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UNIVERSITY YEAR FOR ACTION

Demonstration Projects Evaluation

1980

Executive Summary

FINAL REPORT



**ACTION
EVALUATION**

UNIVERSITY YEAR FOR ACTION
Demonstration Projects Evaluation
1980

Executive Summary

ACTION
Office of Policy and Planning
Evaluation Division
June 1981

FOREWORD

The University Year for ACTION (UYA) Demonstration Projects Evaluation was designed to compare and contrast the demonstration program model with the standard grant program model. The study, which involved the volunteers and project directors from 26 UYA project sites, examined the effects of the new less restrictive guidelines as well as the strengths and weaknesses of the alternative funding model represented by the 1978 demonstration projects.

Appreciation is extended to Dr. David Sansbury, Dr. Mary Jo Smrekar and Judy Earp for the planning, data collection, data analysis and writing of the final report of this study.

The findings in this report are based on incomplete returns and consequently may not be representative of the projects as a whole in some instances.

Melvin E. Beetle
Evaluation Division
Office of Policy and Planning

EXECUTIVE SUMMARY

The UYA Demonstration Projects Evaluation focused on three 1978 standard grant projects, three 1978 demonstration projects and seven 1979 demonstration projects. The purpose of the study was to compare the demonstration projects with each other and with the standard grant projects to examine the effects of the less restrictive guidelines.

The data was collected through questionnaires mailed to volunteers and project directors/coordinators. Due to the poor response rate from some sites within the 13 projects, there were small numbers for particular questions or items in this report. Consequently, in some instances the data presented may not be representative of the project as a whole. Data was collected from 26 sites within 13 projects.

Major research questions focused on the following areas:

- (1) recruitment and retention
- (2) "grassroots" organizations serving as sponsoring agencies
- (3) volunteer roles which stress community organization and development
- (4) individual community members or groups of community members involved in the work of volunteers
- (5) numbers of poor and minorities in target populations
- (6) involvement of educational institutions in local target communities
- (7) service-learning activities in the educational institutions of the volunteers
- (8) integration of learning component with service activities
- (9) operational difficulties.

The results of the data analysis are presented under nine major headings which parallel the research questions.

Recruitment and Retention

All three project types maintained a volunteer strength in excess of 73 percent of the budgeted number of volunteers. The standard grant projects reported a slightly higher volunteer strength when compared with the demonstration projects (82%). Recruitment of local community members as volunteers varied little across all projects. Slightly more than two in five volunteers were recruited from the local community.

The two new provisions in UYA policies governing the demonstration projects received mixed reactions from the project directors in terms of effect on recruitment. Fifty-nine percent of the project directors reported the subsistence allowance a positive factor and 69 percent reported the provision of allowing six hours per week of academic classes a positive factor. Although these two provisions did have a positive effect on recruitment, they did not substantially influence recruitment when compared with the standard grant projects.

"Grassroots" Organizations Serving as Sponsoring Agencies

The 1979 demonstration projects were the only group that reported grassroots organizations serving as sponsoring agencies. Overall, there was a continuation of the trend of more traditional organizations serving as sponsors.

Volunteer Roles Which Stress Community Organization and Development

The demonstration projects showed a substantial increase in community organization roles when compared with the standard grant projects. The 1978 demonstration projects reported the greatest percentage in this particular role (72% of the volunteers) compared to the 1979 demonstration (46% of the volunteers). This is a reflection of the orientation of the projects -- the 1978 demonstration projects are community-based and the 1979 projects are university-based but have a community focus.

Individual Community Members or Groups of Community Members Involved in the Work of Volunteers

Involvement of individual community members was reported across all project types. However, the demonstration projects reported an increase in the involvement of groups of community members in the work of the volunteers. This reflects the difference of focus in the demonstration projects.

Numbers of Poor and Minorities in Target Populations

Based on data reported, there were no substantial differences in the focus on below poverty income populations across all projects. However, the standard grant projects served a larger number of blacks compared with the demonstration projects. This is likely due to the fact that two of the three institutions affiliated with the standard grant projects were Black colleges.

Involvement of Educational Institutions in Local Target Communities

Overall, 96 percent of the project directors reported some increased involvement of the educational institutions in the local communities served. The demonstration projects showed a greater involvement in only two of the six possible areas: (1) volunteering of non-UYA students, and (2) creating new projects involving faculty and students to address needs of the communities. The standard grant projects, on the other hand, showed greater involvement in all other areas such as volunteering of faculty to work in the community, responding to invitations from the local community for speaking engagements, and the availability of physical resources.

Service-Learning Activities in the Educational Institutions of the Volunteers

Overall, 92 percent of the project directors reported increased involvement of the educational institutions in service-learning activities. With the exception of one area--development of academic majors, minors, or concentrations in which the UYA project is a major experiential component--the standard grant projects showed greater involvement in service-learning activities in the institutions. The service-learning activities most commonly reported by the standard grant projects include more service-learning options with credit, modification of course content to reflect and incorporate the community experience and learning obtained by UYA volunteers as an integral part of the curriculum, and awarding of more credits for service-learning activities.

Integration of Learning Component With Service Activities

There was no significant difference, overall, in the degree of integration of the service and learning components. Such integration was high across all models.

Operational Difficulties

The most commonly reported areas of concern across all projects were: (1) recruitment and selection of volunteers, (2) getting volunteers enrolled in courses related to their UYA service, and (3) identification of alternative funding sources. The demonstration projects reported fewer difficulties in project operation than did the standard grant projects.

PROGRAM COMPARISON: VISTA AND NATIONAL SERVICE

Program Element	VISTA	National Service Proposal
Eligibility	18 years of age or older; U.S. citizen or permanent resident; average age is about 37 today	Focus on 18-25 year olds
Term of Service	One year enrollment; possible service up to 5 years; current average service is 18 months	One year period (?) Two year period (?)
Program Focus	Anti-Poverty	Broad community service tied to tuition/training benefits
Type of Assignment	Resource mobilizer; neighborhood and organizational capacity building	Broad range of service activities
Placement Mechanism	Locally within own communities (presently 80%); nationally through VISTA recruitment system (presently 20%)	Locally and possibly state (?)
Matching Requirement	No legislative requirement; most sponsors contribute supervision, transportation, space, supplies, etc.	Requirement for matching of subsistence and related direct support (?)
Living Allowance	Average of 105% of the poverty index for a single individual; actual rates are adjusted for cost-of-living	(?)

PROGRAM COMPARISON: VISTA AND NATIONAL SERVICE

Program Element	VISTA	National Service Proposal
Post-Service Benefits: Prior to college	\$1140 in readjustment stipend for each year of service with no restrictions on use	Up to \$5,000 (for non-loan cancellation participant) for each service year for employment training or further education
Student Loans	Deferment of repayment, not to exceed 3 years, while borrower is serving in VISTA; partial cancellation of Perkins Loans at 15% of the principal and interest for each of first & second years of service, and 20% for each of the third and fourth years of service; partial cancellation of Stafford loans authorized under Higher Ed. Act Amendments of 1992, but not funded.	Up to \$10,000 maximum loan cancellation for each year of service.
Health Insurance; Workmen's Compensation; Tort Claims	Comprehensive coverage	Comprehensive health coverage (?); no compensation or liability coverage(?)
Income Disregard	Allowances do not reduce or eliminate level of, eligibility for, <u>any</u> public assistance program	None (?)

PROGRAM COMPARISON: VISTA AND NATIONAL SERVICE

Program Element	VISTA	National Service Proposal
Child care	Not provided by VISTA; those eligible for child care through public assistance maintain that eligibility	To be provided (?)
Treatment as Federal Employee	For purposes of coverage under FECA, tort claims, service credit for retirement, leave and seniority in the Federal civil service, and non-competitive hiring in the Federal service	None
Training	Four days of pre-service orientation; in-service training primarily by sponsor	To be defined



OFFICE OF THE DIRECTOR

1100 VERMONT AVENUE, NW
WASHINGTON, DC 20525

March 19, 1993

Mr. Jack Lew
General Counsel
Office of National Service
The White House
Washington, D.C.

Dear Mr. *Jack* Lew:

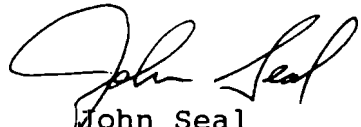
ACTION's staff have prepared recommendations related to the reauthorization of the Domestic Volunteer Service Act, which is scheduled to expire at the end of September. These recommendations are enclosed for your review along with a copy of the current Act.

In general, the recommendations are designed to: (1) add certain new authorities for activities that will enable existing programs to better achieve their intended purposes; (2) provide greater capacity and flexibility for the Agency to meet the purposes of the Act through these program structures; (3) improve the efficiency and effectiveness of the Agency by eliminating a number of specific statutory mandates that currently limit our flexibility; and (4) make a number of technical revisions to the existing statute.

Several of the recommendations may have a direct relationship to proposals under consideration for the President's National Service initiative. We have commented separately on the outline released by the Office of National Service last week.

We are in the process of converting these recommendations to a formal legislative package for transmittal to the Office of Management and Budget and then to the Congress. Inquiries on our reauthorization continue to come from our Committees. We expect to have this completed within two weeks and would appreciate your thoughts as we develop the package.

Sincerely,


John Seal
Acting Director

Enclosures

cc: Pam Van Wie
Office of Management and Budget

ACTION'S MISSION

To stimulate voluntary citizen participation in addressing the needs of American communities, particularly those of the poor, the disadvantaged and the elderly.

REAUTHORIZATION OF THE DOMESTIC VOLUNTEER SERVICE ACT (DVSA)

Recommendations

A. Title I of the DVSA

VISTA

1. Reauthorize the VISTA program so as to maintain its basic purpose and focus -- providing the opportunity for Americans of all ages and backgrounds to engage in full-time service addressing the critical needs of low-income communities and individuals.

The VISTA program has a rich history, is proven as an effective full-time volunteer program, and can be an important vehicle for expansion under National Service.

2. Establish a new authority within VISTA to support a summer of service. [Section 104 of the DVSA]

This new authority would enable individuals age 18 and over to volunteer under VISTA for the summer only, with the goals and requirements of the summer program being consistent with the overall VISTA program. The language would leave it to the discretion of the Director to set the terms and conditions of the summer program. [ACTION is currently planning to implement a VISTA Summer Associates Program under its broad authority to conduct volunteer programs under Part C of the DVSA. This change would provide specific authority for a VISTA Summer Associates program.]

3. Expand the statement of purpose of the VISTA program to reflect the strengthening of community and nonprofit organizations to address the needs of low-income communities and individuals. [Section 103]

This change clarifies that a purpose of the VISTA program is to strengthen local institutions and organizations to eliminate and alleviate poverty and poverty-related problems in the United States.

4. Leave the minimum subsistence rate for full-time volunteers at an average of about 105% of the poverty level for a single individual. [Section 105]

The current subsistence rate is adequate to attract and maintain individuals as VISTA Volunteers. The rate is adjusted to take into account geographic differences in the cost of living.

Maintaining the rate would keep VISTA cost-effective when compared to other full-time stipended programs. As currently written, the legislation allows for increases in the subsistence rate beyond the minimum of 105% of the poverty level for a single individual if circumstances warrant.

5. Increase the postservice stipend to a minimum of \$125 per month for each year of service, beginning in fiscal year 1995. [Section 105] \$1100

The current legislation provides a maximum postservice stipend of \$95 per month, or \$1,140 per year. This is less than a number of other programs enabling individuals to serve full-time, where postservice stipends of up to \$5,000 per year are provided for further education or to cover expenses.

This change will depend, to a certain extent, on broader questions related to National Service. Depending upon the specifics, ACTION believes that VISTA Volunteers should receive educational benefits comparable to the participants in the new National Service program.

If implemented, the program cost for this change per 1,000 volunteer service years is \$360,000 above current levels; based on current volunteer strength, the annual cost would be \$1.2 million. ACTION believes that the stipend should not be increased if it will reduce volunteer strength.

6. Consolidate fully VISTA Literacy Corps and VISTA, while maintaining a central focus of VISTA on literacy. [Sec. 109]

A separate identity for Literacy Corps, within the VISTA program, is not necessary. Instead, all existing and future volunteers engaged in literacy activities can be managed and accounted for under the regular VISTA program. Today, more volunteers engage in literacy activities under the regular VISTA program than under Literacy Corps. Whether or not there is a Literacy Corps, VISTA will continue to emphasize this very popular and proven activity.

The change will eliminate the need to develop projects, recruit volunteers, and track their costs, specifically for a subcomponent of the entire VISTA program. The administrative burden and cost to the Agency will be lessened.

[Note: If strong interest for a separate Literacy Corps continues, there are no major difficulties in keeping such a separation. If the Literacy Corps is maintained, ACTION

recommends deleting Section 109(g), which requires that funds made available for Literacy Corps shall be used to supplement and not supplant the level of services provided under the regular VISTA program in fiscal year 1986.]

7. Simplify the language requiring the Director to consider certain factors in selecting sponsors under the VISTA program; the intent is that support for projects under VISTA should be made on the basis of merit, and that the prior existence of VISTA support should not be a negative consideration when considering future support. [Sec. 110]

The current language is cumbersome and unnecessary.

8. Repeal provisions mandating particular organizational structures, information systems, staffing levels, and hiring requirements related to the recruitment and placement of VISTA Volunteers. [Section 103]

These provisions would be deleted because they are administratively cumbersome and unnecessary and restrict the flexibility of the Director to administer the recruitment and placement program in the most efficient and economical manner possible.

9. Revise authority for a sponsoring organization to recruit a volunteer to clarify that it is subject to the Director's approval and that the Director is not required to give priority for placement in that organization. [Section 103]

This would conform the legislation to the practice of having sponsoring organizations recruit volunteers subject to the approval of the Director. The sponsoring agency also must approve any volunteer assigned or recruited, and hence there is no reason for the Director to be required to give priority to a locally recruited volunteer.

10. Delete a provision that allows a project to replace an applicant who is recruited locally but becomes unavailable for service prior to commencement. [Section 103]

This particular authorization is unnecessary; when feasible, other recruits are assigned to projects when another recruit cannot become a volunteer.

11. Make a series of changes to the existing requirements concerning public awareness and recruitment, the composition of the volunteer force, and spending requirements related to promotion and recruitment. Specifically, the changes will:
(1) replace certain mandated activities with the requirement that the Director conduct a vigorous recruitment program,

with the specific activities under that program to be determined at the discretion of the Director; (2) eliminate the statutory requirement for the production of an annual recruitment plan with the recognition that this activity may continue at the discretion of the Director; (3) eliminate the mandate that 20 percent of the VISTA Volunteer force must be 55 years of age or older and another 20 percent must be between 18 and 27 years of age; (4) identify returned Peace Corps Volunteers as potential experienced applicants for VISTA; and (5) revise the requirement that a minimum of 1.5% of available monies must be spent for recruitment and promotion to such sums as necessary. [Section 103]

These changes are necessary to provide the Director with the discretion and flexibility necessary to conduct a vigorous recruitment and placement program that will meet the volunteer strength goal. Further, legislative mandates concerning age range prescribed as percentages of volunteers are unnecessarily restrictive and may conflict with other goals of the program, such as increasing the recruitment of recent college graduates. There is also potential for greater use of returned Peace Corps Volunteers as potential Volunteers under VISTA.

12. Clarify the terms and periods of service for VISTA Volunteers. [Section 104]

This change would clarify the statutory language concerning the terms and periods of service. VISTA volunteers may be enrolled initially for a minimum of one year, and a maximum of two years, of service. Exceptions to the minimum requirement are critical needs set by the Director and summer programs. Reenrollment terms are set by the Director, but no volunteer may serve for more than five years under the program.

13. Prepare separate legislation, in conjunction with the Peace Corps, to provide Federal Employees' Retirement System (FERS) coverage for Peace Corps and VISTA volunteer service for those entering service after January 1989.

Peace Corps and VISTA Volunteers lost this coverage when FERS replaced the Civil Service Retirement Act (CSRA). This is being prepared as stand-alone legislation because of the jurisdictional differences in the Congress and because the changes involved are not amendments to the DVSA. Peace Corps is taking the lead on this issue.

STUDENT COMMUNITY SERVICE PROGRAM

14. Reauthorize, as is, the authority to conduct a Student Community Service program.

The DVSA provides flexible authority for the Director to conduct Student Community Service Programs on a non-stipended basis. The nature and purpose of the programs to be funded are left to the discretion of the Director. ACTION's experience has been that such programs are extremely important sources of opportunities for young adults to engage in service while in school and can act as a "feeder system" for later VISTA enrollment.

15. Reauthorize the University Year for ACTION Program. Revise the minimum period of service under this program from an academic year to an academic semester. [Section 113]

This revision will enable individuals to participate in the program for an academic semester or its equivalent, whereas the former requirement was to serve for a minimum of one year. This will provide greater flexibility for individuals to participate in the program.

PART C PROGRAMS

16. Reauthorize Part C of title I providing broad authority to the Director to support volunteer programs, including demonstration and innovative activities. Redraft Title C to make the purpose clearer, to eliminate references to specific activities that should be supported, and to provide a simple, broad authority to serve as a "venture capital fund" for the Agency.

The major purposes of activities conducted under Part C would be to support: demonstrations, capacity building efforts, technical assistance, and other broad functions in support of volunteerism. The authority would include funding stipended volunteer programs through grants that are different from the VISTA and OAVP program structures. Non-stipended volunteer programs could also be supported. Drug abuse prevention activities, the priority over the last several years, would be permitted but would not be separately identified and authorized.

17. Reauthorize Literacy Challenge Grants. [Section 125]

This section provides authority to establish, operate, or expand community or employee literacy programs, with the Federal government contributing a declining grant share over

a three-year period. Although this section has not been funded to date, it could be an important vehicle for expanding literacy activities in the future. Further, while the recommended merger of VISTA and VISTA Literacy Corps does not reduce ACTION's concentration on literacy, the Literacy Challenge Grants would permit ongoing visibility to this emphasis area.

18. Drop the provision eliminating the ability to provide support for state offices of volunteerism. [Section 122]

The Administration may want to have the option of supporting such State organizations in the future.

B. Title II of the DVSA

OLDER AMERICAN VOLUNTEER PROGRAMS

1. Reauthorize ACTION's Older American Volunteer Programs -- Retired Senior Volunteer Program (RSVP), Foster Grandparent Program (FGP), and Senior Companion Program (SCP).

These programs have proven to be cost-effective vehicles for involving older Americans, including low-income seniors, in volunteer activities.

2. Rename the Retired Senior Volunteer Program to the "Retired and Senior Volunteer Program." Specify that individuals aged 55 and over, both retired and currently working either full-time or part-time, may serve under the Program.
[Section 201]

In recognition of the interest of older Americans aged 55 and above in participating in senior volunteer activities, this provision lowers the age limit for participation from 60 to 55, and clarifies that people still employed may participate in the Program. Since the program is non-stipended, this change does not automatically trigger higher Federal costs.

3. Clarify that Foster Grandparents may serve multiple children in certain settings, such as in Head Start projects.
[Section 211]

The DVSA authorizes Foster Grandparents to provide person-to-person services. ACTION believes that this unique characteristic of the Foster Grandparent Program, that is, linking a Foster Grandparent with individual children in need of assistance, needs to be preserved. However, the reality also is that Foster Grandparents working in schools, day care centers, and with the parents of children, are often providing special assistance to multiple individuals at the same time. These are positive experiences for both the Foster Grandparent and the organization and individuals receiving assistance, and the law should reflect these positive activities.

4. Provide authority under the Older American Volunteer Programs to enter into arrangements with profit-making organizations so as to offer the services of Senior Companions, Foster Grandparents, and Retired Senior Volunteer Programs with full cost reimbursement, including a portion of local administrative costs, to employees and relatives of such organizations.

The provision of such services may occur only when there is no negative impact on the organization to provide services in the public sector.

5. Permit Foster Grandparents and Senior Companions to work on a part-time basis.

This would clarify that these individuals are permitted to hold part-time employment while serving as Foster Grandparents and Senior Companions. It would not affect the separate provision requiring these volunteers to be low income.

6. Revise the language for stipends in the Senior Companion and Foster Grandparent Programs so as to set a minimum of \$2.45 on and after October 1, 1993. [Section 211]

The current law provides for a minimum of \$2.50 per hour, but appropriations have been insufficient to accomplish this rate. The DVSA specifies that increases in stipend rates may occur only if implementing the increase will not result in a decrease in the number of volunteers or projects supported in the prior year. The proposed language simply clarifies that we do not intend to reduce the current stipend level in future years.

7. Specify that, in carrying out the Older American Programs, the Director is encouraged to enter into arrangements with other federal agencies in order to expand ACTION's programs and the mission of the other Agency. Specifically, encourage the Director to enter into arrangements with the Department of Health and Human Services to provide Foster Grandparents in Head Start projects and to use Medicaid funds for Senior Companions, with the Department of Education to provide intergenerational tutoring and mentoring for at-risk children, with the Administration on Aging to promote in-home care, and with the Environmental Protection Agency to support environmental efforts.

This will provide legislative support for ACTION's participation in certain governmentwide initiatives that could benefit from volunteer involvement.

8. Delete the requirement that one-third of new monies must be made available for programs of national significance. Allow the amount to be a determination made by the Director of ACTION. [Section 225]

Although this provision has resulted in some additional monies for projects, it has proven administratively burdensome. Frequently, nationwide grant competitions are required to be held even when only a few awards will be made under this authority.

9. Revise the programs of national significance to indicate that they are priority areas to be implemented when new monies are available for existing projects. Expand to include environmental projects for RSVP and those reaching out to categories of new organizations not previously involved in local projects, such as labor unions and retired volunteer programs under private, profit-making corporations. [Section 225]

Currently, monies under this category are distributed on a discretionary basis, with the activities to be determined by local projects. This change would provide greater flexibility in administering the program on a nationwide basis and would expand the areas that may be supported.

10. Delete the requirement to report on the inflationary adjustments made for grants to the Older American programs. Retain the requirement to consider inflation when making annual grants. [Section 226]

This reporting burden, while intended to demonstrate projects' needs for additional administrative funds, has proven excessive for projects and the Government. A simple provision, requiring the Director to consider inflation when making awards, will suffice.

11. Repeal a requirement that grants under the Older American Volunteer Programs be made to a community action agency, and if not made to that agency, that certain requirements be met. Repeal a similar requirement related to State Agencies on Aging. [Section 212]

These provisions are outdated and no longer applicable. To the extent that community action agencies wish to participate in the program, they are afforded the same opportunity to do so as other local organizations. Further, the mission of community action agencies was changed under the Community Services Block Grant Act and they no longer receive direct, earmarked support from the Federal government. Finally, there is no need to give State Agencies on Aging a right of first refusal.

12. Delete a provision requiring the evaluation of the impact of projects assisted under the Senior Companion Program. [Section 213]

This provision is outdated and duplicative; Section 416 of the Act sets forth the evaluation requirements for all programs under the Domestic Volunteer Service Act.

13. Provide a separate authority to conduct demonstration and other innovative programs involving Older American Volunteers. Existing projects, as well as other organizations, would be eligible to compete for these monies.

