

and references to subchapter II are deemed to exclude such parts. See section 202(b) of Pub. L. 92-226, set out as a note under section 2346 of this title, and sections 2348c and 2349aa-5 of this title.

#### AMENDMENTS

1980—Subsec. (b). Pub. L. 96-465, § 2203(c), among other changes, substituted references to the Foreign Service Act of 1980 for references to the Foreign Service Act of 1946 and section 2385(d) of this title.

Subsec. (c). Pub. L. 96-465, § 2203(d), among other changes, substituted references to the Foreign Service Act of 1980, for references to the Foreign Service Act of 1946, and inserted provisions relating to employee status for purposes of chapters 81, 83, 87 and 89 of title 5.

1977—Subsec. (d). Pub. L. 95-92 substituted reference to subchapter I of this chapter for reference to this chapter and struck out provisions requiring administration of assistance by the senior military officer of the mission for assistance under subchapter II of this chapter.

1965—Subsec. (d). Pub. L. 89-171 added subsec. (d).

1963—Subsec. (c). Pub. L. 88-205 added subsec. (c).

#### EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-465 effective Feb. 15, 1981, except as otherwise provided, see section 2403 of Pub. L. 96-465, set out as an Effective Date note under section 3901 of this title.

#### DELEGATION OF FUNCTIONS

For delegation of functions of President under this section, see Ex. Ord. No. 12163, Sept. 29, 1979, 44 F.R. 56673, as amended, set out as a note under section 2381 of this title.

#### FLAG AND GENERAL OFFICERS

Pub. L. 94-11, title I, § 100, Mar. 26, 1975, 89 Stat. 20, provided in part that: "The total number of flag and general officers of the United States Armed Forces assigned or detailed to military assistance advisory groups, military missions, or similar organizations, or performing duties primarily with respect to the Military Assistance Program and the Foreign Military Sales Program shall not exceed twenty after May 1, 1975."

#### APPROVAL OF SECRETARY OF STATE

The maintenance of special missions or staffs abroad, the fixing of ranks of chiefs thereof after the chiefs of United States diplomatic missions, and authorization of same compensation and allowances as chief of mission, as defined in section 3902(3) of this title, all under this section, shall be subject to approval of Secretary of State, see section 1-603 of Ex. Ord. No. 12163, Sept. 29, 1979, 44 F.R. 56677, as amended, set out as a note under section 2381 of this title.

### § 2392. Government agencies

#### (a) Allocation and transfer of funds

The President may allocate or transfer to any agency of the United States Government any part of any funds available for carrying out the purposes of this chapter, including any advance to the United States Government by any country or international organization for the procurement of commodities, defense articles, military education and training, or services (including defense services). Such funds shall be available for obligation and expenditure for the purposes for which authorized, in accordance with authority granted in this chapter or under authority governing the activities of the agencies of the United States Government to which such funds are allocated or transferred.

#### (b) Utilization of services and facilities of other agencies

Any officer of the United States Government carrying out functions under this chapter may utilize the services (including defense services) and facilities of, or procure commodities, defense articles, or military education and training from, any agency of the United States Government as the President shall direct, or with the consent of the head of such agency, and funds allocated pursuant to this subsection to any such agency may be established in separate appropriation accounts on the books of the Treasury.

#### (c) Reimbursement for commodities, services, and facilities

In the case of any commodity, service, or facility procured from any agency of the United States Government to carry out subchapter I of this chapter, reimbursement or payment shall be made to such agency from funds available to carry out such subchapter. Such reimbursement or payment shall be at replacement cost, or, if required by law, at actual cost, or, in the case of services procured from the Department of Defense to carry out part VIII of subchapter I of this chapter, the amount of the additional costs incurred by the Department of Defense in providing such services, or at any other price authorized by law and agreed to by the owning or disposing agency. The amount of any such reimbursement or payment shall be credited to current applicable appropriations, funds, or accounts, from which there may be procured replacements of similar commodities, services, or facilities, except that where such appropriations, funds, or accounts are not reimbursable except by reason of this subsection, and when the owning or disposing agency determines that such replacement is not necessary, any funds received in payment therefor shall be deposited into the Treasury as miscellaneous receipts.

#### (d) Reimbursement for military assistance

Except as otherwise provided in section 2318 of this title, reimbursement shall be made to any United States Government agency, from funds available for use under subchapter II of this chapter, for any assistance furnished under subchapter II of this chapter, from, by, or through such agency. Such reimbursement shall be in an amount equal to the value (as defined in section 2403(m) of this title) of the defense articles or of the defense services (other than salaries of members of the Armed Forces of the United States), or other assistance furnished, plus expenses arising from or incident to operations under subchapter II of this chapter (other than salaries of the Armed Forces of the United States and unfunded estimated costs of civilian retirement and other benefits). The amount of such reimbursement shall be credited to the current applicable appropriations, funds, or accounts of such agency.

