

(d) LIMITATIONS ON REQUESTS TO CONGRESS FOR REPROGRAMMINGS.—Neither the Secretary of Defense nor the Secretary of a military department may prepare or present to the Congress, or to any committee of either House of the Congress, a request with respect to a reprogramming of funds—

(1) unless the funds to be transferred are to be used for a higher priority item, based on unforeseen military requirements, than the item for which the funds were originally appropriated; or

(2) if the request would be for authority to reprogram amounts to an item for which the Congress has denied funds.

(Added Pub. L. 101-510, div. A, title XIV, §1482(c)(1), Nov. 5, 1990, 104 Stat. 1709.)

EFFECTIVE DATE

Section effective Oct. 1, 1991, see section 1482(d) of Pub. L. 101-510, set out as an Effective Date of 1990 Amendment note under section 119 of this title.

§ 2215. Transfer of funds to other departments and agencies: limitation

Funds available for military functions of the Department of Defense may not be made available to any other department or agency of the Federal Government pursuant to a provision of law enacted after November 29, 1989, unless, not less than 30 days before such funds are made available to such other department or agency, the Secretary of Defense submits to the congressional defense committees a certification that making those funds available to such other department or agency is in the national security interest of the United States.

(Added Pub. L. 103-160, div. A, title XI, §1106(a)(1), Nov. 30, 1993, 107 Stat. 1750; amended Pub. L. 104-106, div. A, title XV, §1502(a)(14), Feb. 10, 1996, 110 Stat. 503; Pub. L. 106-65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 108-375, div. A, title X, §1084(b)(1), Oct. 28, 2004, 118 Stat. 2060.)

PRIOR PROVISIONS

A prior section 2215, added Pub. L. 99-661, div. A, title XIII, §1307(a)(1), Nov. 14, 1986, 100 Stat. 3980, related to reports on unobligated balances, prior to repeal by Pub. L. 101-510, div. A, title XIII, §1301(7), Nov. 5, 1990, 104 Stat. 1668.

Provisions similar to those in this section were contained in Pub. L. 101-189, div. A, title XVI, §1604, Nov. 29, 1989, 103 Stat. 1598, which was set out as a note under section 1531 of Title 31, Money and Finance, prior to repeal by Pub. L. 103-160, §1106(b).

AMENDMENTS

2004—Pub. L. 108-375 struck out subsec. (a) designation and heading before “Funds available”, substituted “congressional defense committees” for “congressional committees specified in subsection (b)”, and struck out heading and text of subsec. (b). Text of subsec. (b) read as follows: “The committees referred to in subsection (a) are—

“(1) the Committee on Armed Services and the Committee on Appropriations of the Senate; and

“(2) the Committee on Armed Services and the Committee on Appropriations of the House of Representatives.”

1999—Subsec. (b)(2). Pub. L. 106-65 substituted “Committee on Armed Services” for “Committee on National Security”.

1996—Pub. L. 104-106 designated existing provisions as subsec. (a), inserted heading, substituted “to the congressional committees specified in subsection (b)” for “to the Committees on Armed Services and the Committees on Appropriations of the Senate and House of Representatives”, and added subsec. (b).

§ 2216. Defense Modernization Account

(a) ESTABLISHMENT.—There is established in the Treasury an account to be known as the “Defense Modernization Account”.

(b) FUNDS AVAILABLE FOR ACCOUNT.—The Defense Modernization Account shall consist of the following:

(1) Amounts appropriated to the Defense Modernization Account for the costs of projects described in subsection (d)(1), and amounts reimbursed to the Defense Modernization Account under subsection (c)(1)(B)(iii) out of savings derived from such projects.

(2) Amounts transferred to the Defense Modernization Account under subsection (c).

(c) TRANSFERS TO ACCOUNT.—(1)(A) Upon a determination by the Secretary of a military department, or the Secretary of Defense with respect to Defense-wide appropriations accounts, of the availability and source of funds described in subparagraph (B), the Secretary concerned may transfer to the Defense Modernization Account during any fiscal year any amount of funds available to the Secretary described in that subparagraph. Such funds may be transferred to that account only after the Secretary concerned notifies the congressional defense committees in writing of the amount and source of the proposed transfer.

