

section 1075(k)(1) is effective as of May 22, 2009, and as if included in Pub. L. 111–23 as enacted.

CERTIFICATION AND REVIEW OF PROGRAMS ENTERING DEVELOPMENT PRIOR TO ENACTMENT OF SECTION 2366B OF TITLE 10

Pub. L. 111–23, title II, §205(b), May 22, 2009, 123 Stat. 1725, as amended by Pub. L. 111–383, div. A, title VIII, §813(d)(2), Jan. 7, 2011, 124 Stat. 4266, which related to certification and review of programs entering development prior to enactment of section 2366b of this title, was repealed by Pub. L. 112–239, div. A, title VIII, §814, Jan. 2, 2013, 126 Stat. 1830.

FORMAL REVIEW PROCESS FOR BANDWIDTH REQUIREMENTS

Pub. L. 110–417, [div. A], title X, §1047(d), Oct. 14, 2008, 122 Stat. 4603, as amended by Pub. L. 111–84, div. A, title X, §1033, Oct. 28, 2009, 123 Stat. 2449, provided that:

“(1) IN GENERAL.—The Secretary of Defense and the Director of National Intelligence shall, as part of the Milestone B or Key Decision Point B approval process for any major defense acquisition program or major system acquisition program, establish a formal review process to ensure that—

“(A) the bandwidth requirements needed to support such program are or will be met; and

“(B) a determination will be made with respect to how to meet the bandwidth requirements for such program.

“(2) REPORTS.—Not later than January 1 of each year, the Secretary of Defense and the Director of National Intelligence shall each submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives], the Select Committee on Intelligence of the Senate, and the Permanent Select Committee on Intelligence of the House of Representatives a report on any determinations made under paragraph (1) with respect to meeting the bandwidth requirements for major defense acquisition programs and major system acquisition programs during the preceding fiscal year.”

**§ 2367. Use of federally funded research and development centers**

(a) LIMITATION ON USE OF CENTERS.—Except as provided in subsection (b), the Secretary of Defense may not place work with a federally funded research and development center unless such work is within the purpose, mission, and general scope of effort of such center as established in the sponsoring agreement of the Department of Defense with such center.

(b) EXCEPTION FOR APPLIED SCIENTIFIC RESEARCH.—This section does not apply to a federally funded research and development center that performs applied scientific research under laboratory conditions.

(c) LIMITATION ON CREATION OF NEW CENTERS.—(1) The head of an agency may not obligate or expend amounts appropriated to the Department of Defense for purposes of operating a federally funded research center that was not in existence before June 2, 1986, until—

(A) the head of the agency submits to Congress a report with respect to such center that describes the purpose, mission, and general scope of effort of the center; and

(B) a period of 60 days beginning on the date such report is received by Congress has elapsed.

(2) In this subsection, the term “head of an agency” has the meaning given such term in section 2302(1) of this title.

(d) IDENTIFICATION TO CONGRESS OF FFRDC WORKLOAD EFFORT.—After the close of a fiscal year, and not later than January 1 of the next year, the Secretary shall submit 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 a report setting forth the actual obligations and the actual man-years of effort expended at each federally funded research and development center during that fiscal year.

(Added Pub. L. 99–500, §101(c) [title X, §912(a)(1)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–146, and Pub. L. 99–591, §101(c) [title X, §912(a)(1)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–146; Pub. L. 99–661, div. A, title IX, formerly title IV, §912(a)(1), Nov. 14, 1986, 100 Stat. 3925, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273; amended Pub. L. 102–190, div. A, title II, §256(a)(1), Dec. 5, 1991, 105 Stat. 1330; Pub. L. 104–106, div. A, title XV, §1502(a)(9), Feb. 10, 1996, 110 Stat. 503; Pub. L. 106–65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 107–314, div. A, title X, §1041(a)(12), Dec. 2, 2002, 116 Stat. 2645.)

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500. Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 added identical sections.

AMENDMENTS

2002—Subsec. (d). Pub. L. 107–314, §1041(a)(12), struck out designations for pars. (1) and (2) and text of par. (1). Prior to amendment par. (1) read as follows: “In the documents provided to Congress by the Secretary of Defense in support of the budget submitted by the President under section 1105 of title 31 for any fiscal year, the Secretary shall set forth the proposed amount of the man-years of effort to be funded by the Department of Defense for each federally funded research and development center for the fiscal year covered by that budget.”

1999—Subsec. (d)(2). Pub. L. 106–65 substituted “and the Committee on Armed Services” for “and the Committee on National Security”.

1996—Subsec. (d)(2). Pub. L. 104–106 substituted “the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on National Security and the Committee on Appropriations of the” for “the Committees on Armed Services and the Committees on Appropriations of the Senate and”.

1991—Subsec. (d). Pub. L. 102–190 added subsec. (d).

EFFECTIVE DATE OF 1991 AMENDMENT

Pub. L. 102–190, div. A, title II, §256(a)(2), Dec. 5, 1991, 105 Stat. 1330, provided that:

“(A) Paragraph (1) of subsection (d) of section 2367 of title 10, United States Code, as added by paragraph (1), shall take effect with respect to the budget submitted for fiscal year 1994.

“(B) Paragraph (2) of such subsection shall take effect with respect to fiscal year 1992.”

GAO STUDY; REPORT

Pub. L. 99–500, §101(c) [title X, §912(b), (c)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–146, Pub. L. 99–591, §101(c) [title X, §912(b), (c)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–146, and Pub. L. 99–661, div. A, title IX, formerly title IV, §912(b), (c), Nov. 14, 1986, 100 Stat. 3926, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273, directed Comptroller General to conduct a study of national defense role of federally funded research and development centers and submit a report to Congress not later than one year after Oct. 18, 1986.