#### (e) Establishment of accounts

In furnishing assistance under this chapter, accounts may be established on the books of any agency of the United States Government or, on terms and conditions approved by the Secretary of the Treasury, in banking institutions in the

United States, (1) against which letters of commitment may be issued which shall constitute recordable obligations of the United States Government, and moneys due or to become due under such letters of commitment shall be assignable under the Assignment of Claims Act of 1940, as amended<sup>1</sup> (second and third paragraphs of 31 U.S.C. 203 and 41 U.S.C. 15), and (2) from which disbursements may be made to, or withdrawals may be made by, recipient countries or agencies, organizations, or persons upon presentation of contracts, invoices, or other appropriate documentation. Expenditure of funds which have been made available through accounts so established shall be accounted for on standard documentation required for expenditure of funds of the United States Government: *Provided*, That such expenditures for commodities, defense articles, military education and training, services (including defense services), or facilities procured outside the United States may be accounted for exclusively on such certification as may be prescribed in regulations approved by the Comptroller General of the United States.

**(f) Credits made by Export-Import Bank of the United States**

Credits made by the Export-Import Bank of the United States with funds allocated thereto under subsection (a) of this section or under section 1782(a)<sup>1</sup> of this title, shall not be considered in determining whether the Bank has outstanding at any one time loans and guaranties to the extent of the limitation imposed by section 635e of title 12.

**(g) Charge of expenses to appropriation or account**

Any appropriation or account available to carry out provisions of subchapter I of this chapter may initially be charged in any fiscal year, within the limit of available funds, to finance expenses for which funds are available in other appropriations or accounts under subchapter I of this chapter: *Provided*, That as of the end of such fiscal year such expenses shall be finally charged to applicable appropriations or accounts with proper credit to the appropriations or accounts initially utilized for financing purposes: *Provided further*, That such final charge to applicable appropriations or accounts shall not be required in the case of expenses (other than those provided for under section 2397(a) of this title) incurred in furnishing assistance by the agency primarily responsible for administering subchapter I of this chapter where it is determined that the accounting costs of identifying the applicable appropriation or account to which such expenses should be charged would be disproportionate to the advantage to be gained.

(Pub. L. 87-195, pt. III, § 632, Sept. 4, 1961, 75 Stat. 453; Pub. L. 90-137, pt. III, § 302(g), Nov. 14, 1967, 81 Stat. 460; Pub. L. 90-267, § 1(a), Mar. 13, 1968, 82 Stat. 47; Pub. L. 90-629, ch. 4, § 45(b)(3), Oct. 22, 1968, 82 Stat. 1327; Pub. L. 94-329, title I, § 106(b)(4), June 30, 1976, 90 Stat. 733; Pub. L. 100-690, title IV, § 4506, Nov. 18, 1988, 102 Stat. 4286; Pub. L. 101-165, title IX, § 9104(b)(2), Nov. 21, 1989, 103 Stat. 1152.)

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

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a), (b), and (e), was in the original "this Act", meaning Pub. L. 87-195, Sept. 4, 1961, 75 Stat. 424, known as the Foreign Assistance Act of 1961. For complete classification of this Act to the Code, see Short Title note set out under section 2151 of this title and Tables.

The Assignment of Claims Act of 1940, as amended, referred to in subsec. (e), means act Oct. 9, 1940, ch. 779, 54 Stat. 1029, which added the second and third pars. to section 203 of former Title 31, Money and Finance, and the second and third pars. to section 15 of former Title 41, Public Contracts. Section 203 of former Title 31 was repealed by Pub. L. 97-258, § 5(b), Sept. 13, 1982, 96 Stat. 1068, and reenacted by the first section thereof as section 3727 of Title 31, Money and Finance. Such second and third pars. were restated in section 3727(b) (last sentence) and (c) of Title 31. Section 15 of former Title 41 was amended generally by Pub. L. 103-355, title II, § 2451, Oct. 13, 1994, 108 Stat. 3324, and was repealed and restated as section 6305 of Title 41, Public Contracts, by Pub. L. 111-350, §§ 3, 7(b), Jan. 4, 2011, 124 Stat. 3677, 3855.

Section 1782(a) of this title, referred to in subsec. (f), was repealed by Pub. L. 87-195, pt. III, § 642(a)(2), Sept. 4, 1961, 75 Stat. 460.

