

## HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
126(a) .....	5:172f(a). 5:171n(a) (as applicable to 5:172f(a)).	July 26, 1947, ch. 343, § 407; added Aug. 10, 1949, ch. 412, § 11 (21st and 22d pars.), 63 Stat. 589.
126(b) .....	5:172f (less (a)).	July 26, 1947, ch. 343, § 308(a) (as applicable to § 407), 61 Stat. 509.

In subsection (a), the words “under authority of law” are omitted as surplusage. The following substitutions are made: “needed” for “necessary”; “used” for “be available for use by”; and “those appropriations” for “said funds”.

In subsection (b), 5 U.S.C. 172f(b) is restated to reflect more clearly its purpose to authorize “transfers of personnel” (Senate Report No. 366, 81st Congress, p. 23).

## AMENDMENTS

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.

## DELEGATION OF FUNCTIONS

Authority of President under subsec. (a) of this section to approve transfers of balances of appropriations provided for therein delegated to Director of Office of Management and Budget, see section 9(2) of Ex. Ord. No. 11609, July 22, 1971, 36 F.R. 13747, set out as a note under section 301 of Title 3, The President.

**§ 127. Emergency and extraordinary expenses**

(a) Subject to the limitations of subsection (c), and within the limitation of appropriations made for the purpose, the Secretary of Defense, the Inspector General of the Department of Defense, and the Secretary of a military department within his department, may provide for any emergency or extraordinary expense which cannot be anticipated or classified. When it is so provided in such an appropriation, the funds may be spent on approval or authority of the Secretary concerned or the Inspector General for any purpose he determines to be proper, and such a determination is final and conclusive upon the accounting officers of the United States. The Secretary concerned or the Inspector General may certify the amount of any such expenditure authorized by him that he considers advisable not to specify, and his certificate is sufficient voucher for the expenditure of that amount.

(b) The authority conferred by this section may be delegated by the Secretary of Defense to any person in the Department of Defense, by the Inspector General to any person in the Office of the Inspector General, or by the Secretary of a military department to any person within his department, with or without the authority to make successive redelegations.

(c)(1) Funds may not be obligated or expended in an amount in excess of \$500,000 under the authority of subsection (a) or (b) until the Secretary of Defense has notified the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on Armed Services and the Committee on Appropriations of the House of Representatives of the intent to obligate or expend the funds, and—

(A) in the case of an obligation or expenditure in excess of \$1,000,000, 15 days have elapsed since the date of the notification; or

(B) in the case of an obligation or expenditure in excess of \$500,000, but not in excess of \$1,000,000, 5 days have elapsed since the date of the notification.

(2) Subparagraph (A) or (B) of paragraph (1) shall not apply to an obligation or expenditure of funds otherwise covered by such subparagraph if the Secretary of Defense determines that the national security objectives of the United States will be compromised by the application of the subparagraph to the obligation or expenditure. If the Secretary makes a determination with respect to an obligation or expenditure under the preceding sentence, the Secretary shall immediately notify the committees referred to in paragraph (1) that such obligation or expenditure is necessary and provide any relevant information (in classified form, if necessary) jointly to the chairman and ranking minority member (or their designees) of such committees.

(3) A notification under paragraph (1) and information referred to in paragraph (2) shall include the amount to be obligated or expended, as the case may be, and the purpose of the obligation or expenditure.

(d) ANNUAL REPORT.—Not later than December 1 each year, the Secretary of Defense shall submit to the congressional defense committees a report on expenditures during the preceding fiscal year under subsections (a) and (b).

(Added Pub. L. 94-106, title VIII, § 804(a), Oct. 7, 1975, 89 Stat. 538, § 140; amended Pub. L. 98-94, title XII, § 1268(2), Sept. 24, 1983, 97 Stat. 705; renumbered § 127 and amended Pub. L. 99-433, title I, §§ 101(a)(3), 110(d)(4), Oct. 1, 1986, 100 Stat. 994, 1002; Pub. L. 103-160, div. A, title III, § 361, Nov. 30, 1993, 107 Stat. 1627; Pub. L. 103-337, div. A, title III, § 378, Oct. 5, 1994, 108 Stat. 2737; Pub. L. 104-106, div. A, title IX, § 915, title XV, § 1502(a)(5), Feb. 10, 1996, 110 Stat. 413, 502; Pub. L. 106-65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 108-136, div. A, title X, § 1031(a)(2), Nov. 24, 2003, 117 Stat. 1596.)

## AMENDMENTS

2003—Subsec. (d). Pub. L. 108-136 amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: “In any case in which funds are expended under the authority of subsections (a) and (b), the Secretary of Defense shall submit a report of such expenditures on a quarterly basis to the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on Armed Services and the Committee on Appropriations of the House of Representatives.”

1999—Subsecs. (c)(1), (d). Pub. L. 106-65 substituted “and the Committee on Armed Services” for “and the Committee on National Security”.

1996—Subsec. (c). Pub. L. 104-106, § 915(2), added subsec. (c). Former subsec. (c) redesignated (d).

Pub. L. 104-106, § 1502(a)(5), substituted “Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on National Security and the Committee on Appropriations of” for “Committees on Armed Services and Appropriations of the Senate and”.

Subsec. (d). Pub. L. 104-106, § 915(1), redesignated subsec. (c), as amended by Pub. L. 104-106, §§ 1502(a)(5), 1506, as (d).