This would provide flexible funds to be used to improve Older American Volunteer Programs on a nationwide basis. It is different from Part C under Title I in that programs do not have to be focused on poverty and will be targeted on Older American Volunteer Programs.

14. Modify language designed to make difficult the use of non-stipended volunteers in FGP and SCP, while retaining the intent of these provisions. [Section 211]

This language is not necessary; such activity will be permitted but it is not likely to grow and will not be encouraged.

15. Change the name of Title II from the Older American Volunteer Programs to National Senior Volunteer Corps.

This name reflects a more appropriate umbrella for these activities, and would encourage greater participation in local programs and projects.

C. TITLES IV THROUGH VII OF THE DVSA

1. Change the name of the organization to the Volunteer Action Agency. [Section 401]

This provision provides greater identity for the Agency with the public and others served by the organization. The title, ACTION, does not indicate the responsibilities and activities of the organization. A modified name, in addition to promoting greater identity, has the advantage of reflecting the mission and responsibilities of the organization.

2. Provide authority for the Director to solicit gifts [current authority is limited to accepting gifts]. [Section 402]

This provision provides the Agency with the ability to seek gifts and services from public and private agencies and individuals to support the activities authorized under the Domestic Volunteer Service Act. Currently, Agency officials may accept such gifts and services, but are not specifically authorized to actively solicit them. As a result, opportunities to further the mission of the Agency and its activities are lost.

3. Repeal the requirement for a report on the annual recruitment plan. [Section 407]

This provision is deleted because the report is unnecessary; the important information required in the report is provided to the Congress, through both authorizing and appropriations committees, upon request.

4. Revise the basis of computation for disability benefits for volunteers under the VISTA program from the entrance salary of a grade GS-7 employee to the entrance salary of a grade GS-5 employee. [Section 415]

This provision is necessary because the current computation procedure results in a situation where a volunteer receives more benefits upon becoming disabled than he or she receives as a volunteer. This both serves as a powerful disincentive to rehabilitate and increases costs. This new procedure will set a compensation rate that is fair and equitable, is comparable to that offered in other federal programs, and will encourage the return of recipients to gainful employment.

5. Revise the requirement for program evaluations as follows:
 - (a) Delete a requirement for an evaluation component in every grant of more than \$10,000. [Section 124]
 - (b) Eliminate a requirement that there be an evaluation for each program every three years, and specify that the Director shall evaluate ACTION's programs on a periodic basis, including setting up appropriate Management Information Systems for ACTION's programs. [Section 416]
 - (c) Authorize the creation of a Center for Research and Training on Volunteer Service. This Center would support independent research on the impact of volunteer service on the well-being of individuals, families, neighborhoods, and communities. As well, the Center would be charged with supporting training for volunteer efforts around the country. The Center would also serve as a clearinghouse for information.
 - (d) Authorize, from sums appropriated for the Act, not less than one-half of one percent, nor more than one percent, for the Agency's evaluation activities and the Center for Research and Training. This would replace the current authority enabling the Director to spend a maximum of one percent of program funds for evaluation purposes. Further, programs would be held harmless when implementing this authority. [Section 416]
6. Limit the liability of volunteers, advisory council members, and other personnel supported under the DVSA. Proposed language, based on model State legislation developed by the Department of Justice, is as follows:

The Act is amended by inserting the following new section at the end of Title IV:

"Section 425 (a). Any part-time or full-time volunteer serving under Title II of this Act, or individual serving as a member of a Board of Directors or Advisory Council of a nonprofit organization receiving support under this Act, shall be immune from civil liability in any legal cause of action on the basis of any act or omission of such volunteer or individual resulting in damage or injury if (1) the volunteer or individual was acting in good faith and within the scope of his/her official functions and duties; and (2) the damage or injury was not caused by willful or wanton misconduct by such volunteer or individual.

"(b). In any suit against a nonprofit organization receiving Federal assistance under this Act, based upon the negligent act or omission of a volunteer or individual as described in subsection (a) (including the limitations set forth in subsection (a)(1) and (a)(2) of this section) proof of such act or omission shall be sufficient to establish the responsibility of the organization, therefore, under the doctrine of respondeat superior, notwithstanding the immunity granted to the volunteer or individual with respect to any act or omission within the meaning of this section.

"(c). Notwithstanding subsection (b) of this section, a plaintiff may sue and recover civil damages from a volunteer or individual as described in subsection (a) of this section, based upon a negligent act or omission involving the operation of a motor vehicle under the circumstances described in subsection (b) of this section provided that the amount recovered from such volunteer or individual shall not exceed the limits of applicable insurance coverage, maintained by or on behalf of such volunteer or individual with respect to the negligent operation of a motor vehicle in such circumstances."

This provision is necessary given that the willingness of volunteers and others to offer their services has been increasingly deterred by a perception that they put personal assets at risk in the event of tort actions seeking damages arising from their activities as volunteers under this Act.

Further, the contributions of programs, activities and services to communities is diminished, and worthwhile programs, activities and services are deterred by such fears. There should be an effective balance in the public interest between the right of a person to seek redress for injury and the right of an individual to freely give his time and energy without compensation as a volunteer in service to his community without fear of personal liability for acts undertaken in good faith absent willful or wanton conduct on the part of the volunteer.

7. Provide copyright protection for the major programs operated by the Agency.

The specific language would be as follows:

The Act is amended by inserting the following new section at the end of Title IV, following Section 425:

"Section 426 (a). The following are hereby declared the property of the United States:

- (1) The name "Retired Senior Volunteer Program" and the logo and acronym, RSVP, associated therewith;
- (2) The name "Foster Grandparent Program" and the logo and acronym, FGP, associated therewith;
- (3) The name "Senior Companion Program" and the logo and acronym, SCP, associated therewith; and
- (4) The names "Volunteers in Service to America", "VISTA" and the logo associated therewith.

"(b). For purposes of this Section:

- (1) The term "Director" means the Director of the Volunteer Action Agency.
- (2) The term "the Act" means the Domestic Volunteer Service Act of 1973, as amended.
- (3) The terms "Volunteers in Service to America" and "VISTA" mean the name of the program established by Title I, Part A of the Act.
- (4) The term "Retired Senior Volunteer Program" means the name of the program established by Title II, Part A of the Act.
- (5) The term "Foster Grandparent Program" means the name of the program established by Title II, Part B of the Act.
- (6) The term "Senior Companion Program" means the name of the program established by Title II, Part C of the Act.

"(c). The Director shall deposit into a special account, to be available to foster and expand volunteerism consistent with the Act, all fees collected under regulations prescribed by him/her relating to use or reproduction of the property designated in subsection (a) of this Section by entities other than the Volunteer Action Agency.

"(d). Whoever, except as provided by regulations prescribed by the Director uses, reproduces or creates the appearance of using or reproducing any of the property designated in subsection A of this Section may be enjoined from such use, reproduction or misleading impression at the suit of the Attorney General upon complaint by the Director."

This Section is necessary because, on occasion, other organizations have used the names of ACTION programs and volunteers in a manner that is inappropriate for Federal volunteer programs. Other Federal programs and symbols, such as "Smokey the Bear" in the Department of the Interior, have such copyright protection.

8. Provide separate authorizations for programs under Title I of the legislation for fiscal years 1994, 1995, 1996, 1997, and 1998.

This authorization is necessary to provide authority for appropriations to carry out programs under Title I.

9. Amend the minimum service year floor under VISTA to reflect 5,500 volunteer service years in fiscal years 1994, and 7,500 volunteer service years in each of fiscal years 1995, 1996, 1997, and 1998.

This provision is dependent upon National Service decisions and is an important statement as to what extent the Administration supports VISTA. It is consistent with the package submitted by ACTION for VISTA's participation under National Service in fiscal year 1994, with the figures in the out-years left to future decisions about available slots within National Service.

10. Provide separate authorization for Older American Volunteer programs under Title II of the legislation for fiscal years 1994, 1995, 1996, 1997, and 1998. Authorization would be such sums as necessary.

This authorization is necessary to provide authority for appropriations to carry out programs under Title II.

11. Provide authorization for program administration under title IV of the legislation for fiscal years 1994, 1995, 1996, 1997, and 1998.

This Section is necessary to provide authority for appropriations to carry out Title IV of the Act.

12. Modify requirements placed upon grantees concerning the availability of records; insert the words "the Inspector General of ACTION" after the words "the Director" in the two places in which those words appear in subsection 422(b).

This will clarify that recipients of ACTION grants and contracts must make records available to the Inspector General of ACTION. This requirement already exists, but this language would help further specify the requirements placed upon grantees and contractors.

13. Clarify the statute so as to prohibit any coercion of volunteers or beneficiaries into making financial contributions and eliminate current requirements affecting funding relationships among sponsors, projects, and volunteer stations. [Section 404]

Section 404(c) of the DVSA creates operational problems for certain ACTION projects by appearing to prohibit them from receiving local support funds from project stations and sites in support of volunteer activities. This language clarifies that the prohibition applies to contributions from volunteers or beneficiaries only, not organizations where volunteers are assigned.

14. Add the following specific authority to the DVSA: "This Agency shall promote the coordination of volunteer efforts among federal, state, and local agencies and organizations, exchange technical assistance information among them, and provide technical assistance to other nations concerning domestic volunteer programs within their countries."
[Section 401]

While these activities are not prohibited, specifically mentioning them in the law would provide a firm basis for their implementation.

15. Add the following authority for the Director: "enter into agreements with private, profit-making organizations under terms and conditions determined by the Director when such agreements will further the purpose of this Act."
[Section 402]

This provision will provide specific authority to enter into formal arrangements with profit-making organizations to further the purpose of the Act.

16. Eliminate separate requirements for prescribing regulations.
[Section 420]

Governmentwide requirements concerning the publication of regulations exist and are sufficient to cover ACTION's

programs and operations; there is no need for additional requirements in the DVSA.

17. Retitle the statutory Presidential appointment of "Associate Director for Domestic and Anti-Poverty Operations" to "Associate Director for Program Operations." [Section 401]

The Associate Director title dates to the agency's formation when it was much larger and included additional programs (including the Peace Corps and the Service Corps of Retired Executives).



ACTION

1100 VERMONT AVENUE, NW
WASHINGTON, DC 20525

March 26, 1993

*Shirley = this is the
paper I gave to
Lois Quam at Health
TF for Long Term Care
working group.*

MEMORANDUM

TO: Judy Harrington, White House Liaison
FROM: Thomas E. Endres, Acting Assistant Director
Older American Volunteer Programs
SUBJECT: Senior Companion Program and Health Care

I am writing to you as a follow-up to our recent discussions about the Senior Companion Program and its relation to meeting the health care needs of at-risk adults. This little known Program is the "head start" of aging. The Senior Companion Program has established an incredible record of accomplishments and directly contributes in a low or no cost way to the health and well-ness of two at-risk populations. We believe, therefore, that the Senior Companion Program can be an important partner in reducing health care costs. It is a shining example of how the recipients of services can become the providers of services.

The Senior Companion Program utilizes low-income (at-risk because of income) elders, 60 years of age and older, and matches them with another adult, primarily an older adult, who needs support and assistance to sustain independent living and prevent inappropriate placement into a nursing home, convalescent center, or other long-term care facility. The basis of the relationship between these two at-risk populations is the self-help, voluntary relationship which maintains and enhances the self-image and self-esteem of both individuals.

Through the Senior Companion Program, the low-income individual, serving as a companion to another, is provided a small stipend as an incentive to get involved and become reconnected to the community. The services provided by the low-income Senior Companion is unrestricted and free to another adult at risk of inappropriate institutionalization.

Why is this little known Program important? Today, about 32 million Americans are age 65 or older. By the year 2000, that number will swell to more than 52 million, and almost 7 million will be 85 or older. Although most of the Nation's elderly are healthy and independent, a growing number need help to maintain their independence and avoid costly institutionalization. This changing demography will challenge the Nation throughout this decade and beyond. The potential costs related to this demographic, population bubble as it rises, is staggering and an increasing national priority.

ACTION'S MISSION

To stimulate voluntary citizen participation in addressing the needs of American communities, particularly those of the poor, the disadvantaged and the elderly.

The Senior Companion Program, at a cost of three dollars per hour of service, keeps low-income elders involved in important and valued community service, thereby, contributing to their physical, mental, and emotional well-being. At the same time, the person receiving the non-medical personal support of Senior Companions is able to remain at home, outside the long-term care system; does not require Federal cost support for dependent care; and is able to continue, independently with Senior Companion support, active participation in the community.

The Senior Companion Program currently supports 181 projects across the country with 10,413 Senior Companions serving over 36,000 persons. Senior Companion volunteers serve in over 2,700 human services agencies whose missions are to serve at-risk adults. Seventy-nine percent of Senior Companions serve in private homes. The remainder serve in community based adult day care centers and similar local organizations.

Senior Companions support the needs of others with chronic care disabilities, emotional impairments, mental illness, short-term acute care disabilities, visual impairment, need for respite of primary care givers. This level of activity has shown beyond doubt the value of informal, non-medical support of trained volunteers in freeing professionally trained providers from non-professional tasks, thereby, increasing professional skilled services to additional clients.

This simple idea is catching on. Senior Companion volunteers tell us the Program:

- "gives me a sense of purpose and of being needed,"
- "makes me want to get up in the morning and makes me happy,"
- "gives me joy and learning,"
- "gives me the chance to be with others and get out,"
- "helps me help someone else, to give something back; this country has been good to me."

Community agencies tell us that Senior Companion volunteers:

- "are the eyes and ears of the case manager,"
- "are the only in-home service because there is a waiting list that is extensive for other agencies,"
- "are trained; they know who to take information to. If something is not right, they know to go to someone . . .,"

- "are able to coordinate care because they are there and help develop the natural community support system to rally around those they serve."

Finally, there is strong support at State and local levels to support the Senior Companion Program. Currently, \$16.1 million is contributed at State and local levels to the Program. There are 38 projects funded totally through non-Federal funds. Keen interest is also being displayed by the national Visiting Nurses Associations of America in using SCP to supplement professional care and by national insurance providers as a way of extending care inexpensively to customers. Plans for expanding the Program are currently under discussion.

Attached, for your review, is a proposal detailing the ROLE OF THE SENIOR COMPANION PROGRAM IN SUPPORT OF THE HOMEBOUND ELDERLY. We will be pleased to provide any additional information you may require. Additionally, we will be pleased to meet with you and discuss, in detail, the Senior Companion Program, its potential in promoting and sustaining well-ness of low-income persons over 60 and adults who are at risk of inappropriate placement into a long-term care facility, and its relationship to health care and aging policy as they are evolved by the new Administration.

Attachment

cc: Gary Kowalczyk, Acting Associate Director, DO
Doug S. Hill, Acting SCP Officer

ROLE OF THE SENIOR COMPANION PROGRAM
IN SUPPORT OF THE HOMEBOUND ELDERLY

PURPOSE:

To expand and integrate the Senior Companion Program (SCP) non-medical personal care services into a comprehensive health care system that helps families and community health care providers assist the homebound elderly to achieve and maintain quality and independent lives. The following options for consideration by the White House Home Health Task Force are designed to:

- Expand the Program at no or minimal Federal cost and;
- Build on existing government, employer-initiated and prepaid health plan strategies to enlarge the pool of resources that are available to meet the needs of our increasing population of older persons.

BACKGROUND:

Financing long-term care continues to be one of the most important concerns of older people and their families. Experts are divided on whether a federally guaranteed national social insurance scheme or a blend of private and publicly financed care can be adopted. Regardless of what Federal policy is approved, many observers agree that assistance to impaired older persons . . . those most vulnerable to exorbitant health care costs . . . is key to a coordinated care system of affordable access to formal care that values the informal support of families and friends.

We believe expansion of the SCP is justified because it is a proven low-cost resource that can enrich the informal care portion of a national or comprehensive private pay capitation health care plan that provides in-home services for older persons.

The Program pairs the life-time-of-living skills of trained and stipended older low-income volunteers, 60 years and older, with clients who need help to achieve and maintain the degree of independence that delays or voids the need for costly nursing home care or excessive visits to acute care hospitals.

It is a Program that values and augments the caregiving capacity of relatives and significant others rather than displacing them. The SCP is distinctive because it:

- Recognizes older people as a valued national resource, not a problem;
- Has had a positive impact on the psychological well-being of volunteers--many of whom live alone;
- Affirms that personal assistance and peer support to adults with physical and mental health limitations can:
 - .. strengthen the capacity of clients to live independent lives in the community and;
 - .. ease the transition from institutions back into the community;
- Has great potential for future growth. The 12,000 Federal and non-federally supported volunteers represent only a minuscule (one-tenth of one percent) of the universe of low-income older persons eligible to volunteer.

The SCP model supplements prescribed formal home health medical and homemaker/chore services. The development of quality personal relationships encompassing a variety of peer support activities is fostered by regular person-to-person contact with clients during the required 20-hour weekly service schedule. On average, Companions serve 3.5 clients per week.

Senior Companions serve through community non-profit organizations with the ability to develop and manage grants. The principal activities of the project sponsors are to recruit, train and place Companions with health and social service providers.

The provider organizations to which Companions are assigned: select clients, provide supervision and integrate volunteers into client care plans. Under the supervision of trained health care professionals, Companions provide home management help, assistance with prescribed physical therapy, nutrition, social/recreation activities, information and personal representation.

Operating in an environment of limited assets and expanding home health needs, SCP has leveraged its FY'93 \$28.7 million appropriation supporting 143 projects by an estimated \$10.7 million that funds 2,900 Companions in 36 non-ACTION projects funded mostly by State governments. Ever increasing deficits have curtailed expansion of these and new State supported projects.

The Program has also extending its reach to the health care community by funding 2- and 3-year model public/private partnerships with the Visiting Nurse Associations of America, The Alzheimer's Association and the American Foundation for the Blind. These partnerships with local chapters of national and affiliated organizations are using private funds to extend the impact of SCP in over 20 States.

OPTIONS:

Within SCP's narrow but critical role in the delivery of health and social services, national health care planners should give special attention to three home health care initiatives:

- Expansion of the Medicaid Home and Community Based Services Medicaid Waiver Program;
- Development of a corporate eldercare program that uses Senior Companion resources to provide respite, personal support and other home care services to corporate retirees and their relatives;
- Expansion of existing Health and Human Services (HHS) Social Health Maintenance Organization (SHMO) models to include Senior Companions as participants in the delivery of home health care to SHMO plan members on a predetermined capitation basis. Under the plan, older members must receive all their services through SHMOs. This proposal builds on the concept of the HMO medical model of preventive care by adding personal care social services.

Twelve of the 144 federally funded SCP Projects have contracted with Medicaid-supported provider organizations. SCP participation has taken the form of addendums to existing waivers or Companion services are included in waiver packages approved by HCFA (Health Care Finance Administration).

In either case, formal requests must come from community agencies with client assessment or case management capability. Approved waiver services under which volunteers are eligible include hospice care, skilled and unskilled respite care, home management, homemaker support, non-medical personal care and home health transportation.

States reimburse SCP grantees up to \$4,000 annually for each volunteer who provides a full volunteer service year of 1,044 hours. SCP projects in Alabama, Missouri and Minnesota which have had four or more years experience with these programs claim considerable savings in costs compared to Medicaid reimbursements given normally to nursing homes. The Washington Post, February 2, 1993, reported governors of States with home-based Medicaid Waivers need and want more flexibility from HCFA in the way they provide these innovative and cost-effective programs.

The term "corporate eldercare" means a service provided by a corporation on behalf of its employees who have responsibility for older relatives. The service most often includes some form of information and referral, but may extend to other types of services and/or programs, as determined by the corporation.

It is proposed that SCP provide non-medical personal care benefits to relatives through Memorandums of Agreement with non-profit corporate foundations or other intermediaries. The corporations, in turn, would make third-party payments to a SCP grantee or direct service health and social service agency to pay for SCP stipends and other administrative costs. Health care providers would develop care plans for each client that included formal, as well as informal personalized service to homebound clients with chronic or acute functional disabilities.

SCP Program staff would recruit, train and place the Companions and be responsible for transportation and monitoring assignments. Volunteer activities would include: respite care, home management, peer support and other non-medical services.

This would become an employee benefit underwritten, in part, through corporate contracts with private or public national long-term care insurance agencies.

A final option for SCP expansion is development of eldercare SCP placements with Social Health Maintenance Organizations (SHMOS). It combines the traditional health services available in prepaid health insurance HMOs with a range of home health and community long-term care services aimed at keeping older people out of hospitals and nursing homes.

Like the corporate eldercare model, SCP grantees or health and social service provider organizations that accept volunteers for assignment would enter into third-party Memorandums of Agreement or contracts with HMOs to provide person-to-person non-medical services.

RECOMMENDATIONS:

- Integrate the Senior Companion Program into a comprehensive and coordinated health care system of formal and informal support to the homebound elderly;
- Create meaningful low-cost volunteer service opportunities for the 7.5 million low-income persons, 60 years and older, that enables them to provide valued home-based health and social services to their communities;
- Provide cost-effective non-medical support to at-risk elders enabling them to live independently in the least restrictive setting possible;
- Use the well elderly who have the talent and experience to assist the vulnerable elderly and promote the physical, emotional and mental well-being of both.

Corporation for Public Broadcasting (47 § 396: there is established a nonprofit organization .. which will not be an agency or establishment of the US Government.)

Legal Services Corporation (42 § 2996): "There is established in the District of Columbia a **private nonmembership nonprofit corporation**, which shall be known as the Legal Services Corporation, for the purposes of providing financial support for legal assistance in noncriminal proceedings or matters to persons financially unable to afford legal assistance."

Neighborhood Reinvestment Corporation (42 § 8101): "there is established a Neighborhood Reinvestment Corporation which shall be a body corporate and shall possess the powers "

Consolidated Rail Corporation (45 § 741): "the Corporation shall be a for-profit corporation established under the laws of a State and shall not be an agency or instrumentality of the Federal Government."

Smithsonian Institution (20 § 41): §41. Incorporation of institution: "The President, the Vice President, the Chief Justice, and the heads of executive departments are constituted an establishment by the name of the Smithsonian Institution for the increase and diffusion of knowledge among men, and by that name shall be known and have perpetual succession with the powers, limitations, and restrictions hereinafter contained, and no other." Notes of Decisions 1. Independent nature of Institution: "The Smithsonian Institution is independent of any of the executive departments mentioned in former § 1 [now 101] of Title 5.

Postal Service (39 USC 2000): "There is established, as an *independent establishment of the executive branch of the Government* of the US, the USPS." Notes on Decisions 1: Congressional purpose in establishing Service was to permit Service to operate in "business-like" fashion; to such end, Congress removed Service from political sphere and *authorized it to act as an independent establishment with powers equivalent to private enterprise*, such as power to make contracts, keep accounts and to acquire and lease property."

Tennessee Valley Authority (16 § 831): "there is created a body corporate by the name of the TVA..." Notes of Decisions: "3. The Authority exercises an executive or administrative function in its activities which prior to its establishment rested with the division of the executive branch of the government, and is a governmental agency or instrumentality of the US ... The Authority is agency performing wholly governmental services and is instrumentality of the US ... The Authority is the US in action, an arm of the government and an agency performing wholly governmental service ... The Authority is a wholly owned corporate agency and instrumentality of the US

... 4. State regulation and control. The Authority as an 'agency of the federal government' is not subject to the jurisdiction of state courts and is free from the state's regulation or control."