REFERENCES TO SUBCHAPTER I DEEMED TO INCLUDE CERTAIN PARTS OF SUBCHAPTER II, AND REFERENCES TO SUBCHAPTER II DEEMED TO EXCLUDE SUCH PARTS

References to subchapter I of this chapter are deemed to include parts IV (§ 2346 et seq.), VI (§ 2348 et seq.), and VIII (§ 2349aa et seq.) of subchapter II of this chapter, and references to subchapter II are deemed to exclude such parts. See section 202(b) of Pub. L. 92-226, set out as a note under section 2346 of this title, and sections 2348c and 2349aa-5 of this title.

AMENDMENTS

1989—Subsec. (d). Pub. L. 101-165 inserted at end of second sentence "other than salaries of the Armed Forces of the United States and unfunded estimated costs of civilian retirement and other benefits".

1988—Subsec. (c). Pub. L. 100-690 inserted "or, in the case of services procured from the Department of Defense to carry out part VIII of subchapter I of this chapter, the amount of the additional costs incurred by the Department of Defense in providing such services," after "at actual cost,".

1976—Subsec. (a). Pub. L. 94-329, § 106(b)(4)(A), inserted "military education and training" after "articles".

Subsec. (b). Pub. L. 94-329, § 106(b)(4)(B), substituted "defense articles, or military education and training" for "and defense articles".

Subsec. (e). Pub. L. 94-329, § 106(b)(4)(A), inserted "military education and training" after "articles".

1968—Subsec. (d). Pub. L. 90-629 struck out references to sections 2342 and 2343 of this title in the exception provision.

1967—Subsec. (d). Pub. L. 90-137 substituted reference to sections 2318, 2342, and 2343 for former reference to sections 2315 and 2318 of this title.

CHANGE OF NAME

"Export-Import Bank of Washington" changed to "Export-Import Bank of the United States" in text to conform to such change in name in the Export-Import Bank Act of 1945, section 635 et seq. of Title 12, Banks and Banking, provided for in section 1(a) of Pub. L. 90-267, Mar. 13, 1968, 82 Stat. 47.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-629 effective July 1, 1968, see section 41 of Pub. L. 90-629, set out as an Effective Date note under section 2751 of this title.

DELEGATION OF FUNCTIONS

For delegation of functions of President under this section, see Ex. Ord. No. 12163, Sept. 29, 1979, 44 F.R.

56673, as amended, set out as a note under section 2381 of this title.

#### ACCOUNTING ADJUSTMENTS BETWEEN APPROPRIATIONS

Charge of expenses to appropriation or account not affected by provisions for accounting adjustments between appropriations, see section 3 of Pub. L. 89-473, June 29, 1966, 80 Stat. 221, set out as a note under section 628a of Title 31, Money and Finance.

### § 2393. Waiver of certain laws

#### (a) Contracts and expenditure of funds

Whenever the President determines it to be in furtherance of the purposes of this chapter, the functions authorized under this chapter may be performed without regard to such provisions of law (other than the Renegotiation Act of 1951, as amended (50 U.S.C. App. 1211 et seq.) regulating the making, performance, amendment, or modification of contracts and the expenditure of funds of the United States Government as the President may specify.

#### (b) Neutrality laws

The functions authorized under subchapter II of this chapter may be performed without regard to such provisions as the President may specify of subchapter II of chapter 9 of this title.

#### (c) Assignment of personnel

Notwithstanding the provisions of sections 3544(b) and 8544(b)<sup>1</sup> of title 10, personnel of the Department of Defense may be assigned or detailed to any civil office to carry out this chapter.

(Pub. L. 87-195, pt. III, § 633, Sept. 4, 1961, 75 Stat. 454.)

#### REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 87-195, Sept. 4, 1961, 75 Stat. 424, as amended, known as the Foreign Assistance Act of 1961. For complete classification of this Act to the Code, see Short Title note set out under section 2151 of this title and Tables.

The Renegotiation Act of 1951, as amended, referred to in subsec. (a), is act Mar. 23, 1951, ch. 15, 65 Stat. 7, as amended, which was classified principally to section 1211 et seq. of Title 50, Appendix, War and National Defense, prior to its omission from the Code. See note preceding section 1211 of Title 50, Appendix.

Sections 3544 and 8544 of title 10, referred to in subsec. (c), were repealed by Pub. L. 90-235, § 4(a)(6), Jan. 2, 1968, 81 Stat. 759.

#### REFERENCES TO SUBCHAPTER II DEEMED TO EXCLUDE CERTAIN PARTS OF SUBCHAPTER II

References to subchapter II of this chapter are deemed to exclude parts IV (§ 2346 et seq.), VI (§ 2348 et seq.), and VIII (§ 2349aa et seq.) of subchapter II, and references to subchapter I of this chapter are deemed to include such parts. See section 202(b) of Pub. L. 92-226, set out as a note under section 2346 of this title, and sections 2348c and 2349aa-5 of this title.

