 (note).	Dec. 21, 1979, Pub. L. 96-154, §767, 93 Stat. 1163.

The word “hereafter” is omitted as executed.

## PRIOR PROVISIONS

Provisions similar to those in subsecs. (m) to (q) of this section were contained in section 2216a of this title prior to repeal by Pub. L. 105-261, §1008(b).

## AMENDMENTS

2011—Subsec. (c)(1). Pub. L. 111-383, §1403(1), inserted before semicolon “, including the cost of the procurement and qualification of technology-enhanced maintenance capabilities that improve either reliability, maintainability, sustainability, or supportability and have, at a minimum, been demonstrated to be functional in an actual system application or operational environment”.

Subsec. (k)(2). Pub. L. 111-383, §1403(2), substituted “\$250,000” for “\$100,000” in introductory provisions.

2004—Subsec. (r). Pub. L. 108-375 added subsec. (r).

2000—Subsec. (j)(1). Pub. L. 106-398 substituted “contract, and the solicitation” for “contract; and” at end of subpar. (A) and all that follows through “(B) the solicitation”, substituted “; or” for period after “private firms”, and added a new subpar. (B).

1999—Subsec. (j). Pub. L. 106-65, §§331(a)(1), 332, designated existing provisions as par. (1), redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, substituted “, remanufacturing, and engineering” for “or remanufacturing” in introductory provisions, inserted “or a subcontract under a Department of Defense contract” before the semicolon in subpar. (A), substituted “solicitation for the contract or subcontract” for “Department of Defense solicitation for such contract” in subpar. (B), and added par. (2).

Subsec. (l)(2)(A). Pub. L. 106-65, §1066(a)(16), inserted “of” after “during a period”.

1998—Subsec. (l)(3), (4). Pub. L. 105-261, §1007(e)(1), and Pub. L. 105-262 amended subsec. (l) identically, adding par. (3) and redesignating former par. (3) as (4).

Subsecs. (m) to (q). Pub. L. 105-261, §1008(a), added subsecs. (m) to (q).

1997—Subsec. (k). Pub. L. 105-85, §1011(a), added subsec. (k) and struck out former subsec. (k) which read as follows: “The Secretary of Defense shall provide that of the total amount of payments received in a fiscal year by funds established under this section for industrial-type activities, not less than 3 percent during fiscal year 1985, not less than 4 percent during fiscal year 1986, and not less than 5 percent during fiscal year 1987 shall be used for the acquisition of capital equipment for such activities.”

Subsec. (l). Pub. L. 105-85, §1011(b), added subsec. (l).

1993—Subsec. (i). Pub. L. 103-160 amended subsec. (i) generally. Prior to amendment, subsec. (i) required that regulations under subsec. (h) authorize working-capital funded Army industrial facilities to sell manufactured articles and services to persons outside the Department of Defense in specified cases.

1992—Subsec. (j). Pub. L. 102-484 substituted “The Secretary of a military department may authorize a working capital funded industrial facility of that department” for “The Secretary of the Army may authorize a working capital funded Army industrial facility”.

1991—Subsecs. (j), (k). Pub. L. 102-172 added subsec. (j) and redesignated former subsec. (j) as (k).

1990—Subsec. (i)(1). Pub. L. 101-510, §801, added par. (1), redesignated par. (3) as (2), and struck out former pars. (1) and (2) which read as follows:

“(1) Regulations under subsection (h) may authorize an article manufactured by a working-capital funded Department of the Army arsenal that manufactures

large caliber cannons, gun mounts, or recoil mechanisms to be sold to a person outside the Department of Defense if—

“(A) the article is sold to a United States manufacturer, assembler, or developer (i) for use in developing new products, or (ii) for incorporation into items to be sold to, or to be used in a contract with, an agency of the United States or a friendly foreign government;

“(B) the purchaser is determined by the Department of Defense to be qualified to carry out the proposed work involving the article to be purchased;

“(C) the article is not readily available from a commercial source in the United States; and

“(D) the sale is to be made on a basis that does not interfere with performance of work by the arsenal for the Department of Defense or for a contractor of the Department of Defense.

“(2) Services related to an article sold under this subsection may also be sold to the purchaser if the services are to be performed in the United States for the purchaser.”

Subsec. (k). Pub. L. 101-510, §1301(6), struck out subsec. (k) which read as follows: “Reports annually shall be made to the President and to Congress on the condition and operation of working-capital funds established under this section.”

1987—Subsec. (i)(3). Pub. L. 100-26 inserted “(22 U.S.C. 2778)” after “Arms Export Control Act”.

1984—Subsecs. (i) to (k). Pub. L. 98-525 added subsecs. (i) and (j) and redesignated former subsec. (i) as (k).

1983—Subsec. (d). Pub. L. 98-94 substituted “In addition, such amounts may be appropriated for the purpose of providing capital for working-capital funds as have been specifically authorized by law” for “If this method does not, in the determination of the Secretary of Defense, provide adequate amounts of working capital, such amounts as may be necessary may be appropriated for that purpose”.

1982—Subsec. (h). Pub. L. 97-295 inserted provision that supplies available in inventories financed by working capital funds established under this section may be sold to contractors for use in performing contracts with the Department of Defense.

## EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-261, div. A, title X, §1007(e)(2), Oct. 17, 1998, 112 Stat. 2115, and Pub. L. 105-262, title VIII, §8146(d)(2), Oct. 17, 1998, 112 Stat. 2340, provided that: “Section 2208(l)(3) of such title, as added by paragraph (1), applies to fiscal years after fiscal year 1999.”

## EFFECTIVE DATE OF 1983 AMENDMENT

Section 1204(b) of Pub. L. 98-94 provided that: “The amendment made by subsection (a) [amending this section] shall apply only with respect to appropriations for fiscal years beginning after September 30, 1984.”

## ADVANCE BILLING FOR FISCAL YEAR 2006

Pub. L. 109-234, title I, §1206, June 15, 2006, 120 Stat. 430, provided in part that: “Notwithstanding 10 U.S.C. 2208(l), the total amount of advance billings rendered or imposed for all working capital funds of the Department of Defense in fiscal year 2006 shall not exceed \$1,200,000,000”.

## ADVANCE BILLING FOR FISCAL YEAR 2005

Pub. L. 109-13, div. A, title I, §1005, May 11, 2005, 119 Stat. 243, provided that for fiscal year 2005, the limitation under subsec. (l)(3) of this section on the total amount of advance billings rendered or imposed for all working capital funds of the Department of Defense in a fiscal year would be applied by substituting “\$1,500,000,000” for “\$1,000,000,000”.

## OVERSIGHT OF DEFENSE BUSINESS OPERATIONS FUND

Pub. L. 103-337, div. A, title III, §311(b)–(e), Oct. 5, 1994, 108 Stat. 2708, which related to purchase from other sources, limitation on inclusion of certain costs

in DBOF charges, procedures for accumulation of funds, and annual reports and budget, was repealed and restated in section 2216a(d)(2)(B), (f) to (h)(3) of this title by Pub. L. 104-106, div. A, title III, §371(a)(1), (b)(1), Feb. 10, 1996, 110 Stat. 277-279.

Pub. L. 103-337, div. A, title III, §311(f), (g), Oct. 5, 1994, 108 Stat. 2709, required Secretary of Defense to submit to congressional defense committees, not later than Feb. 1, 1995, a report on progress made in implementing the Defense Business Operations Fund Improvement Plan, dated September 1993, and required Comptroller General to monitor and evaluate the Department of Defense implementation of the Plan and to report to congressional defense committees not later than Mar. 1, 1995.

#### CHARGES FOR GOODS AND SERVICES PROVIDED THROUGH DEFENSE BUSINESS OPERATIONS FUND

Section 333(a), (b) of Pub. L. 103-160, which provided that charges for goods and services provided through Defense Business Operations Fund were to include amounts necessary to recover full costs of development, implementation, operation, and maintenance of systems supporting wholesale supply and maintenance activities of Department of Defense and use of military personnel in provision of goods and services, and were not to include amounts necessary to recover costs of military construction project other than minor construction project financed by Defense Business Operations Fund pursuant to section 2805(c)(1) of this title, and which required full cost of operation of Defense Finance Accounting Service to be financed within Defense Business Operations Fund through charges for goods and services provided through Fund, was repealed and restated in section 2216a(d)(1)(A), (C), (2)(A) of this title by Pub. L. 104-106, div. A, title III, §371(a)(1), (b)(2), Feb. 10, 1996, 110 Stat. 277-279.

#### CAPITAL ASSET SUBACCOUNT

Section 342 of Pub. L. 102-484, as amended by Pub. L. 103-160, div. A, title III, §333(c), Nov. 30, 1993, 107 Stat. 1622, which provided that charges for goods and services provided through the Defense Business Operations Fund include amounts for depreciation of capital assets which were to be credited to a separate capital asset subaccount in the Fund, authorized Secretary of Defense to award contracts for capital assets of the Fund in advance of availability of funds in the subaccount, required Secretary to submit annual reports to congressional defense committees, authorized appropriations to the Fund for fiscal years 1993 and 1994, and defined terms, was repealed and restated in section 2216a(d)(1)(B), (e), (h)(4), and (i) of this title by Pub. L. 104-106, div. A, title III, §371(a)(1), (b)(3), Feb. 10, 1996, 110 Stat. 277-279.

#### LIMITATIONS ON USE OF DEFENSE BUSINESS OPERATIONS FUND

Pub. L. 102-190, div. A, title III, §316, Dec. 5, 1991, 105 Stat. 1338, as amended by Pub. L. 102-484, div. A, title III, §341, Oct. 23, 1992, 106 Stat. 2374; Pub. L. 103-160, div. A, title III, §§331, 332, Nov. 30, 1993, 107 Stat. 1620; Pub. L. 103-337, div. A, title III, §311(a), Oct. 5, 1994, 108 Stat. 2708, which authorized Secretary of Defense to manage performance of certain working-capital funds established under this section, the Defense Finance and Accounting Service, the Defense Industrial Plan Equipment Center, the Defense Commissary Agency, the Defense Technical Information Service, the Defense Reutilization and Marketing Service, and certain activities funded through use of working-capital fund established under this section, directed Secretary to maintain separate accounting, reporting, and auditing of such funds and activities, required Secretary to submit to congressional defense committees, by not later than 30 days after Nov. 30, 1993, a comprehensive management plan and, by not later than Feb. 1, 1994, a progress report on plan's implementation, and directed Comptroller General to monitor and evaluate the plan and

submit to congressional defense committees, not later than Mar. 1, 1994, a report, was repealed and restated in section 2216a(a)-(c) of this title by Pub. L. 104-106, div. A, title III, §371(a)(1), (b)(4), Feb. 10, 1996, 110 Stat. 277, 279.

#### DEFENSE BUSINESS OPERATIONS FUND

Section 8121 of Pub. L. 102-172, which established on the books of the Treasury a fund entitled the "Defense Business Operations Fund" to be operated as a working capital fund under the provisions of this section and to include certain existing organizations including the Defense Finance and Accounting Service, the Defense Commissary Agency, the Defense Technical Information Center, the Defense Reutilization and Marketing Service, and the Defense Industrial Plant Equipment Service, directed transfer of assets and balances of those organizations to the Fund, provided for budgeting and accounting of charges for supplies and services provided by the Fund, and directed that capital asset charges collected be credited to a subaccount of the Fund, was repealed by Pub. L. 104-106, div. A, title III, §371(b)(5), Feb. 10, 1996, 110 Stat. 280.

#### SALE OF INVENTORIES FOR PERFORMANCE OF CONTRACTS WITH DEFENSE DEPARTMENT

Pub. L. 96-154, title VII, §767, Dec. 21, 1979, 93 Stat. 1163, which had provided that supplies available in inventories financed by working capital funds established pursuant to this section could, on and after Dec. 21, 1979, be sold to contractors for use in performing contracts with the Department of Defense, was repealed and restated in subsec. (h) of this section by Pub. L. 97-295, §§1(22), 6(b), Oct. 12, 1982, 96 Stat. 1290, 1315.

#### § 2209. Management funds

(a) To conduct economically and efficiently the operations of the Department of Defense that are financed by at least two appropriations but whose costs cannot be immediately distributed and charged to those appropriations, there is the Army Management Fund, the Navy Management Fund, and the Air Force Management Fund, each within its respective department and under the direction of the Secretary of that department. Each such fund shall consist of a corpus of \$1,000,000 and such amounts as may be appropriated thereto from time to time. An account for an operation that is to be financed by such a fund may be established only with the approval of the Secretary of Defense.

(b) Under such regulations as the Secretary of Defense may prescribe, expenditures may be made from a management fund for material (other than for stock), personal services, and services under contract. However, obligation may not be incurred against that fund if it is not chargeable to funds available under an appropriation of the department concerned or funds of another department or agency of the Department of Defense. The fund shall be promptly reimbursed from those funds for expenditures made from it.

(c) Notwithstanding any other provision of law, advances, by check or warrant, or reimbursements, may be made from available appropriations to a management fund on the basis of the estimated cost of a project. As adequate data becomes available, the estimated cost shall be revised and necessary adjustments made. Final adjustment shall be made with the appropriate funds for the fiscal year in which the advances or reimbursements are made. Except as otherwise provided by law, amounts advanced to

management funds are available for obligation only during the fiscal year in which they are advanced.

(Added Pub. L. 87-651, title II, §207(a), Sept. 7, 1962, 76 Stat. 522.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
2209(a) .....	5:172e(a), (b).	July 3, 1942, ch. 484; re-
2209(b) .....	5:172e(c) (last sentence).	stated Aug. 10, 1949, ch.
2209(c) .....	5:172e(c) (less last sentence).	412, §11 (16th through
	5:172e(d).	19th pars.), 63 Stat. 588.

In subsection (a), the second sentence is substituted for the second sentence of 5 U.S.C. 172e(a) and the first sentence (less last 21 words) of 5 U.S.C. 172e(b) which are omitted as unnecessary.

In subsection (c), the 13th through 33d words of 5 U.S.C. 172e(d) are omitted as surplusage.

**§ 2210. Proceeds of sales of supplies: credit to appropriations**

(a)(1) A working-capital fund established pursuant to section 2208 of this title may retain so much of the proceeds of disposals of property referred to in paragraph (2) as is necessary to recover the expenses incurred by the fund in disposing of such property. Proceeds from the sale or disposal of such property in excess of amounts necessary to recover the expenses may be credited to current applicable appropriations of the Department of Defense.

(2) Paragraph (1) applies to disposals of supplies, material, equipment, and other personal property that were not financed by stock funds established under section 2208 of this title.

(b) Obligations may, without regard to fiscal year limitations, be incurred against anticipated reimbursements to stock funds in such amounts and for such period as the Secretary of Defense, with the approval of the President, may determine to be necessary to maintain stock levels consistently with planned operations for the next fiscal year.

(Added Pub. L. 87-651, title II, §207(a), Sept. 7, 1962, 76 Stat. 522; amended Pub. L. 96-513, title V, §511(72), Dec. 12, 1980, 94 Stat. 2926; Pub. L. 105-261, div. A, title X, §1009, Oct. 17, 1998, 112 Stat. 2117.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
2210(a) .....	5:172d-1 (less proviso).	Aug. 1, 1953, ch. 305, §645,
2210(b) .....	5:172d-1 (proviso).	67 Stat. 357.

In section (a), the words "proceeds of the disposal" are substituted for the words "moneys arising from the disposition".

AMENDMENTS

1998—Subsec. (a). Pub. L. 105-261 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "Current applicable appropriations of the Department of Defense may be credited with proceeds of the disposals of supplies that are not financed by stock funds established under section 2208 of this title."

1980—Subsec. (b). Pub. L. 96-513 substituted "President" for "Director of the Bureau of the Budget".

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96-513, set out as a note under section 101 of this title.

**§ 2211. Reimbursement for equipment, material, or services furnished members of the United Nations**

Amounts paid by members of the United Nations for equipment or materials furnished, or services performed, in joint military operations shall be credited to appropriate appropriations of the Department of Defense in the manner authorized by section 632(d) of the Foreign Assistance Act of 1961 (22 U.S.C. 2392(d)).

(Added Pub. L. 87-651, title II, §207(a), Sept. 7, 1962, 76 Stat. 522; amended Pub. L. 96-513, title V, §511(73), Dec. 12, 1980, 94 Stat. 2926.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
2211 .....	5:171m-1.	Jan. 6, 1951, ch. 1213, §703, 64 Stat. 1235.

The reference to section 2392(d) of title 22 is substituted for the reference to section 1574(b) of that title to reflect section 542(b) of the Act of August 26, 1954, ch. 937 (68 Stat. 861) and section 642(a)(2) and (b) of the Act of September 4, 1961, Pub. L. 87-195 (75 Stat. 460).

AMENDMENTS

1980—Pub. L. 96-513 substituted "section 632(d) of the Foreign Assistance Act of 1961 (22 U.S.C. 2392(d))" for "section 2392(d) of title 22".

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96-513, set out as a note under section 101 of this title.

**§ 2212. 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 ef-

ficient 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 re-

port 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; amended Pub. L. 106-65, div. A, title X, §1066(a)(17), Oct. 5, 1999, 113 Stat. 771.)

#### PRIOR PROVISIONS

A prior section 2212, added Pub. L. 100-370, §1(d)(2)(A), July 19, 1988, 102 Stat. 842, directed Secretary of Defense to maintain within each military department an accounting procedure to aid in identification and control of expenditures for contracted advisory and assistance services, prior to repeal by Pub. L. 103-355, title II, §2454(c)(1), Oct. 13, 1994, 108 Stat. 3326.

Another prior section 2212, added Pub. L. 95-356, title VIII, §802(a)(1), Sept. 8, 1978, 92 Stat. 585; amended Pub. L. 97-258, §3(b)(5), Sept. 18, 1982, 96 Stat. 1063, related to transmission of annual military construction authorization request, prior to repeal by Pub. L. 97-214, §7(1), July 12, 1982, 96 Stat. 173, eff. Oct. 1, 1982, applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date. See section 2859 of this title.