Commodity Credit Corporation (15 § 714): "there is created a body corporate to be known as the Commodity Credit Corporation... which shall be an agency and instrumentality of the US, within the Dept. of Agriculture, subject to the general supervision and direction of the Secretary of Agriculture."

African Development Foundation (22 § 29h): "there is established a body corporate to be known as the "African Development Foundation."

Export-Import Bank of the United States (12 § 635): "there is created a corporation with the name Export-Import Bank of the US, which shall be an agency of the USA."

Federal Deposit Insurance Corporation (12 § 1811): "there is created a Federal Deposit Insurance Corporation which shall insure ... " Historical and Statutory note 4. Nature of FDIC: "**FDIC is a governmental institution.**"

Federal Home Loan Mortgage Corporation (12 § 1451): "there is created the Federal Home Loan Mortgage Corporation, which shall be a body corporate and shall be under the direction of a Board of Directors ... "

Inter-American Foundation (22 § 290): "there is created as an agency of the USA a body corporate to be known as the Inter-American Foundation."

Pennsylvania Avenue Development Corporation (40 § 871): "There is hereby created a body corporate to be known as the" PADC....

Farm Credit System Financial Assistance Board (12 § 2278a): "the Farm Credit Administration ... shall charter the Farm Credit System Assistance Board ... that shall be a Federally chartered instrumentality of the US."

Farm Credit System Insurance Corporation (12 § 2277a-1)

Farm Credit System Financial Assistance Corporation (12 § 2278b)

National Science Foundation (42 USC 1861): "There is established **in the executive branch of the Government** an independent agency to be known as the National Science Foundation..."

[also maybe:

Federal Agriculture Mortgage Corporation (12 § 2279aa)

Pension Benefit Gauranty Corporation (29 § 1301)]

ment of grants or contracts for projects for which applications approved under this subpart have been submitted within one year after the last day of such fiscal year.

(June 19, 1934, c. 652, Title III, § 395, as added Nov. 2, 1978, Pub.L. 95-567, Title II, § 201, 92 Stat. 2409.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1978 Act. House Report No. 95-1178 and House Conference Report No. 95-1774, see 1978 U.S. Code Cong. and Adm. News, p. 5345.

Effective Dates

1978 Act. Section effective Nov. 2, 1978, see section 403 of Pub.L. 95-567, set out as a note under section 390 of this title.

Prior Provisions

A prior section 395, Act June 19, 1934, c. 652, Title III, § 395, as added May 1, 1962, Pub.L. 87-447, 76 Stat. 67, and amended Nov. 7, 1967, Pub.L. 90-129, Title II, § 201(2), 81 Stat. 367; June 5, 1976, Pub.L. 94-309, § 5, 90 Stat. 684, relating to assistance of the Secretary by the Commission, was repealed by Pub.L. 95-567, Title II, § 201, Nov. 2, 1978, 92 Stat. 2409.

LIBRARY REFERENCES

Administrative Law

Amateur radio services, see 47 C.F.R. § 97.1 et seq.

Aviation services, see 47 C.F.R. § 87.1 et seq.

Public telecommunications facilities program, see 15 C.F.R. § 2301.1 et seq.

American Digest System

Regulation of radio and television broadcasting generally, see Telecommunications ¶381 et seq.

Encyclopedias

Regulation of radio and television broadcasting generally, see C.J.S. Telegraphs, Telephones, Radios, and Television §§ 292 et seq., 316 et seq.

WESTLAW ELECTRONIC RESEARCH

Telecommunications cases: 372k[add key number].

See, also, WESTLAW guide following the Explanation pages of this volume.

Subpart D—Corporation for Public Broadcasting

HISTORICAL AND STATUTORY NOTES

Amendments

1990 Amendment. Pub.L. 101-437, Title II, § 203(a)(2), Oct. 18, 1990, 104

Stat. 998, redesignated former subpart C as D.

§ 396. Corporation for Public Broadcasting

(a) Congressional declaration of policy

The Congress hereby finds and declares that—

(1) it is in the public interest to encourage the growth and development of public radio and television broadcasting, including the use of such media for instructional, educational, and cultural purposes;

(2) it is in the public interest to encourage the growth and development of nonbroadcast telecommunications technologies for the delivery of public telecommunications services;

(3) expansion and development of public telecommunications and of diversity of its programming depend on freedom, imagination, and initiative on both local and national levels;

(4) the encouragement and support of public telecommunications, while matters of importance for private and local development, are also of appropriate and important concern to the Federal Government;

(5) It furthers the general welfare to encourage public telecommunications services which will be responsive to the interests of people both in particular localities and throughout the United States, which will constitute an expression of diversity and excellence, and which will constitute a source of alternative telecommunications services for all the citizens of the Nation;

(6) it is in the public interest to encourage the development of programming that involves creative risks and that addresses the needs of unserved and underserved audiences, particularly children and minorities;

(7) it is necessary and appropriate for the Federal Government to complement, assist, and support a national policy that will most effectively make public telecommunications services available to all citizens of the United States; and

(8) a private corporation should be created to facilitate the development of public telecommunications and to afford maximum protection from extraneous interference and control.

(b) Establishment of Corporation; application of District of Columbia Nonprofit Corporation Act

There is authorized to be established a nonprofit corporation, to be known as the "Corporation for Public Broadcasting", which will not be an agency or establishment of the United States Government. The Corporation shall be subject to the provisions of this section, and, to the extent consistent with this section, to the District of Columbia Nonprofit Corporation Act [D.C. Code, § 29-501 et seq.].

(c) Board of Directors; functions, duties, etc.

(1) The Corporation for Public Broadcasting shall have a Board of Directors (hereinafter in this section referred to as the "Board"), consisting of 10 members appointed by the President, by and with the advice and consent of the Senate. No more than 6 members of the Board appointed by the President may be members of the same political party.

(2) The 10 members of the Board appointed by the President (A) shall be selected from among citizens of the United States (not regular full-time employees of the United States) who are eminent in such fields as education, cultural and civic affairs, or the arts, including radio and television; and (B) shall be selected so as to provide as nearly as practicable a broad representation of various regions of the Nation, various professions and occupations, and various kinds of talent and experience appropriate to the functions and responsibilities of the Corporation.

(3) Of the members of the Board appointed by the President under paragraph (1), one member shall be selected from among individuals who represent the licensees and permittees of public television stations, and one member shall be selected from among individuals who represent the licensees and permittees of public radio stations.

(4) The members of the initial Board of Directors shall serve as incorporators and shall take whatever actions are necessary to establish the Corporation under the District of Columbia Nonprofit Corporation Act [D.C. Code, § 29-501 et seq.].

(5) The term of office of each member of the Board appointed by the President shall be 5 years, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term. No member of the Board shall be eligible to serve in excess of 2 consecutive terms of 5 years each.

(6) Any vacancy in the Board shall not affect its power, but shall be filled in the manner consistent with this chapter.

(7) Members of the Board shall attend not less than 50 percent of all duly convened meetings of the Board in any calendar year. A member who fails to meet the requirement of the preceding sentence shall forfeit membership and the President shall appoint a new member to fill such vacancy not later than 30 days after such vacancy is determined by the Chairman of the Board.

(d) Election of Chairman and Vice Chairman; compensation of Board members

(1) Members of the Board shall annually elect one of their members to be Chairman and elect one or more of their members as a Vice Chairman or Vice Chairmen.

(2) The members of the Board shall not, by reason of such membership, be deemed to be officers or employees of the United States. They shall, while attending meetings of the Board or while engaged in duties related to such meetings or other activities of the

Board pursuant to this subpart, be entitled to receive compensation at the rate of \$150 per day, including traveltime. No Board member shall receive compensation of more than \$10,000 in any fiscal year. While away from their homes or regular places of business, Board members shall be allowed travel and actual, reasonable, and necessary expenses.

(e) Officers and employees; term of office, compensation, qualifications, and removal; political party affiliation, political test or qualification when taking personnel actions

(1) The Corporation shall have a President, and such other officers as may be named and appointed by the Board for terms and at rates of compensation fixed by the Board. No officer or employee of the Corporation may be compensated by the Corporation at an annual rate of pay which exceeds the rate of basic pay in effect from time to time for level I of the Executive Schedule under section 5312 of Title 5. No individual other than a citizen of the United States may be an officer of the Corporation. No officer of the Corporation, other than the Chairman or a Vice Chairman, may receive any salary or other compensation from any source other than the Corporation for services rendered during the period of his employment by the Corporation. All officers shall serve at the pleasure of the Board.

(2) Except as provided in the second sentence of subsection (c)(1) of this section, no political test or qualification shall be used in selecting, appointing, promoting, or taking other personnel actions with respect to officers, agents, and employees of the Corporation.

(f) Nonprofit and nonpolitical nature of Corporation

(1) The Corporation shall have no power to issue any shares of stock, or to declare or pay any dividends.

(2) No part of the income or assets of the Corporation shall inure to the benefit of any director, officer, employee, or any other individual except as salary or reasonable compensation for services.

(3) The Corporation may not contribute to or otherwise support any political party or candidate for elective public office.

(g) Purposes and activities of Corporation; powers under District of Columbia Nonprofit Corporation Act

(1) In order to achieve the objectives and to carry out the purposes of this subpart, as set out in subsection (a) of this section, the Corporation is authorized to—

(A) facilitate the full development of public telecommunications in which programs of high quality, diversity, creativity, excellence, and innovation, which are obtained from diverse

sources, will be made available to public telecommunications entities, with strict adherence to objectivity and balance in all programs or series of programs of a controversial nature;

(B) assist in the establishment and development of one or more interconnection systems to be used for the distribution of public telecommunications services so that all public telecommunications entities may disseminate such services at times chosen by the entities;

(C) assist in the establishment and development of one or more systems of public telecommunications entities throughout the United States; and

(D) carry out its purposes and functions and engage in its activities in ways that will most effectively assure the maximum freedom of the public telecommunications entities and systems from interference with, or control of, program content or other activities.

(2) In order to carry out the purposes set forth in subsection (a) of this section, the Corporation is authorized to—

(A) obtain grants from and make contracts with individuals and with private, State, and Federal agencies, organizations, and institutions;

(B) contract with or make grants to public telecommunications entities, national, regional, and other systems of public telecommunications entities, and independent producers and production entities, for the production or acquisition of public telecommunications services to be made available for use by public telecommunications entities, except that—

(I) to the extent practicable, proposals for the provision of assistance by the Corporation in the production or acquisition of programs or series of programs shall be evaluated on the basis of comparative merit by panels of outside experts, representing diverse interests and perspectives, appointed by the Corporation; and

(II) nothing in this subparagraph shall be construed to prohibit the exercise by the Corporation of its prudent business judgment with respect to any grant to assist in the production or acquisition of any program or series of programs recommended by any such panel;

(C) make payments to existing and new public telecommunications entities to aid in financing the production or acquisition of public telecommunications services by such entities, particularly innovative approaches to such services, and other costs of operation of such entities;

(D) establish and maintain, or contribute to, a library and archives of noncommercial educational and cultural radio and television programs and related materials and develop public awareness of, and disseminate information about, public telecommunications services by various means, including the publication of a journal;

(E) arrange, by grant to or contract with appropriate public or private agencies, organizations, or institutions, for interconnection facilities suitable for distribution and transmission of public telecommunications services to public telecommunications entities;

(F) hire or accept the voluntary services of consultants, experts, advisory boards, and panels to aid the Corporation in carrying out the purposes of this subpart;

(G) conduct (directly or through grants or contracts) research, demonstrations, or training in matters related to public television or radio broadcasting and the use of nonbroadcast communications technologies for the dissemination of noncommercial educational and cultural television or radio programs;

(H) make grants or contracts for the use of nonbroadcast telecommunications technologies for the dissemination to the public of public telecommunications services; and

(I) take such other actions as may be necessary to accomplish the purposes set forth in subsection (a) of this section.

Nothing contained in this paragraph shall be construed to commit the Federal Government to provide any sums for the payment of any obligation of the Corporation which exceeds amounts provided in advance in appropriation Acts.

(3) To carry out the foregoing purposes and engage in the foregoing activities, the Corporation shall have the usual powers conferred upon a nonprofit corporation by the District of Columbia Nonprofit Corporation Act [D.C. Code, § 29-501 et seq.], except that the Corporation is prohibited from—

(A) owning or operating any television or radio broadcast station, system, or network, community antenna television system, interconnection system or facility, program production facility, or any public telecommunications entity, system, or network; and

(B) producing programs, scheduling programs for dissemination, or disseminating programs to the public.

(4) All meetings of the Board of Directors of the Corporation, including any committee of the Board, shall be open to the public

under such terms, conditions, and exceptions as are set forth in subsection (k)(4) of this section.

(5) The Corporation, in consultation with interested parties, shall create a 5-year plan for the development of public telecommunications services. Such plan shall be updated annually by the Corporation.

(h) Free or reduced rate interconnection service; access to facilities

(1) Nothing in this chapter, or in any other provision of law, shall be construed to prevent United States communications common carriers from rendering free or reduced rate communications interconnection services for public television or radio services, subject to such rules and regulations as the Commission may prescribe.

(2) Subject to such terms and conditions as may be established by public telecommunications entities receiving space satellite interconnection facilities or services purchased or arranged for, in whole or in part, with funds authorized under this part, other public telecommunications entities shall have reasonable access to such facilities or services for the distribution of educational and cultural programs to public telecommunications entities. Any remaining capacity shall be made available to other persons for the transmission of noncommercial educational and cultural programs and program information relating to such programs, to public telecommunications entities, at a charge or charges comparable to the charge or charges, if any, imposed upon a public telecommunications entity for the distribution of noncommercial educational and cultural programs to public telecommunications entities. No such person shall be denied such access whenever sufficient capacity is available.

(i) Report to Congress

(1) The Corporation shall submit an annual report for the preceding fiscal year ending September 30 to the President for transmittal to the Congress on or before the 15th day of May of each year. The report shall include—

(A) a comprehensive and detailed report of the Corporation's operations, activities, financial condition, and accomplishments under this subpart and such recommendations as the Corporation deems appropriate;

(B) a comprehensive and detailed inventory of funds distributed by Federal agencies to public telecommunications entities during the preceding fiscal year; and

(C) the summary of the annual report provided to the Secretary pursuant to section 398(b)(4) of this title.

(2) The officers and directors of the Corporation shall be available to testify before appropriate committees of the Congress with respect to such report, the report of any audit made by the Comptroller General pursuant to subsection (l) of this section, or any other matter which such committees may determine.

(j) Repeal, alteration, or amendment

The right to repeal, alter, or amend this section at any time is expressly reserved.

(k) Financing restrictions

(1)(A) There is hereby established in the Treasury a fund which shall be known as the Public Broadcasting Fund (hereinafter in this subsection referred to as the "Fund"), to be administered by the Secretary of the Treasury.

(B) There is authorized to be appropriated to the Fund, for each of the fiscal years 1978, 1979, and 1980, an amount equal to 40 percent of the total amount of non-Federal financial support received by public broadcasting entities during the fiscal year second preceding each such fiscal year, except that the amount so appropriated shall not exceed \$121,000,000 for fiscal year 1978, \$140,000,000 for fiscal year 1979, and \$160,000,000 for fiscal year 1980.

(C) There is authorized to be appropriated to the Fund, for each of the fiscal years 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, and 1993, an amount equal to 40 percent of the total amount of non-Federal financial support received by public broadcasting entities during the fiscal year second preceding each such fiscal year, except that the amount so appropriated shall not exceed \$180,000,000 for fiscal year 1981, \$200,000,000 for fiscal year 1982, \$220,000,000 for fiscal year 1983, \$145,000,000 for fiscal year 1984, \$153,000,000 for fiscal year 1985, \$162,000,000 for fiscal year 1986, \$200,000,000 for fiscal year 1987, \$214,000,000 for fiscal year 1988, \$238,000,000 for fiscal year 1989, \$254,000,000 for fiscal year 1990, \$245,000,000 for fiscal year 1991, \$265,000,000 for fiscal year 1992, and \$285,000,000 for fiscal year 1993.

(D) Funds appropriated under this subsection shall remain available until expended.

(2)(A) The funds authorized to be appropriated by this subsection shall be used by the Corporation, in a prudent and financially responsible manner, solely for its grants, contracts, and administrative costs, except that the Corporation may not use any funds appropriated under this subpart for purposes of conducting any reception, or providing any other entertainment, for any officer or employee of the Federal Government or any State or local govern-

ment. The Corporation shall determine the amount of non-Federal financial support received by public broadcasting entities during each of the fiscal years referred to in paragraph (1) for the purpose of determining the amount of each authorization, and shall certify such amount to the Secretary of the Treasury, except that the Corporation may include in its certification non-Federal financial support received by a public broadcasting entity during its most recent fiscal year ending before September 30 of the year for which certification is made. Upon receipt of such certification, the Secretary of the Treasury shall make available to the Corporation, from such funds as may be appropriated to the Fund, the amount authorized for each of the fiscal years pursuant to the provisions of this subsection.

(B) Funds appropriated and made available under this subsection shall be disbursed by the Secretary of the Treasury on a fiscal year basis.

(3)(A)(i) The Corporation shall establish an annual budget for use in allocating amounts from the Fund. Of the amounts appropriated into the Fund available for allocation for any fiscal year—

(I) \$10,200,000 shall be available for the administrative expenses of the Corporation for fiscal year 1989, and for each succeeding fiscal year the amount which shall be available for such administrative expenses shall be the sum of the amount made available to the Corporation under this subclause for such expenses in the preceding fiscal year plus the greater of 4 percent of such amount or a percentage of such amount equal to the percentage change in the Consumer Price Index, except that none of the amounts allocated under subclauses (II), (III), and (IV) and clause (v) shall be used for any administrative expenses of the Corporation and not more than 5 percent of all the amounts appropriated into the Fund available for allocation for any fiscal year shall be available for such administrative expenses;

(II) 6 percent of such amounts shall be available for expenses incurred by the Corporation for capital costs relating to telecommunications satellites, the payment of programming royalties and other fees, the costs of interconnection facilities and operations (as provided in clause (iv)(I)), and grants which the Corporation may make for assistance to stations that broadcast programs in languages other than English, and if the available funding level permits, for projects and activities that enhance public broadcasting;

(III) 75 percent of the remainder (after allocations are made under subclause (I) and subclause (II)) shall be allocated in accordance with clause (ii); and

(IV) 25 percent of such remainder shall be allocated in accordance with clause (iii).

(ii) Of the amounts allocated under clause (i)(III) for any fiscal year—

(I) 75 percent of such amounts shall be available for distribution among the licensees and permittees of public television stations pursuant to paragraph (6)(B); and

(II) 25 percent of such amounts shall be available for distribution under subparagraph (B)(i), and in accordance with any plan implemented under paragraph (6)(A), for national public television programming.

(iii) Of the amounts allocated under clause (i)(IV) for any fiscal year—

(I) 70 percent of such amounts shall be available for distribution among the licensees and permittees of public radio stations pursuant to paragraph (6)(B);

(II) 7 percent of such amounts shall be available for distribution under subparagraph (B)(i) for public radio programming; and

(III) 23 percent of such amounts shall be available for distribution among the licensees and permittees of public radio stations pursuant to paragraph (6)(B), solely to be used for acquiring or producing programming that is to be distributed nationally and is designed to serve the needs of a national audience.

(iv)(I) From the amount provided pursuant to clause (i)(II), the Corporation shall defray an amount equal to 50 percent of the total costs of interconnection facilities and operations to facilitate the availability of public television and radio programs among public broadcast stations.

(II) Of the amounts received as the result of any contract, lease agreement, or any other arrangement under which the Corporation directly or indirectly makes available interconnection facilities, 50 percent of such amounts shall be distributed to the licensees and permittees of public television stations and public radio stations. The Corporation shall not have any authority to establish any requirements, guidelines, or limitations with respect to the use of such amounts by such licensees and permittees.

(v) Of the interest on the amounts appropriated into the Fund which is available for allocation for any fiscal year—

(I) 75 percent shall be available for distribution for the purposes referred to in clause (ii)(II); and

(II) 25 percent shall be available for distribution for the purposes referred to in clause (iii)(II) and (III).

(B)(I) The Corporation shall utilize the funds allocated pursuant to subparagraph (A)(ii)(II) and subparagraph (A)(iii)(II) to make grants for production of public television or radio programs by independent producers and production entities and public telecommunications entities, producers of national children's educational programming, and producers of programs addressing the needs and interests of minorities, and for acquisition of such programs by public telecommunications entities. The Corporation may make grants to public telecommunications entities and producers for the production of programs in languages other than English. Of the funds utilized pursuant to this clause, a substantial amount shall be distributed to independent producers and production entities, producers of national children's educational programming, and producers of programming addressing the needs and interests of minorities for the production of programs.

(II) All funds available for distribution under clause (i) shall be distributed to entities outside the Corporation and shall not be used for the general administrative costs of the Corporation, the salaries or related expenses of Corporation personnel and members of the Board, or for expenses of consultants and advisers to the Corporation.

(III)(I) For fiscal year 1990 and succeeding fiscal years, the Corporation shall, in carrying out its obligations under clause (i) with respect to public television programming, provide adequate funds for an independent production service.

(II) Such independent production service shall be separate from the Corporation and shall be incorporated under the laws of the District of Columbia for the purpose of contracting with the Corporation for the expenditure of funds for the production of public television programs by independent producers and independent production entities.

(III) The Corporation shall work with organizations or associations of independent producers or independent production entities to develop a plan and budget for the operation of such service that is acceptable to the Corporation.

(IV) The Corporation shall ensure that the funds provided to such independent production service shall be used exclusively in pursuit of the Corporation's obligation to expand the diversity and innovativeness of programming available to public broadcasting.

(V) The Corporation shall report annually to Congress regarding the activities and expenditures of the independent production service. At the end of fiscal year 1992, the Corporation shall submit a report to Congress evaluating the performance of the independent production service in light of its mission to expand the diversity and innovativeness of programming available to public broadcasting.

(4) Funds may not be distributed pursuant to this subsection to the Public Broadcasting Service or National Public Radio (or any successor organization), or to the licensee or permittee of any public broadcast station, unless the governing body of any such organization, any committee of such governing body, or any advisory body of any such organization, holds open meetings preceded by reasonable notice to the public. All persons shall be permitted to attend any meeting of the board, or of any such committee or body, and no person shall be required, as a condition to attendance at any such meeting, to register such person's name or to provide any other information. Nothing contained in this paragraph shall be construed to prevent any such board, committee, or body from holding closed sessions to consider matters relating to individual employees, proprietary information, litigation and other matters requiring the confidential advice of counsel, commercial or financial information obtained from a person on a privileged or confidential basis, or the purchase of property or services whenever the premature exposure of such purchase would compromise the business interests of any such organization. If any such meeting is closed pursuant to the provisions of this paragraph, the organization involved shall thereafter (within a reasonable period of time) make available to the public a written statement containing an explanation of the reasons for closing the meeting.

