

1961—Pub. L. 87-212, §1(2), Sept. 8, 1961, 75 Stat. 488, added item 2736 “Property loss; personal injury or death: incident to aircraft or missile operation”.

1959—Pub. L. 86-223, §1(2), Sept. 1, 1959, 73 Stat. 454, substituted “armed forces” for “Department of Army, Navy, or Air Force” in item 2734.

§ 2731. Definition

In this chapter, “settle” means consider, ascertain, adjust, determine, and dispose of a claim, whether by full or partial allowance or by disallowance.

(Aug. 10, 1956, ch. 1041, 70A Stat. 152.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
2731	[No source].	[No source].

The revised section is inserted for clarity and is based on usage in the source laws for this revised chapter.

CONGRESSIONAL DEFENSE COMMITTEES DEFINED

Pub. L. 116-93, div. A, title VIII, §8027, Dec. 20, 2019, 133 Stat. 2342, provided that: “For the purposes of this Act [div. A of Pub. L. 116-93, see Tables for classification], the term ‘congressional defense committees’ means the Armed Services Committee of the House of Representatives, the Armed Services Committee of the Senate, the Subcommittee on Defense of the Committee on Appropriations of the Senate, and the Subcommittee on Defense of the Committee on Appropriations of the House of Representatives.”

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 115-245, div. A, title VIII, §8026, Sept. 28, 2018, 132 Stat. 3005.

Pub. L. 115-141, div. C, title VIII, §8026, Mar. 23, 2018, 132 Stat. 469.

Pub. L. 115-31, div. C, title VIII, §8027, May 5, 2017, 131 Stat. 252.

Pub. L. 114-113, div. C, title VIII, §8026, Dec. 18, 2015, 129 Stat. 2356.

Pub. L. 113-235, div. C, title VIII, §8026, Dec. 16, 2014, 128 Stat. 2258.

Pub. L. 113-76, div. C, title VIII, §8025, Jan. 17, 2014, 128 Stat. 109.

EX GRATIA PAYMENTS

Pub. L. 116-93, div. A, title VIII, §8104, Dec. 20, 2019, 133 Stat. 2361, provided that:

“(a) Of the funds appropriated in this Act [div. A of Pub. L. 116-93, see Tables for classification] for the Department of Defense, amounts should be made available, under such regulations as the Secretary of Defense may prescribe, to local military commanders appointed by the Secretary, or by an officer or employee designated by the Secretary, to provide at their discretion ex gratia payments in amounts consistent with subsection (d) of this section for damage, personal injury, or death that is incident to combat operations of the Armed Forces in a foreign country.

“(b) An ex gratia payment under this section may be provided only if—

“(1) the prospective foreign civilian recipient is determined by the local military commander to be friendly to the United States;

“(2) a claim for damages would not be compensable under chapter 163 of title 10, United States Code (commonly known as the ‘Foreign Claims Act’); and

“(3) the property damage, personal injury, or death was not caused by action by an enemy.

“(c) Any payments provided under a program under subsection (a) shall not be considered an admission or acknowledgement of any legal obligation to compensate for any damage, personal injury, or death.

“(d) If the Secretary of Defense determines a program under subsection (a) to be appropriate in a particular

setting, the amounts of payments, if any, to be provided to civilians determined to have suffered harm incident to combat operations of the Armed Forces under the program should be determined pursuant to regulations prescribed by the Secretary and based on an assessment, which should include such factors as cultural appropriateness and prevailing economic conditions.

“(e) Local military commanders shall receive legal advice before making ex gratia payments under this subsection. The legal advisor, under regulations of the Department of Defense, shall advise on whether an ex gratia payment is proper under this section and applicable Department of Defense regulations.

“(f) A written record of any ex gratia payment offered or denied shall be kept by the local commander and on a timely basis submitted to the appropriate office in the Department of Defense as determined by the Secretary of Defense.