#### AMENDMENTS

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”.

## 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, set out as a note under section 133 of this title.

## TRANSITION

Pub. L. 105-261, div. A, title IX, §911(b), Oct. 17, 1998, 112 Stat. 2099, provided that for the budget for fiscal year 2000, and the reporting of information to the Office of Management and Budget in connection with the preparation of that budget, this section would be applied by substituting “30 percent” in subsec. (a) for “15 percent”.

**§ 2213. Limitation on acquisition of excess supplies**

(a) **TWO-YEAR SUPPLY.**—The Secretary of Defense may not incur any obligation against a stock fund of the Department of Defense for the acquisition of any item of supply if that acquisition is likely to result in an on-hand inventory (excluding war reserves) of that item of supply in excess of two years of operating stocks.

(b) **EXCEPTIONS.**—The head of a procuring activity may authorize the acquisition of an item of supply in excess of the limitation contained in subsection (a) if that activity head determines in writing—

(1) that the acquisition is necessary to achieve an economical order quantity and will not result in an on-hand inventory (excluding war reserves) in excess of three years of operating stocks and that the need for the item is unlikely to decline during the period for which the acquisition is made; or

(2) that the acquisition is necessary for purposes of maintaining the industrial base or for other reasons of national security.

(Added Pub. L. 102-190, div. A, title III, §317(a), Dec. 5, 1991, 105 Stat. 1338.)

## PRIOR PROVISIONS

A prior section 2213 was renumbered section 2350c of this title.

**§ 2214. Transfer of funds: procedure and limitations**

(a) **PROCEDURE FOR TRANSFER OF FUNDS.**—Whenever authority is provided in an appropriation Act to transfer amounts in working capital funds or to transfer amounts provided in appropriation Acts for military functions of the Department of Defense (other than military construction) between such funds or appropriations (or any subdivision thereof), amounts transferred under such authority shall be merged with and be available for the same purposes and for the same time period as the fund or appropriations to which transferred.

(b) **LIMITATIONS ON PROGRAMS FOR WHICH AUTHORITY MAY BE USED.**—Such authority to transfer amounts—

(1) may not be used except to provide funds for a higher priority item, based on unforeseen military requirements, than the items for which the funds were originally appropriated; and

(2) may not be used if the item to which the funds would be transferred is an item for which Congress has denied funds.

(c) **NOTICE TO CONGRESS.**—The Secretary of Defense shall promptly notify the Congress of each transfer made under such authority to transfer amounts.

(d) **LIMITATIONS ON REQUESTS TO CONGRESS FOR REPROGRAMMINGS.**—Neither the Secretary of Defense nor the Secretary of a military department may prepare or present to the Congress, or to any committee of either House of the Congress, a request with respect to a reprogramming of funds—

(1) unless the funds to be transferred are to be used for a higher priority item, based on unforeseen military requirements, than the item for which the funds were originally appropriated; or

(2) if the request would be for authority to reprogram amounts to an item for which the Congress has denied funds.

(Added Pub. L. 101-510, div. A, title XIV, §1482(c)(1), Nov. 5, 1990, 104 Stat. 1709.)

## EFFECTIVE DATE

Section effective Oct. 1, 1991, see section 1482(d) of Pub. L. 101-510, set out as an Effective Date of 1990 Amendment note under section 119 of this title.

**§ 2215. Transfer of funds to other departments and agencies: limitation**

Funds available for military functions of the Department of Defense may not be made available to any other department or agency of the Federal Government pursuant to a provision of law enacted after November 29, 1989, unless, not less than 30 days before such funds are made available to such other department or agency, the Secretary of Defense submits to the congressional defense committees a certification that making those funds available to such other department or agency is in the national security interest of the United States.

(Added Pub. L. 103-160, div. A, title XI, §1106(a)(1), Nov. 30, 1993, 107 Stat. 1750; amended Pub. L. 104-106, div. A, title XV, §1502(a)(14), Feb. 10, 1996, 110 Stat. 503; Pub. L. 106-65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 108-375, div. A, title X, §1084(b)(1), Oct. 28, 2004, 118 Stat. 2060.)

## PRIOR PROVISIONS

A prior section 2215, added Pub. L. 99-661, div. A, title XIII, §1307(a)(1), Nov. 14, 1986, 100 Stat. 3980, related to reports on unobligated balances, prior to repeal by Pub. L. 101-510, div. A, title XIII, §1301(7), Nov. 5, 1990, 104 Stat. 1668.

Provisions similar to those in this section were contained in Pub. L. 101-189, div. A, title XVI, §1604, Nov. 29, 1989, 103 Stat. 1598, which was set out as a note under section 1531 of Title 31, Money and Finance, prior to repeal by Pub. L. 103-160, §1106(b).

## AMENDMENTS

2004—Pub. L. 108-375 struck out subsec. (a) designation and heading before “Funds available”, substituted “congressional defense committees” for “congressional committees specified in subsection (b)”, and struck out heading and text of subsec. (b). Text of subsec. (b) read as follows: “The committees referred to in subsection (a) are—

“(1) the Committee on Armed Services and the Committee on Appropriations of the Senate; and

“(2) the Committee on Armed Services and the Committee on Appropriations of the House of Representatives.”

1999—Subsec. (b)(2). Pub. L. 106-65 substituted “Committee on Armed Services” for “Committee on National Security”.

1996—Pub. L. 104-106 designated existing provisions as subsec. (a), inserted heading, substituted “to the congressional committees specified in subsection (b)” for “to the Committees on Armed Services and the Committees on Appropriations of the Senate and House of Representatives”, and added subsec. (b).

### § 2216. 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 commencing projects described in subsection (d)(1), and amounts reimbursed to the Defense Modernization Account under subsection (c)(1)(B)(iii) 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), that Secretary 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 available to the Secretary concerned:

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

(ii) 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.

(iii) 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), other than funds referred to in subparagraph (B)(iii) of such paragraph, may not be transferred to the Defense Modernization Account 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 in the account, after transfer of funds to the account, would exceed \$1,000,000,000.

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

(4) 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.

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

(1) For paying the costs of commencing any project that, in accordance with criteria prescribed by the Secretary of Defense, 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 a procurement program in order to achieve a more efficient production or delivery rate.

(3) 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.

(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 procurement 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 procurement program.

(2) Funds in the Defense Modernization Account may not be used for a purpose or program for which Congress has not authorized appropriations.

(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 Defense may transfer funds in the Defense Mod-

ernization 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) in accordance with the provisions of appropriations Acts, but only to the extent authorized in an Act other than an appropriations Act.

(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 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);

(B) 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 from among those proposed for such funding; and

(C) 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)(iii).

(i) ANNUAL REPORT.—(1) Not later than 15 days after the end of each fiscal year, the Secretary of Defense shall submit to the congressional committees specified in paragraph (2) a report on the Defense Modernization Account. Each such report shall set forth the following:

(A) The amount and source of each credit to the account during that fiscal year.

(B) The amount and purpose of each transfer from the account during that fiscal year.

(C) The balance in the account at the end of the fiscal year and, of such balance, the amount attributable to transfers to the account from each Secretary concerned.

(2) The committees referred to in paragraph (1) are 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.

(j) DEFINITIONS.—In this section:

(1) The term “Secretary concerned” includes the Secretary of Defense with respect to Defense-wide appropriations accounts.

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

(k) EXPIRATION OF AUTHORITY AND ACCOUNT.—

(1) The authority under subsection (c) to transfer funds into the Defense Modernization Account terminates at the close of September 30, 2006.

(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.

(Added Pub. L. 104-106, div. A, title IX, §912(a)(1), Feb. 10, 1996, 110 Stat. 407; 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.)

#### CODIFICATION

Another section 2216 was renumbered section 2216a of this title and subsequently repealed.

#### PRIOR PROVISIONS

A prior section 2216, added Pub. L. 99-661, div. A, title XIII, §1307(a)(1), Nov. 14, 1986, 100 Stat. 3980, related to annual reports on budgeting for inflation, prior to repeal by Pub. L. 101-510, div. A, title XIII, §1301(8), Nov. 5, 1990, 104 Stat. 1668.

#### AMENDMENTS

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”.

#### CHANGE OF NAME

Committee on Governmental Affairs of Senate changed to Committee on Homeland Security and Governmental Affairs of Senate, effective Jan. 4, 2005, by Senate Resolution No. 445, One Hundred Eighth Congress, Oct. 9, 2004.

Committee on Government Reform and Oversight of House of Representatives changed to Committee on Government Reform of House of Representatives by House Resolution No. 5, One Hundred Sixth Congress, Jan. 6, 1999. Committee on Government Reform of House of Representatives changed to Committee on Oversight and Government Reform of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

#### EFFECTIVE DATE

Section 912(b) of Pub. L. 104-106 provided that: “Section 2216 of title 10, United States Code (as added by subsection (a)), shall apply only to funds appropriated for fiscal years after fiscal year 1995.”

#### EXPIRATION OF AUTHORITY AND ACCOUNT

Pub. L. 104-106, div. A, title IX, §912(c), Feb. 10, 1996, 110 Stat. 410, as amended by Pub. L. 107-314, div. A, title VIII, §825(a)(1), Dec. 2, 2002, 116 Stat. 2615, provided that authority under section 2216(b) of this title to transfer funds into Defense Modernization Account terminated at close of Sept. 30, 2002, and the Account was to be closed three years later, prior to repeal by Pub. L. 108-136, div. A, title X, §1008(f)(2), Nov. 24, 2003, 117 Stat. 1587.

#### GAO REVIEWS

Pub. L. 104-106, div. A, title IX, §912(d), Feb. 10, 1996, 110 Stat. 410, required Comptroller General of the United States to conduct two reviews of the administration of the Defense Modernization Account, prior to repeal by Pub. L. 107-314, div. A, title VIII, §825(a)(2), Dec. 2, 2002, 116 Stat. 2615.

#### [§ 2216a. Repealed. Pub. L. 105-261, div. A, title X, § 1008(b), Oct. 17, 1998, 112 Stat. 2117]

Section, added Pub. L. 104-106, div. A, title III, §371(a)(1), Feb. 10, 1996, 110 Stat. 277, §2216; renumbered §2216a and amended Pub. L. 104-201, div. A, title III, §§363(c), 364, title X, §1074(a)(10), Sept. 23, 1996, 110 Stat. 2493, 2494, 2659, related to Defense Business Operations Fund.

#### § 2217. 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, and Marine Corps request procurement funds in a defense budget.

(Added Pub. L. 100-370, §1(d)(3)(A), July 19, 1988, 102 Stat. 843; amended Pub. L. 104-106, div. A, title XV, §1503(a)(20), Feb. 10, 1996, 110 Stat. 512.)

#### 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.

#### AMENDMENTS

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

#### § 2218. National Defense Sealift Fund

(a) ESTABLISHMENT.—There is established in the Treasury of the United States a fund to be known as the “National Defense Sealift Fund”.

(b) ADMINISTRATION OF FUND.—The Secretary of Defense shall administer the Fund consistent with the provisions of this section.

(c) FUND PURPOSES.—(1) Funds in the National Defense Sealift Fund shall be available for obligation and expenditure only for the following purposes:

(A) Construction (including design of vessels), purchase, alteration, and conversion of Department of Defense sealift vessels.

(B) Operation, maintenance, and lease or charter of Department of Defense vessels for national defense purposes.

(C) Installation and maintenance of defense features for national defense purposes on privately owned and operated vessels that are constructed in the United States and documented under the laws of the United States.

(D) Research and development relating to national defense sealift.

(E) Expenses for maintaining the National Defense Reserve Fleet under section 11 of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1744), and for the costs of acquisition of vessels for, and alteration and conversion of vessels in (or to be placed in), the fleet, but only for vessels built in United States shipyards.

(2) Funds in the National Defense Sealift Fund may be obligated or expended only in amounts authorized by law.

(3) Funds obligated and expended for a purpose set forth in subparagraph (B) or (D) of paragraph (1) may be derived only from funds deposited in the National Defense Sealift Fund pursuant to subsection (d)(1).

(d) DEPOSITS.—There shall be deposited in the Fund the following:

(1) All funds appropriated to the Department of Defense for—

(A) construction (including design of vessels), purchase, alteration, and conversion of national defense sealift vessels;

(B) operations, maintenance, and lease or charter of national defense sealift vessels;

(C) installation and maintenance of defense features for national defense purposes on privately owned and operated vessels; and

(D) research and development relating to national defense sealift.

(2) All receipts from the disposition of national defense sealift vessels, excluding receipts from the sale, exchange, or scrapping of National Defense Reserve Fleet vessels under sections 57101–57104 and chapter 573 of title 46.

(3) All receipts from the charter of vessels under section 1424(c) of the National Defense Authorization Act for Fiscal Year 1991 (10 U.S.C. 7291 note).

(e) ACCEPTANCE OF SUPPORT.—(1) The Secretary of Defense may accept from any person, foreign government, or international organization any contribution of money, personal property (excluding vessels), or assistance in kind for support of the sealift functions of the Department of Defense.

(2) Any contribution of property accepted under paragraph (1) may be retained and used by the Department of Defense or disposed of in accordance with procedures prescribed by the Secretary of Defense.

(3) The Secretary of Defense shall deposit in the Fund money and receipts from the disposition of any property accepted under paragraph (1).

(f) LIMITATIONS.—(1) A vessel built in a foreign ship yard may not be purchased with funds in the National Defense Sealift Fund pursuant to subsection (c)(1), unless specifically authorized by law.

(2) Construction, alteration, or conversion of vessels with funds in the National Defense Sealift Fund pursuant to subsection (c)(1) shall be conducted in United States ship yards and shall be subject to section 1424(b) of Public Law 101–510 (104 Stat. 1683).

(g) EXPIRATION OF FUNDS AFTER 5 YEARS.—No part of an appropriation that is deposited in the National Defense Sealift Fund pursuant to subsection (d)(1) shall remain available for obligation more than five years after the end of fiscal year for which appropriated except to the extent specifically provided by law.

(h) BUDGET REQUESTS.—Budget requests submitted to Congress for the National Defense Sealift Fund shall separately identify—

(1) the amount requested for programs, projects, and activities for construction (including design of vessels), purchase, alteration, and conversion of national defense sealift vessels;

(2) the amount requested for programs, projects, and activities for operation, maintenance, and lease or charter of national defense sealift vessels;

(3) the amount requested for programs, projects, and activities for installation and

maintenance of defense features for national defense purposes on privately owned and operated vessels that are constructed in the United States and documented under the laws of the United States; and

(4) the amount requested for programs, projects, and activities for research and development relating to national defense sealift.

(i) TITLE OR MANAGEMENT OF VESSELS.—Nothing in this section (other than subsection (c)(1)(E)) shall be construed to affect or modify title to, management of, or funding responsibilities for, any vessel of the National Defense Reserve Fleet, or assigned to the Ready Reserve Force component of the National Defense Reserve Fleet, as established by section 11 of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1744).

(j) CONTRACTS FOR INCORPORATION OF DEFENSE FEATURES IN COMMERCIAL VESSELS.—(1) The head of an agency may enter into a contract with a company submitting an offer for that company to install and maintain defense features for national defense purposes in one or more commercial vessels owned or controlled by that company in accordance with the purpose for which funds in the National Defense Sealift Fund are available under subsection (c)(1)(C). The head of the agency may enter into such a contract only after the head of the agency makes a determination of the economic soundness of the offer. As consideration for a contract with the head of an agency under this subsection, the company entering into the contract shall agree with the Secretary of Defense to make any vessel covered by the contract available to the Secretary, fully crewed and ready for sea, at any time at any port determined by the Secretary, and for whatever duration the Secretary determines necessary.

(2) The head of an agency may make advance payments to the contractor under a contract under paragraph (1) in a lump sum, in annual payments, or in a combination thereof for costs associated with the installation and maintenance of the defense features on a vessel covered by the contract, as follows:

(A) The costs to build, procure, and install a defense feature in the vessel.

(B) The costs to periodically maintain and test any defense feature on the vessel.

(C) Any increased costs of operation or any loss of revenue attributable to the installation or maintenance of any defense feature on the vessel.

(D) Any additional costs associated with the terms and conditions of the contract.

(E) Payments of such sums as the Government would otherwise expend, if the vessel were placed in the Ready Reserve Fleet, for maintaining the vessel in the status designated as “ROS-4 status” in the Ready Reserve Fleet for 25 years.

(3) For any contract under paragraph (1) under which the United States makes advance payments under paragraph (2) for the costs associated with installation or maintenance of any defense feature on a commercial vessel, the contractor shall provide to the United States such security interests in the vessel, by way of a pre-

ferred mortgage under section 31322 of title 46 or otherwise, as the head of the agency may prescribe in order to adequately protect the United States against loss for the total amount of those costs.

(4) Each contract entered into under this subsection shall—

(A) set forth terms and conditions under which, so long as a vessel covered by the contract is owned or controlled by the contractor, the contractor is to operate the vessel for the Department of Defense notwithstanding any other contract or commitment of that contractor; and

(B) provide that the contractor operating the vessel for the Department of Defense shall be paid for that operation at fair and reasonable rates.

(5) The head of an agency may not delegate authority under this subsection to any officer or employee in a position below the level of head of a procuring activity.

(6) The head of an agency may not enter into a contract under paragraph (1) that would provide for payments to the contractor as authorized in paragraph (2)(E) until notice of the proposed contract is submitted to the congressional defense committees and a period of 90 days has elapsed.

(k) DEFINITIONS.—In this section:

(1) The term “Fund” means the National Defense Sealift Fund established by subsection (a).

(2) The term “Department of Defense sealift vessel” means any ship owned, operated, controlled, or chartered by the Department of Defense that is any of the following:

(A) A fast sealift ship, including any vessel in the Fast Sealift Program established under section 1424 of Public Law 101-510 (104 Stat. 1683).