(5) Funds may not be distributed pursuant to this subsection to any public telecommunications entity that does not maintain for public examination copies of the annual financial and audit reports, or other information regarding finances, submitted to the Corporation pursuant to subsection (1)(3)(B) of this section.

(6)(A) The Corporation shall conduct a study and prepare a plan, in consultation with public television licensees (or designated representatives of those licensees) and the Public Broadcasting Service, on how funds available to the Corporation under paragraph (3)(A)(ii)(II) can be best allocated to meet the objectives of this chapter with regard to national public television programming. The plan, which shall be based on the conclusions resulting from the study, shall be submitted by the Corporation to the Congress not later than January 31, 1990. Unless directed otherwise by an Act of Congress, the Corporation shall implement the plan during the first

fiscal year beginning after the fiscal year in which the plan is submitted to Congress.

(B) The Corporation shall make a basic grant from the portion reserved for television stations under paragraph (3)(A)(ii)(I) to each licensee and permittee of a public television station that is on the air. The Corporation shall assist radio stations to maintain and improve their service where public radio is the only broadcast service available. The balance of the portion reserved for television stations and the total portion reserved for radio stations under paragraph (3)(A)(iii)(I) shall be distributed to licensees and permittees of such stations in accordance with eligibility criteria that promote the public interest in public broadcasting, and on the basis of a formula designed to—

(i) provide for the financial needs and requirements of stations in relation to the communities and audiences such stations undertake to serve;

(ii) maintain existing, and stimulate new, sources of non-Federal financial support for stations by providing incentives for increases in such support; and

(iii) assure that each eligible licensee and permittee of a public radio station receives a basic grant.

(7) The funds distributed pursuant to paragraph (3)(A)(ii)(I) and (iii)(I) may be used at the discretion of the recipient for purposes related primarily to the production or acquisition of programming.

(8)(A) Funds may not be distributed pursuant to this subpart to any public broadcast station (other than any station which is owned and operated by a State, a political or special purpose subdivision of a State, or a public agency) unless such station establishes a community advisory board. Any such station shall undertake good faith efforts to assure that (i) its advisory board meets at regular intervals; (ii) the members of its advisory board regularly attend the meetings of the advisory board; and (iii) the composition of its advisory board are ' reasonably representative of the diverse needs and interests of the communities served by such station.

(B) The board shall be permitted to review the programming goals established by the station, the service provided by the station, and the significant policy decisions rendered by the station. The board may also be delegated any other responsibilities, as determined by the governing body of the station. The board shall advise the governing body of the station with respect to whether the programming and other policies of such station are meeting the specialized educational and cultural needs of the communities

served by the station, and may make such recommendations as it considers appropriate to meet such needs.

(C) The role of the board shall be solely advisory in nature, except to the extent other responsibilities are delegated to the board by the governing body of the station. In no case shall the board have any authority to exercise any control over the daily management or operation of the station.

(D) In the case of any public broadcast station (other than any station which is owned and operated by a State, a political or special purpose subdivision of a State, or a public agency) in existence on November 2, 1978, such station shall comply with the requirements of this paragraph with respect to the establishment of a community advisory board not later than 180 days after November 2, 1978.

(E) The provision of subparagraph (A) prohibiting the distribution of funds to any public broadcast station (other than any station which is owned and operated by a State, a political or special purpose subdivision of a State, or a public agency) unless such station establishes a community advisory board shall be the exclusive remedy for the enforcement of the provisions of this paragraph.

(9) Funds may not be distributed pursuant to this subsection to the Public Broadcasting Service or National Public Radio (or any successor organization) unless assurances are provided to the Corporation that no officer or employee of the Public Broadcasting Service or National Public Radio (or any successor organization), as the case may be, will be compensated at an annual rate of pay which exceeds the rate of basic pay in effect from time to time for level I of the Executive Schedule under section 5312 of Title 5, and unless further assurances are provided to the Corporation that no officer or employee of such an entity will be loaned money by that entity on an interest-free basis.

(10)(A) There is hereby established in the Treasury a fund which shall be known as the Public Broadcasting Satellite Interconnection Fund (hereinafter in this subsection referred to as the "Satellite Interconnection Fund"), to be administered by the Secretary of the Treasury.

(B) There is authorized to be appropriated to the Satellite Interconnection Fund, for fiscal year 1991, the amount of \$200,000,000. If such amount is not appropriated in full for fiscal year 1991, the portion of such amount not yet appropriated is authorized to be appropriated for fiscal years 1992 and 1993. Funds appropriated to

the Satellite Interconnection Fund shall remain available until expended.

(C) The Secretary of the Treasury shall make available and disburse to the Corporation, at the beginning of fiscal year 1991 and of each succeeding fiscal year thereafter, such funds as have been appropriated to the Satellite Interconnection Fund for the fiscal year in which such disbursement is to be made.

(D) Notwithstanding any other provision of this subsection except paragraphs (4), (5), (8), and (9), all funds appropriated to the Satellite Interconnection Fund and interest thereon—

(I) shall be distributed by the Corporation to the licensees and permittees of noncommercial educational television broadcast stations providing public telecommunications services or the national entity they designate for satellite interconnection purposes and to those public telecommunications entities participating in the public radio satellite interconnection system or the national entity they designate for satellite interconnection purposes, exclusively for the capital costs of the replacement, refurbishment, or upgrading of their national satellite interconnection systems and associated maintenance of such systems; and

(II) shall not be used for the administrative costs of the Corporation, the salaries or related expenses of Corporation personnel and members of the Board, or for expenses of consultants and advisers to the Corporation.

(f) Financial management and records

(1)(A) The accounts of the Corporation shall be audited annually in accordance with generally accepted auditing standards by independent certified public accountants or independent licensed public accountants certified or licensed by a regulatory authority of a State or other political subdivision of the United States, except that such requirement shall not preclude shared auditing arrangements between any public telecommunications entity and its licensee where such licensee is a public or private institution. The audits shall be conducted at the place or places where the accounts of the Corporation are normally kept. All books, accounts, financial records, reports, files, and all other papers, things, or property belonging to or in use by the Corporation and necessary to facilitate the audits shall be made available to the person or persons conducting the audits; and full facilities for verifying transactions with the balances or securities held by depositories, fiscal agents and custodians shall be afforded to such person or persons.

(B) The report of each such independent audit shall be included in the annual report required by subsection (i) of this section. The audit report shall set forth the scope of the audit and include such statements as are necessary to present fairly the Corporation's assets and liabilities, surplus or deficit, with an analysis of the changes therein during the year, supplemented reasonable detail by a statement of the Corporation's income and expenses during the year, and a statement of the sources and application of funds, together with the independent auditor's opinion of those statements.

(2)(A) The financial transactions of the Corporation for any fiscal year during which Federal funds are available to finance any portion of its operations may be audited by the General Accounting Office in accordance with the principles and procedures applicable to commercial corporate transactions and under such rules and regulations as may be prescribed by the Comptroller General of the United States. Any such audit shall be conducted at the place or places where accounts of the Corporation are normally kept. The representative of the General Accounting Office shall have access to all books, accounts, records, reports, files, and all other papers, things, or property belonging to or in use by the Corporation pertaining to its financial transactions and necessary to facilitate the audit, and they shall be afforded full facilities for verifying transactions with the balances or securities held by depositories, fiscal agents, and custodians. All such books, accounts, records, reports, files, papers and property of the Corporation shall remain in possession and custody of the Corporation.

(B) A report of each such audit shall be made by the Comptroller General to the Congress. The report to the Congress shall contain such comments and information as the Comptroller General may deem necessary to inform Congress of the financial operations and condition of the Corporation, together with such recommendations with respect thereto as he may deem advisable. The report shall also show specifically any program, expenditure, or other financial transaction or undertaking observed in the course of the audit, which, in the opinion of the Comptroller General, has been carried on or made without authority of law. A copy of each report shall be furnished to the President, to the Secretary, and to the Corporation at the time submitted to the Congress.

(3)(A) Not later than 1 year after November 2, 1978, the Corporation, in consultation with the Comptroller General, and as appropriate with others, shall develop accounting principles which shall be used uniformly by all public telecommunications entities receiving funds under this subpart, taking into account organizational differences among various categories of such entities. Such principles

shall be designed to account fully for all funds received and expended for public telecommunications purposes by such entities.

(B) Each public telecommunications entity receiving funds under this subpart shall be required—

(i) to keep its books, records, and accounts in such form as may be required by the Corporation;

(ii) to undergo a biannual audit by independent certified public accountants or independent licensed public accountants certified or licensed by a regulatory authority of a State, which audit shall be in accordance with auditing standards developed by the Corporation, in consultation with the Comptroller General; and

(iii) to furnish biannually to the Corporation a copy of the audit report required pursuant to clause (ii), as well as such other information regarding finances (including an annual financial report) as the Corporation may require.

(C) Any recipient of assistance by grant or contract under this section, other than a fixed price contract awarded pursuant to competitive bidding procedures, shall keep such records as may be reasonably necessary to disclose fully the amount and the disposition by such recipient of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount and nature of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(D) The Corporation or any of its duly authorized representatives shall have access to any books, documents, papers, and records of any recipient of assistance for the purpose of auditing and examining all funds received or expended for public telecommunications purposes by the recipient. The Comptroller General of the United States or any of his duly authorized representatives also shall have access to such books, documents, papers, and records for the purpose of auditing and examining all funds received or expended for public telecommunications purposes during any fiscal year for which Federal funds are available to the Corporation.

(4)(A) Subject to subparagraph (C), the Corporation may not distribute to National Public Radio any funds authorized to be appropriated by this chapter unless there is in effect a determination by the Corporation that—

(i) National Public Radio has adopted and is implementing a system of financial controls and procedures devised in consultation with, and recommended by, an independent certified public accountant and determined by the Comptroller General

as sufficient to assure that the financial transactions of National Public Radio reflect prudent management practices and are accounted for in a manner consistent with generally accepted accounting principles;

(ii) National Public Radio has adopted a budget under which reasonably projected expenditures will not exceed reasonably projected revenues from all sources for any fiscal year in which such funds are distributed to National Public Radio; and

(iii) financial reporting systems of National Public Radio provide the Corporation with continuous access to all financial books and records of National Public Radio.

(B) Not later than fifteen days after December 8, 1983, the Corporation shall report to the appropriate committees of the Congress on actions taken by National Public Radio to meet the conditions described in subparagraph (A) and on actions taken by the Corporation with respect to the indebtedness of National Public Radio related to deficits accumulated before October 1, 1983. The Corporation shall certify to such committees when such conditions have been met.

(C) The requirements of subparagraphs (A) and (B) shall cease to be effective on and after the date on which the Corporation certifies to the appropriate committees of Congress that all indebtedness of National Public Radio related to deficits accumulated before October 1, 1983, has been liquidated in full.

(m) Needs of minorities and other groups

(1) Prior to July 1, 1989, and every three years thereafter, the Corporation shall compile an assessment of the needs of minority and diverse audiences, the plans of public broadcasting entities and public telecommunications entities to address such needs, the ways radio and television can be used to help these underrepresented groups, and projections concerning minority employment by public broadcasting entities and public telecommunications entities. Such assessment shall address the needs of racial and ethnic minorities, new immigrant populations, people for whom English is a second language, and adults who lack basic reading skills.

(2) Commencing July 1, 1989, the Corporation shall prepare an annual report on the provision by public broadcasting entities and public telecommunications entities of service to the audiences described in paragraph (1). Such report shall address programming (including that which is produced by minority producers), training, minority employment, and efforts by the Corporation to increase the number of minority public radio and television stations eligible for financial support from the Corporation.

(3) As soon as they have been prepared, each assessment and annual report required under paragraphs (1) and (2) shall be submitted to Congress.

(June 19, 1934, c. 652, Title III, § 396, as added Nov. 7, 1967, Pub.L. 90-129, Title II, § 201(9), 81 Stat. 368, and amended Apr. 26, 1968, Pub.L. 90-294, 82 Stat. 108; Oct. 27, 1969, Pub.L. 91-97, § 3, 83 Stat. 146; Oct. 7, 1970, Pub.L. 91-437, § 2, 84 Stat. 888; Aug. 29, 1972, Pub.L. 92-411, § 1, 86 Stat. 643; Aug. 6, 1973, Pub.L. 93-84, § 1(a), (b), 87 Stat. 219; Dec. 31, 1975, Pub.L. 94-192, §§ 2 to 4, 89 Stat. 1099, 1100; Nov. 2, 1978, Pub.L. 95-567, Title III, §§ 301 to 303(a), 304 to 307(a), 308, 92 Stat. 2411, 2412, 2414, 2415, 2419; Aug. 13, 1981, Pub.L. 97-35, Title XII, §§ 1224, 1225(a)(1), (b), (c), 1226, 1227(a)-(c)(3), (d)(1), (2), (e)-(g), 1228, 1234(a), 95 Stat. 725-730, 736; Dec. 8, 1983, Pub.L. 98-214, §§ 3, 5, 6(a), (b)(1), (c), 97 Stat. 1467-1469; Apr. 7, 1986, Pub.L. 99-272, Title V, § 5001(c), 100 Stat. 117; Nov. 7, 1988, Pub.L. 100-626, §§ 3, 4(a), 5-9(a), 102 Stat. 3207-3211.)

¹ So in original. Probably should be "is".

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1967 Act. House Report No. 572, Senate Report No. 222, and Conference Report No. 794, see 1967 U.S. Code Cong. and Adm. News, p. 1772.

1968 Act. Senate Report No. 1017, see 1968 U.S. Code Cong. and Adm. News, p. 1896.

1969 Act. House Report No. 91-466, see 1969 U.S. Code Cong. and Adm. News, p. 1200.

1970 Act. Senate Report No. 91-869, see 1970 U.S. Code Cong. and Adm. News, p. 3954.

1975 Act. Senate Report No. 94-447 and House Conference Report No. 94-713, see 1975 U.S. Code Cong. and Adm. News, p. 2206.

1978 Act. House Report No. 95-1178 and House Conference Report No. 95-1774, see 1978 U.S. Code Cong. and Adm. News, p. 5345.

1981 Act. Senate Report No. 97-139 and House Conference Report No. 97-208, see 1981 U.S. Code Cong. and Adm. News, p. 396.

1983 Act. House Report No. 98-356, see 1983 U.S. Code Cong. and Adm. News, p. 2219.

1986 Act. Senate Report No. 99-146, House Report No. 99-241 (Parts I, II and III), and a Related Report, see 1986 U.S. Code Cong. and Adm. News, p. 42.

1988 Act. House Report No. 100-825, see 1988 U.S. Code Cong. and Adm. News, p. 4357.

References in Text

The District of Columbia Nonprofit Corporation Act, referred to in subsecs. (b), (c)(4), and (g)(3), is Pub.L. 87-569, Aug. 6, 1962, 76 Stat. 265, as amended, which appears in chapter 5 (section 29-501 et seq.) of Title 29, Corporations, of the District of Columbia Code.

Amendments

1988 Amendment. Subsec. (a)(6) to (8). Pub.L. 100-626, § 5, added par. (6), and redesignated former pars. (6) and (7) as (7) and (8), respectively.

Subsec. (g)(2)(B)(ii). Pub.L. 100-626, § 6, struck out "contract or" following "respect to any".

Subsec. (k)(1)(C). Pub.L. 100-626, § 3, substituted "1990, 1991, 1992, and 1993" for "and 1990", "40 percent" for "50 percent", struck out "and" following "fiscal year 1989", and added "\$245,000,000 for fiscal year 1991, \$265,000,000 for fiscal year 1992, and \$285,000,000 for fiscal year 1993." following "fiscal year 1990".

Subsec. (k)(3)(A)(i)(I). Pub.L. 100-626, § 7(a)(1), added subcl. (I). Former subcl. (I) which provided that not more than 5 percent of such amounts shall be available for administrative expenses of Corporation, was struck out.

Subsec. (k)(3)(A)(i)(II). Pub.L. 100-626, § 7(a)(2), added subcl. (II). Former subcl. (II) which provided that not less than 5 percent be available for expenses of Corporation, including capital costs relating to telecommunications satellites, the payment of programming royalties and other fees, and the costs of interconnection facilities and operations, with limit of 10 percent of amounts appropriated into Fund to be available for obligation for any fiscal year.

Subsec. (k)(3)(A)(i)(III). Pub.L. 100-626, § 7(a)(3), substituted "clause (ii)" for "clause (ii)(I)".

Subsec. (k)(3)(A)(ii)(II). Pub.L. 100-626, § 7(b), substituted ", and in accordance with any plan implemented under paragraph (6)(A), for national public" for "for public".

Subsec. (k)(3)(A)(iii)(I). Pub.L. 100-626, § 7(c), substituted "70" for "not less than 50", struck out "(as determined under paragraph (6)(A))" following "of such amounts", and struck out "and" following "to paragraph (6)(B)".

Subsec. (k)(3)(A)(iii)(II). Pub.L. 100-626, § 7(c), substituted "7 percent" for "not more than 50 percent", struck out "(as determined under paragraph (6)(A))" following "of such amounts", and substituted "radio programming; and" for "radio".

Subsec. (k)(3)(A)(iii)(III). Pub.L. 100-626, § 7(c), added subcl. (III).

Subsec. (k)(3)(A)(iv)(I). Pub.L. 100-626, § 7(e), substituted "From the amount provided pursuant to clause (i)(II)," for "Subject to the provisions of clause (v)".

Subsec. (k)(3)(A)(v). Pub.L. 100-626, § 7(d), added cl. (v). Former cl. (v) which provided that if expenses of Corporation under c. (i)(II) for any fiscal year for capital costs relating to telecommunications satellites, payment of programming royalties and other fees, and costs interconnection facilities and operations exceed 6 percent of amounts appropriated into Fund, then 75 percent of such costs shall be defrayed by licensees and permittees of public television stations, and 25 percent by licensees and permittees of public radio stations, from amounts available to them under cl. (iii)(I), was struck out.

Subsec. (k)(3)(B)(i). Pub.L. 100-626, § 7(f), struck out ", and a significant

portion of such other funds as may be available to the Corporation," following "subparagraph (A)(iii)(II)", "and contracts" following "to make grants", added "producers of national children's educational programming, and producers of programs addressing the needs and interests of minorities," following "telecommunications entities," added provisions relating to grants for production of programs in languages other than English, substituted "be distributed" for "be reserved for distribution", and added ", producers of national children's educational programming, and producers of programming addressing the needs and interests of minorities" following "production entities".

Subsec. (k)(3)(B)(iii). Pub.L. 100-626, § 8, added cl. (iii).

Subsec. (k)(3)(C). Pub.L. 100-626, § 7(g), struck out former subpar. (C) which related to limit on expenditure by Corporation in fiscal year 1981 of an amount equal to not more than 5 percent of funds made available by Secretary of the Treasury.

Subsec. (k)(3)(D). Pub.L. 100-626, § 7(g), struck out former subpar. (D) which related to expenditure by Corporation of 105 percent of amount derived for preceding fiscal year, for activities authorized under subsection (g)(2) of this section, in fiscal years 1982 and 1983.

Subsec. (k)(6)(A). Pub.L. 100-626, § 7(h), added subpar. (A). Former subpar. (A) which related to determination of percentage of funds allocation under subcls. (I) and (I) of paragraph (3)(A)(iii) for each fiscal year, in consultation with public radio stations and with National Public Radio, was struck out.

Subsec. (k)(6)(B). Pub.L. 100-626, § 7(i), added provisions which required Corporation to assist radio stations to maintain and improve service where public radio is only broadcast service available.

Subsec. (k)(7). Pub.L. 100-626, § 7(j), added "(ii)(I) and (iii)(I)" following "paragraph (3)(A)".

Subsec. (k)(10). Pub.L. 100-626, § 4(a), added par. (10).

Subsec. (m). Pub.L. 100-626, § 9(a), added subsec. (m).

1986 Amendment. Subsec. (k)(1)(C). Pub.L. 99-272, § 5001(c)(1), substituted "1986, 1987, 1988, 1989, and 1990" for "and 1986", and added "\$200,000,000 for fiscal year 1987, \$214,000,000 for fiscal year 1988, \$238,000,000 for fiscal year 1989, and \$254,000,000 for fiscal year 1990".

Subsec. (k)(3)(A)(i)(II). Pub.L. 99-272, § 5001(c)(2), struck out "research, training, technical assistance, engineering, instructional support, payment of interest on indebtedness" following "Corporation, including".

Subsec. (k)(8) to (10). Pub.L. 99-272, § 5001(c)(3), redesignated paragraphs (9) and (10) as (8) and (9), respectively. Former subsec. (8), which related to the refunding to the Corporation an amount equal to the amount of unrelated business income, was struck out.

1983 Amendment. Subsec. (c)(1). Pub.L. 98-214, § 6(a)(1), struck out "and the President of the Corporation" following "advice and consent of the Senate".

Pub.L. 98-214, § 6(a)(2), struck out provision directing that the President of the Corporation serve as the Chairman of the Board.

Subsec. (d)(1). Pub.L. 98-214, § 6(b)(1), inserted "elect one of their members to be Chairman and" following "Members of the Board shall annually".

Subsec. (e)(1). Pub.L. 98-214, § 6(c), substituted "No officer of the Corporation, other than the Chairman or a Vice Chairman" for "No officer of the Corporation, other than a Vice Chairman".

Subsec. (k)(1)(C). Pub.L. 98-214, § 3(a), substituted "\$145,000,000 for fiscal year 1984, \$153,000,000 for fiscal year 1985, and \$162,000,000 for fiscal year 1986" for "and \$130,000,000 for each of the fiscal years 1984, 1985, and 1986".

Subsec. (k)(10). Pub.L. 98-214, § 3(b), added provision requiring assurances that no officer or employee of such entity will be loaned money by that entity on an interest-free basis.

Subsec. (f)(4). Pub.L. 98-214, § 5, added par. (4).

1981 Amendment. Subsec. (a)(5). Pub.L. 97-35, § 1224, added provisions respecting alternative telecommunications services.

Subsec. (c). Pub.L. 97-35, § 1225(a)(1), substituted provisions respecting appointment, selection, service, etc., of the ten members of the Board of Directors, for provisions respecting appointment, selection, service, etc., of the 15 members of the Board of Directors.

Subsec. (d). Pub.L. 97-35, § 1225(a), substituted provisions respecting election, status, compensation, etc., of Vice Chairman, for provisions respecting election, status, compensation, etc., of Chairman and Vice Chairman.

Subsec. (e)(1). Pub.L. 97-35, § 1225(c), added reference to services rendered by a Vice Chairman, and struck out reference to the Chairman.

Subsec. (g). Pub.L. 97-35, § 1234(a), struck out par. (5), relating to study and report concerning utilization of personnel services of volunteers in manner of determining non-Federal financial support. Former par. (6) redesignated (5).

Subsec. (i)(1). Pub.L. 97-35, § 1224, substituted "May" for "February".

Subsec. (k)(1)(C). Pub.L. 97-35, § 1227(a), extended authorization of appropriations through 1986.