(B) This subsection applies to the following funds that have been appropriated for fiscal years after fiscal year 2016 and are available to the Secretary concerned:

(i) Unexpired funds in appropriations accounts that are available for new obligations and that, as a result of economies, efficiencies, and other savings achieved in carrying out an acquisition program, are excess to the requirements of that program.

(ii) Unexpired funds in appropriations accounts that are available for procurement or operation and maintenance of a system, if and to the extent that savings are achieved for such accounts through reductions in life cycle costs of such system that result from one or more projects undertaken with respect to such systems with funds made available from the Defense Modernization Account under subsection (b)(1).

(C) Any transfer under subparagraph (A) shall be made under regulations prescribed by the Secretary of Defense.

(2) Funds referred to in paragraph (1) may not be transferred to the Defense Modernization Account if the balance of funds in the account, after transfer of funds to the account, would exceed \$1,000,000,000.

(3) Amounts deposited in the Defense Modernization Account shall remain available for transfer and obligation until the end of the third fiscal year that follows the fiscal year in which the amounts are deposited in the account.

(d) **AUTHORIZED USE OF FUNDS.**—Funds in the Defense Modernization Account may be used for the following purposes:

(1) For paying the costs of any project that, in accordance with criteria prescribed by the Secretary concerned, is undertaken by the Secretary of a military department or the head of a Defense Agency or other element of the Department of Defense to reduce the life cycle cost of a new or existing system.

(2) For increasing, subject to subsection (e), the quantity of items and services procured under an acquisition program in order to achieve a more efficient production or delivery rate.

(3) For research, development, test, and evaluation, for procurement, and for sustainment activities necessary for paying costs of unforeseen contingencies that are approved by the milestone decision authority concerned, that could prevent an ongoing acquisition program from meeting critical schedule or performance requirements.

(4) For paying costs of changes to program requirements or system configuration that are approved by the configuration steering board for a major defense acquisition program.

(e) **LIMITATIONS.**—(1) Funds in the Defense Modernization Account may not be used to increase the quantity of an item or services procured under a particular acquisition program to the extent that doing so would—

(A) result in procurement of a total quantity of items or services in excess of—

(i) a specific limitation provided by law on the quantity of the items or services that may be procured; or

(ii) the requirement for the items or services as approved by the Joint Requirements Oversight Council and reported to Congress by the Secretary of Defense; or

(B) result in an obligation or expenditure of funds in excess of a specific limitation provided by law on the amount that may be obligated or expended, respectively, for that acquisition program.

(2) Funds in the Defense Modernization Account may not be used for a purpose or program for which Congress has not authorized appropriations, unless the procedures for initiating a new start program are complied with.

(3) Funds may not be transferred from the Defense Modernization Account in any year for the purpose of—

(A) making an expenditure for which there is no corresponding obligation; or

(B) making an expenditure that would satisfy an unliquidated or unrecorded obligation arising in a prior fiscal year.

(f) **TRANSFER OF FUNDS.**—(1) The Secretary of a military department, or the Secretary of Defense with respect to Defense-wide appropriations accounts, may transfer funds in the Defense Modernization Account to appropriations available for purposes set forth in subsection (d).

(2) Funds in the Defense Modernization Account may not be transferred under paragraph (1) until 30 days after the date on which the Secretary concerned notifies the congressional de-

fense committees in writing of the amount and purpose of the proposed transfer.

(3) The total amount of transfers from the Defense Modernization Account during any fiscal year under this subsection may not exceed \$500,000,000.

(g) **AVAILABILITY OF FUNDS BY APPROPRIATION.**—In addition to transfers under subsection (f), funds in the Defense Modernization Account may be made available for purposes set forth in subsection (d), but only to the extent authorized in an Act other than an appropriations Act. Funds deposited in the Defense Modernization Account shall remain available for obligation until the end of the third fiscal year that follows the fiscal year in which the amounts are deposited in the account.