(B) Any other auxiliary vessel that was procured or chartered with specific authorization in law for the vessel, or class of vessels, to be funded in the National Defense Sealift Fund.

(3) The term “national defense sealift vessel” means—

(A) a Department of Defense sealift vessel; and

(B) a national defense reserve fleet vessel, including a vessel in the Ready Reserve Force maintained under section 11 of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1744).

(4) The term “head of an agency” has the meaning given that term in section 2302(1) of this title.

(Added Pub. L. 102-484, div. A, title X, §1024(a)(1), Oct. 23, 1992, 106 Stat. 2486; amended Pub. L. 102-396, title V, Oct. 6, 1992, 106 Stat. 1896; Pub. L. 104-106, div. A, title X, §1014(a), title XV, §1502(a)(15), Feb. 10, 1996, 110 Stat. 423, 503; Pub. L. 106-65, div. A, title X, §§1014(b), 1015, 1067(1), Oct. 5, 1999, 113 Stat. 742, 743, 774; Pub. L. 106-398, §1 [div. A], title X, §1011], Oct. 30, 2000, 114 Stat. 1654, 1654A-251; Pub. L. 107-107, div. A, title X, §1048(e)(9), Dec. 28, 2001, 115 Stat. 1228; Pub. L. 108-136, div. A, title X, §1043(b)(9), Nov.

24, 2003, 117 Stat. 1611; Pub. L. 109-163, div. A, title X, §1018(d), Jan. 6, 2006, 119 Stat. 3426; Pub. L. 109-304, §17(a)(2), Oct. 6, 2006, 120 Stat. 1706; Pub. L. 110-417, [div. A], title XIV, §1407, Oct. 14, 2008, 122 Stat. 4647.)

#### REFERENCES IN TEXT

Section 1424 of Public Law 101-510, referred to in subsecs. (d)(3), (f)(2), and (k)(2)(A), is section 1424 of the National Defense Authorization Act for Fiscal Year 1991, which is set out as a note under section 7291 of this title.

#### CODIFICATION

Pub. L. 102-396, title V, Oct. 6, 1992, 106 Stat. 1896, provided that section 1024 of the National Defense Authorization Act for Fiscal Year 1993 [H.R. 5006, Pub. L. 102-484], as it passed the Senate on Oct. 3, 1992, shall be amended in subsection 2218(c)(2) proposed for inclusion in this chapter by deleting all after “expended only” down to and including “appropriations Act” and inserting in lieu thereof “in amounts authorized by law”. It further provided that for purposes of that amendment, Pub. L. 102-396 shall be treated as having been enacted after Pub. L. 102-484, regardless of the actual dates of enactment. The date of Oct. 3, 1992, referred to as the date the Senate passed the National Defense Authorization Act for Fiscal Year 1993, apparently is based on an order adopted by the Senate on Oct. 3, 1992 [Cong. Rec., vol. 138, p. 30919] providing that when the conference report on the National Defense Authorization Act for Fiscal Year 1993 was received by the Senate from the House of Representatives it would be deemed to have been agreed to. On Oct. 5, 1992, the Senate received the conference report from the House, and it was considered adopted pursuant to that order [Cong. Rec., vol. 138, p. 31565].

#### AMENDMENTS

2008—Subsecs. (j), (k), Pub. L. 110-417, §1407(1), redesignated subsecs. (k) and (l) as (j) and (k), respectively, and struck out heading and text of former subsec. (j). Text read as follows: “Upon a determination by the Secretary of Defense that such action serves the national defense interest and after consultation with the congressional defense committees, the Secretary may use funds available for obligation or expenditure for a purpose specified under subsection (c)(1)(A), (B), (C), and (D) for any purpose under subsection (c)(1).”

Subsec. (k)(2)(B) to (I). Pub. L. 110-417, §1407(2), added subpar. (B) and struck out former subpars. (B) to (I) which read as follows:

“(B) A maritime prepositioning ship.

“(C) An afloat prepositioning ship.

“(D) An aviation maintenance support ship.

“(E) A hospital ship.

“(F) A strategic sealift ship.

“(G) A combat logistics force ship.

“(H) A maritime prepositioned ship.

“(I) Any other auxiliary support vessel.”

Subsec. (l). Pub. L. 110-417, §1407(1), redesignated subsec. (l) as (k).

2006—Subsec. (d)(2). Pub. L. 109-304 substituted “sections 57101-57104 and chapter 573 of title 46” for “sections 508 and 510 of the Merchant Marine Act of 1936 (46 U.S.C. App. 1158, 1160), shall be deposited in the Fund”.

Subsec. (f)(1). Pub. L. 109-163 substituted “A vessel built in a foreign ship yard may not be” for “Not more than a total of five vessels built in foreign ship yards may be” and inserted “, unless specifically authorized by law” before period at end.

2003—Subsec. (l)(4), (5). Pub. L. 108-136 redesignated par. (5) as (4) and struck out former par. (4) 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.”

2001—Subsec. (d)(1). Pub. L. 107–107 struck out “for fiscal years after fiscal year 1993” after “Department of Defense” in introductory provisions.

2000—Subsec. (k)(1). Pub. L. 106–398, § 1 [[div. A], title X, § 1011(1)], inserted at end “As consideration for a contract with the head of an agency under this subsection, the company entering into the contract shall agree with the Secretary of Defense to make any vessel covered by the contract available to the Secretary, fully crewed and ready for sea, at any time at any port determined by the Secretary, and for whatever duration the Secretary determines necessary.”

Subsec. (k)(2)(E). Pub. L. 106–398, § 1 [[div. A], title X, § 1011(2)], added subpar. (E).

Subsec. (k)(6). Pub. L. 106–398, § 1 [[div. A], title X, § 1011(3)], added par. (6).

1999—Subsec. (k). Pub. L. 106–65, § 1015(a)(2), added subsec. (k). Former subsec. (k) redesignated (l).

Subsec. (k)(2). Pub. L. 106–65, § 1014(b), substituted “that is any of the following:” for “that is—” in introductory provisions, substituted “A” for “a” and a period for the semicolon in subpars. (A) and (B), “An” for “an” and a period for the semicolon in subpar. (C), “An” for “an” and a period for “; or” in subpar. (D), and “A” for “a” in subpar. (E), and added subpars. (F) to (I).

Subsec. (l). Pub. L. 106–65, § 1015(a)(1), redesignated subsec. (k) as (l).

Subsec. (l)(4)(B). Pub. L. 106–65, § 1067(1), substituted “Committee on Armed Services” for “Committee on National Security”.

Subsec. (l)(5). Pub. L. 106–65, § 1015(b), added par. (5).

1996—Subsec. (c)(1). Pub. L. 104–106, § 1014(a)(1)(A), substituted “only for the following purposes:” for “only for—”.

Subsec. (c)(1)(A). Pub. L. 104–106, § 1014(a)(1)(B), (C), substituted “Construction” for “construction” and “vessels.” for “vessels;”.

Subsec. (c)(1)(B). Pub. L. 104–106, § 1014(a)(1)(B), (C), substituted “Operation” for “operation” and “purposes.” for “purposes;”.

Subsec. (c)(1)(C). Pub. L. 104–106, § 1014(a)(1)(B), (D), substituted “Installation” for “installation” and “States.” for “States; and”.

Subsec. (c)(1)(D). Pub. L. 104–106, § 1014(a)(1)(B), substituted “Research” for “research”.

Subsec. (c)(1)(E). Pub. L. 104–106, § 1014(a)(1)(E), added subpar. (E).

Subsec. (i). Pub. L. 104–106, § 1014(a)(2), inserted “(other than subsection (c)(1)(E))” after “Nothing in this section”.

Subsec. (j). Pub. L. 104–106, § 1502(a)(15)(A), substituted “the congressional defense committees” for “the Committees on Armed Services and on Appropriations of the Senate and the House of Representatives”.

Subsec. (k)(4). Pub. L. 104–106, § 1502(a)(15)(B), added par. (4).

1992—Subsec. (c)(2). Pub. L. 102–396 substituted “in amounts authorized by law” for “for programs, projects, and activities and only in amounts authorized in, or otherwise permitted under, an Act other than an appropriations Act”. See Codification note above.

## [§ 2219. Renumbered § 2491c]

### § 2220. Performance based management: acquisition programs

(a) ESTABLISHMENT OF GOALS.—The Secretary of Defense shall approve or define the cost, performance, and schedule goals for major defense acquisition programs of the Department of Defense and for each phase of the acquisition cycle of such programs.

(b) EVALUATION OF COST GOALS.—The Under Secretary of Defense (Comptroller) shall evaluate the cost goals proposed for each major defense acquisition program of the Department.

(Added Pub. L. 103–355, title V, § 5001(a)(1), Oct. 13, 1994, 108 Stat. 3349; amended Pub. L. 104–106,

div. A, title XV, § 1503(a)(20), div. D, title XLIII, § 4321(b)(1), Feb. 10, 1996, 110 Stat. 512, 671; Pub. L. 105–85, div. A, title VIII, § 841(a), Nov. 18, 1997, 111 Stat. 1843; Pub. L. 107–314, div. A, title X, § 1041(a)(8), Dec. 2, 2002, 116 Stat. 2645.)

#### AMENDMENTS

2002—Subsec. (a). Pub. L. 107–314, § 1041(a)(8)(B), (C), struck out par. (1) designation and redesignated par. (2) as subsec. (b).

Subsec. (b). Pub. L. 107–314, § 1041(a)(8)(A), (C), redesignated subsec. (a)(2) as (b) and struck out heading and text of former subsec. (b). Text read as follows: “The Secretary of Defense shall include in the annual report submitted to Congress pursuant to section 113(c) of this title an assessment of whether major acquisition programs of the Department of Defense are achieving, on average, 90 percent of cost, performance, and schedule goals established pursuant to subsection (a) and whether the average period for converting emerging technology into operational capability has decreased by 50 percent or more from the average period required for such conversion as of October 13, 1994. The Secretary shall use data from existing management systems in making the assessment.”

Subsec. (c). Pub. L. 107–314, § 1041(a)(8)(A), struck out heading and text of subsec. (c). Text read as follows: “Whenever the Secretary of Defense, in the assessment required by subsection (b), determines that major defense acquisition programs of the Department of Defense are not achieving, on average, 90 percent of cost, performance, and schedule goals established pursuant to subsection (a), the Secretary shall ensure that there is a timely review of major defense acquisition programs and other programs as appropriate. In conducting the review, the Secretary shall—

“(1) determine whether there is a continuing need for programs that are significantly behind schedule, over budget, or not in compliance with performance or capability requirements; and

“(2) identify suitable actions to be taken, including termination, with respect to such programs.”

1997—Subsec. (b). Pub. L. 105–85 substituted “whether major acquisition programs” for “whether major and nonmajor acquisition programs”.

1996—Subsec. (a)(2). Pub. L. 104–106, § 1503(a)(20), substituted “Under Secretary of Defense (Comptroller)” for “Comptroller of the Department of Defense”.

Subsec. (b). Pub. L. 104–106, § 4321(b)(1), substituted “October 13, 1994” for “the date of the enactment of the Federal Acquisition Streamlining Act of 1994”.

#### EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by section 4321(b)(1) of Pub. L. 104–106, see section 4401 of Pub. L. 104–106, set out as a note under section 2302 of this title.

#### PILOT PROGRAMS FOR TESTING PROGRAM MANAGER PERFORMANCE OF PRODUCT SUPPORT OVERSIGHT RESPONSIBILITIES FOR LIFE CYCLE OF ACQUISITION PROGRAMS

Pub. L. 105–261, div. A, title VIII, § 816, Oct. 17, 1998, 112 Stat. 2088, provided that:

“(a) DESIGNATION OF PILOT PROGRAMS.—The Secretary of Defense, acting through the Secretaries of the military departments, shall designate 10 acquisition programs of the military departments as pilot programs on program manager responsibility for product support.

“(b) RESPONSIBILITIES OF PROGRAM MANAGERS.—The program manager for each acquisition program designated as a pilot program under this section shall have the responsibility for ensuring that the product support functions for the program are properly carried out over the entire life cycle of the program.

“(c) REPORT.—Not later than February 1, 1999, the Secretary of Defense shall submit to the congressional

defense committees [Committees on Armed Services and Appropriations of Senate and House of Representatives] a report on the pilot programs. The report shall contain the following:

“(1) A description of the acquisition programs designated as pilot programs under subsection (a).

“(2) For each such acquisition program, the specific management actions taken to ensure that the program manager has the responsibility for oversight of the performance of the product support functions.

“(3) Any proposed change to law, policy, regulation, or organization that the Secretary considers desirable, and determines feasible to implement, for ensuring that the program managers are fully responsible under the pilot programs for the performance of all such responsibilities.”

#### ENHANCED SYSTEM OF PERFORMANCE INCENTIVES

Pub. L. 103-355, title V, §5001(b), Oct. 13, 1994, 108 Stat. 3350, provided that: “Within one year after the date of the enactment of this Act [Oct. 13, 1994], the Secretary of Defense shall review the incentives and personnel actions available to the Secretary of Defense for encouraging excellence in the management of defense acquisition programs and provide an enhanced system of incentives to facilitate the achievement of goals approved or defined pursuant to section 2220(a) of title 10, United States Code. The enhanced system of incentives shall, to the maximum extent consistent with applicable law—

“(1) relate pay to performance (including the extent to which the performance of personnel in such programs contributes to achieving the cost goals, performance goals, and schedule goals established for acquisition programs of the Department of Defense pursuant to section 2220(a) of title 10, as added by subsection (a)); and

“(2) provide for consideration, in personnel evaluations and promotion decisions, of the extent to which the performance of personnel in such programs contributes to achieving the cost goals, performance goals, and schedule goals established for acquisition programs of the Department of Defense pursuant to section 2220(a) of title 10, United States Code, as added by subsection (a).”

#### RECOMMENDED LEGISLATION

Pub. L. 103-355, title V, §5001(c), Oct. 13, 1994, 108 Stat. 3350, directed the Secretary of Defense, not later than one year after Oct 13, 1994, to submit to Congress any recommended legislation that the Secretary considered necessary to carry out this section and otherwise to facilitate and enhance management of Department of Defense acquisition programs on the basis of performance.

#### **[§ 2221. Repealed. Pub. L. 105-261, div. A, title IX, § 906(f)(1), Oct. 17, 1998, 112 Stat. 2096]**

Section, added Pub. L. 104-106, div. A, title IX, §914(a)(1), Feb. 10, 1996, 110 Stat. 412; amended Pub. L. 104-201, div. A, title X, §1008(a), Sept. 23, 1996, 110 Stat. 2633; Pub. L. 105-85, div. A, title X, §1006(a), Nov. 18, 1997, 111 Stat. 1869; Pub. L. 105-261, div. A, title X, §1069(b)(2), Oct. 17, 1998, 112 Stat. 2136, related to Fisher House trust funds. See section 2493 of this title.

#### EFFECTIVE DATE OF REPEAL

Repeal effective 90 days after Oct. 17, 1998, see section 906(f)(3) of Pub. L. 105-261, set out as an Effective Date of 1998 Amendment note under section 1321 of Title 31, Money and Finance.

#### **§ 2222. Defense business systems: architecture, accountability, and modernization**

(a) CONDITIONS FOR OBLIGATION OF FUNDS FOR DEFENSE BUSINESS SYSTEM MODERNIZATION.—Funds appropriated to the Department of Defense may not be obligated for a defense busi-

ness system modernization that will have a total cost in excess of \$1,000,000 unless—

(1) the appropriate chief management officer for the defense business system modernization has determined whether or not—

(A) the defense business system modernization is in compliance with the enterprise architecture developed under subsection (c); and

(B) appropriate business process re-engineering efforts have been undertaken to ensure that—

(i) the business process to be supported by the defense business system modernization will be as streamlined and efficient as practicable; and

(ii) the need to tailor commercial-off-the-shelf systems to meet unique requirements or incorporate unique interfaces has been eliminated or reduced to the maximum extent practicable;

(2) the approval authority designated for the defense business system certifies to the Defense Business Systems Management Committee established by section 186 of this title that the defense business system modernization—

(A) has been determined by the appropriate chief management officer to be in compliance with the requirements of paragraph (1);

(B) is necessary to achieve a critical national security capability or address a critical requirement in an area such as safety or security; or

(C) is necessary to prevent a significant adverse effect on a project that is needed to achieve an essential capability, taking into consideration the alternative solutions for preventing such adverse effect; and

(3) the certification by the approval authority and the determination by the chief management officer are approved by the Defense Business Systems Management Committee.

(b) OBLIGATION OF FUNDS IN VIOLATION OF REQUIREMENTS.—The obligation of Department of Defense funds for a business system modernization in excess of the amount specified in subsection (a) that has not been certified and approved in accordance with such subsection is a violation of section 1341(a)(1)(A) of title 31.

(c) ENTERPRISE ARCHITECTURE FOR DEFENSE BUSINESS SYSTEMS.—Not later than September 30, 2005, the Secretary of Defense, acting through the Defense Business Systems Management Committee, shall develop—

(1) an enterprise architecture to cover all defense business systems, and the functions and activities supported by defense business systems, which shall be sufficiently defined to effectively guide, constrain, and permit implementation of interoperable defense business system solutions and consistent with the policies and procedures established by the Director of the Office of Management and Budget, and

(2) a transition plan for implementing the enterprise architecture for defense business systems.

(d) COMPOSITION OF ENTERPRISE ARCHITECTURE.—The defense business enterprise architec-

ture developed under subsection (c)(1) shall include the following:

(1) An information infrastructure that, at a minimum, would enable the Department of Defense to—

(A) comply with all Federal accounting, financial management, and reporting requirements;

(B) routinely produce timely, accurate, and reliable financial information for management purposes;

(C) integrate budget, accounting, and program information and systems; and

(D) provide for the systematic measurement of performance, including the ability to produce timely, relevant, and reliable cost information.