Subsec. (k)(2)(B). Pub.L. 97-35, § 1227(b), substituted fiscal year basis for disbursement for quarterly basis.

Subsec. (k)(3)(A). Pub.L. 97-35, § 1227(c)(1), substituted provisions mandating the establishment by the Corporation of an annual budget for use in allocating amounts from the Fund, setting out the allocation and distribution formulae, and providing for interconnecting facilities and operations costs for making public television and radio programs available to public broadcast stations for former provisions which had directed the Corporation to reserve for distribution among the licensees and permittees of public television and radio stations an amount equal to (i) not less than 40 percent of the funds disbursed by the Corporation from the Fund under this section in each fiscal year in which the amount disbursed was \$88,000,000 or more, but less than \$121,000,000; (ii) not less than 45 percent of such funds in each fiscal year in which the amount disbursed was \$121,000,000 or more, but less than \$160,000,000; and (iii) not less than 50 percent of such funds in each fiscal year in which the amount disbursed was \$160,000,000 or more.

Subsec. (k)(3)(B)(i). Pub.L. 97-35, § 1227(c)(2), substituted "The Corporation shall utilize the funds allocated pursuant to subparagraph (A)(ii)(II) and subparagraph (A)(iii)(II), and a significant portion of such other funds as may be available to the Corporation, to make grants and contracts for production of public television or radio programs by independent producers and production entities and public telecommunications entities, and for acquisition of such programs by public telecommunications entities. Of the funds utilized pursuant to this clause, a substantial amount shall be reserved for distribution to independent producers and production entities for the production of programs" for "The Corporation shall establish an annual budget according to which it shall make grants and contracts for production of public television or radio programs by independent producers and production entities and public telecommunications entities, for acquisition of such programs by public telecommunications entities, for interconnection facilities and operations, for distribution of funds among public telecommunications entities, and for engineering and program-related research. A significant portion of funds available under the budget established by the Corporation under this subparagraph shall be used for funding the production of television and radio programs. Of such portion, a substantial amount shall be reserved for distribution to independent producers and production entities for the production of programs".

Subsec. (k)(3)(B)(ii). Pub.L. 97-35, § 1227(c)(3)(A), substituted "available for distribution under clause (i)" for "contained in the annual budget established by the Corporation under clause (i)".

Subsec. (k)(3)(B)(iii), (iv). Pub.L. 97-35, § 1227(c)(3)(B), struck out cls. (iii) and (iv) which had provided, respectively, that "During each of the fiscal years 1981, 1982, and 1983, the annual budget established by the Corporation under clause (i) shall consist of not less than 95 percent of the funds made available by the Secretary of the Treasury to the Corporation pursuant to paragraph (2)(A)" and that "In determining the amount of funds which shall be made available for radio programming and operations under this subparagraph, the

Corporation shall take into account the increased financial needs relating to radio programming and operations resulting from the expansion and development of noncommercial radio broadcast station facilities through the use of funds made available pursuant to section 393(d) of this title".

Subsec. (k)(6)(A). Pub.L. 97-35, § 1227(d)(1), substituted "The Corporation, in consultation with public radio stations and with National Public Radio (or any successor organization), shall determine the percentage of funds allocated under subclause (I) and subclause (II) of paragraph (3)(A)(iii) for each fiscal year. The Corporation, in consultation with such organizations, also shall conduct an annual review of the criteria and conditions applicable to such allocations" for "The Corporation, in consultation with public television and radio licensees, shall review annually the percentage of funds reserved pursuant to paragraph (3)(A), and the criteria and conditions regarding the division and distribution of such funds among public television and radio stations".

Subsec. (k)(6)(B). Pub.L. 97-35, § 1227(d)(2)(A), struck out provision that the funds reserved for public broadcast stations pursuant to paragraph (3)(A) be divided into two portions, one to be distributed among radio stations and one to be distributed among television stations.

Pub.L. 97-35, § 1227(d)(2)(B), inserted "under paragraph (3)(A)(iii)(I)" following "The Corporation shall make a basic grant from the portion reserved for television stations".

Pub.L. 97-35, § 1227(d)(2)(C), inserted "under paragraph (3)(A)(iii)(I)" following "The balance of the portion reserved for television stations and the total portion reserved for radio stations".

Subsec. (k)(7). Pub.L. 97-35, § 1227(e), reformulated distribution requirements.

Subsec. (k)(8). Pub.L. 97-35, § 1227(f), reformulated refunding requirements.

Subsec. (k)(9). Pub.L. 97-35, § 1227(g), in subpar. (A) substituted "to assure that (i) its advisory board meets at regular intervals; (ii) the members of its advisory board regularly attend the meetings of the advisory board; and (iii)

the composition of its advisory board are reasonably representative of the diverse needs" for "to assure that the composition of its advisory board reasonably reflects the diverse needs" and in subpars. (A), (D), and (E) inserted provisions respecting stations owned and operated by a State, a political or special purpose subdivision of a State or a public agency.

Subsec. (f). Pub.L. 97-35, § 1228, added provisions respecting shared auditing arrangements, and substituted provisions relating to biannual audits and accompanying report, for provisions relating to annual audits and accompanying report.

1978 Amendment. Subsec. (a). Pub.L. 95-567, § 301, substituted the term "public" for "noncommercial educational" wherever appearing, substituted the term "telecommunications" for "radio and television" wherever appearing, and added provisions relating to the growth and development of nonbroadcast telecommunications technologies for the delivery of public telecommunications services.

Subsec. (d)(1). Pub.L. 95-567, § 302, struck out provision authorizing the President to designate one of the members first appointed to the Board as Chairman.

Subsec. (e)(1). Pub.L. 95-567, § 303(a), added provision which regulated the rate of compensation an officer or employee of the Corporation could receive.

Subsec. (g). Pub.L. 95-567, § 304, substituted "public telecommunications" for "educational broadcasting", "non-commercial educational television or radio", or "program production" wherever appearing, authorized panel of outside experts to evaluate programs, authorized Corporation to use its own judgment when dealing with programming, and struck out provision dealing with the creation of new noncommercial educational broadcast stations.

Subsec. (h). Pub.L. 95-567, § 305, designated former par. (h) as (h)(1) and added par. (2).

Subsec. (i)(1). Pub.L. 95-567, § 306, revised and restructured subsection and, as so restructured, substituted "September 30" for "June 30", "15th day of February" for "31st day of December", and

added provisions comprising subsecs. (B) and (C).

Subsec. (k). Pub.L. 95-567, § 307, completely revised and restructured subsection (k) and, in so doing, added provisions establishing an annual budget, authorizing funds for the fiscal years 1979 to 1983, requiring funds be disbursed on a quarterly basis, requiring that all earnings of entities receiving funds be open to the public, and that the financial records of such entities be available for public examination.

Subsec. (l)(3). Pub.L. 95-567, § 308, completely revised and restructured par. (3) and, in so doing, added provisions requiring an annual audit, furnishing a copy of the audit report, and use of uniform accounting principals.

1975 Amendment. Subsec. (g)(2)(B). Pub.L. 94-192, § 3, inserted "and the use of nonbroadcast communications technologies for the dissemination of educational television or radio programs" following "broadcast".

Subsec. (i). Pub.L. 94-192, § 4, directed that officers and directors be available to testify before Congressional committees concerning the annual fiscal report, audit report, or any other matter.

Subsec. (k). Pub.L. 94-192, § 2, added pars. (3) to (7).

1973 Amendment. Subsec. (k)(1)(B). Pub.L. 93-84, § 1(a), substituted authorization of appropriation of \$50,000,000 and \$60,000,000 for the fiscal years ending June 30, 1974 and June 30, 1975 respectively for authorization of appropriation of \$40,000,000 for the fiscal year ending June 30, 1973.

Subsec. (k)(2). Pub.L. 93-84, § 1(b), substituted "1975" for "1973".

1972 Amendment. Subsec. (k)(1)(B). Pub.L. 92-411 struck out authorization of appropriation for fiscal years ending June 30, 1969, June 30, 1970, and the two succeeding fiscal years and provided for an appropriation of \$40,000,000 for fiscal year ending June 30, 1973.

Subsec. (k)(2). Pub.L. 92-411 substituted "June 30, 1973" for "June 30, 1972".

1970 Amendment. Subsec. (k)(1)(B). Pub.L. 91-437 authorized appropriation of \$20,000,000 for the fiscal year ending June 30, 1970, and \$30,000,000 for each of the two succeeding fiscal years.

Further authorized appropriation of amounts equal to the amount of total grants, donations, bequests, or other contributions from non-Federal sources received by the Corporation during each fiscal year with a maximum limit of \$1,000,000 for any fiscal year.

1969 Amendment. Subsec. (k)(1). Pub.L. 91-97, § 3(a), added ", and for the next fiscal year the sum of \$20,000,000" following "the sum of \$1,000,000".

Subsec. (k)(2). Pub.L. 91-97, § 3(b), added "or the next fiscal year" following "the fiscal year ending June 30, 1969".

1968 Amendment. Subsec. (k). Pub.L. 90-294 substituted "1969" for "1968".

Effective Dates

1968 Act. Amendment by sections 6 and 7(d) of Pub.L. 100-626 effective Oct. 1, 1969, see section 12 of Pub.L. 100-626, set out as a note under section 391 of this title.

1981 Act. Section 1227(c)(4) of Pub.L. 97-35 provided that: "The amendments made in this subsection [amending subsec. (k)(3)(A), (B)(i), and (B)(ii) of this section and striking out subsec. (k)(3)(B)(iii) and (iv) of this section] shall apply to fiscal years beginning after September 30, 1983."

Section 1227(d)(3) of Pub.L. 97-35 provided that: "The amendments made in this subsection [amending subsec. (k)(4) of this section] shall apply to fiscal years beginning after September 30, 1983."

1978 Act. Amendment by Pub.L. 95-567 effective Nov. 2, 1978, see section 406 of Pub.L. 95-567, set out as a note under section 390 of this title.

Prior Provisions

A prior section 396, Act June 19, 1934, c. 652, Title III, § 396, as added May 1, 1962, Pub.L. 87-447, 76 Stat. 67, and renumbered § 394 by Pub.L. 90-129, Title II, § 201(4), Nov. 7, 1967, 81 Stat. 367, authorized making of rules and regulations, and is classified to section 394 of this title.

Compensation of Officers and Employees

Section 303(b) of Pub.L. 95-567 provided that: "The amendment made by subsection (a) [amending subsec. (e)(1)

of this section] shall not be construed to reduce the annual rate of pay of any officer or employee of the Corporation for Public Broadcasting in any case in which (1) such officer or employee was appointed or named to any position in the Corporation before the date of the enactment of this Act [Nov. 2, 1978]; and (2) the annual rate of pay for such position, as in effect on such date of enactment, exceeds the maximum rate of pay established in section 396(e)(1) of the Communications Act of 1934, as amended by subsection (a) [subsec. (e)(1) of this section]."

Section 307(b) of Pub.L. 95-567 provided that: "Section 396(k)(10) of the Communications Act of 1934, as added by subsection (a) [subsec. (k)(10) of this section], shall not be construed to reduce the annual rate of pay of any officer or employee of the Public Broadcasting Service or National Public Radio (or any successor organization) in any case in which (1) such officer or employee was appointed or named to any position in the Public Broadcasting Service or National Public Radio (or any successor organization) before the date of the enactment of this Act [Nov. 2, 1978]; and (2) the annual rate of pay for such position, as in effect on such date of enactment, exceeds the maximum rate of pay established in section 396(k)(10) of the Communications Act of 1934, as added by subsection (a) [subsec. (k)(10) of this section]."

Continuation of Individuals Serving on Board of Directors; Reduction in Membership of Board; Political Affiliation of Board Appointees; Abolition of Five Offices on March 1, 1984

Section 1225(a)(2) of Pub.L. 97-35, as amended Pub.L. 97-410, § 4, Jan. 3, 1983, 96 Stat. 2044, provided that:

"(A) The amendment made in paragraph (1) [amending subsec. (c) of this section] shall not affect the continuation in office of any individual serving on the Board of Directors of the Corporation for Public Broadcasting on the date of the enactment of this Act [Aug. 13, 1981].

"(B) Notwithstanding the provisions of subsection (c) of section 396 of the Communications Act of 1934 [subsec. (c) of this section], in the case of the offices of director the terms of which expired March 1982, persons appointed to fill two of such vacancies existing as of De-

ember 13, 1982, shall be appointed for terms which shall expire on March 1, 1984 and shall not be representative of the political party having a majority of the directors of the Board on December 13, 1982. Persons appointed for a term beginning March 1, 1984, to fill the vacancies occurring in such offices the terms of which, by reason of the preceding sentence, expire on March 1, 1984, shall not be filled by persons representing the political party having a majority of the directors of the Board on March 1, 1984. Persons appointed on or after March 1, 1984, to fill vacancies in the two such offices shall be appointed for terms of five years. On March 1, 1984, there are abolished those five offices of director the terms of which, without application of the preceding provisions of this paragraph, expire on such date. In administering the provisions of this paragraph a director is a minority member of the Board if he is not a member of the political party to which the majority of the directors of the Board are members."

Satellite Replacement Needs; Report to Congress by March 1, 1990

Section 4(b) of Pub.L. 100-626 provided that: "On or before March 1, 1990, the Corporation for Public Broadcasting, on behalf of the public radio and public television licensees and permittees (or their designated representatives), shall submit to Congress a report by such licensees or permittees (or their representatives) detailing the satellite replacement needs of public radio and public television, the difference in cost between leasing satellite transponder capacity and buying such capacity, and the availability of private sector rather than Federal financing."

Temporary Commission on Alternative Financing for Public Telecommunications; Composition; Personnel; Functions; Report; Demonstration Programs for Determining Feasibility of Permitting Public Television Stations and Public Radio Station Licensees to Broadcast Advertising Announcements

Sections 1232 and 1233 of Pub.L. 97-35, as amended by Pub.L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"Sec. 1232. (a)(1) A study shall be conducted in accordance with the provisions of this section regarding options which may be available to public telecommunications entities, the Public Broadcasting Service, and National Public Radio with respect to the development of sources of revenue in addition to the sources of revenue available to such entities and organizations on the date of the enactment of this Act [Aug. 13, 1981]. Such study shall be completed not later than July 1, 1982, and a report shall be submitted to the Congress in accordance with subsection (i).

"(2) The study required in paragraph (1) shall seek to identify funding options which also will ensure that public telecommunications as a source of alternative and diverse programming will be maintained and enhanced, and that public telecommunications services will continue to expand and be available to increasing numbers of citizens throughout the Nation.

"(3) The study required in paragraph (1), in examining funding alternatives, also shall seek to determine appropriate means for ensuring that the use of such funding alternatives does not interfere with the content and quality of programming appearing on public television and radio.

"(b)(1) The study required in subsection (a)(1) shall be conducted by a commission to be known as the Temporary Commission on Alternative Financing for Public Telecommunications (hereinafter in this section referred to as the 'Commission').

"(2) The Commission shall consist of the Chairman of the Federal Communications Commission (or a member of the Commission designated by the Chairman); the Assistant Secretary of Commerce for Communications and Information (or his delegate); the heads of the Corporation for Public Broadcasting, National Public Radio, and the National Association of Public Television Stations (or their delegates); the Chairman and the ranking minority member of the Committee on Commerce, Science, and Transportation of the Senate (or any members of such committee designated by them); and the Chairman and ranking minority member of the Committee on Energy and Commerce of the House of Representatives (or any members of such committee designated by them).

"(3) In addition to the members of the Commission specified in paragraph (2), an officer or employee of a public television station and an officer or employee of a public radio station shall serve as members of the Commission. Such members shall be selected by the members of the Commission specified in paragraph (2). Such selection shall be made at the first meeting conducted by the Commission.

"(4) For purposes of this subsection, the terms 'public television station' and 'public radio station' have the same meaning as the term 'public broadcast station' in section 397(6) of the Communications Act of 1934 (47 U.S.C. 397(6)) [section 397(6) of this title].

"(c) The members of the Commission shall serve without compensation, but the Federal Communications Commission shall make funds available to reimburse such members for travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Federal Government service are allowed expenses under section 5703 of title 5, United States Code [section 5703 of Title 5 Government Organization and Employees].

"(d) The Chairman of the Federal Communications Commission (or the person designated by the Chairman under subsection (b)(2)) shall serve as Chairman of the Commission.

"(e) The Commission shall meet at the call of the Chairman or a majority of the members of the Commission. Six members of the Commission shall constitute a quorum.

"(f)(1) Upon request of the Commission, the Federal Communications Commission shall furnish the Commission with such personnel and support services as may be necessary to assist the Commission in carrying out its duties and functions under this section. The Commission shall not be required to pay or reimburse the Federal Communications Commission for such personnel and support services.

"(2) The Assistant Secretary of Commerce for Communications and Information, and the heads of the Corporation for Public Broadcasting, the Public Broadcasting Service, National Public Radio, and the National Association of

Public Television Stations, each are authorized to furnish the Commission with such personnel and support services as each such organization considers necessary or appropriate to assist the Commission in carrying out its duties and functions under this section.

"(g) The Commission shall have authority to hold such hearings, sit and act at such times and places, and take such testimony as the Commission considers advisable. The Commission shall seek to obtain the testimony and advice of business representatives, persons representing public interest groups, and other persons and organizations which have an interest in public broadcasting.

"(h) The Commission shall be exempt from section 10(e), section 10(f), and section 14 of the Federal Advisory Committee Act (5 U.S.C. Appendix) [set out in Appendix 2 to Title 5].

"(i) The Commission shall submit a report to the Congress containing the results of the study required in subsection (a)(1) not later than July 1, 1982. Such report shall include an evaluation of each option with respect to the development of additional sources of revenue, and shall include recommendations for such legislative or other action as the Commission considers necessary or appropriate.

"(j)(1) Except as provided in paragraph (2), the Commission shall terminate at the end of the 90-day period following the date of the submission of the report required in subsection (i).

"(2) If the Commission decides to establish the demonstration program specified in section 1233, then the Commission shall reconvene after the termination of the demonstration program conducted under section 1233 for the purpose of carrying out the functions of the Commission specified in section 1233(e). The Commission shall terminate at the end of the 90-day period following the date of the submission of the report required in section 1233(e).

"Sec. 1233. (a) The Temporary Commission on Alternative Financing for Public Telecommunications established in section 1232 may establish a demonstration program in accordance with this section for the purpose of determining the feasibility of permitting public television station licensees and public radio

station licensees to broadcast advertising announcements. If the Commission decides to establish such demonstration program, then the Commission shall establish and carry out such demonstration program in accordance with the provisions of subsection (b) through subsection (f).

"(b)(1)(A) The Commission shall establish the demonstration program as soon as practicable after the date of the enactment of this Act [Aug. 13, 1981]. The Commission shall permit public broadcast station licensees to begin the broadcasting of qualifying advertising not later than January 1, 1982, except that such licensees may begin such advertising before such date if the Commission completes the establishment of the demonstration program before such date.

"(B) Such broadcasting of qualifying advertising shall be carried out during the 18-month period beginning January 1, 1982 (or beginning on such earlier date as may be authorized by the Commission under subparagraph (A)), except that such broadcasting of qualifying advertising shall terminate not later than June 30, 1983. The demonstration program shall terminate at the end of such period.

"(2)(A) The Corporation for Public Broadcasting, in consultation with the Commission, shall select not more than 10 public television station licensees and not more than 10 public radio station licensees to participate in the demonstration program.

"(B) Such selection shall be made from among licensees which have expressed to the Corporation a desire to participate in the demonstration program, except that any public television station licensee or public radio station licensee which is represented on the Commission under section 1232(b)(3) shall not be eligible to participate in the demonstration program.

"(C) If a licensee elects not to participate in the demonstration program, after receiving notice of its selection from the Corporation, then the Corporation shall select an alternate licensee.

"(D) The exemption from income tax of any public broadcast station licensee under section 501(a) of the Internal Revenue Code of 1986 [formerly I.R.C.1954]

[section 501(a) of Title 26, Internal Revenue Code of 1986], relating to exemption from taxation, shall not be affected by the participation of such licensee in the demonstration program.

"(3) The Corporation shall make selections under paragraph (2), to the extent practicable, in a manner which ensures that—

"(A) a representative geographical distribution of public broadcast station licensees will be achieved;

"(B) licensees serving audiences and markets of various sizes will participate in the demonstration program;

"(C) licensees with operating budgets of various sizes will participate in the demonstration program;

"(D) different types of licensees will participate in the demonstration program; and

"(E) in the case of public radio station licensees, licensees with different types of programming formats will participate in the demonstration program.

"(c) Each public television station licensee or public radio station licensee which is selected by the Corporation for Public Broadcasting under subsection (b) shall be authorized to broadcast qualifying advertising in accordance with subsection (d).

"(d)(1)(A) Except as provided in subparagraph (B), any qualifying advertising announcement which is broadcast by any public television station licensee or any public radio station licensee may be broadcast only at the beginning or at the end of regular programs, and may not interrupt regular programs.

"(B) In the case of any regular program which is 2 or more hours in duration, any public radio station licensee may broadcast (subject to paragraph (2)) a qualifying advertising announcement during the program, but only (i) during a break in the program scheduled for station identification; or (ii) at other times which will not unduly disrupt the program.

"(2) Any qualifying advertising announcements which are broadcast consecutively by any public television station licensee or any public radio station licensee may not exceed 2 minutes in duration. Such licensees may not engage in any such consecutive broadcast

of qualifying advertising announcements more than once during any 30-minute period.

"(3)(A) The Commission shall prescribe regulations which specify the types of advertisements which may be broadcast by licensees during the demonstration program. The Commission may authorize licensees participating in the demonstration program to broadcast institutional advertisements and advertisements relating to specific products, services, or facilities. Licensees shall not be authorized or required to broadcast any advertisement which—

"(I) is intended to promote any opinion or point-of-view regarding any matter of public importance or interest, any political issue, or any matter relating to religion; or

"(II) is intended to support or oppose any candidate for political office.

"(B) The Federal Communications Commission shall have authority to determine in disputed cases whether any advertising announcement shall be considered to be qualifying advertising for purposes of this section.

"(4) The Commission shall prescribe regulations which establish requirements relating to the sale of broadcast time for advertisements during the demonstration program. Such regulations may authorize—

"(A) the assignment of broadcast time for advertisements through a system of random selection;

"(B) the sale of broadcast time for advertisements which will be broadcast at the beginning or at the end of particular programs, or during particular portions of the broadcast day; or

"(C) any other method for the sale of broadcast time which the Commission considers appropriate.

"(5) The Commission shall have authority to prescribe regulations under paragraph (3) and paragraph (4) which establish different criteria and requirements applicable to the various licensees participating in the demonstration program, to the extent the Commission considers the establishment of such different criteria and requirements to be necessary to assist the Commission in preparing the report, and making the recommendations, required in subsection (e).

"(6) Any issue regarding compliance with the provisions of this subsection shall be resolved by the Federal Communications Commission in accordance with its authority under the Communications Act of 1934 (47 U.S.C 151 et seq.) [this chapter].