**[§ 2368. Repealed. Pub. L. 102-190, div. A, title VIII, § 821(c)(1), Dec. 5, 1991, 105 Stat. 1431]**

Section, added Pub. L. 100-456, div. A, title VIII, § 823(a)(1), Sept. 29, 1988, 102 Stat. 2018; amended Pub. L. 101-189, div. A, title VIII, § 841(c)(1), Nov. 29, 1989, 103 Stat. 1514; Pub. L. 102-25, title VII, § 701(g)(1), Apr. 6, 1991, 105 Stat. 115, authorized studies in fields of research and development essential to development of critical technologies.

**[§ 2369. Repealed. Pub. L. 103-355, title III, § 3062(a), Oct. 13, 1994, 108 Stat. 3336]**

Section, added Pub. L. 100-456, div. A, title VIII, § 842(a), Sept. 29, 1988, 102 Stat. 2026; amended Pub. L. 103-160, div. A, title IX, § 904(d)(1), Nov. 30, 1993, 107 Stat. 1728, related to program for supervision and coordination of product evaluation activities within the Department of Defense.

**[§ 2370. Repealed. Pub. L. 104-106, div. A, title X, § 1061(j)(1), Feb. 10, 1996, 110 Stat. 443]**

Section, added Pub. L. 101-510, div. A, title II, § 241(a), Nov. 5, 1990, 104 Stat. 1516, required annual report to Congress on Biological Defense Research Program.

**[§ 2370a. Repealed. Pub. L. 108-375, div. A, title X, § 1005(a), Oct. 28, 2004, 118 Stat. 2036]**

Section, added Pub. L. 103-160, div. A, title II, § 214(a), Nov. 30, 1993, 107 Stat. 1586, related to medical countermeasures against biowarfare threats and allocation of funding between near-term and other threats.

**§ 2371. Research projects: transactions other than contracts and grants**

(a) **ADDITIONAL FORMS OF TRANSACTIONS AUTHORIZED.**—The Secretary of Defense and the Secretary of each military department may enter into transactions (other than contracts, cooperative agreements, and grants) under the authority of this subsection in carrying out basic, applied, and advanced research projects. The authority under this subsection is in addition to the authority provided in section 2358 of this title to use contracts, cooperative agreements, and grants in carrying out such projects.

(b) **EXERCISE OF AUTHORITY BY SECRETARY OF DEFENSE.**—In any exercise of the authority in subsection (a), the Secretary of Defense shall act through the Defense Advanced Research Projects Agency or any other element of the Department of Defense that the Secretary may designate.

(c) **ADVANCE PAYMENTS.**—The authority provided under subsection (a) may be exercised without regard to section 3324 of title 31.

(d) **RECOVERY OF FUNDS.**—(1) A cooperative agreement for performance of basic, applied, or advanced research authorized by section 2358 of this title and a transaction authorized by subsection (a) may include a clause that requires a person or other entity to make payments to the Department of Defense or any other department or agency of the Federal Government as a condition for receiving support under the agreement or other transaction.

(2) The amount of any payment received by the Federal Government pursuant to a requirement imposed under paragraph (1) may be credited, to the extent authorized by the Secretary of Defense, to the appropriate account established under subsection (f). Amounts so credited

shall be merged with other funds in the account and shall be available for the same purposes and the same period for which other funds in such account are available.

(e) **CONDITIONS.**—(1) The Secretary of Defense shall ensure that—

(A) to the maximum extent practicable, no cooperative agreement containing a clause under subsection (d) and no transaction entered into under subsection (a) provides for research that duplicates research being conducted under existing programs carried out by the Department of Defense; and

(B) to the extent that the Secretary determines practicable, the funds provided by the Government under a cooperative agreement containing a clause under subsection (d) or a transaction authorized by subsection (a) do not exceed the total amount provided by other parties to the cooperative agreement or other transaction.

(2) A cooperative agreement containing a clause under subsection (d) or a transaction authorized by subsection (a) may be used for a research project when the use of a standard contract, grant, or cooperative agreement for such project is not feasible or appropriate.

(f) **SUPPORT ACCOUNTS.**—There is hereby established on the books of the Treasury separate accounts for each of the military departments and the Defense Advanced Research Projects Agency for support of research projects and development projects provided for in cooperative agreements containing a clause under subsection (d) and research projects provided for in transactions entered into under subsection (a). Funds in those accounts shall be available for the payment of such support.

(g) **REGULATIONS.**—The Secretary of Defense shall prescribe regulations to carry out this section.

[(h) Repealed. Pub. L. 113-291, div. A, title X, § 1071(f)(20), Dec. 19, 2014, 128 Stat. 3511.]

(i) **PROTECTION OF CERTAIN INFORMATION FROM DISCLOSURE.**—(1) Disclosure of information described in paragraph (2) is not required, and may not be compelled, under section 552 of title 5 for five years after the date on which the information is received by the Department of Defense.

(2)(A) Paragraph (1) applies to information described in subparagraph (B) that is in the records of the Department of Defense if the information was submitted to the Department in a competitive or noncompetitive process having the potential for resulting in an award, to the party submitting the information, of a cooperative agreement for performance of basic, applied, or advanced research authorized by section 2358 of this title or another transaction authorized by subsection (a).

(B) The information referred to in subparagraph (A) is the following:

(i) A proposal, proposal abstract, and supporting documents.

(ii) A business plan submitted on a confidential basis.

(iii) Technical information submitted on a confidential basis.

(Added Pub. L. 101-189, div. A, title II, § 251(a)(1), Nov. 29, 1989, 103 Stat. 1403; amended Pub. L.