

Subsec. (c)(2). Pub. L. 116-283, §924(b)(1)(N), substituted “Marine Corps, and Space Force” for “and Marine Corps”.

1996—Subsec. (b). Pub. L. 104-106 substituted “Under Secretary of Defense (Comptroller)” for “Comptroller of the Department of Defense”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by section 1809(f)(1) of Pub. L. 116-283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116-283, set out as a note preceding section 3001 of this title.

§ 3136. 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)(ii) 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 Ac-

count 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 De-

fense 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 defense 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 4201 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 trans-

fer 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 remaining 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, §2216; 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; Pub. L. 116–92, div. A, title XVII, §1731(a)(30), Dec. 20, 2019, 133 Stat. 1814; renumbered §3136 and amended Pub. L. 116–283, div. A, title XVIII, §§1809(g)(1), 1883(b)(2), Jan. 1, 2021, 134 Stat. 4161, 4294.)

Editorial Notes

AMENDMENTS

2021—Pub. L. 116–283, §1809(g)(1), renumbered section 2216 of this title as this section.

Subsec. (i)(1). Pub. L. 116–283, §1883(b)(2), substituted “section 4201 of this title” for “section 2430(a) of this title”.

2019—Subsec. (b)(1). Pub. L. 116–92 substituted “subsection (c)(1)(B)(ii)” for “subsection (c)(1)(B)(iii)”.

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 follows: “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”.

Statutory Notes and Related Subsidiaries

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. Committee on Oversight and Government Reform of House of Representatives changed to Committee on Oversight and Reform of House of Representatives by House Resolution No. 6, One Hundred Sixteenth Congress, Jan. 9, 2019.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116-283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116-283, set out as a note preceding section 3001 of this title.

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 [now 10 U.S.C. 3136] (as added by subsection (a)), shall apply only to funds appropriated for fiscal years after fiscal year 1995.”

[§ 3137. Omitted]

Editorial Notes

CODIFICATION

Pub. L. 116-283, div. A, title XVIII, §1809(h)(1), Jan. 1, 2021, 134 Stat. 4162, directed the transfer of section 235 of this title to this section, which was to take effect Jan. 1, 2022. However, Pub. L. 117-81, div. A, title VIII, §815(b)(1), Dec. 27, 2021, 135 Stat. 1825, subsequently repealed section 235 of this title effective Dec. 27, 2021, effectively eliminating that transfer and omitting this section before it took effect.