(2) Policies, procedures, data standards, and system interface requirements that are to apply uniformly throughout the Department of Defense.

(e) COMPOSITION OF TRANSITION PLAN.—(1) The transition plan developed under subsection (c)(2) shall include the following:

(A) The acquisition strategy for new systems that are expected to be needed to complete the defense business enterprise architecture.

(B) A listing of the defense business systems as of December 2, 2002 (known as “legacy systems”), that will not be part of the objective defense business enterprise architecture, together with the schedule for terminating those legacy systems that provides for reducing the use of those legacy systems in phases.

(C) A listing of the legacy systems (referred to in subparagraph (B)) that will be a part of the objective defense business system, together with a strategy for making the modifications to those systems that will be needed to ensure that such systems comply with the defense business enterprise architecture.

(2) Each of the strategies under paragraph (1) shall include specific time-phased milestones, performance metrics, and a statement of the financial and nonfinancial resource needs.

(f) APPROVAL AUTHORITIES AND ACCOUNTABILITY FOR DEFENSE BUSINESS SYSTEMS.—(1) The Secretary of Defense shall delegate responsibility for review, approval, and oversight of the planning, design, acquisition, deployment, operation, maintenance, and modernization of defense business systems as follows:

(A) The Under Secretary of Defense for Acquisition, Technology and Logistics shall be responsible and accountable for any defense business system the primary purpose of which is to support acquisition activities, logistics activities, or installations and environment activities of the Department of Defense.

(B) The Under Secretary of Defense (Comptroller) shall be responsible and accountable for any defense business system the primary purpose of which is to support financial management activities or strategic planning and budgeting activities of the Department of Defense.

(C) The Under Secretary of Defense for Personnel and Readiness shall be responsible and accountable for any defense business system the primary purpose of which is to support

human resource management activities of the Department of Defense.

(D) The Assistant Secretary of Defense for Networks and Information Integration and the Chief Information Officer of the Department of Defense shall be responsible and accountable for any defense business system the primary purpose of which is to support information technology infrastructure or information assurance activities of the Department of Defense.

(E) The Deputy Secretary of Defense or an Under Secretary of Defense, as designated by the Secretary of Defense, shall be responsible for any defense business system the primary purpose of which is to support any activity of the Department of Defense not covered by subparagraphs (A) through (D).

(2) For purposes of subsection (a), the appropriate chief management officer for a defense business system modernization is as follows:

(A) In the case of an Army program, the Chief Management Officer of the Army.

(B) In the case of a Navy program, the Chief Management Officer of the Navy.

(C) In the case of an Air Force program, the Chief Management Officer of the Air Force.

(D) In the case of a program of a Defense Agency, the Deputy Chief Management Officer of the Department of Defense.

(E) In the case of a program that will support the business processes of more than one military department or Defense Agency, the Deputy Chief Management Officer of the Department of Defense.

(g) DEFENSE BUSINESS SYSTEM INVESTMENT REVIEW.—(1) The Secretary of Defense shall require each approval authority designated under subsection (f) to establish, not later than March 15, 2005, an investment review process, consistent with section 11312 of title 40, to review the planning, design, acquisition, development, deployment, operation, maintenance, modernization, and project cost benefits and risks of all defense business systems for which the approval authority is responsible. The investment review process so established shall specifically address the responsibilities of approval authorities under subsection (a).

(2) The review of defense business systems under the investment review process shall include the following:

(A) Review and approval by an investment review board of each defense business system as an investment before the obligation of funds on the system.

(B) Periodic review, but not less than annually, of every defense business system investment.

(C) Representation on each investment review board by appropriate officials from among the armed forces, combatant commands, the Joint Chiefs of Staff, and Defense Agencies.

(D) Use of threshold criteria to ensure an appropriate level of review within the Department of Defense of, and accountability for, defense business system investments depending on scope, complexity, and cost.

(E) Use of procedures for making certifications in accordance with the requirements of subsection (a).

(F) Use of procedures for ensuring consistency with the guidance issued by the Secretary of Defense and the Defense Business Systems Management Committee, as required by section 186(c) of this title, and incorporation of common decision criteria, including standards, requirements, and priorities that result in the integration of defense business systems.

(h) BUDGET INFORMATION.—In the materials that the Secretary submits to Congress in support of the budget submitted to Congress under section 1105 of title 31 for fiscal year 2006 and fiscal years thereafter, the Secretary of Defense shall include the following information:

(1) Identification of each defense business system for which funding is proposed in that budget.

(2) Identification of all funds, by appropriation, proposed in that budget for each such system, including—

(A) funds for current services (to operate and maintain the system); and

(B) funds for business systems modernization, identified for each specific appropriation.

(3) For each such system, identification of the official to whom authority for such system is delegated under subsection (f).

(4) For each such system, a description of each certification made under subsection (d) with regard to such system.

(i) CONGRESSIONAL REPORTS.—Not later than March 15 of each year from 2005 through 2013, the Secretary of Defense shall submit to the congressional defense committees a report on Department of Defense compliance with the requirements of this section. The first report shall define plans and commitments for meeting the requirements of subsection (a), including specific milestones and performance measures. Subsequent reports shall—

(1) describe actions taken and planned for meeting the requirements of subsection (a), including—

(A) specific milestones and actual performance against specified performance measures, and any revision of such milestones and performance measures; and

(B) specific actions on the defense business system modernizations submitted for certification under such subsection;

(2) identify the number of defense business system modernizations so certified;

(3) identify any defense business system modernization with an obligation in excess of \$1,000,000 during the preceding fiscal year that was not certified under subsection (a), and the reasons for the waiver; and

(4) discuss specific improvements in business operations and cost savings resulting from successful defense business systems modernization efforts.

(j) DEFINITIONS.—In this section:

(1) The term “approval authority”, with respect to a defense business system, means the Department of Defense official responsible for the defense business system, as designated by subsection (f).

(2) The term “defense business system” means an information system, other than a national security system, operated by, for, or on behalf of the Department of Defense, including financial systems, mixed systems, financial data feeder systems, and information technology and information assurance infrastructure, used to support business activities, such as acquisition, financial management, logistics, strategic planning and budgeting, installations and environment, and human resource management.

(3) The term “defense business system modernization” means—

(A) the acquisition or development of a new defense business system; or

(B) any significant modification or enhancement of an existing defense business system (other than necessary to maintain current services).

(4) The term “enterprise architecture” has the meaning given that term in section 3601(4) of title 44.

(5) The terms “information system” and “information technology” have the meanings given those terms in section 11101 of title 40.

(6) The term “national security system” has the meaning given that term in section 3542(b)(2) of title 44.

(Added Pub. L. 108-375, div. A, title III, § 332(a)(1), Oct. 28, 2004, 118 Stat. 1851; amended Pub. L. 109-364, div. A, title IX, § 906(a), Oct. 17, 2006, 120 Stat. 2354; Pub. L. 110-417, [div. A], title III, § 351, Oct. 14, 2008, 122 Stat. 4425; Pub. L. 111-84, div. A, title X, § 1072(a), Oct. 28, 2009, 123 Stat. 2470; Pub. L. 111-383, div. A, title X, § 1075(b)(29), Jan. 7, 2011, 124 Stat. 4370.)

#### PRIOR PROVISIONS

A prior section 2222, added Pub. L. 105-85, div. A, title X, § 1008(a)(1), Nov. 18, 1997, 111 Stat. 1870; amended Pub. L. 107-107, div. A, title X, § 1009(b)(1)-(3)(A), Dec. 28, 2001, 115 Stat. 1208, 1209, required Secretary of Defense to submit to Congress an annual strategic plan for improvement of financial management within Department of Defense and specified statements and matters to be included in the plan, prior to repeal by Pub. L. 107-314, div. A, title X, § 1004(h)(1), Dec. 2, 2002, 116 Stat. 2631.

#### AMENDMENTS

2011—Subsec. (a). Pub. L. 111-383 substituted “Funds” for “Effective October 1, 2005, funds”.

2009—Subsec. (a). Pub. L. 111-84, § 1072(a)(1)(A), (B), added par. (1) and redesignated former pars. (1) and (2) as (2) and (3), respectively.

Subsec. (a)(2)(A). Pub. L. 111-84, § 1072(a)(1)(C), added subpar. (A) and struck out former subpar. (A), which read as follows: “is in compliance with the enterprise architecture developed under subsection (c);”.

Subsec. (a)(3). Pub. L. 111-84, § 1072(a)(1)(D), substituted “the certification by the approval authority and the determination by the chief management officer are” for “the certification by the approval authority is”.

Subsec. (f). Pub. L. 111-84, § 1072(a)(2), designated existing provisions as par. (1), redesignated former pars. (1) to (5) as subpars. (A) to (E), respectively, of par. (1), in subpar. (E) substituted “subparagraphs (A) through (D)” for “paragraphs (1) through (4)”, and added par. (2).

2008—Subsec. (i). Pub. L. 110-417 substituted “2013” for “2009” in introductory provisions.

2006—Subsec. (j)(6). Pub. L. 109-364 substituted “in section 3542(b)(2) of title 44” for “in section 2315 of this title”.

## REVIEW OF OBLIGATION AND EXPENDITURE THRESHOLDS

Pub. L. 111-383, div. A, title VIII, §882, Jan. 7, 2011, 124 Stat. 4308, provided that:

“(a) PROCESS REVIEW.—Not later than one year after the date of the enactment of this Act [Jan. 7, 2011], the Chief Management Officer of the Department of Defense, in coordination with the Chief Management Officer of each military department, the Director of the Office of Performance Assessment and Root Cause Analysis, the Under Secretary of Defense (Comptroller), and the Comptrollers of the military departments, shall complete a comprehensive review of the use and value of obligation and expenditure benchmarks and propose new benchmarks or processes for tracking financial performance, including, as appropriate—

“(1) increased reliance on individual obligation and expenditure plans for measuring program financial performance;

“(2) mechanisms to improve funding stability and to increase the predictability of the release of funding for obligation and expenditure; and

“(3) streamlined mechanisms for a program manager to submit an appeal for funding changes and to have such appeal evaluated promptly.

“(b) TRAINING.—The Under Secretary of Defense for Acquisition, Technology, and Logistics and the Under Secretary of Defense (Comptroller) shall ensure that, as part of the training required for program managers and business managers, an emphasis is placed on obligating and expending appropriated funds in a manner that achieves the best value for the Government and that the purpose and limitations of obligation and expenditure benchmarks are made clear.

“(c) REPORT.—The Deputy Chief Management Officer of the Department of Defense shall include a report on the results of the review under this section in the next update of the strategic management plan transmitted to the Committees on Armed Services of the Senate and the House of Representatives under section 904(d) of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181; 122 Stat. 275; 10 U.S.C. note prec. 2201) after the completion of the review.”

## AUDIT READINESS OF FINANCIAL STATEMENTS OF THE DEPARTMENT OF DEFENSE

Pub. L. 111-383, div. A, title VIII, §881, Jan. 7, 2011, 124 Stat. 4306, provided that:

“(a) INTERIM MILESTONES.—

“(1) REQUIREMENT.—Not later than 90 days after the date of the enactment of this Act [Jan. 7, 2011], the Under Secretary of Defense (Comptroller), in consultation with the Deputy Chief Management Officer of the Department of Defense, the secretaries of the military departments, and the heads of the defense agencies and defense field activities, shall establish interim milestones for achieving audit readiness of the financial statements of the Department of Defense, consistent with the requirements of section 1003 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111-84; 123 Stat. 2439; 10 U.S.C. 2222 note).

“(2) MATTERS INCLUDED.—The interim milestones established pursuant to paragraph (1) shall include, at a minimum, for each military department and for the defense agencies and defense field activities—

“(A) an interim milestone for achieving audit readiness for each major element of the statement of budgetary resources, including civilian pay, military pay, supply orders, contracts, and funds balance with the Treasury; and

“(B) an interim milestone for addressing the existence and completeness of each major category of Department of Defense assets, including military equipment, real property, inventory, and operating material and supplies.

“(3) DESCRIPTION IN SEMIANNUAL REPORTS.—The Under Secretary shall describe each interim milestone established pursuant to paragraph (1) in the next semiannual report submitted pursuant to sec-

tion 1003(b) of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111-84; 123 Stat. 2439; 10 U.S.C. 2222 note). Each subsequent semiannual report submitted pursuant to section 1003(b) shall explain how the Department has progressed toward meeting such interim milestones.

“(b) VALUATION OF DEPARTMENT OF DEFENSE ASSETS.—

“(1) REQUIREMENT.—Not later than 120 days after the date of the enactment of this Act, the Under Secretary of Defense (Comptroller) shall, in consultation with other appropriate Federal agencies and officials—

“(A) examine the costs and benefits of alternative approaches to the valuation of Department of Defense assets;

“(B) select an approach to such valuation that is consistent with principles of sound financial management and the conservation of taxpayer resources; and

“(C) begin the preparation of a business case analysis supporting the selected approach.

“(2) The Under Secretary shall include information on the alternatives considered, the selected approach, and the business case analysis supporting that approach in the next semiannual report submitted pursuant to section 1003(b) of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111-84; 123 Stat. 2439; 10 U.S.C. 2222 note).

“(c) REMEDIAL ACTIONS REQUIRED.—In the event that the Department of Defense, or any component of the Department of Defense, is unable to meet an interim milestone established pursuant to subsection (a), the Under Secretary of Defense (Comptroller) shall—

“(1) develop a remediation plan to ensure that—

“(A) the component will meet the interim milestone no more than one year after the originally scheduled date; and

“(B) the component’s failure to meet the interim milestone will not have an adverse impact on the Department’s ability to carry out the plan under section 1003(a) of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111-84; 123 Stat. 2439; 10 U.S.C. 2222 note); and

“(2) include in the next semiannual report submitted pursuant to section 1003(b) of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111-84; 123 Stat. 2439; 10 U.S.C. 2222 note)—

“(A) a statement of the reasons why the Department of Defense, or component of the Department of Defense, will be unable to meet such interim milestone;

“(B) the revised completion date for meeting such interim milestone; and

“(C) a description of the actions that have been taken and are planned to be taken by the Department of Defense, or component of the Department of Defense, to meet such interim milestone.

“(d) INCENTIVES FOR ACHIEVING AUDITABILITY.—

“(1) REVIEW REQUIRED.—Not later than 120 days after the date of the enactment of this Act, the Under Secretary of Defense (Comptroller) shall review options for providing appropriate incentives to the military departments, Defense Agencies, and defense field activities to ensure that financial statements are validated as ready for audit earlier than September 30, 2017.

“(2) OPTIONS REVIEWED.—The review performed pursuant to paragraph (1) shall consider changes in policy that reflect the increased confidence that can be placed in auditable financial statements, and shall include, at a minimum, consideration of the following options:

“(A) Consistent with the need to fund urgent warfighter requirements and operational needs, priority in the release of appropriated funds.

“(B) Relief from the frequency of financial reporting in cases in which such reporting is not required by law.

“(C) Relief from departmental obligation and expenditure thresholds to the extent that such

thresholds establish requirements more restrictive than those required by law.

“(D) Increases in thresholds for reprogramming of funds.

“(E) Personnel management incentives for the financial and business management workforce.

“(F) Such other measures as the Under Secretary considers appropriate.

“(3) REPORT.—The Under Secretary shall include a discussion of the review performed pursuant to paragraph (1) in the next semiannual report pursuant to section 1003(b) of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2439; 10 U.S.C. 2222 note) and for each option considered pursuant to paragraph (2) shall include—

“(A) an assessment of the extent to which the implementation of the option—

“(i) would be consistent with the efficient operation of the Department of Defense and the effective funding of essential Department of Defense programs and activities; and

“(ii) would contribute to the achievement of Department of Defense goals to prepare auditable financial statements; and

“(B) a recommendation on whether such option should be adopted, a schedule for implementing the option if adoption is recommended, or a reason for not recommending the option if adoption is not recommended.”

Pub. L. 111–84, div. A, title X, §1003, Oct. 28, 2009, 123 Stat. 2439, provided that:

“(a) FINANCIAL IMPROVEMENT AUDIT READINESS PLAN.—

“(1) IN GENERAL.—The Chief Management Officer of the Department of Defense shall, in consultation with the Under Secretary of Defense (Comptroller), develop and maintain a plan to be known as the ‘Financial Improvement and Audit Readiness Plan’.

“(2) ELEMENTS.—The plan required by paragraph (1) shall—

“(A) describe specific actions to be taken and the costs associated with—

“(i) correcting the financial management deficiencies that impair the ability of the Department of Defense to prepare timely, reliable, and complete financial management information; and

“(ii) ensuring the financial statements of the Department of Defense are validated as ready for audit by not later than September 30, 2017;

“(B) systematically tie the actions described under subparagraph (A) to process and control improvements and business systems modernization efforts described in the business enterprise architecture and transition plan required by section 2222 of title 10, United States Code;

“(C) prioritize—

“(i) improving the budgetary information of the Department of Defense, in order to achieve an unqualified audit opinion on the Department’s statements of budgetary resources; and

“(ii) as a secondary goal, improving the accuracy and reliability of management information on the Department’s mission-critical assets (military and general equipment, real property, inventory, and operating materials and supplies) and validating its accuracy through existence and completeness audits; and

“(D) include interim goals, including—

“(i) the objective of ensuring that the financial statement of each of the Department of the Army, the Department of the Navy, the Department of the Air Force, and the Defense Logistics Agency is validated as ready for audit; and

“(ii) a schedule setting forth milestones for elements of the military departments and financial statements of the military departments to be made ready for audit as part of the progress required to meet the objectives established pursuant to clause (i) of this subparagraph and clause (ii) of subparagraph (A) of this paragraph.