(h) **SECRETARY TO ACT THROUGH COMPTROLLER.**—(1) The Secretary of Defense shall carry out this section through the Under Secretary of Defense (Comptroller), who shall be authorized to implement this section through the issuance of any necessary regulations, policies, and procedures after consultation with the General Counsel and Inspector General of the Department of Defense.

(2) The regulations prescribed under paragraph (1) shall, at a minimum, provide for—

(A) the establishment and management of subaccounts for each of the military departments and Defense Agencies concerned for the use of funds in the Defense Modernization Account, consistent with each military department's or Defense Agency's deposits in the account;

(B) the submission of proposals by the Secretaries concerned or heads of Defense Agencies or other elements of the Department of Defense to the Comptroller for the use of Defense Modernization Account funds for purposes set forth in subsection (d);

(C) the use of a competitive process for the evaluation of such proposals and the selection of programs, projects, and activities to be funded out of the Defense Modernization Account and subaccounts from among those proposed for such funding; and

(D) the calculation of—

(i) the savings to be derived from projects described in subsection (d)(1) that are to be funded out of the Defense Modernization Account; and

(ii) the amounts to be reimbursed to the Defense Modernization Account out of such savings pursuant to subsection (c)(1)(B)(ii).

(i) **DEFINITIONS.**—In this section:

(1) The term “major defense acquisition program” has the meaning given the term in section 2430(a) of this title.

(2) The term “unexpired funds” means funds appropriated for a definite period that remain available for obligation.

(j) **EXPIRATION OF AUTHORITY AND ACCOUNT.**—

(1) The authority under subsection (c) to transfer funds into the Defense Modernization Account terminates at the close of September 30, 2022.

(2) Three years after the termination date specified in paragraph (1), the Defense Modernization Account shall be closed and any re-

maining balance in the account shall be canceled and thereafter shall not be available for any purpose.

(Added Pub. L. 104-106, div. A, title IX, §912(a)(1), Feb. 10, 1996, 110 Stat. 407; amended Pub. L. 106-65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 108-136, div. A, title X, §§1008(a)-(f)(1), 1043(b)(8), Nov. 24, 2003, 117 Stat. 1586, 1587, 1611; Pub. L. 109-364, div. A, title X, §1071(a)(16), Oct. 17, 2006, 120 Stat. 2399; Pub. L. 113-66, div. A, title X, §1084(a)(2), Dec. 26, 2013, 127 Stat. 871; Pub. L. 114-328, div. A, title VIII, §804, Dec. 23, 2016, 130 Stat. 2250.)

CODIFICATION

Another section 2216 was renumbered section 2216a of this title and subsequently repealed.

PRIOR PROVISIONS

A prior section 2216, added Pub. L. 99-661, div. A, title XIII, §1307(a)(1), Nov. 14, 1986, 100 Stat. 3980, related to annual reports on budgeting for inflation, prior to repeal by Pub. L. 101-510, div. A, title XIII, §1301(8), Nov. 5, 1990, 104 Stat. 1668.

AMENDMENTS

2016—Subsec. (b)(1). Pub. L. 114-328, §804(a), struck out “commencing” before “projects described”.

Subsec. (c)(1)(A). Pub. L. 114-328, §804(b)(1), substituted “, or the Secretary of Defense with respect to Defense-wide appropriations accounts,” for “or the Secretary of Defense with respect to Defense-wide appropriations accounts” and “the Secretary concerned” for “that Secretary” before “may transfer”.

Subsec. (c)(1)(B). Pub. L. 114-328, §804(b)(2)(A), in introductory provisions, inserted “that have been appropriated for fiscal years after fiscal year 2016 and are” after “following funds”.

Subsec. (c)(1)(B)(i). Pub. L. 114-328, §804(b)(2)(B), substituted “or new obligations” for “for procurement”, “an acquisition program” for “a particular procurement”, and “that program” for “that procurement”.