“(g) The Secretary of Defense shall report to the congressional defense committees [Committees on Armed Services and Subcommittees on Defense of the Committees on Appropriations of the Senate and the House of Representatives] on an annual basis the efficacy of the ex gratia payment program including the number of types of cases considered, amounts offered, the response from ex gratia payment recipients, and any recommended modifications to the program.”

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 115-245, div. A, title VIII, §8106, Sept. 28, 2018, 132 Stat. 3025.

Pub. L. 115-141, div. C, title VIII, §8107, Mar. 23, 2018, 132 Stat. 488.

Pub. L. 115-31, div. C, title VIII, §8107, May 5, 2017, 131 Stat. 272.

Pub. L. 114-113, div. C, title VIII, §8111, Dec. 18, 2015, 129 Stat. 2377.

Pub. L. 113-235, div. C, title VIII, §8121, Dec. 16, 2014, 128 Stat. 2281.

Pub. L. 113-76, div. C, title VIII, §8127, Jan. 17, 2014, 128 Stat. 134.

AUTHORITY FOR CERTAIN PAYMENTS TO REDRESS INJURY AND LOSS

Pub. L. 116-92, div. A, title XII, §1213, Dec. 20, 2019, 133 Stat. 1629, provided that:

“(a) AUTHORITY.—During the period beginning on the date of the enactment of this Act [Dec. 20, 2019] and ending on December 31, 2022, not more than \$3,000,000 for each calendar year, to be derived from funds authorized to be appropriated to the Office of the Secretary of Defense under the Operation and Maintenance, Defense-wide account, may be made available for ex gratia payments for damage, personal injury, or death that is incident to the use of force by the United States Armed Forces, a coalition that includes the United States, a military organization supporting the United States, or a military organization supporting the United States or such coalition.

“(b) CONDITIONS ON PAYMENT.—An ex gratia payment authorized pursuant to subsection (a) may be provided only if—

“(1) the prospective foreign civilian recipient is determined by the local military commander to be friendly to the United States;

“(2) a claim for damages would not be compensable under chapter 163 of title 10, United States Code (commonly known as the ‘Foreign Claims Act’);

“(3) the property damage, personal injury, or death was not caused by action by an enemy;

“(4) the claimant suffered property damage, personal injury, or death that was—

“(A) caused by the United States Armed Forces, a coalition that includes the United States, or a military organization supporting the United States or such a coalition; and

“(B) occurred during an operation carried out by the United States, such coalition, or such military organization; and

“(5) the claimant had no involvement in planning or executing an attack or other hostile action that

gave rise to the use of force by the United States, such coalition, or such military organization resulting in such property damage, personal injury, or death.

“(c) NATURE OF PAYMENT.—A payment provided pursuant to the authority under subsection (a) may not be construed or considered as an admission or acknowledgment of any legal obligation to provide compensation for any property damage, personal injury, or death.

“(d) AMOUNT OF PAYMENTS.—If the Secretary of Defense determines a payment under subsection (a) to be appropriate in a particular setting, the amounts of payments, if any, to be provided to civilians determined to have suffered harm incident to the use of force by the United States Armed Forces under the program should be determined pursuant to regulations prescribed by the Secretary and based on an assessment, conducted in consultation with the Secretary of State, that includes such factors as cultural appropriateness and prevailing economic conditions. A copy of any regulations so prescribed shall be provided to the congressional defense committees [Committees on Armed Services and Appropriations] of the Senate and the House of Representatives] upon finalization.

“(e) LEGAL ADVICE.—Local military commanders shall receive legal advice before making ex gratia payments under this subsection. The legal advisor, under regulations of the Department of Defense, shall advise on whether an ex gratia payment is proper under this section and applicable Department of Defense regulations.

“(f) WRITTEN RECORD.—A written record of any ex gratia payment offered pursuant to the authority under subsection (a), and whether accepted or denied, shall be kept by the local military commander and on a timely basis submitted to the appropriate office in the Department of Defense as determined by the Secretary of Defense.

“(g) QUARTERLY REPORT.—Not later than 90 days after the date of the enactment of this Act [Dec. 20, 2019], and every 90 days thereafter, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations] of the Senate and the House of Representatives] a report including the following:

“(1) With respect to each ex gratia payment made under the authority in this subsection or any other authority during the preceding 90-day period, each of the following:

“(A) The amount used for such payments and the country with respect to which each such payment was made.