“(b) SEMI-ANNUAL REPORTS ON FINANCIAL IMPROVEMENT AND AUDIT READINESS PLAN.—

“(1) IN GENERAL.—Not later than May 15 and November 15 each year, the Under Secretary of Defense (Comptroller) shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the status of the implementation by the Department of Defense of the Financial Improvement and Audit Readiness Plan required by subsection (a).

“(2) ELEMENTS.—Each report under paragraph (1) shall include, at a minimum—

“(A) an overview of the steps the Department has taken or plans to take to meet the objectives specified in subsection (a)(2)(A), including progress toward achieving the interim goals and milestone schedule established pursuant to subsection (a)(2)(D); and

“(B) a description of any impediments identified in the efforts of the Department to meet such objectives, and of the actions the Department has taken or plans to take to address such impediments.

“(3) ADDITIONAL ISSUES TO BE ADDRESSED IN FIRST REPORT.—The first report submitted under paragraph (1) after the date of the enactment of this Act [Oct. 28, 2009] shall address, in addition to the elements required by paragraph (2), the actions taken or to be taken by the Department as follows:

“(A) To develop standardized guidance for financial improvement plans by components of the Department.

“(B) To establish a baseline of financial management capabilities and weaknesses at the component level of the Department.

“(C) To provide results-oriented metrics for measuring and reporting quantifiable results toward addressing financial management deficiencies.

“(D) To define the oversight roles of the Chief Management Officer of the Department of Defense, the chief management officers of the military departments, and other appropriate elements of the Department to ensure that the requirements of the Financial Improvement and Audit Readiness Plan are carried out.

“(E) To assign accountability for carrying out specific elements of the Financial Improvement and Audit Readiness Plan to appropriate officials and organizations at the component level of the Department.

“(F) To develop mechanisms to track budgets and expenditures for the implementation of the requirements of the Financial Improvement and Audit Readiness Plan.

“(G) To develop a mechanism to conduct audits of the military intelligence programs and agencies and to submit audited financial statements for such agencies to Congress in a classified manner.

“(c) RELATIONSHIP TO EXISTING LAW.—The requirements of this section shall be implemented in a manner that is consistent with the requirements of section 1008 of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107–107; 115 Stat. 1204; 10 U.S.C. 2222 [113] note).”

#### BUSINESS PROCESS REENGINEERING EFFORTS; ONGOING PROGRAMS

Pub. L. 111–84, div. A, title X, §1072(b), Oct. 28, 2009, 123 Stat. 2471, provided that:

“(1) IN GENERAL.—Not later than one year after the date of the enactment of this Act [Oct. 28, 2009], the appropriate chief management officer for each defense business system modernization approved by the Defense Business Systems Management Committee before the date of the enactment of this Act that will have a total cost in excess of \$100,000,000 shall review such defense business system modernization to determine whether or not appropriate business process reengineering efforts have been undertaken to ensure that—

“(A) the business process to be supported by such defense business system modernization will be as streamlined and efficient as practicable; and

“(B) the need to tailor commercial-off-the-shelf systems to meet unique requirements or incorporate unique interfaces has been eliminated or reduced to the maximum extent practicable.

“(2) ACTION ON FINDING OF LACK OF REENGINEERING EFFORTS.—If the appropriate chief management officer determines that appropriate business process reengineering efforts have not been undertaken with regard to a defense business system modernization as described in paragraph (1), that chief management officer—

“(A) shall develop a plan to undertake business process reengineering efforts with respect to the defense business system modernization; and

“(B) may direct that the defense business system modernization be restructured or terminated, if necessary to meet the requirements of paragraph (1).

“(3) DEFINITIONS.—In this subsection:

“(A) The term ‘appropriate chief management officer’, with respect to a defense business system modernization, has the meaning given that term in paragraph (2) of subsection (f) of section 2222 of title 10, United States Code (as amended by subsection (a)(2) of this section).

“(B) The term ‘defense business system modernization’ has the meaning given that term in subsection (j)(3) of section 2222 of title 10, United States Code.”

#### BUSINESS TRANSFORMATION INITIATIVES FOR THE MILITARY DEPARTMENTS

Pub. L. 110-417, [div. A], title IX, §908, Oct. 14, 2008, 122 Stat. 4569, provided that:

“(a) IN GENERAL.—The Secretary of each military department shall, acting through the Chief Management Officer of such military department, carry out an initiative for the business transformation of such military department.

“(b) OBJECTIVES.—The objectives of the business transformation initiative of a military department under this section shall include, at a minimum, the following:

“(1) The development of a comprehensive business transformation plan, with measurable performance goals and objectives, to achieve an integrated management system for the business operations of the military department.

“(2) The development of a well-defined enterprise-wide business systems architecture and transition plan encompassing end-to-end business processes and capable of providing accurately and timely information in support of business decisions of the military department.

“(3) The implementation of the business transformation plan developed pursuant to paragraph (1) and the business systems architecture and transition plan developed pursuant to paragraph (2).

“(c) BUSINESS TRANSFORMATION OFFICES.—

“(1) ESTABLISHMENT.—Not later than 180 days after the date of the enactment of this Act [Oct. 14, 2008], the Secretary of each military department shall establish within such military department an office (to be known as the ‘Office of Business Transformation’ of such military department) to assist the Chief Management Officer of such military department in carrying out the initiative required by this section for such military department.

“(2) HEAD.—The Office of Business Transformation of a military department under this subsection shall be headed by a Director of Business Transformation, who shall be appointed by the Chief Management Officer of the military department, in consultation with the Director of the Business Transformation Agency of the Department of Defense, from among individuals with significant experience managing large-scale organizations or business transformation efforts.

“(3) SUPERVISION.—The Director of Business Transformation of a military department under paragraph (2) shall report directly to the Chief Management Of-

ficer of the military department, subject to policy guidance from the Director of the Business Transformation Agency of the Department of Defense.

“(4) AUTHORITY.—In carrying out the initiative required by this section for a military department, the Director of Business Transformation of the military department under paragraph (2) shall have the authority to require elements of the military department to carry out actions that are within the purpose and scope of the initiative.

“(d) RESPONSIBILITIES OF BUSINESS TRANSFORMATION OFFICES.—The Office of Business Transformation of a military department established pursuant to subsection (b) may be responsible for the following:

“(1) Transforming the budget, finance, accounting, and human resource operations of the military department in a manner that is consistent with the business transformation plan developed pursuant to subsection (b)(1).

“(2) Eliminating or replacing financial management systems of the military department that are inconsistent with the business systems architecture and transition plan developed pursuant to subsection (b)(2).

“(3) Ensuring that the business transformation plan and the business systems architecture and transition plan are implemented in a manner that is aggressive, realistic, and accurately measured.

“(4) Such other responsibilities as the Secretary of that military department determines are appropriate.

“(e) REQUIRED ELEMENTS.—In carrying out the initiative required by this section for a military department, the Chief Management Officer and the Director of Business Transformation of the military department shall ensure that each element of the initiative is consistent with—

“(1) the requirements of the Business Enterprise Architecture and Transition Plan developed by the Secretary of Defense pursuant to section 2222 of title 10, United States Code;

“(2) the Standard Financial Information Structure of the Department of Defense;

“(3) the Federal Financial Management Improvement Act of 1996 [section 101(f) [title VIII] of title I of div. A of Pub. L. 104-208, 31 U.S.C. 3512 note] (and the amendments made by that Act); and

“(4) other applicable requirements of law and regulation.

“(f) REPORTS ON IMPLEMENTATION.—

“(1) INITIAL REPORTS.—Not later than nine months after the date of the enactment of this Act [Oct. 14, 2008], the Chief Management Officer of each military department shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the actions taken, and on the actions planned to be taken, by such military department to implement the requirements of this section.

“(2) UPDATES.—Not later than March 1 of each of 2010, 2011, and 2012, the Chief Management Officer of each military department shall submit to the congressional defense committees a current update of the report submitted by such Chief Management Officer under paragraph (1).”

#### FINANCIAL MANAGEMENT TRANSFORMATION INITIATIVE FOR THE DEFENSE AGENCIES

Pub. L. 110-181, div. A, title X, §1005, Jan. 28, 2008, 122 Stat. 301, provided that:

“(a) FINANCIAL MANAGEMENT TRANSFORMATION INITIATIVE.—

“(1) IN GENERAL.—The Director of the Business Transformation Agency of the Department of Defense shall carry out an initiative for financial management transformation in the Defense Agencies. The initiative shall be known as the ‘Defense Agencies Initiative’ (in this section referred to as the ‘Initiative’).

“(2) SCOPE OF AUTHORITY.—In carrying out the Initiative, the Director of the Business Transformation Agency may require the heads of the Defense Agencies to carry out actions that are within the purpose and scope of the Initiative.

“(b) PURPOSES.—The purposes of Initiative shall be as follows:

“(1) To eliminate or replace financial management systems of the Defense Agencies that are duplicative, redundant, or fail to comply with the standards set forth in subsection (d).

“(2) To transform the budget, finance, and accounting operations of the Defense Agencies to enable the Defense Agencies to achieve accurate and reliable financial information needed to support financial accountability and effective and efficient management decisions.

“(c) REQUIRED ELEMENTS.—The Initiative shall include, to the maximum extent practicable—

“(1) the utilization of commercial, off-the-shelf technologies and web-based solutions;

“(2) a standardized technical environment and an open and accessible architecture; and

“(3) the implementation of common business processes, shared services, and common data structures.

“(d) STANDARDS.—In carrying out the Initiative, the Director of the Business Transformation Agency shall ensure that the Initiative is consistent with—

“(1) the requirements of the Business Enterprise Architecture and Transition Plan developed pursuant to section 2222 of title 10, United States Code;

“(2) the Standard Financial Information Structure of the Department of Defense;

“(3) the Federal Financial Management Improvement Act of 1996 [section 101(f) [title VIII] of title I of div. A of Pub. L. 104-208, 31 U.S.C. 3512 note] (and the amendments made by that Act); and

“(4) other applicable requirements of law and regulation.

“(e) SCOPE.—The Initiative shall be designed to provide, at a minimum, capabilities in the major process areas for both general fund and working capital fund operations of the Defense Agencies as follows:

“(1) Budget formulation.

“(2) Budget to report, including general ledger and trial balance.

“(3) Procure to pay, including commitments, obligations, and accounts payable.

“(4) Order to fulfill, including billing and accounts receivable.

“(5) Cost accounting.

“(6) Acquire to retire (account management).

“(7) Time and attendance and employee entitlement.

“(8) Grants financial management.

“(f) CONSULTATION.—In carrying out subsections (d) and (e), the Director of the Business Transformation Agency shall consult with the Comptroller of the Department of Defense to ensure that any financial management systems developed for the Defense Agencies, and any changes to the budget, finance, and accounting operations of the Defense Agencies, are consistent with the financial standards and requirements of the Department of Defense.

“(g) PROGRAM CONTROL.—In carrying out the Initiative, the Director of the Business Transformation Agency shall establish—

“(1) a board (to be known as the ‘Configuration Control Board’) to manage scope and cost changes to the Initiative; and

“(2) a program management office (to be known as the ‘Program Management Office’) to control and enforce assumptions made in the acquisition plan, the cost estimate, and the system integration contract for the Initiative, as directed by the Configuration Control Board.

“(h) PLAN ON DEVELOPMENT AND IMPLEMENTATION OF INITIATIVE.—Not later than six months after the date of the enactment of this Act [Jan. 28, 2008], the Director of the Business Transformation Agency shall submit to

the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a plan for the development and implementation of the Initiative. The plan shall provide for the implementation of an initial capability under the Initiative as follows:

“(1) In at least one Defense Agency by not later than eight months after the date of the enactment of this Act.

“(2) In not less than five Defense Agencies by not later than 18 months after the date of the enactment of this Act.”

#### LIMITATION ON FINANCIAL MANAGEMENT IMPROVEMENT AND AUDIT INITIATIVES WITHIN THE DEPARTMENT OF DEFENSE

Pub. L. 109-364, div. A, title III, §321, Oct. 17, 2006, 120 Stat. 2144, as amended by Pub. L. 111-383, div. A, title X, §1075(g)(1), Jan. 7, 2011, 124 Stat. 4376, provided that:

“(a) LIMITATION.—The Secretary of Defense may not obligate or expend any funds for the purpose of any financial management improvement activity relating to the preparation, processing, or auditing of financial statements until the Secretary submits to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a written determination that each activity proposed to be funded is—

“(1) consistent with the financial management improvement plan of the Department of Defense required by section 376(a)(1) of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109-163; 119 Stat. 3213); and

“(2) likely to improve internal controls or otherwise result in sustained improvements in the ability of the Department to produce timely, reliable, and complete financial management information.

“(b) EXCEPTION.—The limitation in subsection (a) shall not apply to an activity directed exclusively at assessing the adequacy of internal controls and remediating any inadequacy identified pursuant to such assessment.”

#### TIME-CERTAIN DEVELOPMENT FOR DEPARTMENT OF DEFENSE INFORMATION TECHNOLOGY BUSINESS SYSTEMS

Pub. L. 109-364, div. A, title VIII, §811, Oct. 17, 2006, 120 Stat. 2316, provided that:

“(a) MILESTONE A LIMITATION.—The Department of Defense executive or entity that is the milestone decision authority for an information system described in subsection (c) may not provide Milestone A approval for the system unless, as part of the decision process for such approval, that authority determines that the system will achieve initial operational capability within a specified period of time not exceeding five years.

“(b) INITIAL OPERATIONAL CAPABILITY LIMITATION.—If an information system described in subsection (c), having received Milestone A approval, has not achieved initial operational capability within five years after the date of such approval, the system shall be deemed to have undergone a critical change in program requiring the evaluation and report required by section 2445c(d) of title 10, United States Code (as added by section 816 of this Act).

“(c) COVERED SYSTEMS.—An information system described in this subsection is any Department of Defense information technology business system that is not a national security system, as defined in 3542(b)(2) of title 44, United States Code.

“(d) DEFINITIONS.—In this section:

“(1) MILESTONE DECISION AUTHORITY.—The term ‘milestone decision authority’ has the meaning given that term in Department of Defense Instruction 5000.2, dated May 12, 2003.

“(2) MILESTONE A.—The term ‘Milestone A’ has the meaning given that term in Department of Defense Instruction 5000.2, dated May 12, 2003.”

**§ 2223. Information technology: additional responsibilities of Chief Information Officers**

(a) ADDITIONAL RESPONSIBILITIES OF CHIEF INFORMATION OFFICER OF DEPARTMENT OF DEFENSE.—In addition to the responsibilities provided for in chapter 35 of title 44 and in section 11315 of title 40, the Chief Information Officer of the Department of Defense shall—

(1) review and provide recommendations to the Secretary of Defense on Department of Defense budget requests for information technology and national security systems;

(2) ensure the interoperability of information technology and national security systems throughout the Department of Defense;

(3) ensure that information technology and national security systems standards that will apply throughout the Department of Defense are prescribed;

(4) provide for the elimination of duplicate information technology and national security systems within and between the military departments and Defense Agencies; and

(5) maintain a consolidated inventory of Department of Defense mission critical and mission essential information systems, identify interfaces between those systems and other information systems, and develop and maintain contingency plans for responding to a disruption in the operation of any of those information systems.

(b) ADDITIONAL RESPONSIBILITIES OF CHIEF INFORMATION OFFICER OF MILITARY DEPARTMENTS.—In addition to the responsibilities provided for in chapter 35 of title 44 and in section 11315 of title 40, the Chief Information Officer of a military department, with respect to the military department concerned, shall—

(1) review budget requests for all information technology and national security systems;

(2) ensure that information technology and national security systems are in compliance with standards of the Government and the Department of Defense;

(3) ensure that information technology and national security systems are interoperable with other relevant information technology and national security systems of the Government and the Department of Defense; and

(4) coordinate with the Joint Staff with respect to information technology and national security systems.

(c) DEFINITIONS.—In this section:

(1) The term “Chief Information Officer” means the senior official designated by the Secretary of Defense or a Secretary of a military department pursuant to section 3506 of title 44.

(2) The term “information technology” has the meaning given that term by section 11101 of title 40.

(3) The term “national security system” has the meaning given that term by section 3542(b)(2) of title 44.

(Added Pub. L. 105–261, div. A, title III, § 331(a)(1), Oct. 17, 1998, 112 Stat. 1967; amended Pub. L. 106–398, § 1 [[div. A], title VIII, § 811(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–210; Pub. L.

107–217, § 3(b)(1), Aug. 21, 2002, 116 Stat. 1295; Pub. L. 109–364, div. A, title IX, § 906(b), Oct. 17, 2006, 120 Stat. 2354.)

AMENDMENTS

2006—Subsec. (c)(3). Pub. L. 109–364 substituted “section 3542(b)(2) of title 44” for “section 11103 of title 40”.

2002—Subsecs. (a), (b). Pub. L. 107–217, § 3(b)(1)(A), (B), substituted “section 11315 of title 40” for “section 5125 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1425)” in introductory provisions.

Subsec. (c)(2). Pub. L. 107–217, § 3(b)(1)(C), substituted “section 11101 of title 40” for “section 5002 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1401)”.

Subsec. (c)(3). Pub. L. 107–217, § 3(b)(1)(D), substituted “section 11103 of title 40” for “section 5142 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1452)”.

2000—Subsec. (a)(5). Pub. L. 106–398 added par. (5).

EFFECTIVE DATE

Pub. L. 105–261, div. A, title III, § 331(b), Oct. 17, 1998, 112 Stat. 1968, provided that: “Section 2223 of title 10, United States Code, as added by subsection (a), shall take effect on October 1, 1998.”

