

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emergency by the President, to undertake military construction without regard to any other provisions of law, was repealed and restated as section 2808 of this title by Pub.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 ex-

pected 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 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.

(f) SUBMISSION OF REQUESTS FOR SUPPLEMENTAL APPROPRIATIONS.—It is the sense of Congress that whenever there is an operation described in subsection (a), the President should, not later than 90 days after the date on which notification is provided pursuant to subsection (a)(3), submit to Congress a request for the enactment of supplemental appropriations for the then-current fiscal year in order to provide funds to replenish the Defense Business Operations Fund or any other fund or account of the Department of Defense from which funds for the incremental expenses of that operation were derived under this section and should, as necessary, submit subsequent requests for the enactment of such appropriations.

(g) INCREMENTAL COSTS.—For purposes of this section, incremental costs of the Department of Defense with respect to an operation are the costs of the Department that are directly attributable to the operation (and would not have been incurred but for the operation). Incremental costs do not include the cost of property or services acquired by the Department that are paid for by a source outside the Department or out of funds contributed by such a source.

(h) RELATIONSHIP TO WAR POWERS RESOLUTION.—This section may not be construed as altering or superseding the War Powers Resolution. This section does not provide authority to conduct any military operation.

(i) GAO COMPLIANCE REVIEWS.—The Comptroller General of the United States shall from time to time, and when requested by a committee of Congress, conduct a review of the defense funding structure under this section to determine whether the Department of Defense is complying with the requirements and limitations of this section.

(Added Pub. L. 103–160, div. A, title XI, § 1108(a)(1), Nov. 30, 1993, 107 Stat. 1751; amended Pub. L. 104–106, div. A, title X, § 1003(a)(1), Feb. 10, 1996, 110 Stat. 415; Pub. L. 108–136, div. A, title X, § 1031(a)(3), Nov. 24, 2003, 117 Stat. 1596; Pub. L. 111–383, div. A, title X, § 1075(b)(2), Jan. 7, 2011, 124 Stat. 4369; Pub. L. 112–81, div. A, title X, § 1061(1), Dec. 31, 2011, 125 Stat. 1583.)

REFERENCES IN TEXT

The War Powers Resolution, referred to in subsec. (h), is Pub. L. 93–148, Nov. 7, 1973, 87 Stat. 555, which is classified generally to chapter 33 (§ 1541 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1541 of Title 50 and Tables.

AMENDMENTS

2011—Subsec. (a)(1)(A). Pub. L. 111–383, § 1075(b)(2)(A), substituted “armed forces” for “Armed Forces”.

Subsec. (a)(3), (4). Pub. L. 112–81 redesignated par. (4) as (3) and struck out former par. (3) which read as follows: “Whenever an operation to which this section applies is commenced or subsequently becomes covered by this section, the Secretary of Defense shall designate and identify that operation for the purposes of this section and shall promptly notify Congress of that designation (and of the identification of the operation).”

Subsec. (b)(1). Pub. L. 111–383, § 1075(b)(2)(B), substituted “armed forces” for “Armed Forces” in two places.

2003—Subsec. (d). Pub. L. 108–136 struck out subsec. (d) which required Secretary of Defense, within 45 days after identifying an operation pursuant to subsec. (a)(2), to submit a report to Congress relating to the funding, objectives, duration, cost, and exit criteria of the operation.

1996—Pub. L. 104–106 substituted “Operations for which funds are not provided in advance: funding mechanisms” for “Expenses for contingency operations” as section catchline and amended text generally. Prior to amendment, text consisted of subsecs. (a) to (h) relating to funding procedures for operations designated by the Secretary of Defense as National Contingency Operations.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–106, div. A, title X, § 1003(b), Feb. 10, 1996, 110 Stat. 417, provided that: “The amendment to section 127a of title 10, United States Code, made by subsection (a) shall take effect on the date of the enactment of this Act [Feb. 10, 1996] and shall apply to any operation of the Department of Defense that is in effect on or after that date, whether such operation is begun before, on, or after such date of enactment. In the case of an operation begun before such date, any reference in such section to the commencement of such operation shall be treated as referring to the effective date under the preceding sentence.”

INCREMENTAL CONTINGENCY OPERATIONS COST REPORT

Pub. L. 114–113, div. C, title VIII, § 8093, Dec. 18, 2015, 129 Stat. 2373, provided that: “The Department of Defense shall continue to report incremental contingency operations costs for Operation Inherent Resolve, Operation Freedom’s Sentinel, and any named successor operations, on a monthly basis and any other operation designated and identified by the Secretary of Defense for the purposes of section 127a of title 10, United States Code, on a semi-annual basis in the Cost of War Execution Report as prescribed in the Department of Defense Financial Management Regulation Department of Defense Instruction 7000.14, Volume 12, Chapter 23 ‘Contingency Operations’, Annex 1, dated September 2005.”

Similar provisions were contained in the following appropriation acts:

Pub. L. 113–235, div. C, title VIII, § 8097, Dec. 16, 2014, 128 Stat. 2276.

Pub. L. 113–76, div. C, title VIII, § 8092, Jan. 17, 2014, 128 Stat. 126.

§ 127b. Department of Defense rewards program

(a) AUTHORITY.—The Secretary of Defense may pay a monetary amount, or provide a payment-in-kind, to a person as a reward for providing