

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

EFFECTIVE DATE OF 2024 AMENDMENT

Pub. L. 118-159, div. A, title X, § 1003(b), Dec. 23, 2024, 138 Stat. 2047, provided that: “Paragraphs (5) and (6) of subsection (d) of section 3136 of title 10, United States Code, as added by subsection (a), shall apply only with respect to funds made available, and transferred to the Defense Modernization Account, on or after the date of the enactment of this Act [Dec. 23, 2024].”

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.

§ 3138. Obligations for contract services: reporting in budget object classes

(a) **LIMITATION ON REPORTING IN MISCELLANEOUS SERVICES OBJECT CLASS.**—The Secretary of Defense shall ensure that, in reporting to the Office of Management and Budget (pursuant to OMB Circular A-11 (relating to preparation and submission of budget estimates)) obligations of the Department of Defense for any period of time for contract services, no more than 15 percent of the total amount of obligations so reported is reported in the miscellaneous services object class.

(b) **DEFINITION OF REPORTING CATEGORIES FOR ADVISORY AND ASSISTANCE SERVICES.**—In carrying out section 1105(g) of title 31 for the Department of Defense (and in determining what services are to be reported to the Office of Management and Budget in the advisory and assistance services object class), the Secretary of Defense shall apply to the terms used for the definition of “advisory and assistance services” in paragraph (2)(A) of that section the following meanings (subject to the authorized exemptions):

(1) **MANAGEMENT AND PROFESSIONAL SUPPORT SERVICES.**—The term “management and professional support services” (used in clause (i) of section 1105(g)(2)(A) of title 31) means services that provide engineering or technical support, assistance, advice, or training for the efficient and effective management and operation of organizations, activities, or systems. Those services—

(A) are closely related to the basic responsibilities and mission of the using organization; and

(B) include efforts that support or contribute to improved organization or program management, logistics management, project monitoring and reporting, data collection, budgeting, accounting, auditing, and administrative or technical support for conferences and training programs.

(2) **STUDIES, ANALYSES, AND EVALUATIONS.**—The term “studies, analyses, and evaluations” (used in clause (ii) of section 1105(g)(2)(A) of title 31) means services that provide organized, analytic assessments to understand or evaluate complex issues to improve policy development, decisionmaking, management, or administration and that result in documents containing data or leading to conclusions or recommendations. Those services may include databases, models, methodologies, and related software created in support of a study, analysis, or evaluation.

(3) **ENGINEERING AND TECHNICAL SERVICES.**—The term “engineering and technical services” (used in clause (iii) of section 1105(g)(2)(A) of title 31) means services that take the form of advice, assistance, training, or hands-on training necessary to maintain and operate fielded weapon systems, equipment, and components (including software when applicable) at design or required levels of effectiveness.

(c) **PROPER CLASSIFICATION OF ADVISORY AND ASSISTANCE SERVICES.**—Before the submission to the Office of Management and Budget of the proposed Department of Defense budget for inclu-

sion in the President's budget for a fiscal year pursuant to section 1105 of title 31, the Secretary of Defense, acting through the Under Secretary of Defense (Comptroller), shall conduct a review of Department of Defense services expected to be performed as contract services during the fiscal year for which that budget is to be submitted in order to ensure that those services that are advisory and assistance services (as defined in accordance with subsection (b)) are in fact properly classified, in accordance with that subsection, in the advisory and assistance services object class.

(d) **REPORT TO CONGRESS.**—The Secretary shall submit to Congress each year, not later than 30 days after the date on which the budget for the next fiscal year is submitted pursuant to section 1105 of title 31, a report containing the information derived from the review under subsection (c).

(e) **ASSESSMENT BY COMPTROLLER GENERAL.**—(1) The Comptroller General shall conduct a review of the report of the Secretary of Defense under subsection (d) each year and shall—

(A) assess the methodology used by the Secretary in obtaining the information submitted to Congress in that report; and

(B) assess the information submitted to Congress in that report.

(2) Not later than 120 days after the date on which the Secretary submits to Congress the report required under subsection (d) for any year, the Comptroller General shall submit to Congress the Comptroller General's report containing the results of the review for that year under paragraph (1).

(f) **DEFINITIONS.**—In this section:

(1) The term “contract services” means all services that are reported to the Office of Management and Budget pursuant to OMB Circular A-11 (relating to preparation and submission of budget estimates) in budget object classes that are designated in the Object Class 25 series.

(2) The term “advisory and assistance services object class” means those contract services constituting the budget object class that is denominated “Advisory and Assistance Service” and designated (as of October 17, 1998) as Object Class 25.1 (or any similar object class established after October 17, 1998, for the reporting of obligations for advisory and assistance contract services).

(3) The term “miscellaneous services object class” means those contract services constituting the budget object class that is denominated “Other Services (services not otherwise specified in the 25 series)” and designated (as of October 17, 1998) as Object Class 25.2 (or any similar object class established after October 17, 1998, for the reporting of obligations for miscellaneous or unspecified contract services).

(4) The term “authorized exemptions” means those exemptions authorized (as of October 17, 1998) under Department of Defense Directive 4205.2, captioned “Acquiring and Managing Contracted Advisory and Assistance Services (CAAS)” and issued by the Under Secretary of Defense for Acquisition and Technology on February 10, 1992, such exemptions