1994—Subsec. (c). Pub. L. 103-337 struck out par. (1) designation before “In any case” and struck out par. (2)

which read as follows: “The amount of funds expended by the Inspector General of the Department of Defense under subsections (a) and (b) during a fiscal year may not exceed \$400,000.”

1993—Subsec. (a). Pub. L. 103-160, §361(1), inserted “, the Inspector General of the Department of Defense,” after “the Secretary of Defense” and “or the Inspector General” after “the Secretary concerned” and after “The Secretary concerned”.

Subsec. (b). Pub. L. 103-160, §361(2), inserted “, by the Inspector General to any person in the Office of the Inspector General,” after “the Department of Defense”.

Subsec. (c). Pub. L. 103-160, §361(3), designated existing provisions as par. (1) and added par. (2).

1986—Pub. L. 99-433 renumbered section 140 of this title as this section and substituted “Emergency” for “Emergencies” in section catchline.

1983—Subsec. (a). Pub. L. 98-94 struck out “of this section” after “subsection (c)”.

Subsec. (c). Pub. L. 98-94 struck out “of this section” after “subsections (a) and (b)”.

#### CONSTRUCTION AUTHORITY OF SECRETARY OF DEFENSE UNDER DECLARATION OF WAR OR NATIONAL EMERGENCY

Pub. L. 97-99, title IX, §903, Dec. 23, 1981, 95 Stat. 1382, which authorized the Secretary of Defense, in the event of a declaration of war or the declaration of a national emergency by the President, to undertake military construction without regard to any other provisions of law, was repealed and restated as section 2808 of this title by Pub. L. 97-214, §§2(a), 7(18), July 12, 1982, 96 Stat. 157, 174, effective Oct. 1, 1982.

#### § 127a. Operations for which funds are not provided in advance: funding mechanisms

(a) IN GENERAL.—(1) The Secretary of Defense shall use the procedures prescribed by this section with respect to any operation specified in paragraph (2) that involves—

(A) the deployment (other than for a training exercise) of elements of the armed forces for a purpose other than a purpose for which funds have been specifically provided in advance; or

(B) the provision of humanitarian assistance, disaster relief, or support for law enforcement (including immigration control) for which funds have not been specifically provided in advance.

(2) This section applies to—

(A) any operation the incremental cost of which is expected to exceed \$50,000,000; and

(B) any other operation the expected incremental cost of which, when added to the expected incremental costs of other operations that are currently ongoing, is expected to result in a cumulative incremental cost of ongoing operations of the Department of Defense in excess of \$100,000,000.

Any operation the incremental cost of which is expected not to exceed \$10,000,000 shall be disregarded for the purposes of subparagraph (B).

(3) This section does not provide authority for the President or the Secretary of Defense to carry out any operation, but establishes mechanisms for the Department of Defense by which funds are provided for operations that the armed forces are required to carry out under some other authority.

(b) WAIVER OF REQUIREMENT TO REIMBURSE SUPPORT UNITS.—(1) The Secretary of Defense shall direct that, when a unit of the armed forces participating in an operation described in

subsection (a) receives services from an element of the Department of Defense that operates through the Defense Business Operations Fund (or a successor fund), such unit of the armed forces may not be required to reimburse that element for the incremental costs incurred by that element in providing such services, notwithstanding any other provision of law or any Government accounting practice.

(2) The amounts which but for paragraph (1) would be required to be reimbursed to an element of the Department of Defense (or a fund) shall be recorded as an expense attributable to the operation and shall be accounted for separately.

(c) TRANSFER AUTHORITY.—(1) Whenever there is an operation of the Department of Defense described in subsection (a), the Secretary of Defense may transfer amounts described in paragraph (3) to accounts from which incremental expenses for that operation were incurred in order to reimburse those accounts for those incremental expenses. Amounts so transferred shall be merged with and be available for the same purposes as the accounts to which transferred.

(2) The total amount that the Secretary of Defense may transfer under the authority of this section in any fiscal year is \$200,000,000.

(3) Transfers under this subsection may only be made from amounts appropriated to the Department of Defense for any fiscal year that remain available for obligation, other than amounts within any operation and maintenance appropriation that are available for (A) an account (known as a budget activity 1 account) that is specified as being for operating forces, or (B) an account (known as a budget activity 2 account) that is specified as being for mobilization.

(4) The authority provided by this subsection is in addition to any other authority provided by law authorizing the transfer of amounts available to the Department of Defense. However, the Secretary may not use any such authority under another provision of law for a purpose described in paragraph (1) if there is authority available under this subsection for that purpose.

(5) The authority provided by this subsection to transfer amounts may not be used to provide authority for an activity that has been denied authorization by Congress.

(6) A transfer made from one account to another under the authority of this subsection shall be deemed to increase the amount authorized for the account to which the amount is transferred by an amount equal to the amount transferred.

[(d) Repealed. Pub. L. 108-136, div. A, title X, §1031(a)(3), Nov. 24, 2003, 117 Stat. 1596.]

(e) LIMITATIONS.—(1) The Secretary may not restore balances in the Defense Business Operations Fund through increases in rates charged by that fund in order to compensate for costs incurred and not reimbursed due to subsection (b).

(2) The Secretary may not restore balances in the Defense Business Operations Fund or any other fund or account through the use of unobligated amounts in an operation and maintenance appropriation that are available within that appropriation for (A) an account (known as a budg-