"(e)(1) The Commission, as soon as practicable after the termination of the demonstration program under subsection (b)(1)(A), shall analyze the results of the demonstration program and shall submit a report to each House of the Congress regarding the demonstration program. Such report shall be submitted not later than October 1, 1983, and shall include—

"(A) an examination of whether qualifying advertising had any influence or effect upon programming broadcast by the public broadcast station licensees involved;

"(B) an analysis of the reaction of audiences to the broadcasting of such qualifying advertising;

"(C) an examination of the extent to which businesses and other organizations engaged in the purchase of broadcast time for the broadcast of qualifying advertising;

"(D) an analysis of whether the broadcasting of qualifying advertising had any impact upon the underwriting of programs; and

"(E) any other findings or information which the Commission considers appropriate.

"(2) Such report also shall include such recommendations for legislative or other action as the Commission considers appropriate, including a recommendation regarding whether public broadcast stations should be permitted to broadcast qualifying advertising on a permanent basis.

"(f) For purposes of this section:

"(1) The term 'Commission' means the Temporary Commission on Alternative Financing for Public Telecommunications established in section 1232.

"(2) The term 'demonstration program' means the demonstration program which the Commission is authorized to establish in accordance with this section.

"(3) The terms 'public broadcast station', 'public television station', and

Section 2994b, Pub.L. 88-452, Title VIII, § 833, as added Pub.L. 90-222, Title I, § 110, Dec. 23, 1967, 81 Stat. 726, and amended Pub.L. 90-623, § 5(b), Oct. 22, 1968, 82 Stat. 1315; Pub.L. 91-177, Title I, § 112(b), Dec. 30, 1969, 83 Stat. 832; Pub.L. 92-424, § 3(d)(3), Sept. 19, 1972, 86 Stat. 689, related to application of Federal law.

Section 2994c, Pub.L. 88-452, Title VIII, § 834, as added Pub.L. 90-222, Title I, § 110, Dec. 23, 1967, 81 Stat. 726, related to special limitations.

Section 2994d, Pub.L. 88-452, Title VIII, § 835, as added Pub.L. 90-222, Title I, § 110, Dec. 23, 1967, 81 Stat. 726, and amended Pub.L.

91-177, Title I, § 101(b), Dec. 30, 1969, 83 Stat. 827; Pub.L. 92-424, § 2(a), Sept. 19, 1972, 86 Stat. 688, related to duration of program.

Such former provisions are now covered by various sections as follows:

Former Sections	Present Sections
2994	5050
2994a	4957
2994b(a)	5055(a)
2994b(b)(1), (2)	5055(b)(1)-(3)
2294b(c)(1), (2)	5055(c)(1), (2)
2994c	5044
2994d	5053

SUBCHAPTER IX—EVALUATION

§§ 2995 to 2995c. Repealed. Pub.L. 97-35, Title VI, § 683(a), Aug. 18, 1981, 96 Stat. 519

HISTORICAL AND STATUTORY NOTES

Section 2995, Pub.L. 88-452, Title IX, § 901, as added Pub.L. 92-424, § 27(a), Sept. 19, 1972, 86 Stat. 704, and amended Pub.L. 93-644, § 12, Jan. 4, 1975, 88 Stat. 2328; Pub.L. 95-568, § 17(a)(42), Nov. 2, 1978, 92 Stat. 2443, related to program and project evaluation.

Section 2995a, Pub.L. 88-452, Title IX, § 902, as added Pub.L. 92-424, § 27(a), Sept. 19, 1972, 86 Stat. 704, and amended Pub.L. 93-644, § 12, Jan. 4, 1975, 88 Stat. 2329; Pub.L. 95-568, § 17(a)(43), Nov. 2, 1978, 92 Stat. 2443, related to cooperation and consultation with other Federal agencies.

Section 2995b, Pub.L. 88-452, Title IX, § 903, as added Pub.L. 92-424, § 27(a), Sept. 19, 1972, 86 Stat. 704, and amended Pub.L. 93-644, § 12, Jan. 4, 1975, 88 Stat. 2329, related to evaluation by other Federal agencies.

Section 2995c, Pub.L. 88-452, Title IX, § 904, as added Pub.L. 95-568, § 16, Nov. 2, 1978, 92 Stat. 2439, set forth authorization of appropriations.

Effective Date of Repeal

Sections repealed effective Oct. 1, 1981, see section 9912(a) of this title.

§ 2995d. Omitted

HISTORICAL AND STATUTORY NOTES

Codification

Section, Pub.L. 88-452, Title IX, § 905, as added Pub.L. 92-424, § 27(a), Sept. 19, 1972, 86 Stat. 705, making provision for the evaluation of

programs by other agencies was omitted in the general reorganization and amendment of this subchapter by Pub.L. 93-644, § 12, Jan. 4, 1975, 88 Stat. 2327. See section 2995(b) of this title.

SUBCHAPTER X—LEGAL SERVICES CORPORATION

CROSS REFERENCES

VISTA volunteers, assignment in connection with programs or activities eligible for assistance under this subchapter, see section 4953(a)(5) of this title.

§ 2996. Congressional findings and declaration of purpose

The Congress finds and declares that—

(1) there is a need to provide equal access to the system of justice in our Nation for individuals who seek redress of grievances;

(2) there is a need to provide high quality legal assistance to those who would be otherwise unable to afford adequate legal counsel and to continue the present vital legal services program;

(3) providing legal assistance to those who face an economic barrier to adequate legal counsel will serve best the ends of justice and assist in improving opportunities for low-income persons consistent with the purposes of this chapter;

(4) for many of our citizens, the availability of legal services has reaffirmed faith in our government of laws;

(5) to preserve its strength, the legal services program must be kept free from the influence of or use by it of political pressures; and

(6) attorneys providing legal assistance must have full freedom to protect the best interests of their clients in keeping with the Code of Professional Responsibility, the Canons of Ethics, and the high standards of the legal profession.

(Pub.L. 88-452, Title X, § 1001, as added Pub.L. 93-355, § 2, July 25, 1974, 88 Stat. 378, and amended Pub.L. 95-222, § 2, Dec. 28, 1977, 91 Stat. 1619.)

HISTORICAL AND STATUTORY NOTES

1977 Amendment

Par. (3). Pub.L. 95-222 added provision relating to assistance in improving opportunities for low-income persons consistent with this chapter.

Effective Date of 1977 Amendment

Section 17(b) of Pub.L. 95-222 provided that: "The amendments made by provisions of this Act other than sections 11 and 15 [amending this section and sections 2996c, 2996e, 2996f(a), (b), (f), and (h), 2996g, 2996h, 2996i(d) and 2996j of this title] shall be effective on the date of enactment of this Act [Dec. 28, 1977]."

Short Title of 1977 Amendment

Section 1 of Pub.L. 95-222 provided that: "This Act [amending this section and sections 2996c and 2996e to 2996j of this title, and enacting provisions set out as notes under this section and sections 2701, 2996f and 2996j of this title]

may be cited as the 'Legal Services Corporation Act Amendments of 1977'."

Short Title

Section 1 of Pub.L. 93-355 provided: "That this Act [enacting this subchapter and section 2971e of this title, amending section 2809 of this title, and enacting provisions set out as notes under this section and sections 2809 and 2996b of this title] may be cited as the 'Legal Services Corporation Act of 1974'."

Section 1014 of Pub.L. 88-452, as added by section 2 of Pub.L. 93-355, provided that: "This title [this subchapter] may be cited as the 'Legal Services Corporation Act'."

Legislative History

For legislative history and purpose of Pub.L. 93-355, see 1974 U.S.Code Cong. and Adm.News, p. 3872. See, also, Pub.L. 95-222, 1977 U.S.Code Cong. and Adm.News, p. 4503.

CODE OF FEDERAL REGULATIONS

Legal Services corporation, see 45 CFR Chap. XVI.

NOTES OF DECISIONS

Attorney fees 2

Conduct of attorney 4

Construction 1

Jurisdiction 8

Prevailing party 5

Private right of action 7

Purpose 1/2

State or local bar associations 6

Waiver of attorney fees 3

2. Attorney fees

Regulation permitting uncompensated outside practice by staff attorneys for legal service corporation under certain circumstances does not encompass any fee-generating work, even if fee is contingent on successfully prosecuting case; outside practice is "compensated" within meaning of Legal Services Corporation Act and underlying regulations if practice reasonably may be expected to result in fee for legal services. *Jordan v. City of Greenwood, Miss., C.A.5 (Miss.) 1987, 808 F.2d 1114, certiorari denied 108 S.Ct. 89, 484 U.S. 824, 98 L.Ed.2d 50.*

In setting attorney fees in civil rights case, fact that prevailing party was represented by a public service firm or association funded by public funds is irrelevant. *Watkins v. Mobile Housing Bd., C.A.Ala.1980, 632 F.2d 565.*

A reasonable attorney fee and costs of the action would be assessed against legal services corporation, which represented black maids and cook in suit unsuccessfully brought against hospital for racial discrimination in employment, since the conduct of the litigation by plaintiffs was carried on for months in a vexatious, wanton and oppressive manner; however, under the circumstances, it would be unjust to impose personal liability on the individual plaintiffs, themselves indigent persons, on a theory of vicarious responsibility. *Flora v. Moore, D.C.Miss.1978, 461 F.Supp. 1104.*

1/2. Purpose

This subchapter was intended to benefit indigents who have legal grievances but who are unable to afford legal means necessary to redress them; Congress did not seek to protect its members from anything, but instead sought to protect strength and integrity of Corporation and its recipients. *Grasley v. Legal Services Corp., D.C.Iowa 1982, 535 F.Supp. 818.*

1. Construction

Prohibition of this subchapter on use of funds to provide legal assistance in school desegregation cases must be read in conjunction with other statements contained in this subchapter regarding the need to protect the best interests of the clients and to adhere to the Code of Professional Responsibility, the Canons of Ethics, and the high standards of the legal profession. *Tasby v. Estes, D.C.Tex.1976, 416 F.Supp. 644.*

3. Waiver of attorney fees

Waiver of legal service foundation's right to attorney fees in school desegregation case was exclusively within province of the foundation's board of directors. *Tasby v. Estes*, D.C.Tex.1976, 416 F.Supp. 644.

4. Conduct of attorney

It is improper for an attorney to start out representing a client at a time when he is employed on the basis that he may not charge a fee and then separate from that service and suggest entitlement to a fee; same principle holds true for individuals who are not employed by a legal services foundation but are willing to donate their time to the foundation. *Tasby v. Estes*, D.C.Tex. 1976, 416 F.Supp. 644.

5. Prevailing party

Reasonable and necessary costs of litigation were recoverable by the successful plaintiffs in school desegregation case. *Tasby v. Estes*, D.C.Tex.1976, 416 F.Supp. 644.

6. State or local bar associations

Under system of federalism, this subchapter is superior to practices or rules of state or local bar associations. *Central Florida Legal Services, Inc. v. Eastmoore*, D.C.Fla.1981, 517 F.Supp. 497.

7. Private right of action

Even if legal services association was a state actor, individual who was denied legal services had no private action under Legal Services Corporation Act which was enforceable under civil rights statute. *Fultz v. Neighborhood Legal Services*, W.D.Pa.1987, 654 F.Supp. 881.

There is no private cause of action under the Legal Services Corporation Act [Economic Op-

portunity Act of 1964 § 1001 et seq., as amended, 42 U.S.C.A. § 2996 et seq.] for persons aggrieved by violations of the Act. *Howard Gault Co. v. Texas Rural Legal Aid, Inc.*, D.C.Tex.1985, 615 F.Supp. 916.

Plaintiff had no private right of action under this subchapter for alleged discrimination and misuse of federal funds by legal aid program and Legal Services Corporation, which denied her legal assistance, notwithstanding that she was one of class of possible beneficiaries for whose benefit this subchapter was enacted, where priority allocation of inadequate resources was part of statutory scheme, section of proposed act explicitly providing a private remedy was deleted in committee in both houses prior to enactment, and implication of private remedy would undercut purpose of this subchapter, which was to deliver the maximum legal services to the poor on a priority basis with limited funds. *Nabke v. U.S. Dept. of Housing and Urban Development*, D.C.Cal.1981, 520 F.Supp. 5.

8. Jurisdiction

District court had subject-matter jurisdiction under section 1331 of Title 28 over dispute involving termination of grantee's legal services program's funding by grantor legal services corporation, even though there was no provision in this subchapter for judicial review, where questions of whether terminated grantee was entitled to such review and what standards should be applied, if there was right of judicial review, depended upon construction given this subchapter, federal law was only element of grantee's cause of action, and questions were neither "wholly insubstantial" nor "obviously frivolous." *San Juan Legal Services, Inc. v. Legal Services Corp.*, C.A.Puerto Rico 1981, 655 F.2d 434.

§ 2996a. Definitions

As used in this subchapter, the term—

- (1) "Board" means the Board of Directors of the Legal Services Corporation;
- (2) "Corporation" means the Legal Services Corporation established under this subchapter;
- (3) "eligible client" means any person financially unable to afford legal assistance;
- (4) "Governor" means the chief executive officer of a State;
- (5) "legal assistance" means the provision of any legal services consistent with the purposes and provisions of this subchapter;
- (6) "recipient" means any grantee, contractee, or recipient of financial assistance described in clause (A) of section 2996a(a)(1) of this title;
- (7) "staff attorney" means an attorney who receives more than one-half of his annual professional income from a recipient organized solely for the provision of legal assistance to eligible clients under this subchapter; and
- (8) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

(Pub.L. 88-452, Title X, § 1002, as added Pub.L. 93-355, § 2, July 25, 1974, 88 Stat. 378.)

HISTORICAL AND STATUTORY NOTES

Legislative History

For legislative history and purpose of Pub.L. 93-355, see 1974 U.S.Code Cong. and Adm.News, p. 3872.

§ 2996b. Legal Services Corporation

(a) Establishment; purpose

There is established in the District of Columbia a private nonmembership nonprofit corporation, which shall be known as the Legal Services Corporation, for the purpose of providing financial support for legal assistance in noncriminal proceedings or matters to persons financially unable to afford legal assistance.

(b) Principal office; agent for service of process

The Corporation shall maintain its principal office in the District of Columbia and shall maintain therein a designated agent to accept service of process for the Corporation. Notice to or service upon the agent shall be deemed notice to or service upon the Corporation.

(c) Status of corporation under tax laws

The Corporation, and any legal assistance program assisted by the Corporation, shall be eligible to be treated as an organization described in section 170(c)(2)(B) of Title 26 and as an organization described in section 501(c)(3) of Title 26 which is exempt from taxation under section 501(a) of Title 26. If such treatments are conferred in accordance with the provisions of Title 26, the Corporation, and legal assistance programs assisted by the Corporation, shall be subject to all provisions of Title 26 relevant to the conduct of organizations exempt from taxation.

(Pub.L. 88-452, Title X, § 1008, as added Pub.L. 93-355, § 2, July 25, 1974, 88 Stat. 379.)

HISTORICAL AND STATUTORY NOTES

Transition to Legal Services Corporation Program

Section 3(a)-(d)(1), (e) of Pub.L. 93-355 provided that:

"(a) Notwithstanding any other provision of law, effective ninety days after the date of the first meeting of the Board of Directors of the Legal Services Corporation established under the Legal Services Corporation Act (Title Acts of the Economic Opportunity Act of 1964, as added by this Act) [this subchapter], the Legal Services Corporation shall succeed to all rights of the Federal Government to capital equipment in the possession of legal services programs or activities assisted pursuant to section 222(a)(3) [2809(a)(3) of this title], 230 [2823 of this title], 232 [2825 of this title], or any other provision of the Economic Opportunity Act of 1964 [this chapter].

"(b) Within ninety days after the first meeting of the Board, all assets, liabilities, obligations, property, and records as determined by the Director of the Office of Management and Budget, in consultation with the Director of the Office of Economic Opportunity or the head of any successor authority, to be employed directly or held or used primarily, in connection with any function of the Director of the Office of Economic Opportunity or the head of any successor authority in carrying out legal services activities under the Economic Opportunity Act of 1964 [this chapter], shall be transferred to the Corporation. Personnel transferred to the Corporation from the Office of Economic Opportunity or any successor authority shall be transferred in accordance with applicable laws and regulations, and shall not be reduced in compensation for one year after such

transfer, except for cause. The Director of the Office of Economic Opportunity or the head of any successor authority shall take whatever action is necessary and reasonable to seek suitable employment for personnel who do not transfer to the Corporation.

"(c) Collective-bargaining agreements in effect on the date of enactment of this Act [July 25, 1974] covering employees transferred to the Corporation shall continue to be recognized by the Corporation until the termination date of such agreements, or until mutually modified by the parties.

"(d)(1) Notwithstanding any other provision of law, the Director of the Office of Economic Opportunity or the head of any successor authority shall take such action as may be necessary, in cooperation with the president of the Legal Services Corporation, including the provision (by grant or otherwise) of financial assistance to recipients and the Corporation and the furnishing of services and facilities to the Corporation—

"(A) to assist the Corporation in preparing to undertake, and in the initial undertaking of, its responsibilities under this title [this subchapter];

"(B) out of appropriations available to him, to make funds available to meet the organizational and administrative expenses of the Corporation;

"(C) within ninety days after the first meeting of the Board, to transfer to the Corporation all unexpended balances of funds appropriated for the purpose of carrying out legal services programs and activities under the Economic

Opportunity Act of 1964 [this chapter] or successor authority; and

"(D) to arrange for the orderly continuation by such Corporation of financial assistance of legal services programs and activities assisted pursuant to the Economic Opportunity Act of 1964 [this chapter] or successor authority.

"Whenever the Director of the Office of Economic Opportunity or the head of any successor authority determines that an obligation to provide financial assistance pursuant to any contract or grant for such legal services will extend beyond six months after the date of enactment of this Act (July 25, 1974), he shall include, in any such contract or grant, provisions to assure that the obligation to provide such financial assistance may be assumed by the Legal Services Corporation,

subject to such modifications of the terms and conditions of such contract or grant as the Corporation determines to be necessary.

"(2) [Provisions directed the repeal of section 2809(a)(3) of this title. See 1974 Amendment note under section 2809 of this title.]

"(e) There are authorized to be appropriated for the fiscal year ending June 30, 1975, such sums as may be necessary for carrying out this section."

Legislative History

For legislative history and purpose of Pub.L. 93-355, see 1974 U.S. Code Cong. and Adm. News, p. 3872.

LIBRARY REFERENCES

United States ④53(3).

C.J.S. United States § 65 et seq.

NOTES OF DECISIONS

Attorney fees 1
Denial of funding 2

1. Attorney fees

It was improper for district court to refuse payment of fees to attorney employed by Legal Services Corporation and appointed to represent a defendant in a criminal case by the district court. *Hinde v. Iowa Dist. Court for Mills County, Iowa* 1981, 311 N.W.2d 94.

§ 2996c. Board of Directors

(a) Establishment; membership

The Corporation shall have a Board of Directors consisting of eleven voting members appointed by the President, by and with the advice and consent of the Senate, no more than six of whom shall be of the same political party. A majority shall be members of the bar of the highest court of any State, and none shall be a full-time employee of the United States. Effective with respect to appointments made after December 28, 1977 but not later than July 31, 1978, the membership of the Board shall be appointed so as to include eligible clients, and to be generally representative of the organized bar, attorneys providing legal assistance to eligible clients, and the general public.

(b) Term of office

The term of office of each member of the Board shall be three years, except that five of the members first appointed, as designated by the President at the time of appointment, shall serve for a term of two years. Each member of the Board shall continue to serve until the successor to such member has been appointed and qualified. The term of initial members shall be computed from the date of the first meeting of the Board. The term of each member other than initial members shall be computed from the date of termination of the preceding term. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which such member's predecessor was appointed shall be appointed for the remainder of such term. No member shall be reappointed to more than two consecutive terms immediately following such member's initial term.

(c) Board members not deemed officers or employees of United States

The members of the Board shall not, by reason of such membership, be deemed officers or employees of the United States.

(d) Chairman

The President shall select from among the voting members of the Board a chairman, who shall serve for a term of three years. Thereafter the Board shall annually elect a chairman from among its voting members.

(e) Removal

A member of the Board may be removed by a vote of seven members for malfeasance in office or for persistent neglect of or inability to discharge duties, or for offenses involving moral turpitude, and for no other cause.

(f) State advisory councils

Within six months after the first meeting of the Board, the Board shall request the Governor of each State to appoint a nine-member advisory council for such State. A majority of the members of the advisory council shall be appointed, after recommendations have been received from the State bar association, from among the attorneys admitted to practice in the State, and the membership of the council shall be subject to annual reappointment. If ninety days have elapsed without such an advisory council appointed by the Governor, the Board is authorized to appoint such a council. The advisory council shall be charged with notifying the Corporation of any apparent violation of the provisions of this subchapter and applicable rules, regulations, and guidelines promulgated pursuant to this subchapter. The advisory council shall, at the same time, furnish a copy of the notification to any recipient affected thereby, and the Corporation shall allow such recipient a reasonable time (but in no case less than thirty days) to reply to any allegation contained in the notification.

(g) Open meetings; applicability of Government in the Sunshine provisions

All meetings of the Board, of any executive committee of the Board, and of any advisory council established in connection with this subchapter shall be open and shall be subject to the requirements and provisions of section 552b of Title 5 (relating to open meetings).

(h) Quarterly meetings

The Board shall meet at least four times during each calendar year.

(Pub.L. 88-452, Title X, § 1004, as added Pub.L. 98-355, § 2, July 25, 1974, 88 Stat. 379, and amended Pub.L. 95-222, §§ 8, 4, Dec. 28, 1977, 91 Stat. 1619.)

HISTORICAL AND STATUTORY NOTES

1977 Amendment

Subsec. (a). Pub.L. 95-222, § 3, added provision relating to appointments made after Dec. 28, 1977.

Subsec. (g). Pub.L. 95-222, § 4, substituted provisions relating to applicability of section 552b of Title 5, for provisions setting forth requirements respecting availability of minutes of public meetings.

Effective Date of 1977 Amendment

Amendment by Pub.L. 95-222 effective on Dec. 28, 1977, see section 17(b) of Pub.L. 95-222, set out as a note under section 2996 of this title.

Compensation of Members of Board of Directors

Pub.L. 97-377, Title I, § 101(d), Dec. 21, 1982, 96 Stat. 1876, provided that: "No member of the

Board of Directors of the Legal Services Corporation shall be compensated for his services to the Corporation except for the payment of an attendance fee at meetings of the Board at a rate not to exceed the highest daily rate for grade fifteen (15) of the General Schedule and necessary travel expenses to attend Board meetings in accordance with the Standard Government Travel Regulations."

Legislative History

For legislative history and purpose of Pub.L. 93-355, see 1974 U.S. Code Cong. and Adm. News, p. 3872. See, also, Pub.L. 95-222, 1977 U.S. Code Cong. and Adm. News, p. 4503.

CODE OF FEDERAL REGULATIONS

Government in the Sunshine, see 45 CFR 1622.1 et seq.

State Advisory Councils, see 45 CFR 1603.1 et seq.

LIBRARY REFERENCES

United States ④53(5).