Subsec. (c)(1)(B)(ii), (iii). Pub. L. 114-328, §804(b)(2)(C), (D), redesignated cl. (iii) as (ii) and struck out former cl. (ii) which read as follows: “Unexpired funds that are available during the final 30 days of a fiscal year for support of installations and facilities and that, as a result of economies, efficiencies, and other savings, are excess to the requirements for support of installations and facilities.”

Subsec. (c)(2). Pub. L. 114-328, §804(b)(3), struck out “, other than funds referred to in subparagraph (B)(iii) of such paragraph,” after “Funds referred to in paragraph (1)” and substituted “if the balance of funds” for “if—

“(A) the funds are necessary for programs, projects, and activities that, as determined by the Secretary, have a higher priority than the purposes for which the funds would be available if transferred to that account; or

“(B) the balance of funds”.

Subsec. (c)(3). Pub. L. 114-328, §804(b)(4), substituted “deposited in” for “credited to” in two places and inserted “and obligation” after “available for transfer”.

Subsec. (c)(4). Pub. L. 114-328, §804(b)(5), struck out par. (4) which read as follows: “The period of availability of funds for expenditure provided for in sections 1551 and 1552 of title 31 may not be extended by transfer into the Defense Modernization Account.”

Subsec. (d)(1). Pub. L. 114-328, §804(c)(1), struck out “commencing” before “any project” and substituted “Secretary concerned” for “Secretary of Defense”.

Subsec. (d)(2). Pub. L. 114-328, §804(c)(2), substituted “an acquisition program” for “a procurement program”.

Subsec. (d)(3). Pub. L. 114-328, §804(c)(3), amended par. (3) generally. Prior to amendment, par. (3) read as fol-

lows: “For research, development, test, and evaluation and for procurement necessary for modernization of an existing system or of a system being procured under an ongoing procurement program.”

Subsec. (d)(4). Pub. L. 114-328, §804(c)(4), added par. (4).

Subsec. (e)(1). Pub. L. 114-328, §804(d)(1), substituted “acquisition program” for “procurement program” in introductory provisions and subpar. (B).

Subsec. (e)(2). Pub. L. 114-328, §804(d)(2), substituted “authorized appropriations, unless the procedures for initiating a new start program are complied with” for “authorized appropriations”.

Subsec. (f)(1). Pub. L. 114-328, §804(e), substituted “Secretary of a military department, or the Secretary of Defense with respect to Defense-wide appropriations accounts,” for “Secretary of Defense”.

Subsec. (g). Pub. L. 114-328, §804(f), struck out “in accordance with the provisions of appropriations Acts” after “subsection (d)” and inserted at end “Funds deposited in the Defense Modernization Account shall remain available for obligation until the end of the third fiscal year that follows the fiscal year in which the amounts are deposited in the account.”

Subsec. (h)(2)(A), (B). Pub. L. 114-328, §804(g)(1), (2), added subpar. (A) and redesignated former subpar. (A) as (B). Former subpar. (B) redesignated (C).

Subsec. (h)(2)(C). Pub. L. 114-328, §804(g)(1), (3), redesignated subpar. (B) as (C) and inserted “and subaccounts” after “Account”. Former subpar. (C) redesignated (D).

Subsec. (h)(2)(D). Pub. L. 114-328, §804(g)(1), redesignated subpar. (C) as (D).

Subsec. (h)(2)(D)(ii). Pub. L. 114-328, §804(g)(4), substituted “subsection (c)(1)(B)(ii)” for “subsection (c)(1)(B)(iii)”.

Subsec. (i)(1). Pub. L. 114-328, §804(h), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “The term ‘Secretary concerned’ includes the Secretary of Defense with respect to Defense-wide appropriations accounts.”

Subsec. (j)(1). Pub. L. 114-328, §804(j), substituted “terminates at the close of September 30, 2022” for “terminates at the close of September 30, 2006”.

