

count of a military installation of an armed force in excess of the amount necessary to meet cash requirements of that installation. Amounts in excess of that amount shall be transferred to a single nonappropriated morale, welfare, and recreation account for that armed force. This section does not apply to the Coast Guard.

(Added Pub. L. 103-337, div. A, title III, §373(a), Oct. 5, 1994, 108 Stat. 2736, §2219; amended Pub. L. 104-106, div. A, title III, §341, Feb. 10, 1996, 110 Stat. 265; renumbered §2491c, Pub. L. 108-375, div. A, title VI, §651(d), Oct. 28, 2004, 118 Stat. 1972.)

#### AMENDMENTS

2004—Pub. L. 108-375 renumbered section 2219 of this title as this section.

1996—Pub. L. 104-106, in first sentence, substituted “an armed force” for “a military department”, in second sentence, substituted “a single, nonappropriated morale, welfare, and recreation account for that armed force” for “a single, department-wide nonappropriated morale, welfare, and recreation account of the military department”, and inserted after second sentence “This section does not apply to the Coast Guard.”

#### TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

#### § 2492. Nonappropriated fund instrumentalities: contracts with other agencies and instrumentalities to provide and obtain goods and services

An agency or instrumentality of the Department of Defense that supports the operation of the exchange system, or the operation of a morale, welfare, and recreation system, of the Department of Defense may enter into a contract or other agreement with another element of the Department of Defense or with another Federal department, agency, or instrumentality to provide or obtain goods and services beneficial to the efficient management and operation of the exchange system or that morale, welfare, and recreation system.

(Added Pub. L. 104-201, div. A, title III, §341(a)(1), Sept. 23, 1996, 110 Stat. 2488, §2482a; renumbered §2492, Pub. L. 108-375, div. A, title VI, §651(c)(3), Oct. 28, 2004, 118 Stat. 1972.)

#### PRIOR PROVISIONS

A prior section 2492 was renumbered section 2489 of this title.

#### AMENDMENTS

2004—Pub. L. 108-375 renumbered section 2482a of this title as this section.

#### § 2492a. Limitation on Department of Defense entities competing with private sector in offering personal information services

(a) LIMITATION.—(1) Notwithstanding section 2492 of this title, the Secretary of Defense may not authorize a Department of Defense entity to

offer or provide personal information services directly to users using Department resources, personnel, or equipment, or compete for contracts to provide such personal information services directly to users, if users will be charged a fee for the personal information services to recover the cost incurred to provide the services or to earn a profit.

(2) The limitation in paragraph (1) shall not be construed to prohibit or preclude the use of Department resources, personnel, or equipment to administer or facilitate personal information services contracts with private contractors.

(b) EXCEPTIONS.—The limitation in subsection (a) shall not apply if the Secretary of Defense determines that—

(1) a private sector vendor is not available to provide the personal information services at specific locations;

(2) the interests of the user population would be best served by allowing the Government to provide such services; or

(3) circumstances (as specified by the Secretary for purposes of this section) are such that the provision of such services by a Department entity is in the best interest of the Government or military users in general.

(c) PERSONAL INFORMATION SERVICES DEFINED.—In this section, the term “personal information services” means the provision of Internet, telephone, or television services to consumers.

(Added Pub. L. 111-84, div. A, title VI, §651(a), Oct. 28, 2009, 123 Stat. 2368.)

#### SAVINGS PROVISION

Pub. L. 111-84, div. A, title VI, §651(c), Oct. 28, 2009, 123 Stat. 2369, provided that: “Section 2492a of title 10, United States Code, as added by subsection (a), does not affect the validity or terms of any contract for the provision of personal information services entered into before the date of the enactment of this Act [Oct. 28, 2009].”

#### § 2493. Fisher Houses: administration as nonappropriated fund instrumentality

(a) FISHER HOUSES AND SUITES DEFINED.—In this section:

(1) The term “Fisher House” means a housing facility that—

(A) is located in proximity to a health care facility of the Army, the Air Force, or the Navy;

(B) is available for residential use on a temporary basis by patients of that health care facility, members of the families of such patients, and others providing the equivalent of familial support for such patients; and

(C) is constructed and donated by—

(i) the Zachary and Elizabeth M. Fisher Armed Services Foundation; or

(ii) another source, if the Secretary of the military department concerned designates the housing facility as a Fisher House.

