

Corps and civilian employees”, effective two years after Aug. 31, 1964. Pub. L. 88–558, was itself repealed by Pub. L. 97–258, §5(b), Sept. 13, 1982, 96 Stat. 1068.

1962—Pub. L. 87–769, §1(1)(B), Oct. 9, 1962, 76 Stat. 768, added item 2736 “Property loss; personal injury or death: incident to use of property of the United States and not cognizable under other law”.

Pub. L. 87–651, title I, §113(b), Sept. 7, 1962, 76 Stat. 513, added items 2734a and 2734b.

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.

Statutory Notes and Related Subsidiaries

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, as amended by Pub. L. 117–81, div. A, title XIII, §1331(a)–(d), Dec. 27, 2021, 135 Stat. 2006, 2007, 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, 2023, 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 not otherwise ineligible for payment under any other provision of law;

“(2) a request 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 prospective foreign civilian recipient 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 prospective foreign civilian recipient 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) PROCEDURES TO REVIEW ALLEGATIONS.—

“(1) PROCEDURES REQUIRED.—Not later than 180 days after the date of enactment of this subsection [Dec. 27, 2021], the Secretary of Defense shall establish procedures to receive, evaluate, and respond to allegations of civilian harm resulting from military operations involving the United States Armed Forces, a coalition that includes the United States, or a military organization supporting the United States. Such responses may include—

“(A) a formal acknowledgement of such harm;

“(B) a nonmonetary expression of condolence; or

“(C) an ex gratia payment.

“(2) CONSULTATION.—In establishing the procedures under paragraph (1), the Secretary of Defense shall consult with the Secretary of State and with non-governmental organizations that focus on addressing civilian harm in conflict.

“(3) POLICY UPDATES.—Not later than one year after the date of the enactment of this subsection, the Secretary of Defense shall ensure that procedures established under paragraph (1) are formalized through updates to the policy referred to in section 936 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232; 10 U.S.C. 134 note).

“(e) 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.

“(f) 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.

“(g) 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.

“(h) 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 requests 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.

“(3) The status of Department of Defense efforts to establish the requests procedures required under subsection (d)(1) and to otherwise implement this section.

“(i) 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.”

[Pub. L. 117–81, div. A, title XIII, §1331(e), Dec. 27, 2021, 135 Stat. 2007, provided that: “Nothing in this section [amending section 1213 of Pub. L. 116–92, set out above] or the amendments made by this section may be construed to require the Secretary of Defense to pause, suspend, or otherwise alter the provision of ex gratia payments in accordance with section 1213 of the National Defense Authorization Act for Fiscal Year 2020, as amended, in the course of developing the procedures required by subsection (d) of such section (as added by subsection (d) of this section).”]

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 exer-

cised, 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.)

Editorial Notes

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 amount not more than \$100,000, a claim against the United States for—

(1) damage to or loss of real property, including damage or loss incident to use and occupancy;

(2) damage to or loss of personal property, including property bailed to the United States and including registered or insured mail damaged, lost, or destroyed by a criminal act while in the possession of the Army, Navy, Air Force, Marine Corps, Space Force, or Coast Guard, as the case may be; or

(3) personal injury or death;

either caused by a civilian officer or employee of that department, or the Coast Guard, or a member of the Army, Navy, Air Force, Marine Corps, Space Force, or Coast Guard, as the case may be, acting within the scope of his employment, or otherwise incident to noncombat activities of that department, or the Coast Guard.

(b) A claim may be allowed under subsection (a) only if—

(1) it is presented in writing within two years after it accrues, except that if the claim accrues in time of war or armed conflict or if such a war or armed conflict intervenes within two years after it accrues, and if good cause is shown, the claim may be presented not later than two years after the war or armed conflict is terminated;

(2) it is not covered by section 2734 of this title or section 2672 of title 28;

(3) it is not for personal injury or death of such a member or civilian officer or employee whose injury or death is incident to his service;

(4) the damage to, or loss of, property, or the personal injury or death, was not caused wholly or partly by a negligent or wrongful act of the claimant, his agent, or his employee; or, if so caused, allowed only to the extent that the law of the place where the act or omission complained of occurred would permit recovery from a private individual under like circumstances; and

(5) it is substantiated as prescribed in regulations of the Secretary concerned.

For the purposes of clause (1), the dates of the beginning and ending of an armed conflict are the dates established by concurrent resolution of Congress or by a determination of the President.

(c) Payment may not be made under this section for reimbursement for medical, hospital, or burial services furnished at the expense of the United States.

(d) If the Secretary concerned considers that a claim in excess of \$100,000 is meritorious, and the claim otherwise is payable under this section, the Secretary may pay the claimant \$100,000 and report any meritorious amount in excess of \$100,000 to the Secretary of the Treasury for payment under section 1304 of title 31.

(e) Except as provided in subsection (d), no claim may be paid under this section unless the amount tendered is accepted by the claimant in full satisfaction.

(f) For the purposes of this section, a member of the National Oceanic and Atmospheric Administration or of the Public Health Service who is serving with the Navy or Marine Corps shall be treated as if he were a member of that armed force.

(g) Under regulations prescribed by the Secretary concerned, an officer or employee under the jurisdiction of the Secretary may settle a claim that otherwise would be payable under this section in an amount not to exceed \$25,000. A decision of the officer or employee who makes a final settlement decision under this section may be appealed by the claimant to the Secretary concerned or an officer or employee designated by the Secretary for that purpose.

(h) Under such regulations as the Secretary of Defense may prescribe, he or his designee has the same authority as the Secretary of a military department under this section with respect to the settlement of claims based on damage, loss, personal injury, or death caused by a civilian officer or employee of the Department of Defense acting within the scope of his employment