2013—Subsecs. (i) to (k). Pub. L. 113-66 redesignated subsecs. (j) and (k) as (i) and (j), respectively, and struck out former subsec. (i) which related to an annual report submitted by the Secretary of Defense to the congressional defense committees and the Committee on Governmental Affairs of the Senate and the Committee on Government Reform and Oversight of the House of Representatives.

2006—Subsec. (b)(1). Pub. L. 109-364 substituted “subsection (c)(1)(B)(iii)” for “subsections (c)(1)(B)(iii)”.

2003—Subsec. (b). Pub. L. 108-136, §1008(a)(3), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 108-136, §1008(a)(1), (2), redesignated subsec. (b) as (c) and struck out heading and text of former subsec. (c). Text read as follows: “Funds transferred to the Defense Modernization Account from funds appropriated for a military department, Defense Agency, or other element of the Department of Defense shall be available in accordance with subsections (f) and (g) only for transfer to funds available for that military department, Defense Agency, or other element.”

Subsec. (c)(1)(B)(iii). Pub. L. 108-136, §1008(c)(1), added cl. (iii).

Subsec. (c)(2). Pub. L. 108-136, §1008(c)(2), inserted “, other than funds referred to in subparagraph (B)(iii) of such paragraph,” after “Funds referred to in paragraph (1)”.

Subsec. (d). Pub. L. 108-136, §1008(b), substituted “in the Defense Modernization Account” for “available from the Defense Modernization Account pursuant to subsection (f) or (g)” in introductory provisions, added par. (1), and redesignated former pars. (1) and (2) as (2) and (3), respectively.

Subsec. (h). Pub. L. 108-136, §1008(d), designated existing provisions as par. (1) and added par. (2).

Subsec. (i). Pub. L. 108-136, §1008(e)(1), substituted “Annual Report” for “Quarterly Reports” in heading.

Subsec. (i)(1). Pub. L. 108-136, §1008(e)(1), (2), substituted “fiscal year” for “calendar quarter” in introductory provisions and “fiscal year” for “quarter” in subpars. (A) to (C).

Subsec. (j)(3). Pub. L. 108-136, §1043(b)(8), struck out par. (3) which read as follows: “The term ‘congressional defense committees’ means—

“(A) the Committee on Armed Services and the Committee on Appropriations of the Senate; and

“(B) the Committee on Armed Services and the Committee on Appropriations of the House of Representatives.”

Subsec. (k). Pub. L. 108-136, §1008(f)(1), added subsec. (k).

1999—Subsec. (j)(3)(B). Pub. L. 106-65 substituted “Committee on Armed Services” for “Committee on National Security”.

CHANGE OF NAME

Committee on Governmental Affairs of Senate changed to Committee on Homeland Security and Governmental Affairs of Senate, effective Jan. 4, 2005, by Senate Resolution No. 445, One Hundred Eighth Congress, Oct. 9, 2004.

Committee on Government Reform and Oversight of House of Representatives changed to Committee on Government Reform of House of Representatives by House Resolution No. 5, One Hundred Sixth Congress, Jan. 6, 1999. Committee on Government Reform of House of Representatives changed to Committee on Oversight and Government Reform of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

EFFECTIVE DATE

Pub. L. 104-106, div. A, title IX, §912(b), Feb. 10, 1996, 110 Stat. 410, provided that: “Section 2216 of title 10, United States Code (as added by subsection (a)), shall apply only to funds appropriated for fiscal years after fiscal year 1995.”

EXPIRATION OF AUTHORITY AND ACCOUNT

Pub. L. 104-106, div. A, title IX, §912(c), Feb. 10, 1996, 110 Stat. 410, as amended by Pub. L. 107-314, div. A, title VIII, §825(a)(1), Dec. 2, 2002, 116 Stat. 2615, provided that authority under section 2216(b) of this title to transfer funds into Defense Modernization Account terminated at close of Sept. 30, 2002, and the Account was to be closed three years later, prior to repeal by Pub. L. 108-136, div. A, title X, §1008(f)(2), Nov. 24, 2003, 117 Stat. 1587.