CONTINUOUS MONITORING OF DEPARTMENT OF DEFENSE INFORMATION SYSTEMS FOR CYBERSECURITY

Pub. L. 111–383, div. A, title IX, § 931, Jan. 7, 2011, 124 Stat. 4334, provided that:

“(a) IN GENERAL.—The Secretary of Defense shall direct the Chief Information Officer of the Department of Defense to work, in coordination with the Chief Information Officers of the military departments and the Defense Agencies and with senior cybersecurity and information assurance officials within the Department of Defense and otherwise within the Federal Government, to achieve, to the extent practicable, the following:

“(1) The continuous prioritization of the policies, principles, standards, and guidelines developed under section 20 of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3) with agencies and offices operating or exercising control of national security systems (including the National Security Agency) based upon the evolving threat of information security incidents with respect to national security systems, the vulnerability of such systems to such incidents, and the consequences of information security incidents involving such systems.

“(2) The automation of continuous monitoring of the effectiveness of the information security policies, procedures, and practices within the information infrastructure of the Department of Defense, and the compliance of that infrastructure with such policies, procedures, and practices, including automation of—

“(A) management, operational, and technical controls of every information system identified in the inventory required under section 3505(c) of title 44, United States Code; and

“(B) management, operational, and technical controls relied on for evaluations under section 3545 of title 44, United States Code.

“(b) DEFINITIONS.—In this section:

“(1) The term ‘information security incident’ means an occurrence that—

“(A) actually or potentially jeopardizes the confidentiality, integrity, or availability of an information system or the information such system processes, stores, or transmits; or

“(B) constitutes a violation or imminent threat of violation of security policies, security procedures, or acceptable use policies with respect to an information system.

“(2) The term ‘information infrastructure’ means the underlying framework, equipment, and software that an information system and related assets rely on to process, transmit, receive, or store information electronically.

“(3) The term ‘national security system’ has the meaning given that term in section 3542(b)(2) of title 44, United States Code.”

**§ 2223a. Information technology acquisition planning and oversight requirements**

(a) ESTABLISHMENT OF PROGRAM.—The Secretary of Defense shall establish a program to improve the planning and oversight processes for the acquisition of major automated information systems by the Department of Defense.

(b) PROGRAM COMPONENTS.—The program established under subsection (a) shall include—

(1) a documented process for information technology acquisition planning, requirements development and management, project management and oversight, earned value management, and risk management;

(2) the development of appropriate metrics that can be implemented and monitored on a real-time basis for performance measurement of—

(A) processes and development status of investments in major automated information system programs;

(B) continuous process improvement of such programs; and

(C) achievement of program and investment outcomes;

(3) a process to ensure that key program personnel have an appropriate level of experience, training, and education in the planning, acquisition, execution, management, and oversight of information technology systems;

(4) a process to ensure sufficient resources and infrastructure capacity for test and evaluation of information technology systems;

(5) a process to ensure that military departments and Defense Agencies adhere to established processes and requirements relating to the planning, acquisition, execution, management, and oversight of information technology programs and developments; and

(6) a process under which an appropriate Department of Defense official may intervene or terminate the funding of an information technology investment if the investment is at risk of not achieving major project milestones.

(Added Pub. L. 111-383, div. A, title VIII, § 805(a)(1), Jan. 7, 2011, 124 Stat. 4259.)

**§ 2224. Defense Information Assurance Program**

(a) DEFENSE INFORMATION ASSURANCE PROGRAM.—The Secretary of Defense shall carry out a program, to be known as the “Defense Information Assurance Program”, to protect and defend Department of Defense information, information systems, and information networks that are critical to the Department and the armed forces during day-to-day operations and operations in times of crisis.

(b) OBJECTIVES OF THE PROGRAM.—The objectives of the program shall be to provide continuously for the availability, integrity, authentication, confidentiality, nonrepudiation, and rapid restitution of information and information systems that are essential elements of the Defense Information Infrastructure.

(c) PROGRAM STRATEGY.—In carrying out the program, the Secretary shall develop a program strategy that encompasses those actions necessary to assure the readiness, reliability, continuity, and integrity of Defense information

systems, networks, and infrastructure, including through compliance with subchapter II of chapter 35 of title 44, including through compliance with subchapter III of chapter 35 of title 44. The program strategy shall include the following:

(1) A vulnerability and threat assessment of elements of the defense and supporting non-defense information infrastructures that are essential to the operations of the Department and the armed forces.

(2) Development of essential information assurances technologies and programs.

(3) Organization of the Department, the armed forces, and supporting activities to defend against information warfare.

(4) Joint activities of the Department with other departments and agencies of the Government, State and local agencies, and elements of the national information infrastructure.

(5) The conduct of exercises, war games, simulations, experiments, and other activities designed to prepare the Department to respond to information warfare threats.

(6) Development of proposed legislation that the Secretary considers necessary for implementing the program or for otherwise responding to the information warfare threat.

(d) COORDINATION.—In carrying out the program, the Secretary shall coordinate, as appropriate, with the head of any relevant Federal agency and with representatives of those national critical information infrastructure systems that are essential to the operations of the Department and the armed forces on information assurance measures necessary to the protection of these systems.

[(e) Repealed. Pub. L. 108-136, div. A, title X, § 1031(a)(12), Nov. 24, 2003, 117 Stat. 1597.]

(f) INFORMATION ASSURANCE TEST BED.—The Secretary shall develop an information assurance test bed within the Department of Defense to provide—

(1) an integrated organization structure to plan and facilitate the conduct of simulations, war games, exercises, experiments, and other activities to prepare and inform the Department regarding information warfare threats; and

(2) organization and planning means for the conduct by the Department of the integrated or joint exercises and experiments with elements of the national information systems infrastructure and other non-Department of Defense organizations that are responsible for the oversight and management of critical information systems and infrastructures on which the Department, the armed forces, and supporting activities depend for the conduct of daily operations and operations during crisis.

(Added Pub. L. 106-65, div. A, title X, § 1043(a), Oct. 5, 1999, 113 Stat. 760; amended Pub. L. 106-398, § 1 [[div. A], title X, § 1063], Oct. 30, 2000, 114 Stat. 1654, 1654A-274; Pub. L. 107-296, title X, § 1001(c)(1)(B), Nov. 25, 2002, 116 Stat. 2267; Pub. L. 107-347, title III, § 301(c)(1)(B), Dec. 17, 2002, 116 Stat. 2955; Pub. L. 108-136, div. A, title X, § 1031(a)(12), Nov. 24, 2003, 117 Stat. 1597; Pub. L. 108-375, div. A, title X, § 1084(d)(17), Oct. 28, 2004, 118 Stat. 2062.)

## AMENDMENTS

2004—Subsec. (c). Pub. L. 108-375 substituted “subchapter II” for “subtitle II” in introductory provisions.

2003—Subsec. (e). Pub. L. 108-136 struck out subsec. (e) which directed the Secretary of Defense to annually submit to Congress a report on the Defense Information Assurance Program.

2002—Subsec. (b). Pub. L. 107-296, § 1001(c)(1)(B)(i), and Pub. L. 107-347, § 301(c)(1)(B)(i), amended subsec. (b) identically, substituting “Objectives of the Program” for “Objectives and Minimum Requirements” in heading and striking out par. (1) designation before “The objectives”.

Subsec. (b)(2). Pub. L. 107-347, § 301(c)(1)(B)(ii), struck out par. (2) which read as follows: “The program shall at a minimum meet the requirements of sections 3534 and 3535 of title 44.”

Pub. L. 107-296, § 1001(c)(1)(B)(ii), which directed the striking out of “(2) the program shall at a minimum meet the requirements of section 3534 and 3535 of title 44, United States Code.” could not be executed. See above par.

Subsec. (c). Pub. L. 107-347, § 301(c)(1)(B)(iii), inserted “, including through compliance with subchapter III of chapter 35 of title 44” after “infrastructure” in introductory provisions.

Pub. L. 107-296, § 1001(c)(1)(B)(iii), inserted “, including through compliance with subtitle II of chapter 35 of title 44” after “infrastructure” in introductory provisions.

2000—Subsec. (b). Pub. L. 106-398, § 1 [[div. A], title X, § 1063(a)], substituted “OBJECTIVES AND MINIMUM REQUIREMENTS” for “OBJECTIVES OF THE PROGRAM” in heading, designated existing provisions as par. (1), and added par. (2).

Subsec. (e)(7). Pub. L. 106-398, § 1 [[div. A], title X, § 1063(b)], added par. (7).

## EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107-296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

## EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106-398 effective 30 days after Oct. 30, 2000, see section 1 [[div. A], title X, § 1065] of Pub. L. 106-398, set out as an Effective Date note under section 3531 of Title 44, Public Printing and Documents.

## STRATEGY ON COMPUTER SOFTWARE ASSURANCE

Pub. L. 111-383, div. A, title IX, § 932, Jan. 7, 2011, 124 Stat. 4335, provided that:

“(a) STRATEGY REQUIRED.—The Secretary of Defense shall develop and implement, by not later than October 1, 2011, a strategy for assuring the security of software and software-based applications for all covered systems.

“(b) COVERED SYSTEMS.—For purposes of this section, a covered system is any critical information system or weapon system of the Department of Defense, including the following:

“(1) A major system, as that term is defined in section 2302(5) of title 10, United States Code.

“(2) A national security system, as that term is defined in section 3542(b)(2) of title 44, United States Code.

“(3) Any Department of Defense information system categorized as Mission Assurance Category I.

“(4) Any Department of Defense information system categorized as Mission Assurance Category II in accordance with Department of Defense Directive 8500.01E.

“(c) ELEMENTS.—The strategy required by subsection (a) shall include the following:

“(1) Policy and regulations on the following:

“(A) Software assurance generally.

“(B) Contract requirements for software assurance for covered systems in development and production.

“(C) Inclusion of software assurance in milestone reviews and milestone approvals.

“(D) Rigorous test and evaluation of software assurance in development, acceptance, and operational tests.

“(E) Certification and accreditation requirements for software assurance for new systems and for updates for legacy systems, including mechanisms to monitor and enforce reciprocity of certification and accreditation processes among the military departments and Defense Agencies.

“(F) Remediation in legacy systems of critical software assurance deficiencies that are defined as critical in accordance with the Application Security Technical Implementation Guide of the Defense Information Systems Agency.

“(2) Allocation of adequate facilities and other resources for test and evaluation and certification and accreditation of software to meet applicable requirements for research and development, systems acquisition, and operations.

“(3) Mechanisms for protection against compromise of information systems through the supply chain or cyber attack by acquiring and improving automated tools for—

“(A) assuring the security of software and software applications during software development;

“(B) detecting vulnerabilities during testing of software; and

“(C) detecting intrusions during real-time monitoring of software applications.

“(4) Mechanisms providing the Department of Defense with the capabilities—

“(A) to monitor systems and applications in order to detect and defeat attempts to penetrate or disable such systems and applications; and

“(B) to ensure that such monitoring capabilities are integrated into the Department of Defense system of cyber defense-in-depth capabilities.

“(5) An update to Committee for National Security Systems Instruction No. 4009, entitled ‘National Information Assurance Glossary’, to include a standard definition for software security assurance.

“(6) Either—

“(A) mechanisms to ensure that vulnerable Mission Assurance Category III information systems, if penetrated, cannot be used as a foundation for penetration of protected covered systems, and means for assessing the effectiveness of such mechanisms; or

“(B) plans to address critical vulnerabilities in Mission Assurance Category III information systems to prevent their use for intrusions of Mission Assurance Category I systems and Mission Assurance Category II systems.

“(7) A funding mechanism for remediation of critical software assurance vulnerabilities in legacy systems.

“(d) REPORT.—Not later than October 1, 2011, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the strategy required by subsection (a). The report shall include the following:

“(1) A description of the current status of the strategy required by subsection (a) and of the implementation of the strategy, including a description of the role of the strategy in the risk management by the Department regarding the supply chain and in operational planning for cyber security.

“(2) A description of the risks, if any, that the Department will accept in the strategy due to limitations on funds or other applicable constraints.”

## INSTITUTE FOR DEFENSE COMPUTER SECURITY AND INFORMATION PROTECTION

Pub. L. 106-398, § 1 [[div. A], title IX, § 921], Oct. 30, 2000, 114 Stat. 1654, 1654A-233, provided that:

“(a) ESTABLISHMENT.—The Secretary of Defense shall establish an Institute for Defense Computer Security and Information Protection.

“(b) MISSION.—The Secretary shall require the institute—

“(1) to conduct research and technology development that is relevant to foreseeable computer and network security requirements and information assurance requirements of the Department of Defense with a principal focus on areas not being carried out by other organizations in the private or public sector; and

“(2) to facilitate the exchange of information regarding cyberthreats, technology, tools, and other relevant issues.

“(c) CONTRACTOR OPERATION.—The Secretary shall enter into a contract with a not-for-profit entity, or a consortium of not-for-profit entities, to organize and operate the institute. The Secretary shall use competitive procedures for the selection of the contractor to the extent determined necessary by the Secretary.

“(d) FUNDING.—Of the amount authorized to be appropriated by section 301(5) [114 Stat. 1654A–52], \$5,000,000 shall be available for the Institute for Defense Computer Security and Information Protection.

“(e) REPORT.—Not later than April 1, 2001, the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] the Secretary’s plan for implementing this section.”

**§ 2224a. Information security: continued applicability of expiring Governmentwide requirements to the Department of Defense**

(a) IN GENERAL.—The provisions of subchapter II of chapter 35 of title 44 shall continue to apply through September 30, 2004, with respect to the Department of Defense, notwithstanding the expiration of authority under section 3536<sup>1</sup> of such title.

(b) RESPONSIBILITIES.—In administering the provisions of subchapter II of chapter 35 of title 44 with respect to the Department of Defense after the expiration of authority under section 3536<sup>1</sup> of such title, the Secretary of Defense shall perform the duties set forth in that subchapter for the Director of the Office of Management and Budget.

(Added Pub. L. 107–314, div. A, title X, §1052(b)(1), Dec. 2, 2002, 116 Stat. 2648.)

REFERENCES IN TEXT

Provisions relating to the expiration of authority of subchapter II of chapter 35 of title 44, referred to in text, did not appear in section 3536 of title 44 subsequent to the general revision of subchapter II by Pub. L. 107–296, title X, §1001(b)(1), Nov. 25, 2002, 116 Stat. 2259.

**§ 2225. Information technology purchases: tracking and management**

(a) COLLECTION OF DATA REQUIRED.—To improve tracking and management of information technology products and services by the Department of Defense, the Secretary of Defense shall provide for the collection of the data described in subsection (b) for each purchase of such products or services made by a military department or Defense Agency in excess of the simplified acquisition threshold, regardless of whether such a purchase is made in the form of a contract, task order, delivery order, military interdepartmental purchase request, or any other form of interagency agreement.

<sup>1</sup> See References in Text note below.

(b) DATA TO BE COLLECTED.—The data required to be collected under subsection (a) includes the following:

(1) The products or services purchased.

(2) Whether the products or services are categorized as commercially available off-the-shelf items, other commercial items, nondevelopmental items other than commercial items, other noncommercial items, or services.

(3) The total dollar amount of the purchase.

(4) The form of contracting action used to make the purchase.

(5) In the case of a purchase made through an agency other than the Department of Defense—

(A) the agency through which the purchase is made; and

(B) the reasons for making the purchase through that agency.

(6) The type of pricing used to make the purchase (whether fixed price or another type of pricing).

(7) The extent of competition provided in making the purchase.

(8) A statement regarding whether the purchase was made from—

(A) a small business concern;

(B) a small business concern owned and controlled by socially and economically disadvantaged individuals; or

(C) a small business concern owned and controlled by women.

(9) A statement regarding whether the purchase was made in compliance with the planning requirements under sections 11312 and 11313 of title 40.

(c) RESPONSIBILITY TO ENSURE FAIRNESS OF CERTAIN PRICES.—The head of each contracting activity in the Department of Defense shall have responsibility for ensuring the fairness and reasonableness of unit prices paid by the contracting activity for information technology products and services that are frequently purchased commercially available off-the-shelf items.

(d) LIMITATION ON CERTAIN PURCHASES.—No purchase of information technology products or services in excess of the simplified acquisition threshold shall be made for the Department of Defense from a Federal agency outside the Department of Defense unless—

(1) the purchase data is collected in accordance with subsection (a); or

(2)(A) in the case of a purchase by a Defense Agency, the purchase is approved by the Under Secretary of Defense for Acquisition, Technology, and Logistics; or

(B) in the case of a purchase by a military department, the purchase is approved by the senior procurement executive of the military department.

(e) ANNUAL REPORT.—Not later than March 15 of each year, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report containing a summary of the data collected in accordance with subsection (a).

(f) DEFINITIONS.—In this section:

(1) The term “senior procurement executive”, with respect to a military department,

means the official designated as the senior procurement executive for the military department for the purposes of section 1702(c) of title 41.

(2) The term “simplified acquisition threshold” has the meaning given the term in section 134 of title 41.

(3) The term “small business concern” means a business concern that meets the applicable size standards prescribed pursuant to section 3(a) of the Small Business Act (15 U.S.C. 632(a)).

(4) The term “small business concern owned and controlled by socially and economically disadvantaged individuals” has the meaning given that term in section 8(d)(3)(C) of the Small Business Act (15 U.S.C. 637(d)(3)(C)).

(5) The term “small business concern owned and controlled by women” has the meaning given that term in section 8(d)(3)(D) of the Small Business Act (15 U.S.C. 637(d)(3)(D)).

(Added Pub. L. 106-398, §1 [[div. A], title VIII, §812(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A-212; amended Pub. L. 108-178, §4(b)(2), Dec. 15, 2003, 117 Stat. 2640; Pub. L. 109-364, div. A, title X, §1071(a)(2), Oct. 17, 2006, 120 Stat. 2398; Pub. L. 111-350, §5(b)(6), Jan. 4, 2011, 124 Stat. 3842.)

#### AMENDMENTS

2011—Subsec. (f)(1). Pub. L. 111-350, §5(b)(6)(A), substituted “section 1702(c) of title 41” for “section 16(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(c))”.