#### DELEGATION OF FUNCTIONS

For delegation of functions of President under this section, see Ex. Ord. No. 12163, Sept. 29, 1979, 44 F.R. 56673, as amended, set out as a note under section 2381 of this title.

#### EXECUTIVE ORDER NO. 10784

Ex. Ord. No. 10784, Oct. 1, 1958, 23 F.R. 7691, as amended by Ex. Ord. No. 10845, Oct. 12, 1959, 24 F.R. 8317, which

specified laws from which functions authorized by this chapter shall be exempt, was superseded by Ex. Ord. No. 11223, May 12, 1965, 30 F.R. 6635, set out below.

#### EXECUTIVE ORDER NO. 10845

Ex. Ord. No. 10845 of Oct. 12, 1959, setting out laws from which authorized functions were exempt, was superseded by Ex. Ord. No. 11223, May 12, 1965, 30 F.R. 6635, set out below.

#### EX. ORD. NO. 11223. SPECIFICATION OF LAWS FROM WHICH FUNCTIONS AUTHORIZED BY THIS CHAPTER SHALL BE EXEMPT

Ex. Ord. No. 11223, May 12, 1965, 30 F.R. 6635, as amended by Ex. Ord. No. 12163, Sept. 29, 1979, 44 F.R. 56673; Ex. Ord. No. 12178, Dec. 10, 1979, 44 F.R. 71807; Ex. Ord. No. 13118, § 10(10), Mar. 31, 1999, 64 F.R. 16599, provided:

By virtue of the authority vested in me by Section 633 of the Foreign Assistance Act of 1961, as amended, 75 Stat. 454 (22 U.S.C. 2393), it is hereby determined that, to the extent hereinafter indicated, the performance of functions authorized by that Act, as amended, and any predecessor legislation, without regard to the laws specified in the numbered subdivisions of Sections 1 and 2 of this order and without regard to consideration as specified in Sections 3 and 4 of this order will further the purposes of the Foreign Assistance Act of 1961, as amended [this chapter]:

SECTION 1. With respect to functions authorized by the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2151 et seq.), and any predecessor legislation except those functions exercised by the Department of Defense under authority of Sections 621 and 623 of the Foreign Assistance Act of 1961 (22 U.S.C. 2381 and 2383):

(1) The Act of March 26, 1934, 48 Stat. 500, as amended (15 U.S.C. 616a).

(2) Section 3648 of the Revised Statutes, as amended, 60 Stat. 809 (31 U.S.C. 529) [31 U.S.C. 3324].

(3) Section 305 of the Federal Property and Administrative Services Act of 1949, 63 Stat. 396, as amended (41 U.S.C. 255).

(4) Section 3709 of the Revised Statutes, as amended (41 U.S.C. 5).

(5) Section 3710 of the Revised Statutes (41 U.S.C. 8).

(6) Section 2 of title III of the Act of March 3, 1933, 47 Stat. 1520 (41 U.S.C. 10a).

(7) Section 3735 of the Revised Statutes (41 U.S.C. 13).

(8) Section 304(c) of the Federal Property and Administrative Services Act of 1949, as added by the Act of October 31, 1951, 65 Stat. 700 (41 U.S.C. 254(c)), but only with respect to contracts entered into with foreign governments or agencies thereof for the rendering of services to the United States or an agency thereof within the continental limits of the United States.

(9) Section 901(a) of the Merchant Marine Act, 1936, 49 Stat. 2015 as amended (46 U.S.C. [App.] 1241(a)) [now 46 U.S.C. 55302].

SEC. 2. With respect to purchases authorized to be made outside the limits of the United States or the District of Columbia under the Foreign Assistance Act of 1961, as amended [this chapter], and any predecessor legislation:

(1) [Former] Section 2276(a) of title 10 of the United States Code.

(2) Section 2313(b) of title 10 of the United States Code.

(3) Section 304(c) of the Federal Property and Administrative Services Act of 1949, as added by the Act of October 31, 1951, 65 Stat. 700 (41 U.S.C. 254(c)).

(4) Section 1301 of the Second War Powers Act, 1942, 56 Stat. 185 (50 U.S.C. App. 643), as extended by the provisions of the Act of June 30, 1953, 67 Stat. 120.

(5) Section 3(b) of the Act of August 28, 1958, 72 Stat. 972 (50 U.S.C. 1433(b)), but only with respect to contracts in which the inclusion of the clause required by Section 3(b), or the compliance with that clause, if included in a contract, is deemed by the executive or military department concerned to be impracticable.

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