GAO REVIEWS

Pub. L. 104-106, div. A, title IX, §912(d), Feb. 10, 1996, 110 Stat. 410, required Comptroller General of the United States to conduct two reviews of the administration of the Defense Modernization Account, prior to repeal by Pub. L. 107-314, div. A, title VIII, §825(a)(2), Dec. 2, 2002, 116 Stat. 2615.

§ 2216a. Rapidly meeting urgent needs: Joint Urgent Operational Needs Fund

(a) ESTABLISHMENT.—There is established in the Treasury an account to be known as the “Joint Urgent Operational Needs Fund” (in this section referred to as the “Fund”).

(b) ELEMENTS.—The Fund shall consist of the following:

- (1) Amounts appropriated to the Fund.
- (2) Amounts transferred to the Fund.
- (3) Any other amounts made available to the Fund by law.

(c) USE OF FUNDS.—(1) Amounts in the Fund shall be available to the Secretary of Defense for

capabilities that are determined by the Secretary, pursuant to the review process required by section 804(b) of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (10 U.S.C. 2302 note), to be suitable for rapid fielding in response to urgent operational needs.

(2) The Secretary shall establish a merit-based process for identifying equipment, supplies, services, training, and facilities suitable for funding through the Fund.

(3) Nothing in this section shall be interpreted to require or enable any official of the Department of Defense to provide funding under this section pursuant to a congressional earmark, as defined in clause 9 of Rule XXI of the Rules of the House of Representatives, or a congressionally directed spending item, as defined in paragraph 5 of Rule XLIV of the Standing Rules of the Senate.

(d) TRANSFER AUTHORITY.—(1) Amounts in the Fund may be transferred by the Secretary of Defense from the Fund to any of the following accounts of the Department of Defense to accomplish the purpose stated in subsection (c):

(A) Operation and maintenance accounts.

(B) Procurement accounts.

(C) Research, development, test, and evaluation accounts.

(2) Upon determination by the Secretary that all or part of the amounts transferred from the Fund under paragraph (1) are not necessary for the purpose for which transferred, such amounts may be transferred back to the Fund.

(3) The transfer of an amount to an account under the authority in paragraph (1) shall be deemed to increase the amount authorized for such account by an amount equal to the amount so transferred.

(4) The transfer authority provided by paragraphs (1) and (2) is in addition to any other transfer authority available to the Department of Defense by law.

(e) SUNSET.—The authority to make expenditures or transfers from the Fund shall expire on September 30, 2018.

(Added Pub. L. 112-81, div. A, title VIII, §846(a)(1), Dec. 31, 2011, 125 Stat. 1516; amended Pub. L. 112-239, div. A, title X, §1076(e)(2), Jan. 2, 2013, 126 Stat. 1951; Pub. L. 113-291, div. A, title VIII, §860, Dec. 19, 2014, 128 Stat. 3461.)

REFERENCES IN TEXT

Section 804(b) of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011, referred to in subsec. (c)(1), is section 804(b) of Pub. L. 111-383, which is set out as a note under section 2302 of this title.

PRIOR PROVISIONS

A prior section 2216a, added Pub. L. 104-106, div. A, title III, §371(a)(1), Feb. 10, 1996, 110 Stat. 277, §2216; renumbered §2216a and amended Pub. L. 104-201, div. A, title III, §§363(c), 364, title X, §1074(a)(10), Sept. 23, 1996, 110 Stat. 2493, 2494, 2659, related to Defense Business Operations Fund, prior to repeal by Pub. L. 105-261, div. A, title X, §1008(b), Oct. 17, 1998, 112 Stat. 2117.

AMENDMENTS

2014—Subsec. (e). Pub. L. 113-291 substituted “September 30, 2018” for “September 30, 2015”.

2013—Subsec. (e). Pub. L. 112-239 substituted “on September 30, 2015.” for “on the last day of the third fiscal year that begins after the date of the enactment of the