(2) The term “Fisher Suite” means one or more rooms that—

(A) meet the requirements of subparagraphs (A) and (B) of paragraph (1);

(B) are constructed, altered, or repaired and donated by a source described in subparagraph (C) of that paragraph; and

(C) are designated by the Secretary of the military department concerned as a Fisher Suite.

(b) **NONAPPROPRIATED FUND INSTRUMENTALITY.**—The Secretary of each military department shall administer all Fisher Houses and Fisher Suites associated with health care facilities of that military department as a nonappropriated fund instrumentality of the United States.

(c) **GOVERNANCE.**—The Secretary of each military department shall establish a system for the governance of the nonappropriated fund instrumentality required by subsection (b) for that military department.

(d) **CENTRAL FUND.**—The Secretary of each military department shall establish a single fund as the source of funding for the operation, maintenance, and improvement of all Fisher Houses and Fisher Suites of the nonappropriated fund instrumentality required by subsection (b) for that military department.

(e) **ACCEPTANCE OF CONTRIBUTIONS; IMPOSITION OF FEES.**—(1) The Secretary of a military department may—

(A) accept money, property, and services donated for the support of a Fisher House or Fisher Suite associated with health care facilities of that military department; and

(B) may impose fees relating to the use of such Fisher Houses and Fisher Suites.

(2) All monetary donations, and the proceeds of the disposal of any other donated property, accepted by the Secretary of a military department under this subsection shall be credited to the fund established under subsection (d) for the Fisher Houses and Fisher Suites associated with health care facilities of that military department and shall be available to that Secretary to support all such Fisher Houses and Fisher Suites.

(f) **BASE OPERATING SUPPORT.**—The Secretary of a military department may provide base operating support for Fisher Houses associated with health care facilities of that military department.

(Added Pub. L. 105-261, div. A, title IX, §906(a)(1), Oct. 17, 1998, 112 Stat. 2093; amended Pub. L. 106-398, §1 [[div. A], title IX, §914(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A-230; Pub. L. 107-314, div. A, title III, §321, Dec. 2, 2002, 116 Stat. 2510; Pub. L. 112-81, div. A, title X, §1061(17), Dec. 31, 2011, 125 Stat. 1584.)

#### AMENDMENTS

2011—Subsec. (g). Pub. L. 112-81 struck out subsec. (g), which required submission of annual report describing the operation of Fisher Houses and Fisher Suites associated with military department health care facilities.

2002—Subsec. (f). Pub. L. 107-314 amended heading and text of subsec. (f) generally. Prior to amendment text read as follows: “The Secretary of the Navy shall provide base operating support for Fisher Houses associated with health care facilities of the Navy. The level of the support shall be equivalent to the base operating support that the Secretary provides for morale, welfare, and recreation category B community activities (as defined in regulations, prescribed by the Secretary,

that govern morale, welfare, and recreation activities associated with Navy installations).”

2000—Subsecs. (f), (g). Pub. L. 106-398 added subsec. (f) and redesignated former subsec. (f) as (g).

#### EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106-398, §1 [[div. A], title IX, §914(c)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A-230, provided that: “The amendments made by subsection (a) [amending this section] shall be effective as of October 17, 1998, as if included in section 2493 of title 10, United States Code, as enacted by section 906(a) of Public Law 105-261.”

#### SAVINGS PROVISIONS FOR CERTAIN NAVY EMPLOYEES

Pub. L. 106-398, §1 [[div. A], title IX, §914(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A-230, provided that:

“(1) The Secretary of the Navy may continue to employ, and pay out of appropriated funds, any employee of the Navy in the competitive service who, as of October 17, 1998, was employed by the Navy in a position at a Fisher House administered by the Navy, but only for so long as the employee is continuously employed in that position.