“(B) The manner in which claims for such payments were verified.

“(C) The position of the official who approved the payment.

“(D) The manner in which payments are made.

“(2) With respect to a preceding 90-day period in which no ex gratia payments were made—

“(A) whether any such payment was refused, along with the reason for such refusal; or

“(B) any other reason for which no such payments were made.

“(h) RELATION TO OTHER AUTHORITIES.—Notwithstanding any other provision of law, the authority provided by this section shall be construed as the sole authority available to make ex gratia payments for property damage, personal injury, or death that is incident to the use of force by the United States Armed Forces.”

REPORT ON DEPARTMENT POLICY ON PAYMENT OF CLAIMS FOR LOSS OF PERSONAL PROPERTY

Pub. L. 105-85, div. A, title X, §1013(b), Nov. 18, 1997, 111 Stat. 1874, provided that: “The Secretary of Defense shall submit to Congress a report describing the Department of Defense policy regarding the payment of a claim by a member of the Armed Forces who is not assigned to quarters of the United States for losses and damage to personal property of the member incurred at

the member’s residence as a result of a natural disaster. The report shall include a description of the number of such claims received over the past 10 years, the number of claims paid, and the number of claims rejected. If the Secretary determines the Department of Defense should modify its policy in order to accept additional claims by members who are not assigned to quarters of the United States for losses and damage to personal property, the Secretary shall also include in the report any legislative changes that the Secretary considers necessary to enable the Secretary to implement the policy change.”

PUBLIC HEALTH SERVICE

Authority vested by this chapter in “military departments”, “the Secretary concerned”, or “the Secretary of Defense” to be exercised, with respect to commissioned officers of Public Health Service, by Secretary of Health and Human Services or his designee, see section 213a of Title 42, The Public Health and Welfare.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Authority vested by sections 2731, 2732, and 2735 of this title in “military departments”, “the Secretary concerned”, or “the Secretary of Defense” to be exercised, with respect to commissioned officer corps of National Oceanic and Atmospheric Administration, by Secretary of Commerce or his designee, see section 3071 of Title 33, Navigation and Navigable Waters.

§ 2732. Payment of claims: availability of appropriations

Appropriations available to the Department of Defense for operation and maintenance may be used for payment of claims authorized by law to be paid by the Department of Defense (except for civil functions), including—

(1) claims for damages arising under training contracts with carriers; and

(2) repayment of amounts determined by the Secretary concerned to have been erroneously collected—

(A) from military and civilian personnel of the Department of Defense; or

(B) from States or territories or the District of Columbia (or members of the National Guard units thereof).

(Added Pub. L. 101-510, div. A, title XIV, §1481(j)(1), Nov. 5, 1990, 104 Stat. 1708.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 100-463, title VIII, §8098, Oct. 1, 1988, 102 Stat. 2270-35, which was set out as a note under section 2241 of this title, prior to repeal by Pub. L. 101-510, §1481(j)(3).

A prior section 2732, acts Aug. 10, 1956, ch. 1041, 70A Stat. 152; Sept. 2, 1958, Pub. L. 85-861, §§1(53), 33(a)(16), 72 Stat. 1461, 1565; Sept. 15, 1965, Pub. L. 89-185, §1, 79 Stat. 789, related to settlement of property loss incident to service, prior to repeal by Pub. L. 88-558, §5(3), Aug. 31, 1964, 78 Stat. 768, effective two years from Aug. 31, 1964. See section 3701 et seq. of Title 31, Money and Finance.

§ 2733. Property loss; personal injury or death: incident to noncombat activities of Department of Army, Navy, or Air Force

(a) Under such regulations as the Secretary concerned may prescribe, he, or, subject to appeal to him, the Judge Advocate General of an armed force under his jurisdiction, or the chief Counsel of the Coast Guard, as appropriate, if designated by him, may settle, and pay in an