Subsec. (f)(2). Pub. L. 111-350, §5(b)(6)(B), substituted “section 134 of title 41” for “section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))”.

2006—Subsec. (f)(1). Pub. L. 109-364 substituted “section 16(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(c))” for “section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3))”.

2003—Subsec. (b)(9). Pub. L. 108-178 substituted “sections 11312 and 11313 of title 40” for “sections 5122 and 5123 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1422, 1423)”.

#### EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108-178 effective Aug. 21, 2002, see section 5 of Pub. L. 108-178, set out as a note under section 5334 of Title 5, Government Organization and Employees.

#### DEMONSTRATION AND PILOT PROJECTS ON CYBERSECURITY

Pub. L. 111-383, div. A, title II, §215, Jan. 7, 2011, 124 Stat. 4165, provided that:

“(a) DEMONSTRATION PROJECTS ON PROCESSES FOR APPLICATION OF COMMERCIAL TECHNOLOGIES TO CYBERSECURITY REQUIREMENTS.—

“(1) PROJECTS REQUIRED.—The Secretary of Defense and the Secretaries of the military departments shall jointly carry out demonstration projects to assess the feasibility and advisability of using various business models and processes to rapidly and effectively identify innovative commercial technologies and apply such technologies to Department of Defense and other cybersecurity requirements.

“(2) SCOPE OF PROJECTS.—Any demonstration project under paragraph (1) shall be carried out in such a manner as to contribute to the cyber policy review of the President and the Comprehensive National Cybersecurity Initiative.

“(b) PILOT PROGRAMS ON CYBERSECURITY REQUIRED.—The Secretary of Defense shall support or conduct pilot programs on cybersecurity with respect to the following areas:

“(1) Threat sensing and warning for information networks worldwide.

“(2) Managed security services for cybersecurity within the defense industrial base, military departments, and combatant commands.

“(3) Use of private processes and infrastructure to address threats, problems, vulnerabilities, or opportunities in cybersecurity.

“(4) Processes for securing the global supply chain.

“(5) Processes for threat sensing and security of cloud computing infrastructure.

“(c) REPORTS.—

“(1) REPORTS REQUIRED.—Not later than 240 days after the date of the enactment of this Act [Jan. 7, 2011], and annually thereafter at or about the time of the submittal to Congress of the budget of the President for a fiscal year (as submitted pursuant to section 1105(a) of title 31, United States Code), the Secretary of Defense shall, in coordination with the Secretary of Homeland Security, submit to Congress a report on any demonstration projects carried out under subsection (a), and on the pilot projects carried out under subsection (b), during the preceding year.

“(2) ELEMENTS.—Each report under this subsection shall include the following:

“(A) A description and assessment of any activities under the demonstration projects and pilot projects referred to in paragraph (1) during the preceding year.

“(B) For the pilot projects supported or conducted under subsection (b)(2)—

“(i) a quantitative and qualitative assessment of the extent to which managed security services covered by the pilot project could provide effective and affordable cybersecurity capabilities for components of the Department of Defense and for entities in the defense industrial base, and an assessment whether such services could be expanded rapidly to a large scale without exceeding the ability of the Federal Government to manage such expansion; and

“(ii) an assessment of whether managed security services are compatible with the cybersecurity strategy of the Department of Defense with respect to conducting an active, in-depth defense under the direction of United States Cyber Command.

“(C) For the pilot projects supported or conducted under subsection (b)(3)—

“(i) a description of any performance metrics established for purposes of the pilot project, and a description of any processes developed for purposes of accountability and governance under any partnership under the pilot project; and

“(ii) an assessment of the role a partnership such as a partnership under the pilot project would play in the acquisition of cyberspace capabilities by the Department of Defense, including a role with respect to the development and approval of requirements, approval and oversight of acquiring capabilities, test and evaluation of new capabilities, and budgeting for new capabilities.

“(D) For the pilot projects supported or conducted under subsection (b)(4)—

“(i) a framework and taxonomy for evaluating practices that secure the global supply chain, as well as practices for securely operating in an uncertain or compromised supply chain;

“(ii) an assessment of the viability of applying commercial practices for securing the global supply chain; and

“(iii) an assessment of the viability of applying commercial practices for securely operating in an uncertain or compromised supply chain.

“(E) For the pilot projects supported or conducted under subsection (b)(5)—

“(i) an assessment of the capabilities of Federal Government providers to offer secure cloud computing environments; and

“(ii) an assessment of the capabilities of commercial providers to offer secure cloud computing environments to the Federal Government.

“(3) FORM.—Each report under this subsection shall be submitted in unclassified form, but may include a classified annex.”

IMPLEMENTATION OF NEW ACQUISITION PROCESS FOR INFORMATION TECHNOLOGY SYSTEMS

Pub. L. 111–84, div. A, title VIII, §804, Oct. 28, 2009, 123 Stat. 2402, provided that:

“(a) NEW ACQUISITION PROCESS REQUIRED.—The Secretary of Defense shall develop and implement a new acquisition process for information technology systems. The acquisition process developed and implemented pursuant to this subsection shall, to the extent determined appropriate by the Secretary—

“(1) be based on the recommendations in chapter 6 of the March 2009 report of the Defense Science Board Task Force on Department of Defense Policies and Procedures for the Acquisition of Information Technology; and

“(2) be designed to include—

“(A) early and continual involvement of the user;

“(B) multiple, rapidly executed increments or releases of capability;

“(C) early, successive prototyping to support an evolutionary approach; and

“(D) a modular, open-systems approach.

“(b) REPORT TO CONGRESS.—Not later than 270 days after the date of the enactment of this Act [Oct. 28, 2009], the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the new acquisition process developed pursuant to subsection (a). The report required by this subsection shall, at a minimum—

“(1) describe the new acquisition process;

“(2) provide an explanation for any decision by the Secretary to deviate from the criteria established for such process in paragraphs (1) and (2) of subsection (a);

“(3) provide a schedule for the implementation of the new acquisition process;

“(4) identify the categories of information technology acquisitions to which such process will apply; and

“(5) include the Secretary’s recommendations for any legislation that may be required to implement the new acquisition process.”

CLEARINGHOUSE FOR RAPID IDENTIFICATION AND DISSEMINATION OF COMMERCIAL INFORMATION TECHNOLOGIES

Pub. L. 110–181, div. A, title VIII, §881, Jan. 28, 2008, 122 Stat. 262, provided that:

“(a) REQUIREMENT TO ESTABLISH CLEARINGHOUSE.—Not later than 180 days after the date of the enactment of this Act [Jan. 28, 2008], the Secretary of Defense, acting through the Assistant Secretary of Defense for Networks and Information Integration, shall establish a clearinghouse for identifying, assessing, and disseminating knowledge about readily available information technologies (with an emphasis on commercial off-the-shelf information technologies) that could support the warfighting mission of the Department of Defense.

“(b) RESPONSIBILITIES.—The clearinghouse established pursuant to subsection (a) shall be responsible for the following:

“(1) Developing a process to rapidly assess and set priorities and needs for significant information technology needs of the Department of Defense that could be met by commercial technologies, including a process for—

“(A) aligning priorities and needs with the requirements of the commanders of the combatant command; and

“(B) proposing recommendations to the commanders of the combatant command of feasible technical solutions for further evaluation.

“(2) Identifying and assessing emerging commercial technologies (including commercial off-the-shelf technologies) that could support the warfighting mis-

sion of the Department of Defense, including the priorities and needs identified pursuant to paragraph (1).

“(3) Disseminating information about commercial technologies identified pursuant to paragraph (2) to commanders of combatant commands and other potential users of such technologies.

“(4) Identifying gaps in commercial technologies and working to stimulate investment in research and development in the public and private sectors to address those gaps.

“(5) Enhancing internal data and communications systems of the Department of Defense for sharing and retaining information regarding commercial technology priorities and needs, technologies available to meet such priorities and needs, and ongoing research and development directed toward gaps in such technologies.

“(6) Developing mechanisms, including web-based mechanisms, to facilitate communications with industry regarding the priorities and needs of the Department of Defense identified pursuant to paragraph (1) and commercial technologies available to address such priorities and needs.

“(7) Assisting in the development of guides to help small information technology companies with promising technologies to understand and navigate the funding and acquisition processes of the Department of Defense.

“(8) Developing methods to measure how well processes developed by the clearinghouse are being utilized and to collect data on an ongoing basis to assess the benefits of commercial technologies that are produced on the recommendation of the clearinghouse.

“(c) PERSONNEL.—The Secretary of Defense, acting through the Assistant Secretary of Defense for Networks and Information Integration, shall provide for the hiring and support of employees (including detailees from other components of the Department of Defense and from other Federal departments or agencies) to assist in identifying, assessing, and disseminating information regarding commercial technologies under this section.

“(d) REPORT TO CONGRESS.—Not later than one year after the date of the enactment of this Act [Jan. 28, 2008], the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the implementation of this section.”

TIME FOR IMPLEMENTATION; APPLICABILITY

Pub. L. 106–398, §1 [[div. A], title VIII, §812(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–214, provided that:

“(1) The Secretary of Defense shall collect data as required under section 2225 of title 10, United States Code (as added by subsection (a)) for all contractual actions covered by such section entered into on or after the date that is one year after the date of the enactment of this Act [Oct. 30, 2000].

“(2) Subsection (d) of such section shall apply with respect to purchases described in that subsection for which solicitations of offers are issued on or after the date that is one year after the date of the enactment of this Act.”

GAO REPORT

Pub. L. 106–398, §1 [[div. A], title VIII, §812(c)], Oct. 30, 2000, 114 Stat. 1654, 1654A–214, directed the Comptroller General to submit to committees of Congress a report on the collection of data under this section not later than 15 months after Oct. 30, 2000.

**§ 2226. Contracted property and services: prompt payment of vouchers**

(a) REQUIREMENT.—Of the contract vouchers that are received by the Defense Finance and Accounting Service by means of the mechanization of contract administration services system,

the number of such vouchers that remain unpaid for more than 30 days as of the last day of each month may not exceed 5 percent of the total number of the contract vouchers so received that remain unpaid on that day.

(b) CONTRACT VOUCHER DEFINED.—In this section, the term “contract voucher” means a voucher or invoice for the payment to a contractor for services, commercial items (as defined in section 103 of title 41), or other deliverable items provided by the contractor under a contract funded by the Department of Defense.

(Added Pub. L. 106-398, § 1 [[div. A], title X, § 1006(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A-247; amended Pub. L. 111-350, § 5(b)(7), Jan. 4, 2011, 124 Stat. 3842.)

#### AMENDMENTS

2011—Subsec. (b). Pub. L. 111-350 substituted “section 103 of title 41” for “section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12))”.

#### EFFECTIVE DATE

Pub. L. 106-398, § 1 [[div. A], title X, § 1006(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A-248, provided that: “Section 2226 of title 10, United States Code (as added by subsection (a)), shall take effect on December 1, 2000.”

#### CONDITIONAL REQUIREMENT FOR REPORT

Pub. L. 106-398, § 1 [[div. A], title X, § 1006(c)], Oct. 30, 2000, 114 Stat. 1654, 1654A-248, provided that:

“(1) If for any month of the noncompliance reporting period the requirement in section 2226 of title 10, United States Code (as added by subsection (a)), is not met, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the magnitude of the unpaid contract vouchers. The report for a month shall be submitted not later than 30 days after the end of that month.

“(2) A report for a month under paragraph (1) shall include information current as of the last day of the month as follows:

“(A) The number of the vouchers received by the Defense Finance and Accounting Service by means of the mechanization of contract administration services system during each month.

“(B) The number of the vouchers so received, whenever received by the Defense Finance and Accounting Service, that remain unpaid for each of the following periods:

- “(i) Over 30 days and not more than 60 days.
- “(ii) Over 60 days and not more than 90 days.
- “(iii) More than 90 days.

“(C) The number of the vouchers so received that remain unpaid for the major categories of procurements, as defined by the Secretary of Defense.

“(D) The corrective actions that are necessary, and those that are being taken, to ensure compliance with the requirement in subsection (a).

“(3) For purposes of this subsection:

“(A) The term ‘noncompliance reporting period’ means the period beginning on December 1, 2000, and ending on November 30, 2004.

“(B) The term ‘contract voucher’ has the meaning given that term in section 2226(b) of title 10, United States Code (as added by subsection (a)).”

### § 2227. Electronic submission and processing of claims for contract payments

(a) SUBMISSION OF CLAIMS.—The Secretary of Defense shall require that any claim for payment under a Department of Defense contract shall be submitted to the Department of Defense in electronic form.

(b) PROCESSING.—A contracting officer, contract administrator, certifying official, or other officer or employee of the Department of Defense who receives a claim for payment in electronic form in accordance with subsection (a) and is required to transmit the claim to any other officer or employee of the Department of Defense for processing under procedures of the department shall transmit the claim and any additional documentation necessary to support the determination and payment of the claim to such other officer or employee electronically.

(c) WAIVER AUTHORITY.—If the Secretary of Defense determines that the requirement for using electronic means for submitting claims under subsection (a), or for transmitting claims and supporting documentation under subsection (b), is unduly burdensome in any category of cases, the Secretary may exempt the cases in that category from the application of the requirement.

(d) IMPLEMENTATION OF REQUIREMENTS.—In implementing subsections (a) and (b), the Secretary of Defense shall provide for the following:

(1) Policies, requirements, and procedures for using electronic means for the submission of claims for payment to the Department of Defense and for the transmission, between Department of Defense officials, of claims for payment received in electronic form, together with supporting documentation (such as receiving reports, contracts and contract modifications, and required certifications).

(2) The format in which information can be accepted by the corporate database of the Defense Finance and Accounting Service.

(3) The requirements to be included in contracts regarding the electronic submission of claims for payment by contractors.

(e) CLAIM FOR PAYMENT DEFINED.—In this section, the term “claim for payment” means an invoice or any other demand or request for payment.

(Added Pub. L. 106-398, § 1 [[div. A], title X, § 1008(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A-249.)

#### EFFECTIVE DATE

Pub. L. 106-398, § 1 [[div. A], title X, § 1008(c)], Oct. 30, 2000, 114 Stat. 1654, 1654A-250, provided that:

“(1) Subject to paragraph (2), the Secretary of Defense shall apply section 2227 of title 10, United States Code (as added by subsection (a)), with respect to contracts for which solicitations of offers are issued after June 30, 2001.

“(2)(A) The Secretary may delay the implementation of section 2227 to a date after June 30, 2001, upon a finding that it is impracticable to implement that section until that later date. In no event, however, may the implementation be delayed to a date after October 1, 2002.

“(B) Upon determining to delay the implementation of such section 2227 to a later date under subparagraph (A), the Secretary shall promptly publish a notice of the delay in the Federal Register. The notice shall include a specification of the later date on which the implementation of that section is to begin. Not later than 30 days before the later implementation date, the Secretary shall publish in the Federal Register another notice that such section is being implemented beginning on that date.”

[Notice by Department of Defense of delay in the implementation of this section from June 30, 2001, until Oct. 1, 2002, was published on Aug. 21, 2001, at 66 F.R. 43841.]

## IMPLEMENTATION PLAN

Pub. L. 106-398, §1 [[div. A], title X, §1008(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A-250, directed the Secretary of Defense, not later than Mar. 30, 2001, to submit to committees of Congress a plan for the implementation of the requirements imposed under this section.

**§ 2228. Office of Corrosion Policy and Oversight**

(a) OFFICE AND DIRECTOR.—(1) There is an Office of Corrosion Policy and Oversight within the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics.

(2) The Office shall be headed by a Director of Corrosion Policy and Oversight, who shall be assigned to such position by the Under Secretary from among civilian employees of the Department of Defense with the qualifications described in paragraph (3). The Director is responsible in the Department of Defense to the Secretary of Defense (after the Under Secretary of Defense for Acquisition, Technology, and Logistics) for the prevention and mitigation of corrosion of the military equipment and infrastructure of the Department of Defense. The Director shall report directly to the Under Secretary.

(3) In order to qualify to be assigned to the position of Director, an individual shall—

(A) have management expertise in, and professional experience with, corrosion project and policy implementation, including an understanding of the effects of corrosion policies on infrastructure; research, development, test, and evaluation; and maintenance; and

(B) have an understanding of Department of Defense budget formulation and execution, policy formulation, and planning and program requirements.

(4) The Secretary of Defense shall designate the position of Director as a critical acquisition position under section 1733(b)(1)(C) of this title.

(b) DUTIES.—(1) The Director of Corrosion Policy and Oversight (in this section referred to as the “Director”) shall oversee and coordinate efforts throughout the Department of Defense to prevent and mitigate corrosion of the military equipment and infrastructure of the Department. The duties under this paragraph shall include the duties specified in paragraphs (2) through (5).

(2) The Director shall develop and recommend any policy guidance on the prevention and mitigation of corrosion to be issued by the Secretary of Defense.

(3) The Director shall review the programs and funding levels proposed by the Secretary of each military department during the annual internal Department of Defense budget review process as those programs and funding proposals relate to programs and funding for the prevention and mitigation of corrosion and shall submit to the Secretary of Defense recommendations regarding those programs and proposed funding levels.

(4) The Director shall provide oversight and coordination of the efforts within the Department of Defense to prevent or mitigate corrosion during—

(A) the design, acquisition, and maintenance of military equipment; and

(B) the design, construction, and maintenance of infrastructure.

(5) The Director shall monitor acquisition practices within the Department of Defense—

(A) to ensure that the use of corrosion prevention technologies and the application of corrosion prevention treatments are fully considered during research and development in the acquisition process; and

(B) to ensure that, to the extent determined appropriate for each acquisition program, such technologies and treatments are incorporated into that program, particularly during the engineering and design phases of the acquisition process.