NOTES OF DECISIONS

1. Recess appointees

Senate confirmation of Presidential nominees for membership on Board of Directors of the Legal Services Corporation terminated plaintiffs' claim to status as holdover directors, rendering moot the issue whether the "recess appointees" named by the President ranked as persons qualified to succeed holdover Board members prior to

confirmation by the Senate. *McCalpin v. Durant*, C.A.D.C.1985, 766 F.2d 535.

The holdover provisions of subsec. (b) of this section do not preclude the President from making recess appointments to its board of directors after the terms of the members have expired but while they are serving as holdovers. 1978 (Counsel-Inf.Op.) 2 Op.O.L.C. 398.

§ 2996d. Officers and employees

(a) Appointment of president; outside compensation of officers prohibited; terms

The Board shall appoint the president of the Corporation, who shall be a member of the bar of the highest court of a State and shall be a non-voting ex officio member of the Board, and such other officers as the Board determines to be necessary. No officer of the Corporation may receive any salary or other compensation for services from any source other than the Corporation during his period of employment by the Corporation, except as authorized by the Board. All officers shall serve at the pleasure of the Board.

(b) Power of president to appoint and remove employees; nonpartisan appointments

(1) The president of the Corporation, subject to general policies established by the Board, may appoint and remove such employees of the Corporation as he determines necessary to carry out the purposes of the Corporation.

(2) No political test or political qualification shall be used in selecting, appointing, promoting, or taking any other personnel action with respect to any officer, agent, or employee of the Corporation or of any recipient, or in selecting or monitoring any grantee, contractor, or person or entity receiving financial assistance under this subchapter.

(c) Conflict of interest

No member of the Board may participate in any decision, action, or recommendation with respect to any matter which directly benefits such member or pertains specifically to any firm or organization with which such member is then associated or has been associated within a period of two years.

(d) Compensation

Officers and employees of the Corporation shall be compensated at rates determined by the Board, but not in excess of the rate of level V of the Executive Schedule specified in section 5316 of Title 5.

(e) Officers and employees not deemed officers and employees of Federal Government; Corporation not deemed a department, agency, or instrumentality of Federal Government; review of annual budget

(1) Except as otherwise specifically provided in this subchapter, officers and employees of the Corporation shall not be considered officers or employees, and the Corporation shall not be considered a department, agency, or instrumentality, of the Federal Government.

(2) Nothing in this subchapter shall be construed as limiting the authority of the Office of Management and Budget to review and submit comments upon the Corporation's annual budget request at the time it is transmitted to the Congress.

(f) Exceptions

Officers and employees of the Corporation shall be considered officers and employees of the Federal Government for purposes of the following provisions of Title 5: subchapter I of chapter 81 (relating to compensation for work injuries); chapter 83 (relating to civil service retirement); chapter 87 (relating to life insurance); and chapter 89 (relating to health insurance). The Corporation shall make contributions at the same rates applicable to agencies of the Federal Government under the provisions referred to in this subsection.

(g) Freedom of information

The Corporation and its officers and employees shall be subject to the provisions of section 552 of Title 5 (relating to freedom of information).

(Pub.L. 88-452, Title X, § 1005, as added Pub.L. 93-855, § 2, July 25, 1974, 88 Stat. 880.)

HISTORICAL AND STATUTORY NOTES

Reimbursement of Officers or Employees

Pub.L. 97-377, Title I, § 101(d), Dec. 21, 1982, 96 Stat. 1876, provided that: "That no officer or employee of the Legal Services Corporation or a recipient program shall be reimbursed for membership in a private club, or be paid severance pay

in excess of what would be paid a Federal employee for comparable service."

Legislative History

For legislative history and purpose of Pub.L. 93-355, see 1974 U.S. Code Cong. and Adm. News, p. 3872.

CODE OF FEDERAL REGULATIONS

Freedom of information procedures, see 45 CFR 1602.1 et seq.

Prohibited political activities, see 45 CFR 1608.1 et seq.

LIBRARY REFERENCES

United States ¶53(5).

C.J.S. United States § 67.

NOTES OF DECISIONS

Administrative procedure 1

Private right of action 3

Terminable-at-will employees 2

1. Administrative procedure

The legislation creating the legal services corporation provides that corporation shall not be considered agency of federal government and it is therefore exempt from general coverage of Administrative Procedure Act, sections 551 et seq. and 701 et seq. of Title 5, including rule-making provisions, but section 2996g of this title contains its own rule-making and publication requirements. *Neighborhood Legal Services, Inc. v. Legal Services Corp.*, D.C. Conn. 1979, 466 F.Supp. 1148.

2. Terminable-at-will employees

Neither employer's written offer, employee's written acceptance, nor employer's personnel procedures manual contained specified term of employment, and thus, employees, who had been regional directors of Legal Services Corporation, were at-will employees. *Newman v. Legal Services Corp.*, D.D.C. 1986, 628 F.Supp. 535.

3. Private right of action

Private cause of action does not exist for violation of Legal Services Act section providing that no political test or political qualification shall be used in selecting, appointing, promoting, or taking any other personnel action with respect to any officer, agent, or employee, of Legal Services Corporation. *Hedges v. Legal Services Corp.*, N.D. Cal. 1987, 663 F.Supp. 300.

§ 2996e. Powers, duties, and limitations

(a) Powers of nonprofit corporation; additional powers

To the extent consistent with the provisions of this subchapter, the Corporation shall exercise the powers conferred upon a nonprofit corporation by the District of Columbia Nonprofit Corporation Act (except for section 1005(o) of title 29 of the District of Columbia Code). In addition, the Corporation is authorized—

(1)(A) to provide financial assistance to qualified programs furnishing legal assistance to eligible clients, and to make grants to and contracts with—

(i) individuals, partnerships, firms, corporations, and nonprofit organizations, and

(ii) State and local governments (only upon application by an appropriate State or local agency or institution and upon a special determination by the Board that the arrangements to be made by such agency or institution will provide services which will not be provided adequately through nongovernmental arrangements),

for the purpose of providing legal assistance to eligible clients under this subchapter, and (B) to make such other grants and contracts as are necessary to carry out the purposes and provisions of this subchapter;

(2) to accept in the name of the Corporation, and employ or dispose of in furtherance of the purposes of this subchapter, any money or property, real, personal, or mixed, tangible or intangible, received by gift, devise, bequest, or otherwise; and

(3) to undertake directly, or by grant or contract, the following activities relating to the delivery of legal assistance—

(A) research, except that broad general legal or policy research unrelated to representation of eligible clients may not be undertaken by grant or contract,

(B) training and technical assistance, and

(C) to serve as a clearinghouse for information.

(b) Disciplinary powers; representational questions; interference with professional responsibilities of attorneys; bar membership; restrictions; languages other than English

(1)(A) The Corporation shall have authority to insure the compliance of recipients and their employees with the provisions of this subchapter and the rules, regulations, and guidelines promulgated pursuant to this subchapter, and to terminate, after a hearing in accordance with section 2996j of this title, financial support to a recipient which fails to comply.

(B) No question of whether representation is authorized under this subchapter, or the rules, regulations or guidelines promulgated pursuant to this subchapter, shall be considered in, or affect the final disposition of, any proceeding in which a person is represented by a recipient or an employee of a recipient. A litigant in such a proceeding may refer any such question to the Corporation which shall review and dispose of the question promptly, and take appropriate action. This subparagraph shall not preclude judicial review available under applicable law.

(2) If a recipient finds that any of its employees has violated or caused the recipient to violate the provisions of this subchapter or the rules, regulations, and guidelines promulgated pursuant to this subchapter, the recipient shall take appropriate remedial or disciplinary action in accordance with the types of procedures prescribed in the provisions of section 2996j of this title.

(3) The Corporation shall not, under any provision of this subchapter, interfere with any attorney in carrying out his professional responsibilities to his client as established in the Canons of Ethics and the Code of Professional Responsibility of the American Bar Association (referred to collectively in this subchapter as "professional responsibilities") or abrogate as to attorneys in programs assisted under this subchapter the authority of a State or other jurisdiction to enforce the standards of professional responsibility generally applicable to attorneys in such jurisdiction. The Corporation shall ensure that activities under this subchapter are carried out in a manner consistent with attorneys' professional responsibilities.

(4) No attorney shall receive any compensation, either directly or indirectly, for the provision of legal assistance under this subchapter unless such attorney is admitted or otherwise authorized by law, rule, or regulation to practice law or provide such assistance in the jurisdiction where such assistance is initiated.

(5) The Corporation shall insure that (A) no employee of the Corporation or of any recipient (except as permitted by law in connection with such employee's own employment situation), while carrying out legal assistance activities under this subchapter, engage in, or encourage others to engage in, any public demonstration or picketing, boycott, or strike; and (B) no such employee shall, at any time, engage in, or encourage others to engage in, any of the following activities: (i) any rioting or civil disturbance, (ii) any activity which is in violation of an outstanding injunction of any court of competent jurisdiction, (iii) any other illegal activity, or (iv) any intentional identification of the Corporation or any recipient with any political activity prohibited by section 2996f(a)(6) of this title. The Board, within ninety days after its first meeting, shall issue rules and regulations to provide for the enforcement of this paragraph and section 2996f(a)(5) of this title, which rules shall include, among available remedies, provisions, in accordance with the types of procedures prescribed in the provisions of section 2996j of this title, for suspension of legal assistance supported under this subchapter, suspension of an employee of the Corporation or of any employee of any recipient by such recipient, and, after consideration of other remedial measures and after a hearing in accordance with section 2996j of this title, the termination of such assistance or employment, as deemed appropriate for the violation in question.

(6) In areas where significant numbers of eligible clients speak a language other than English as their principal language, the Corporation shall, to the extent

feasible, provide that their principal language is used in the provision of legal assistance to such clients under this subchapter.

(c) Participation in litigation; lobbying activities

The Corporation shall not itself—

(1) participate in litigation unless the Corporation or a recipient of the Corporation is a party, or a recipient is representing an eligible client in litigation in which the interpretation of this subchapter or a regulation promulgated under this subchapter is an issue, and shall not participate on behalf of any client other than itself; or

(2) undertake to influence the passage or defeat of any legislation by the Congress of the United States or by any State or local legislative bodies, except that personnel of the Corporation may testify or make other appropriate communication (A) when formally requested to do so by a legislative body, a committee, or a member thereof, or (B) in connection with legislation or appropriations directly affecting the activities of the Corporation.

(d) Miscellaneous prohibitions

(1) The Corporation shall have no power to issue any shares of stock, or to declare or pay any dividends.

(2) No part of the income or assets of the Corporation shall inure to the benefit of any director, officer, or employee, except as reasonable compensation for services or reimbursement for expenses.

(3) Neither the Corporation nor any recipient shall contribute or make available corporate funds or program personnel or equipment to any political party or association, or the campaign of any candidate for public or party office.

(4) Neither the Corporation nor any recipient shall contribute or make available corporate funds or program personnel or equipment for use in advocating or opposing any ballot measures, initiatives, or referendums. However, an attorney may provide legal advice and representation as an attorney to any eligible client with respect to such client's legal rights.

(5) No class action suit, class action appeal, or amicus curiae class action may be undertaken, directly or through others, by a staff attorney, except with the express approval of a project director of a recipient in accordance with policies established by the governing body of such recipient.

(6) Attorneys employed by a recipient shall be appointed to provide legal assistance without reasonable compensation only when such appointment is made pursuant to a statute, rule, or practice applied generally to attorneys practicing in the court where the appointment is made.

(e) Political activities of Corporation employees and staff attorneys

(1) Employees of the Corporation or of recipients shall not at any time intentionally identify the Corporation or the recipient with any partisan or nonpartisan political activity associated with a political party or association, or the campaign of any candidate for public or party office.

(2) Employees of the Corporation and staff attorneys shall be deemed to be State or local employees for purposes of chapter 15 of Title 5, except that no staff attorney may be a candidate in a partisan political election.

(f) Harassment; malicious abuse of legal process

If an action is commenced by the Corporation or by a recipient and a final order is entered in favor of the defendant and against the Corporation or a recipient's plaintiff, the court shall, upon motion by the defendant and upon a finding by the court that the action was commenced or pursued for the sole purpose of harassment of the defendant or that the Corporation or a recipient's plaintiff maliciously abused legal process, enter an order (which shall be appealable before being made final) awarding reasonable costs and legal fees incurred by the defendant in defense of the action, except when in contravention of a State law, a rule of court, or a statute of

general applicability. Any such costs and fees shall be directly paid by the Corporation.

(Pub.L. 88-452, Title X, § 1006, as added Pub.L. 98-355, § 2, July 25, 1974, 88 Stat. 381, and amended Pub.L. 95-222, §§ 5(a), (b), 6, 7(a), 8, Dec. 28, 1977, 91 Stat. 1619, 1620.)

HISTORICAL AND STATUTORY NOTES

References in Text

The District of Columbia Nonprofit Corporation Act, referred to in subsec. (a), is Pub.L. 87-569, Aug. 6, 1962, 76 Stat. 265, which was not classified to the Code.

1977 Amendment

Subsec. (a)(3). Pub.L. 95-222, § 5(a), substituted " , or " for "and not".

Subsec. (a)(3)(A). Pub.L. 95-222, § 5(b), added exception for broad general legal or policy research.

Subsec. (b)(1). Pub.L. 95-222, § 6(a), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (c)(1). Pub.L. 95-222, § 6(b), added provisions setting forth situations when the Corporation may participate in litigation.

Subsec. (d)(6). Pub.L. 95-222, § 6(c), added subsec. (d)(6).

Subsec. (e)(2). Pub.L. 95-222, § 7(a), added provisions relating to staff attorneys.

Subsec. (f). Pub.L. 95-222, § 8, substituted "the court shall" for "the court may".

Effective Date of 1977 Amendment

Amendment by Pub.L. 95-222 effective on Dec. 28, 1977, see section 17(b) of Pub.L. 95-222, set out as a note under section 2996 of this title.

Legislative History

For legislative history and purpose of Pub.L. 93-355, see 1974 U.S. Code Cong. and Adm. News, p. 3872. See, also, Pub.L. 95-222, 1977 U.S. Code Cong. and Adm. News, p. 4503.

WEST'S FEDERAL FORMS

Judgment and costs, see § 4491 et seq.
Taxation of costs, see §§ 4612 to 4632.

CODE OF FEDERAL REGULATIONS

Legal Services Corporation, see 45 CFR Chap. XVI.

LIBRARY REFERENCES

United States ⇨53(6).
C.J.S. United States § 65 et seq.

NOTES OF DECISIONS

Attorney fees 7
Class actions 5a
Construction with other laws 1/2
Disclosure 1
Duties of corporation 3
Funds for grants 13
Guidelines 2
Harassment or abuse of legal process 10
Injunctions 15
Jurisdiction 5
Matters considered 4
Parties 11
Pleadings 2a
Prohibitions 12
Review 8
Standing 9
Terms and conditions of grants 14
Termination of financial support 6

1/2. Construction with other laws

The Legal Services Corporation Act "[Economic Opportunity Act of 1964 § 1001 et seq., as amended, 42 U.S.C.A. § 2996 et seq.]" does not create in an indigent any right to legal services which is enforceable under Section 1983 [42 U.S.C.A. § 1983]. *Howard Gault Co. v. Texas Rural Legal Aid, Inc.*, D.C. Tex. 1985, 615 F.Supp. 916.

That legal services corporation in Puerto Rico was primarily funded by legal services corporation, which was successor to Office of Economic Opportunity, federal agency, did not make Puerto Rico corporation agent or instrumentality of the United States for purposes of section 1983 of Title 42. *Gerena v. Puerto Rico Legal Services, Inc.*, D.C. Puerto Rico 1982, 538 F.Supp. 754, affirmed 697 F.2d 447.

1. Disclosure

While a litigant should have same right of access to information as is made available to general public under this subchapter, types of information which are sought by an opposing party or by one seeking only to prove a violation of this subchapter are exempt from disclosure. *Brame v. Ray Bills Finance Corp.*, D.C.N.Y. 1977, 76 F.R.D. 25.

2. Guidelines

If defendant has a genuine interest in learning about guidelines of legal services organization representing plaintiffs, it could request to see whatever information was made available to general public under this subchapter and, if organization then refused to provide information, defendant could report the same to appropriate state advisory council given responsibility of notifying organization's parent corporation of apparent violations of

by corporation. *Brame v. Ray Bills Finance Corp.*, D.C.N.Y. 1977, 76 F.R.D. 25.

2a. Pleadings

Petition filed by former director of state legal services corporation for alleged failure of corporation to abide by assertedly applicable federal regulations relative to reprimand, suspension, and termination of employees was sufficient to state cause of action for reinstatement and recovery of back pay. *Young v. Central Louisiana Legal Services, Inc.*, La.App.3 Cir. 1983, 432 So.2d 1072.

3. Duties of corporation

Legal services corporation is primarily responsible for developing and supervising the parameters within which eligibility is to be determined by recipients, and is further charged with the responsibility for coordinating enforcement of the standards so adopted. *Martens v. Hall*, D.C. Fla. 1977, 444 F.Supp. 34.

While this section allows Legal Services Corporation and its recipients to provide testimony and appropriate comments to Congress concerning relevant legislation, it prohibits the Corporation and recipients from expending funds for grass roots lobbying activities. 1981, 60 Comp.Gen. 423.

4. Matters considered

Determination of "eligibility" for representation by a legal services corporation is an administrative decision within the scope of decision of the corporation and its recipients. *Martens v. Hall*, D.C. Fla. 1977, 444 F.Supp. 34.

Contention that, because plaintiff class might contain members not qualified in their own right to receive legal assistance, the class might not therefore be represented by grantee (recipient) of Legal Services Corporation could not be raised in federal district court in civil rights action, in view of this section making determination of propriety of grantee representation of specific litigants a matter within jurisdiction of the Legal Services Corporation, and same was true despite qualification, of this section, that judicial review available under applicable law was not precluded. *Holland v. Steele*, D.C. Ga. 1981, 92 F.R.D. 58.

5. Jurisdiction

In suit brought to challenge decision of legal services corporation to deny refunding to farm worker division of legal services agency, Administrative Procedure Act, sections 551 et seq. and 701 et seq. of Title 5, did not provide jurisdiction, but federal question jurisdiction was present, as was diversity jurisdiction. *Neighborhood Legal Services, Inc. v. Legal Services Corp.*, D.C. Conn. 1979, 466 F.Supp. 1148.

As regards representation by a legal services corporation, a determination of "eligibility" falsely or improperly made by an employee or recipient is within the primary jurisdiction of the agency. *Martens v. Hall*, D.C. Fla. 1977, 444 F.Supp. 34.

No question can be raised in state court as to whether litigant is eligible for representation by nonprofit corporation, which is chartered and funded pursuant to congressional act for purpose of providing legal counsel for poor persons; such corporation has the primary jurisdiction, exclusive of the state, as to who is eligible for representation

by corporation. *Courtney v. Butt*, 1978, 572 S.W.2d 407, 264 Ark. 475.

5a. Class actions

Class action certification was not to be withheld pending showing by plaintiff's attorneys that they had complied with this section to show that they were qualified in proceeding with appropriate class action procedure. *Holland v. Steele*, D.C. Ga. 1981, 92 F.R.D. 58.

6. Termination of financial support

Legal Services Corporation has authority to insure compliance with this subchapter and applicable regulations and, after a hearing, can terminate financial support to a legal services program which violates this subchapter or regulations. *Brame v. Ray Bills Finance Corp.*, D.C.N.Y. 1977, 76 F.R.D. 25.

7. Attorney fees

District court did not abuse its discretion in determining that conduct by Hispanic employees bringing employment discrimination suit did not meet standard required for award of attorney fees against legal service corporation representing employees under Legal Service Corporation Act, which authorizes award of fees for pursuit of action for sole purpose of harassment of defendant or for malicious abuse of legal process. *Trevino v. Holly Sugar Corp.*, C.A.5 (Tex.) 1987, 811 F.2d 896.

A meritless action which is prosecuted or pursued "in bad faith, vexatiously, wantonly, or for oppressive reasons" is the legal equivalent of "an action pursued for the sole purpose of harassment of the defendant," within the meaning of this section imposing liability for attorney fees and costs directly against the legal services corporation for the acts or conduct of staff attorneys employed by the corporation or any recipient agency thereof. *Flora v. Moore*, D.C. Miss. 1978, 461 F.Supp. 1104.

Under this section, defendants, who in civil rights case failed to pursue administrative remedy authorized to question representations of plaintiffs under this section, were precluded from asserting as a bar to award to plaintiffs of attorney fees any fee generating guideline that legal assistance may or may not have transgressed. *Felder v. Foster*, Sup. 1981, 436 N.Y.S.2d 675.

Even though former wife, who was represented by legal service agency, may have had no obligation to pay her attorney, who was furnished by legal service agency, circuit court could not deny or limit an award of attorney fees to wife under the Marriage and Dissolution of Marriage Act; thus, cause was remanded to circuit court to apportion the attorney fees and costs between the parties, and, in apportioning attorney fees, circuit court was not to consider that wife was represented by legal service agency and could order husband to pay his portion to legal service agency. *In re Marriage of Brockett*, 1984, 474 N.E.2d 754, 85 Ill. Dec. 794, 130 Ill.App.3d 499.

Landlords failed to establish sole purpose of harassment or abuse of process on part of legal service corporation representing tenants in dispute regarding landlords' rental property, and thus, reasonable costs and attorney fees would not be imposed upon legal service corporation. *Sonksen*

v. Legal Services Corp., Iowa 1986, 389 N.W.2d 386.

Appeal was not brought unreasonably and without foundation, and was therefore not the legal equivalent of and did not constitute malicious abuse of the legal process; thus, legal services corporation which prosecuted appeal was not liable for costs and attorney fees awarded to Department of Health and Welfare. Davison v. Idaho Dept. of Health & Welfare, Idaho 1983, 673 P.2d 384.

Case, in which mother sought to regain custody of child and in which state's Legal Services Corporation's representative acted as mother's attorney, did not appear to be meritorious, for purposes of determining whether costs could be taxed against Corporation, where social workers testified that mother was a fit person to have custody and child's guardian ad litem told judge that enough evidence was presented to support a finding that it was in child's best interest to be returned to mother's custody. Matter of Kelly, Ala.Civ.App. 1982, 423 So.2d 234.

8. Review

Legal Services Corporation's (LSC) interpretations of Legal Services Corporation Act must be upheld unless Congress has directly spoken to precise question at issue and has resolved it against LSC, or unless regulation cannot be termed permissible construction of Act or is arbitrary or capricious. Texas Rural Legal Aid, Inc. v. Legal Services Corp., C.A.D.C.1991, 940 F.2d 685.

Although decisions of Legal Services Corporation, a private corporation and not an agency of the United States Government, are not technically reviewable under the Administrative Procedure Act, standards of review analogous to those embodied in the Act are appropriate in reviewing LSC decisions. National Clearinghouse for Legal Services, Inc. v. Legal Services Corp., D.D.C. 1987, 674 F.Supp. 37.