“(2) After a person vacates a position in which the person was continued to be employed under the authority of paragraph (1), a person employed in that position shall be employed as an employee of a nonappropriated fund instrumentality of the United States and may not be paid for services in that position out of appropriated funds.

“(3) In this subsection:

“(A) The term ‘Fisher House’ has the meaning given the term in section 2493(a)(1) of title 10, United States Code.

“(B) The term ‘competitive service’ has the meaning given the term in section 2102 of title 5, United States Code.”

[Pub. L. 106-398, §1 [[div. A], title IX, §914(c)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A-230, provided that: “Subsection (b) [set out above] applies with respect to the pay period that includes October 17, 1998, and subsequent pay periods.”]

#### ESTABLISHMENT OF FUNDS AND FUNDING TRANSITION

Pub. L. 105-261, div. A, title IX, §906(b)-(e), Oct. 17, 1998, 112 Stat. 2095, provided that:

“(b) **ESTABLISHMENT OF FUNDS.**—Not later than 90 days after the date of the enactment of this Act [Oct. 17, 1998], the Secretary of each military department shall—

“(1) establish the fund required under section 2493(d) of title 10, United States Code (as added by subsection (a)); and

“(2) close the Fisher House Trust Fund established for that department under section 2221 of such title and transfer the amounts in the closed fund to the newly established fund.

“(c) **FUNDING TRANSITION.**—(1) Of the amount authorized to be appropriated pursuant to section 301(2) [112 Stat. 1960] for operation and maintenance for the Navy, the Secretary of the Navy shall transfer to the fund established by that Secretary under section 2493(d) of title 10, United States Code (as added by subsection (a)), such amount as that Secretary considers appropriate for establishing in the fund a corpus sufficient for operating Fisher Houses and Fisher Suites associated with health care facilities of the Department of the Navy.

“(2) Of the amount authorized to be appropriated pursuant to section 301(4) for operation and maintenance for the Air Force, the Secretary of the Air Force shall transfer to the fund established by that Secretary under section 2493(d) of title 10, United States Code (as added by subsection (a)), such amount as that Secretary considers appropriate for establishing in the fund a corpus sufficient for operating Fisher Houses and Fisher Suites associated with health care facilities of the Department of the Air Force.

“(d) **REPORTING REQUIREMENTS.**—The Secretary of each military department, upon completing the actions

required of the Secretary under subsections (b) and (c), shall submit to Congress a report containing—

“(1) the certification of that Secretary that those actions have been completed; and

“(2) a statement of the amount deposited in the fund established by that Secretary under section 2493(d) of title 10, United States Code (as added by subsection (a)).

“(e) AVAILABILITY OF TRANSFERRED AMOUNTS.—Amounts transferred under subsection (b) or (c) to a fund established under section 2493(d) of title 10, United States Code (as added by subsection (a)), shall be available without fiscal year limitation for the purposes for which the fund is established and shall be administered as nonappropriated funds.”

**§ 2494. Nonappropriated fund instrumentalities: furnishing utility services for morale, welfare, and recreation purposes**

Appropriations for the Department of Defense may be used to provide utility services for—

(1) buildings on military installations authorized by regulation to be used for morale, welfare, and recreation purposes; and

(2) other morale, welfare, and recreation activities for members of the armed forces.

(Added Pub. L. 108–375, div. A, title VI, § 651(c)(4), Oct. 28, 2004, 118 Stat. 1972.)

PRIOR PROVISIONS

A prior section 2494 was renumbered section 2491 of this title.

**§ 2495. Nonappropriated fund instrumentalities: purchase of alcoholic beverages**

(a) The Secretary of Defense shall provide that—

(1) covered alcoholic beverage purchases made for resale on a military installation located in the United States shall be made from the most competitive source and distributed in the most economical manner, price and other factors considered, except that

(2) in the case of malt beverages and wine, such purchases shall be made from, and delivery shall be accepted from, a source within the State in which the military installation concerned is located.