(c) ADDITIONAL AUTHORITIES FOR DIRECTOR.—The Director is authorized to—

(1) develop, update, and coordinate corrosion training with the Defense Acquisition University;

(2) participate in the process within the Department of Defense for the development of relevant directives and instructions; and

(3) interact directly with the corrosion prevention industry, trade associations, other government corrosion prevention agencies, academic research and educational institutions, and scientific organizations engaged in corrosion prevention, including the National Academy of Sciences.

(d) LONG-TERM STRATEGY.—(1) The Secretary of Defense shall develop and implement a long-term strategy to reduce corrosion and the effects of corrosion on the military equipment and infrastructure of the Department of Defense.

(2) The strategy under paragraph (1) shall include the following:

(A) Expansion of the emphasis on corrosion prevention and mitigation within the Department of Defense to include coverage of infrastructure.

(B) Application uniformly throughout the Department of Defense of requirements and criteria for the testing and certification of new corrosion-prevention technologies for equipment and infrastructure with similar characteristics, similar missions, or similar operating environments.

(C) Implementation of programs, including supporting databases, to ensure that a focused and coordinated approach is taken throughout the Department of Defense to collect, review, validate, and distribute information on proven methods and products that are relevant to the prevention of corrosion of military equipment and infrastructure.

(D) Establishment of a coordinated research and development program for the prevention and mitigation of corrosion for new and existing military equipment and infrastructure that includes a plan to transition new corrosion prevention technologies into operational systems, including through the establishment of memoranda of agreement, joint funding agreements, public-private partnerships, university research and education centers, and other cooperative research agreements.

(3) The strategy shall include, for the matters specified in paragraph (2), the following:

(A) Policy guidance.

(B) Performance measures and milestones.

(C) An assessment of the necessary personnel and funding necessary to accomplish the long-term strategy.

(e) REPORT.—(1) For each budget for a fiscal year, beginning with the budget for fiscal year 2009, the Secretary of Defense shall submit, with the defense budget materials, a report on the following:

(A) Funding requirements for the long-term strategy developed under subsection (d).

(B) The return on investment that would be achieved by implementing the strategy.

(C) For the fiscal year covered by the report and the preceding fiscal year, the funds requested in the budget compared to the funding requirements.

(D) An explanation if the funding requirements are not fully funded in the budget.

(E) For the fiscal year covered by the report and the preceding fiscal year, the amount of funds requested in the budget for each project or activity described in subsection (d) compared to the funding requirements for the project or activity.

(2) Within 60 days after submission of the budget for a fiscal year, the Comptroller General shall provide to the congressional defense committees—

(A) an analysis of the budget submission for corrosion control and prevention by the Department of Defense; and

(B) an analysis of the report required under paragraph (1), including the annex to the report described in paragraph (3).

(3) Each report under this section shall include, in an annex to the report, a copy of the annual corrosion report most recently submitted by the corrosion control and prevention executive of each military department under section 903(b)(5) of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110-417; 122 Stat. 4567; 10 U.S.C. 2228 note).

(f) DEFINITIONS.—In this section:

(1) The term “corrosion” means the deterioration of a material or its properties due to a reaction of that material with its chemical environment.

(2) The term “military equipment” includes all weapon systems, weapon platforms, vehicles, and munitions of the Department of Defense, and the components of such items.

(3) The term “infrastructure” includes all buildings, structures, airfields, port facilities, surface and subterranean utility systems, heating and cooling systems, fuel tanks, pavements, and bridges.

(4) The term “budget”, with respect to a fiscal year, means the budget for that fiscal year that is submitted to Congress by the President under section 1105(a) of title 31.

(5) The term “defense budget materials”, with respect to a fiscal year, means the materials submitted to Congress by the Secretary of Defense in support of the budget for that fiscal year.

(Added Pub. L. 107-314, div. A, title X, §1067(a)(1), Dec. 2, 2002, 116 Stat. 2657; amended Pub. L. 110-181, div. A, title III, §371(a)–(e), Jan.

28, 2008, 122 Stat. 79–81; Pub. L. 110-417, [div. A], title X, §1061(b)(1), Oct. 14, 2008, 122 Stat. 4612; Pub. L. 111-383, div. A, title III, §331, Jan. 7, 2011, 124 Stat. 4185.)

#### AMENDMENTS

2011—Subsec. (e)(1)(C). Pub. L. 111-383, §331(1)(A), substituted “For the fiscal year covered by the report and the preceding fiscal year, the” for “The”.

Subsec. (e)(1)(E). Pub. L. 111-383, §331(1)(B), added subpar. (E).

Subsec. (e)(2)(B). Pub. L. 111-383, §331(2), inserted before period at end “, including the annex to the report described in paragraph (3)”.

Subsec. (e)(3). Pub. L. 111-383, §331(3), added par. (3).

2008—Pub. L. 110-181, §371(a)(1), substituted “Office of Corrosion Policy and Oversight” for “Military equipment and infrastructure: prevention and mitigation of corrosion” in section catchline.

Subsec. (a). Pub. L. 110-181, §371(a)(1), added subsec. (a) and struck out heading and text of former subsec. (a). Former text read as follows: “The Secretary of Defense shall designate an officer or employee of the Department of Defense, or a standing board or committee of the Department of Defense, as the senior official or organization responsible in the Department to the Secretary of Defense (after the Under Secretary of Defense for Acquisition, Technology, and Logistics) for the prevention and mitigation of corrosion of the military equipment and infrastructure of the Department.”

Subsec. (b)(1). Pub. L. 110-181, §371(a)(2)(A), substituted “Director of Corrosion Policy and Oversight (in this section referred to as the ‘Director’)” for “official or organization designated under subsection (a)”.

Subsec. (b)(2) to (5). Pub. L. 110-181, §371(a)(2)(B), substituted “Director” for “designated official or organization”.

Subsecs. (c), (d). Pub. L. 110-181, §371(b), added subsec. (c) and redesignated former subsec. (c) as (d). Former subsec. (d) redesignated (f).

Subsec. (d)(2)(D). Pub. L. 110-181, §371(c), as amended by Pub. L. 110-417, inserted “, including through the establishment of memoranda of agreement, joint funding agreements, public-private partnerships, university research and education centers, and other cooperative research agreements” after “operational systems”.

Subsec. (e). Pub. L. 110-181, §371(d), added subsec. (e).

Subsec. (f). Pub. L. 110-181, §371(b), redesignated subsec. (d) as (f).

Subsec. (f)(4), (5). Pub. L. 110-181, §371(e), added pars. (4) and (5).

#### EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-417 effective Jan. 28, 2008, and as if included in Pub. L. 110-181 as enacted, see section 1061(b) of Pub. L. 110-417, set out as a note under section 6382 of Title 5, Government Organization and Employees.

#### CORROSION CONTROL AND PREVENTION EXECUTIVES FOR THE MILITARY DEPARTMENTS

Pub. L. 110-417, [div. A], title IX, §903, Oct. 14, 2008, 122 Stat. 4566, provided that:

“(a) REQUIREMENT TO DESIGNATE CORROSION CONTROL AND PREVENTION EXECUTIVE.—Not later than 90 days after the date of the enactment of this Act [Oct. 14, 2008], the Assistant Secretary of each military department with responsibility for acquisition, technology, and logistics shall designate an employee of the military department as the corrosion control and prevention executive. Such executive shall be the senior official in the department with responsibility for coordinating department-level corrosion control and prevention program activities (including budget programming) with the military department and the Office of the Secretary of Defense, the program executive officers of the military departments, and relevant major subordinate commands of the military departments.

“(b) DUTIES.—(1) The corrosion control and prevention executive of a military department shall ensure

that corrosion control and prevention is maintained in the department's policy and guidance for management of each of the following:

“(A) System acquisition and production, including design and maintenance.

“(B) Research, development, test, and evaluation programs and activities.

“(C) Equipment standardization programs, including international standardization agreements.

“(D) Logistics research and development initiatives.

“(E) Logistics support analysis as it relates to integrated logistic support in the materiel acquisition process.

“(F) Military infrastructure design, construction, and maintenance.

“(2) The corrosion control and prevention executive of a military department shall be responsible for identifying the funding levels necessary to accomplish the items listed in subparagraphs (A) through (F) of paragraph (1).

“(3) The corrosion control and prevention executive of a military department shall, in cooperation with the appropriate staff of the department, develop, support, and provide the rationale for resources—

“(A) to initiate and sustain an effective corrosion control and prevention program in the department;

“(B) to evaluate the program's effectiveness; and

“(C) to ensure that corrosion control and prevention requirements for materiel are reflected in budgeting and policies of the department for the formulation, management, and evaluation of personnel and programs for the entire department, including its reserve components.

“(4) The corrosion control and prevention executive of a military department shall be the principal point of contact of the department to the Director of Corrosion Policy and Oversight (as assigned under section 2228 of title 10, United States Code).

“(5) The corrosion control and prevention executive of a military department shall submit an annual report, not later than December 31 of each year, to the Secretary of Defense containing recommendations pertaining to the corrosion control and prevention program of the military department, including corrosion-related funding levels to carry out all of the duties of the executive under this section.”

DEADLINE FOR DESIGNATION OF RESPONSIBLE OFFICIAL OR ORGANIZATION; INTERIM REPORT; DEADLINE FOR LONG-TERM STRATEGY; GAO REVIEW

Pub. L. 107-314, div. A, title X, §1067(b)–(e), Dec. 2, 2002, 116 Stat. 2658, 2659, directed the Secretary of Defense to designate a responsible official or organization under subsec. (a) of this section not later than 90 days after Dec. 2, 2002, directed the Secretary to submit to Congress a report setting forth the long-term strategy required under subsec. (c) of this section not later than one year after Dec. 2, 2002, and required the Comptroller General to monitor the implementation of such long-term strategy and, not later than 18 months after Dec. 2, 2002, to submit to Congress an assessment of the extent to which that strategy had been implemented.

#### § 2229. Strategic policy on prepositioning of materiel and equipment

(a) **POLICY REQUIRED.**—The Secretary of Defense shall maintain a strategic policy on the programs of the Department of Defense for the prepositioning of materiel and equipment. Such policy shall take into account national security threats, strategic mobility, service requirements, and the requirements of the combatant commands.

(b) **LIMITATION OF DIVERSION OF PREPOSITIONED MATERIEL.**—The Secretary of a military department may not divert materiel or equipment from prepositioned stocks except—

(1) in accordance with a change made by the Secretary of Defense to the policy maintained under subsection (a); or

(2) for the purpose of directly supporting a contingency operation or providing humanitarian assistance under chapter 20 of this title.

(c) **CONGRESSIONAL NOTIFICATION.**—The Secretary of Defense may not implement or change the policy required under subsection (a) until the Secretary submits to the congressional defense committees a report describing the policy or change to the policy.

(Added Pub. L. 109-364, div. A, title III, §351(a), Oct. 17, 2006, 120 Stat. 2160.)

#### DEADLINE FOR ESTABLISHMENT OF POLICY

Pub. L. 109-364, div. A, title III, §351(c), Oct. 17, 2006, 120 Stat. 2160, provided that:

“(1) **DEADLINE.**—Not later than six months after the date of the enactment of this Act [Oct. 17, 2006], the Secretary of Defense shall establish the strategic policy on the programs of the Department of Defense for the prepositioning of materiel and equipment required under section 2229 of title 10, United States Code, as added by subsection (a).

“(2) **LIMITATION ON DIVERSION OF PREPOSITIONED MATERIEL.**—During the period beginning on the date of the enactment of this Act [Oct. 17, 2006] and ending on the date on which the Secretary of Defense submits the report required under section 2229(c) of title 10, United States Code, on the policy referred to in paragraph (1), the Secretary of a military department may not divert materiel or equipment from prepositioned stocks except for the purpose of directly supporting a contingency operation or providing humanitarian assistance under chapter 20 of that title.”

#### IMPROVING DEPARTMENT OF DEFENSE SUPPORT FOR CIVIL AUTHORITIES

Pub. L. 109-364, div. A, title III, §359, Oct. 17, 2006, 120 Stat. 2164, provided that:

“(a) **CONSULTATION.**—In the development of concept plans for the Department of Defense for providing support to civil authorities, the Secretary of Defense may consult with the Secretary of Homeland Security and State governments.

“(b) **PREPOSITIONING OF DEPARTMENT OF DEFENSE ASSETS.**—The Secretary of Defense may provide for the prepositioning of prepackaged or preidentified basic response assets, such as medical supplies, food and water, and communications equipment, in order to improve the ability of the Department of Defense to rapidly provide support to civil authorities. The prepositioning of basic response assets shall be carried out in a manner consistent with Department of Defense concept plans for providing support to civil authorities and section 2229 of title 10, United States Code, as added by section 351.

“(c) **REIMBURSEMENT.**—To the extent required by section 1535 of title 31, United States Code, or other applicable law, the Secretary of Defense shall require that the Department of Defense be reimbursed for costs incurred by the Department in the prepositioning of basic response assets under subsection (b).

“(d) **MILITARY READINESS.**—The Secretary of Defense shall ensure that the prepositioning of basic response assets under subsection (b) does not adversely affect the military preparedness of the United States.

“(e) **PROCEDURES AND GUIDELINES.**—The Secretary may develop procedures and guidelines applicable to the prepositioning of basic response assets under subsection (b).”

#### § 2229a. Annual report on prepositioned materiel and equipment

(a) **ANNUAL REPORT REQUIRED.**—Not later than the date of the submission of the President's

budget request for a fiscal year under section 1105 of title 31, the Secretary of Defense shall submit to the congressional defense committees a report on the status of the materiel in the prepositioned stocks as of the end of the fiscal year preceding the fiscal year during which the report is submitted. Each report shall be unclassified and may contain a classified annex. Each report shall include the following information:

(1) The level of fill for major end items of equipment and spare parts in each prepositioned set as of the end of the fiscal year covered by the report.

(2) The material condition of equipment in the prepositioned stocks as of the end of such fiscal year, grouped by category or major end item.

(3) A list of major end items of equipment drawn from the prepositioned stocks during such fiscal year and a description of how that equipment was used and whether it was returned to the stocks after being used.

(4) A timeline for completely reconstituting any shortfall in the prepositioned stocks.

(5) An estimate of the amount of funds required to completely reconstitute any shortfall in the prepositioned stocks and a description of the Secretary's plan for carrying out such complete reconstitution.

(6) A list of any operations plan affected by any shortfall in the prepositioned stocks and a description of any action taken to mitigate any risk that such a shortfall may create.

(b) COMPTROLLER GENERAL REVIEW.—(1) By not later than 120 days after the date on which a report is submitted under subsection (a), the Comptroller General shall review the report and, as the Comptroller General determines appropriate, submit to the congressional defense committees any additional information that the Comptroller General determines will further inform such committees on issues relating to the status of the materiel in the prepositioned stocks.

(2) The Secretary of Defense shall ensure the full cooperation of the Department of Defense with the Comptroller General for purposes of the conduct of the review required by this subsection, both before and after each report is submitted under subsection (a). The Secretary shall conduct periodic briefings for the Comptroller General on the information covered by each report required under subsection (a) and provide to the Comptroller General access to the data and preliminary results to be used by the Secretary in preparing each such report before the Secretary submits the report to enable the Comptroller General to conduct each review required under paragraph (1) in a timely manner.

(3) The requirement to conduct a review under this subsection shall terminate on September 30, 2015.

(Added Pub. L. 110-181, div. A, title III, §352(a), Jan. 28, 2008, 122 Stat. 71.)

**CHAPTER 133—FACILITIES FOR RESERVE COMPONENTS**

Sec. 2231. Reference to chapter 1803.

PRIOR PROVISIONS

A prior chapter 133 was transferred to end of part V of subtitle E of this title and renumbered chapter 1803.

**§ 2231. Reference to chapter 1803**

Provisions of law relating to facilities for reserve components are set forth in chapter 1803 of this title (beginning with section 18231).

(Added Pub. L. 103-337, div. A, title XVI, §1664(b)(11), Oct. 5, 1994, 108 Stat. 3011.)

PRIOR PROVISIONS

Prior sections 2231 to 2239 were renumbered sections 18231 to 18239 of this title, respectively.

EFFECTIVE DATE

Section effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103-337, set out as a note under section 10001 of this title.

**CHAPTER 134—MISCELLANEOUS ADMINISTRATIVE PROVISIONS**

Subchapter I. Miscellaneous Authorities, Prohibitions, and Limitations on the Use of Appropriated Funds ..... 2241
II. Miscellaneous Administrative Authority ..... 2251

**SUBCHAPTER I—MISCELLANEOUS AUTHORITIES, PROHIBITIONS, AND LIMITATIONS ON THE USE OF APPROPRIATED FUNDS**

Sec. 2241. Availability of appropriations for certain purposes.
2241a. Prohibition on use of funds for publicity or propaganda purposes within the United States.
2242. Authority to use appropriated funds for certain investigations and security services.
2243. Authority to use appropriated funds to support student meal programs in overseas dependents' schools.
2244. Security investigations.
2244a. Equipment scheduled for retirement or disposal: limitation on expenditures for modifications.
2245. Use of aircraft for proficiency flying: limitation.
2245a. Use of operation and maintenance funds for purchase of investment items: limitation.
[2246 to 2248. Renumbered or Repealed.]
2249. Prohibition on use of funds for documenting economic or employment impact of certain acquisition programs.
2249a. Prohibition on providing financial assistance to terrorist countries.
2249b. Display of State flags: prohibition on use of funds to arbitrarily exclude flag; position and manner of display.
2249c. Regional Defense Combating Terrorism Fellowship Program: authority to use appropriated funds for costs associated with education and training of foreign officials.
2249d. Distribution to certain foreign personnel of education and training materials and information technology to enhance military interoperability with the armed forces.

AMENDMENTS

2011—Pub. L. 111-383, div. A, title X, §1075(b)(30), Jan. 7, 2011, 124 Stat. 4370, transferred item 2241a "Prohibition on use of funds for publicity or propaganda purposes within the United States" to appear after item 2241.