(b) If a military installation located in the contiguous States is located in more than one State, a source of supply in any State in which the installation is located shall be considered for the purposes of subsection (a)(2) to be a source within the State in which the installation is located.

(c)(1) In the case of covered alcoholic beverage purchases of distilled spirits, to determine whether a nonappropriated fund instrumentality of the Department of Defense provides the most economical method of distribution to package stores, the Secretary of Defense shall consider all components of the distribution costs incurred by the nonappropriated fund instrumentality, such as overhead costs (including costs associated with management, logistics, administration, depreciation, and utilities), the costs of carrying inventory, and handling and distribution costs.

(2) The Secretary shall use the agencies performing audit functions on behalf of the armed forces and the Inspector General of the Depart-

ment of Defense to make determinations under this subsection.

(d) In this section:

(1) The term “covered alcoholic beverage purchases” means purchases of alcoholic beverages by a nonappropriated fund instrumentality of the Department of Defense with nonappropriated funds.

(2) The term “State” includes the District of Columbia.

(Added Pub. L. 99–661, div. A, title III, § 313(a), Nov. 14, 1986, 100 Stat. 3853, § 2488; amended Pub. L. 100–180, div. A, title III, § 312(a), Dec. 4, 1987, 101 Stat. 1073; Pub. L. 104–106, div. A, title III, § 333, Feb. 10, 1996, 110 Stat. 261; Pub. L. 106–398, § 1 [[div. A], title III, § 335], Oct. 30, 2000, 114 Stat. 1654, 1654A–61; renumbered § 2495, Pub. L. 108–375, div. A, title VI, § 651(b)(2), (c)(5), Oct. 28, 2004, 118 Stat. 1971, 1972.)

AMENDMENTS

2004—Pub. L. 108–375 renumbered section 2488 of this title as this section.

2000—Subsec. (c)(2), (3). Pub. L. 106–398 redesignated par. (3) as (2) and struck out former par. (2) which read as follows: “If the use of a private distributor would subject covered alcoholic beverage purchases of distilled spirits to direct or indirect State taxation, a nonappropriated fund instrumentality shall be considered to be the most economical method of distribution regardless of the results of the determination under paragraph (1).”

1996—Subsec. (a)(1). Pub. L. 104–106, § 333(a), inserted “and distributed in the most economical manner” after “most competitive source”.

Subsecs. (c), (d). Pub. L. 104–106, § 333(b), added subsec. (c) and redesignated former subsec. (c) as (d).

1987—Subsec. (a)(2). Pub. L. 100–180 struck out “purchased for resale on a military installation located in the contiguous States” after “malt beverages and wines”.

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–180, div. A, title III, § 312(b), Dec. 4, 1987, 101 Stat. 1073, provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to purchases of malt beverages and wine after the end of the 60-day period beginning on the date of the enactment of this Act [Dec. 4, 1987].”

PROCUREMENT OF MALT BEVERAGES AND WINE BY NONAPPROPRIATED FUND ACTIVITY

Pub. L. 109–148, div. A, title VIII, § 8080, Dec. 30, 2005, 119 Stat. 2717, which provided that none of the funds appropriated by div. A of Pub. L. 109–148 were to be used for the support of any nonappropriated funds activity of the Department of Defense that procured malt beverages and wine with nonappropriated funds for resale (including such alcoholic beverages sold by the drink) on a military installation located in the United States unless such malt beverages and wine were procured within that State, or in the case of the District of Columbia, within the District of Columbia, in which the military installation was located, was from the Department of Defense Appropriations Act, 2006, and was repeated in provisions of subsequent appropriations acts which are not set out in the Code. Similar provisions were contained in the following prior appropriations acts:

Pub. L. 108–287, title VIII, § 8087, Aug. 5, 2004, 118 Stat. 991.

Pub. L. 108–87, title VIII, § 8088, Sept. 30, 2003, 117 Stat. 1093.

Pub. L. 107–248, title VIII, § 8092, Oct. 23, 2002, 116 Stat. 1558.

Pub. L. 107–117, div. A, title VIII, § 8108, Jan. 10, 2002, 115 Stat. 2271.