Even if guidelines of Legal Service Corporation, a federal corporation which provided funding to legal aid society representing plaintiffs, governed fee situation, rather than bylaws of legal aid society, defendants were nevertheless without standing to complain of any impropriety with respect to that representation and its effect on fee situation, where Congress intended to filter any such representational questions through Legal Services Corporation itself, reserving any judicial review to simple review of agency action. Anderson v. Redman, D.C.Dal.1979, 474 F.Supp. 511.

Subsec. (b)(1)(B) of this section prohibited court of appeals' inquiry into propriety of legal services organization's representation of clients who prevailed on their claim under section 1640(a) of Title 15. Gulf Homes, Inc. v. Gonzales, Ariz. 1984, 676 P.2d 628.

9. Standing

Taxpayers, who alleged only misuse of public funds by federally funded nonprofit legal services corporation, who had not claimed any direct injury from alleged violations of disciplinary rules, and who had not shown that they were members of class of persons affected by corporation's policy not to render services in certain types of litigation

PUBLIC HEALTH AND WELFARE

failed to show any direct injury and thus had no standing to bring action alleging that corporation had misused public funds and had recently adopted policy that directly contravened its stated purpose. Jenkins v. Neighborhood Legal Services Ass'n, D.C.Pa.1981, 523 F.Supp. 376, affirmed 688 F.2d 821.

10. Harassment or abuse of legal process

Though a delay in trial of case, in which mother unsuccessfully sought to regain custody of child and in which state's Legal Services Corporation's representative acted as mother's attorney, would have helped case and would have been better for mother who gave birth to another child on day before trial began, attorney's failure to seek later trial date was not sufficient evidence of "harassment" or "abuse of the legal process" so as to permit costs to be taxed against Corporation pursuant to statute authorizing court to assess costs against Corporation if it commenced or pursued action for sole purpose of harassment or maliciously abused the legal process. Matter of Kelly, Ala.Civ.App.1982, 423 So.2d 234.

11. Parties

Former director of state legal services corporation who was allegedly improperly discharged from employment was proper party plaintiff to invoke protection of federal regulations which assertedly were designed to protect persons such as himself who work for organizations receiving financial assistance from federal Legal Services Corporation. Young v. Central Louisiana Legal Services, Inc., La.App.3 Cir.1983, 432 So.2d 1072.

12. Prohibitions

Legal Services Corporation (LSC) had ample authority under Legal Services Corporation Act's sections granting it specific rule-making authority to promulgate regulation prohibiting recipient programs from engaging in redistricting litigation or related activities; Act granted LSC duty to ensure that legal services programs remained free of political influence and involvement and decision to enact ban on redistricting litigation was consistent with that purpose. Texas Rural Legal Aid, Inc. v. Legal Services Corp., C.A.D.C.1991, 940 F.2d 685.

Organization of campaign with Legal Services Corporation funds, used in attempt to defeat state tax reduction ballot proposition, constituted violation of subsec. (d) of this section, which prohibits Corporation, and its grantees, from using corporate funds to advocate or oppose ballot measures. 1983, 62 Op.Comp.Gen. 654.

13. Funds for grants

As the plain language of affirmative rider attached to 1984 Appropriations Act allowed current legal service training center grantees to claim 14.1 percent more money than they received in 1983, and as there was no evidence that Congress intended its language to have an unusual meaning, said grantees, who were given grants specifically targeted for expenditure in 1983, could claim the benefits of the rider. Massachusetts Law Reform Institute, Inc. v. Legal Services Corp., D.C.D.C. 1984, 601 F.Supp. 415.

The 1984 appropriations rider, Pub.L. 98-166, Nov. 28, 1983, 97 Stat. 1071, 1088, to legislation appropriating funds for operations of legal services

PUBLIC HEALTH AND WELFARE

centers prohibited decision by Corporation not to renew grants of state legal services centers on ground that they had not received funds from 1983 appropriations, but instead had received funds from earlier measure. Massachusetts Law Reform Institute v. Legal Services Corp., D.C.D.C.1984, 581 F.Supp. 1179, affirmed 737 F.2d 1206, 238 U.S.App.D.C. 59.

14. Terms and conditions of grants

Corporation is prohibited from changing terms and conditions of current grants to provide for more training services. Massachusetts Law Reform Institute v. Legal Services Corp., D.C.D.C. 1984, 581 F.Supp. 1179, affirmed 737 F.2d 1206, 238 U.S.App.D.C. 59.

15. Injunctions

Injunction was warranted to enjoin legal services corporation statutorily required to monitor, evaluate and distribute money to legal aid programs from requiring county legal aid service to release personnel files of union members, as would have violated collective bargaining agreement, and

§ 2996f. Grants and contracts

(a) Requisites

With respect to grants or contracts in connection with the provision of legal assistance to eligible clients under this subchapter, the Corporation shall—

(1) insure the maintenance of the highest quality of service and professional standards, the preservation of attorney-client relationships, and the protection of the integrity of the adversary process from any impairment in furnishing legal assistance to eligible clients;

(2)(A) establish, in consultation with the Director of the Office of Management and Budget and with the Governors of the several States, maximum income levels (taking into account family size, urban and rural differences, and substantial cost-of-living variations) for individuals eligible for legal assistance under this subchapter;

(B) establish guidelines to insure that eligibility of clients will be determined by recipients on the basis of factors which include—

(i) the liquid assets and income level of the client,

(ii) the fixed debts, medical expenses, and other factors with affect the client's ability to pay,

(iii) the cost of living in the locality, and

(iv) such other factors as relate to financial inability to afford legal assistance, which may include evidence of a prior determination that such individual's lack of income results from refusal or unwillingness, without good cause, to seek or accept an employment situation; and

(C) insure that (i) recipients, consistent with goals established by the Corporation, adopt procedures for determining and implementing priorities for the provision of such assistance, taking into account the relative needs of eligible clients for such assistance (including such outreach, training, and support services as may be necessary), including particularly the needs for service on the part of significant segments of the population of eligible clients with special difficulties of access to legal services or special legal problems (including elderly and handicapped individuals); and (ii) appropriate training and support services are provided in order to provide such assistance to such significant segments of the population of eligible clients;

(3) insure that grants and contracts are made so as to provide the most economical and effective delivery of legal assistance to persons in both urban and rural areas;

(4) insure that attorneys employed full time in legal assistance activities supported in major part by the Corporation refrain from (A) any compensated outside practice of law, and (B) any uncompensated outside practice of law, and (C) any compensated outside practice of law by the Corporation;

(5) insure that no funds made available to recipients by the Corporation shall be used at any time, directly or indirectly, to influence the issuance, amendment, or revocation of any executive order or similar promulgation by any Federal, State, or local agency, or to undertake to influence the passage or defeat of any legislation by the Congress of the United States, or by any State or local legislative bodies, or State proposals by initiative petition, except where—

(A) representation by an employee of a recipient for any eligible client is necessary to the provision of legal advice and representation with respect to such client's legal rights and responsibilities (which shall not be construed to permit an attorney or a recipient employee to solicit a client, in violation of professional responsibilities, for the purpose of making such representation possible); or

(B) a governmental agency, legislative body, a committee, or a member thereof—

(i) requests personnel of the recipient to testify, draft, or review measures or to make representations to such agency, body, committee, or member, or

(ii) is considering a measure directly affecting the activities under this subchapter of the recipient or the Corporation.

(6) insure that all attorneys engaged in legal assistance activities supported in whole or in part by the Corporation refrain, while so engaged, from—

(A) any political activity, or

(B) any activity to provide voters or prospective voters with transportation to the polls or provide similar assistance in connection with an election (other than legal advice and representation), or

(C) any voter registration activity (other than legal advice and representation);

(7) require recipients to establish guidelines, consistent with regulations promulgated by the Corporation, for a system for review of appeals to insure the efficient utilization of resources and to avoid frivolous appeals (except that such guidelines or regulations shall in no way interfere with attorneys' professional responsibilities);

(8) insure that recipients solicit the recommendations of the organized bar in the community being served before filling staff attorney positions in any project funded pursuant to this subchapter and give preference in filling such positions to qualified persons who reside in the community to be served;

(9) insure that every grantee, contractor, or person or entity receiving financial assistance under this subchapter or predecessor authority under this chapter which files with the Corporation a timely application for refunding is provided interim funding necessary to maintain its current level of activities until (A) the application for refunding has been approved and funds pursuant thereto received, or (B) the application for refunding has been finally denied in accordance with section 2996j of this title; and

(10) insure that all attorneys, while engaged in legal assistance activities supported in whole or in part by the Corporation, refrain from the persistent incitement of litigation and any other activity prohibited by the Canons of Ethics and Code of Professional Responsibility of the American Bar Association, and insure that such attorneys refrain from personal representation for a private fee in any cases in which they were involved while engaged in such legal assistance activities.

(b) Limitations on uses

No funds made available by the Corporation under this subchapter, either by grant or contract, may be used—

(1) to provide legal assistance (except in accordance with guidelines promulgated by the Corporation) with respect to any fee-generating case (which guidelines shall not preclude the provision of legal assistance in cases in which a client seeks only statutory benefits and appropriate private representation is not available);

(2) to provide legal assistance with respect to any criminal proceeding, except to provide assistance to a person charged with a misdemeanor or lesser offense or its equivalent in an Indian tribal court;

(3) to provide legal assistance in civil actions to persons who have been convicted of a criminal charge where the civil action arises out of alleged acts or failures to act and the action is brought against an officer of the court or against a law enforcement official for the purpose of challenging the validity of the criminal convictions;

(4) for any of the political activities prohibited in paragraph (6) of subsection (a) of this section;

(5) to make grants to or enter into contracts with any private law firm which expends 50 percent or more of its resources and time litigating issues in the broad interests of a majority of the public;

(6) to support or conduct training programs for the purpose of advocating particular public policies or encouraging political activities, labor or antilabor activities, boycotts, picketing, strikes, and demonstrations, as distinguished from the dissemination of information about such policies or activities, except that this provision shall not be construed to prohibit the training of attorneys or paralegal personnel necessary to prepare them to provide adequate legal assistance to eligible clients;

(7) to initiate the formation, or act as an organizer, of any association, federation, or similar entity, except that this paragraph shall not be construed to prohibit the provision of legal assistance to eligible clients;

(8) to provide legal assistance with respect to any proceeding or litigation which seeks to procure a nontherapeutic abortion or to compel any individual or institution to perform an abortion, or assist in the performance of an abortion, or provide facilities for the performance of an abortion, contrary to the religious beliefs or moral convictions of such individual or institution;

(9) to provide legal assistance with respect to any proceeding or litigation relating to the desegregation of any elementary or secondary school or school system, except that nothing in this paragraph shall prohibit the provision of legal advice to an eligible client with respect to such client's legal rights and responsibilities; or

(10) to provide legal assistance with respect to any proceeding or litigation arising out of a violation of the Military Selective Service Act [50 App.U.S.C.A. § 461 et seq.] or of desertion from the Armed Forces of the United States, except that legal assistance may be provided to an eligible client in a civil action in which such client alleges that he was improperly classified prior to July 1, 1973, under the Military Selective Service Act or prior corresponding law.

(c) Recipient organizations

In making grants or entering into contracts for legal assistance, the Corporation shall insure that any recipient organized solely for the purpose of providing legal assistance to eligible clients is governed by a body at least 60 percent of which consists of attorneys who are members of the bar of a State in which the legal assistance is to be provided (except that the Corporation (1) shall, upon application, grant waivers to permit a legal services program, supported under section 2809(a)(3) of this title, which on July 25, 1974, has a majority of persons who are not attorneys on its policy-making board to continue such a non-attorney majority under the provisions of this subchapter, and (2) may grant, pursuant to regulations issued by the Corporation, such a waiver for recipients which, because of the nature of the population they serve, are unable to comply with such requirement) and at least one-third of which consists of persons who are, when selected, eligible clients who may also be representatives of associations or organizations of eligible clients. Any such attorney, while serving on such board, shall not receive compensation from a recipient.

(d) Program evaluation

The Corporation shall monitor and evaluate and provide for independent evaluations of programs supported in whole or in part under this subchapter to insure that the provisions of this subchapter and the bylaws of the Corporation and applicable

rules, regulations, and guidelines promulgated pursuant to this subchapter are carried out.

(e) Corporation president authorized to make grants and enter into contracts

The president of the Corporation is authorized to make grants and enter into contracts under this subchapter.

(f) Public notification

At least thirty days prior to the approval of any grant application or prior to entering into a contract or prior to the initiation of any other project, the Corporation shall announce publicly, and shall notify the Governor, the State bar association of any State, and the principal local bar associations (if there be any) of any community, where legal assistance will thereby be initiated, of such grant, contract, or project. Notification shall include a reasonable description of the grant application or proposed contract or project and request comments and recommendations.

(g) Staff-attorney program study

The Corporation shall provide for comprehensive, independent study of the existing staff-attorney program under this chapter and, through the use of appropriate demonstration projects, of alternative and supplemental methods of delivery of legal services to eligible clients, including judicare, vouchers, prepaid legal insurance, and contracts with law firms; and, based upon the results of such study, shall make recommendations to the President and the Congress, not later than two years after the first meeting of the Board, concerning improvements, changes, or alternative methods for the economical and effective delivery of such services.

(h) Study and report to Congress on special needs of eligible clients

The Corporation shall conduct a study on whether eligible clients who are—

- (1) veterans,
- (2) native Americans,
- (3) migrants or seasonal farm workers,
- (4) persons with limited English-speaking abilities, and
- (5) persons in sparsely populated areas where a harsh climate and an inadequate transportation system are significant impediments to receipt of legal services

have special difficulties of access to legal services or special legal problems which are not being met. The Corporation shall report to Congress not later than January 1, 1979, on the extent and nature of any such problems and difficulties and shall include in the report and implement appropriate recommendations.

(Pub.L. 88-452, Title X, § 1007, as added Pub.L. 93-355, § 2, July 25, 1974, 88 Stat. 883, and amended Pub.L. 95-222, §§ 7(b), 9(a), (b)(1), (c), 10, 11, 12, 13, Dec. 28, 1977, 91 Stat. 1620-1623.)

HISTORICAL AND STATUTORY NOTES

References in Text

The Military Selective Service Act, referred to in subsec. (b)(10), is Act June 24, 1948, c. 625, 62 Stat. 204, as amended, which is classified principally to section 451 et seq. of Title 50, App., War and National Defense. For complete classification of this Act to the Code, see References in Text note set out under section 451 of Title 50 App. and Tables.

1977 Amendment

Subsec. (a)(2)(B)(iv). Pub.L. 95-222, § 9(a), substituted provisions setting forth factors which may be included in determining financial ability, for provisions setting forth factors required to be included in determining financial ability.

Subsec. (a)(2)(C). Pub.L. 95-222, § 9(b)(1), expanded existing provisions by requiring the Corporation to establish procedures for determining and implementing priorities and criteria for such

priorities, and added provisions relating to appropriate training and support services.

Subsec. (a)(5). Pub.L. 95-222, § 9(c), in introductory matter added prohibition relating to influencing the passage or defeat of State proposals by initiative referendum, in subpar. (A) substituted provisions relating to representation by an employee of a recipient for any eligible client, for provisions relating to representation by an attorney as attorney for any eligible client, and in subpar. (B) designated existing provision as cl. (i), and, as so designated, added exception for testifying, drafting, or reviewing measures, and added cl. (ii).

Subsec. (a)(6). Pub.L. 95-222, § 7(b), struck out provisions relating to prohibitions against political activities by staff attorneys of the types described under cl. (B) and (C) of this par. and section 1502(a) of Title 5.

Subsec. (b). Pub.L. 95-222, § 10, redesignated and reorganized provisions of former par. (1) as par. (1) to (3) and, as so redesignated, enumerated criteria for assistance under such par., redesignated former par. (2) and (3) as (4) and (5), respectively, struck out former par. (4) relating to assistance to any unemancipated person of less than eighteen years of age, redesignated former par. (5) as (6), redesignated former par. (6) as (7) and, as so redesignated, added provision relating to initiation and provision relating to acting as an organizer, and struck out provisions relating to organization, assistance or encouragement to organize, or to plan for the creation, formation or structuring of entities, and provision respecting guidelines, for assistance to clients, redesignated former par. (7) as (9) and, as so redesignated, added exception for legal advice to clients, reenacted par. (8) without change, and redesignated par. (9) as (10) and, as so redesignated, added exception for actions concerning classifications prior to July 1, 1973.

Subsec. (c). Pub.L. 95-222, § 11, substituted provisions requiring recipients to include at least one-third membership of eligible clients or eligible clients who may also be representatives of associations or organizations of eligible clients, for provisions requiring recipients to include at least one individual eligible to receive legal assistance.

Subsec. (f). Pub.L. 95-222, § 12, added provision requiring notice to the principal local bar association, if any, of the community.

Subsec. (h). Pub.L. 95-222, § 13, added subsec. (h).

Effective Date of 1977 Amendment

Section 17(a)(1) of Pub.L. 95-222 provided that: "The amendment made by section 11 of this Act [amending subsec. (c) of this section] shall be effective six months after the first day of the first calendar month following the date of enactment of this Act. [Dec. 28, 1977]."

Amendment of subsecs. (a), (b), (f) and (h) by Pub.L. 95-222 effective on Dec. 28, 1977, see section 17(b) of Pub.L. 95-222, set out as a note under section 2996 of this title.

Implementation of Competitive System by the Legal Services Corporation Regarding the Awarding of All Grants and Contracts after October 1, 1991

Pub.L. 101-515, Title VI, § 607, Nov. 5, 1990, 104 Stat. 2153, provided in part that: "After October 1, 1991, (but not before) the Board of Directors of the Legal Services Corporation shall develop and implement a system for the competi-

tive award of all grants and contracts, including support centers, except that nothing herein shall prohibit the Corporation Board, members, or staff from engaging in in-house reviews of or holding hearings on proposals for a system for the competitive award of all grants and contracts, including support centers, and that nothing herein shall apply to any competitive awards program currently in existence."

Competitive Awarding of Grants and Contracts; Authorization by Board of Directors; Reviews of or Hearings on Proposals; Development of System

Pub.L. 101-162, Title VI, § 608, Nov. 21, 1989, 103 Stat. 1036, provided in part: "That none of the funds appropriated under this Act [Pub.L. 101-162, Nov. 21, 1989, 103 Stat. 1036], or under any prior Acts for the Legal Services Corporation shall be used to consider, develop, or implement any system for the competitive award of grants or contracts until such action is authorized pursuant to a majority vote of a Board of Directors of the Legal Services Corporation composed of eleven individuals nominated by the President after January 20, 1989, and subsequently confirmed by the United States Senate, except that nothing herein shall prohibit the Corporation Board, members, or staff from engaging in in-house reviews of or holding hearings on proposals for a system for the competitive award of all grants and contracts, including support centers, and that nothing herein shall apply to any competitive awards program currently in existence; subsequent to confirmation such new Board of Directors shall develop and implement a proposed system for the competitive award of all grants and contracts."

Competitive Awarding of Grants and Contracts; Development of System by Board of Directors

Pub.L. 100-459, Title VI, § 605, Oct. 1, 1988, 102 Stat. 2227, provided in part that: "That a Board of Directors of the Legal Services Corporation, composed of individuals nominated by the President after January 20, 1989 and subsequently confirmed by the United States Senate, shall develop and implement a system for the competitive award of all grants and contracts, including support centers, to take effect after September 30, 1989."

Legislative History

For legislative history and purpose of Pub.L. 93-355, see 1974 U.S. Code Cong. and Adm. News, p. 3872. See, also, Pub.L. 95-222, 1977 U.S. Code Cong. and Adm. News, p. 4503.

CODE OF FEDERAL REGULATIONS

Legal Services Corporation, see 45 CFR Chap. XVI.

LIBRARY REFERENCES

United States 8-82.
C.J.S. United States § 122.

NOTES OF DECISIONS

Appointments 9
Appropriation legislation 14
Availability of adequate representation 9a

Constitutionality 1
Due process 8
Exhaustion of remedies 4a

Notice 9
 Pleadings 10
 Political activity 2a
 Political candidacies 2
 Private corporation 3
 Remand 11
 Representation in individual capacity 9b
 Review 12
 Standing to sue 13
 Status of employees and officers 4
 Summary judgment 7

1. Constitutionality

Assuming that policy in question constituted state action, policy of legal services corporation receiving government funds to accept divorce cases only where defendant can be personally served and where there are minor children of the marriage whose custody or support is in issue, even where plaintiff's financial status is such that plaintiff would otherwise be eligible for services, does not deny equal protection, since the state has legitimate interest in maintaining the economic stability of its legal services program and in distributing its available resources in such a way as to serve as large a variety of legal needs as possible. *Calvert v. West Virginia Legal Services Plan, Inc.*, D.C.W.Va.1979, 464 F.Supp. 789.

In measuring reasonableness of provision of this section preventing staff attorneys of legal services agencies funded by Legal Services Corporation from seeking election to partisan or nonpartisan political offices during period for which they receive compensation from Corporation, great deference had to be accorded to judgment of elected representatives inasmuch as determination of extent to which political activities of governmental employees shall be regulated lies primarily with Congress. *Smith v. Ehrlich*, D.C.D.C.1976, 430 F.Supp. 818.

2. Political candidacies

Although candidacies of staff attorneys of legal service agencies funded by Legal Services Corporation occurred in course of "non-partisan" election, such activity was prohibited by this section. *Smith v. Ehrlich*, D.C.D.C.1976, 430 F.Supp. 818.

Use of corporate funds to build organizations, such as political coalitions and grass roots lobbying networks, constitutes violation of this section. 1983, 62 Op.Comp.Gen. 654.

While this section allows Legal Services Corporation and its recipients to provide testimony and appropriate comments to Congress concerning relevant legislation, it prohibits the Corporation and recipients from expending funds for grass roots lobbying activities. 1981, 60 Comp.Gen. 423.

2a. Political activity

Provision of Legal Services Corporation Act, prohibiting funding of legal services relating to the "political activity," did not provide basis for Legal Services Corporation rule prohibiting funding of redistricting lawsuits; Corporation's own regulations excluded from definition of prohibited political activities "any form of legal assistance to eligible client." *Texas Rural Legal Aid, Inc. v. Legal Services Corp.*, D.D.C.1990, 740 F.Supp. 880.

Legal Services Corporation, as established by this subchapter, is a private corporation and is not an agency of the United States Government. *Spokane County Legal Services, Inc. v. Legal Services Corp.*, D.C.Wash.1977, 433 F.Supp. 278.

4. Status of employees and officers

Employees and officers of the Legal Services Corporation are not officers or employees of the United States. *Spokane County Legal Services, Inc. v. Legal Services Corp.*, D.C.Wash.1977, 433 F.Supp. 278.

4a. Exhaustion of remedies

Where Hawaii state officials had not exhausted administrative procedures established for enforcing guidelines, issued under this subchapter, which prohibit recipient organizations from accepting "fee-generating" cases, the court of appeals declined to consider the argument that the Legal Aid Society of Hawaii was barred from seeking or receiving attorney fees by the administrative guidelines. *Dennis v. Chang*, C.A.Hawaii 1980, 611 F.2d 1302.

5. Jurisdiction

To extent that any activities of Corporation and its staff attorneys in connection with litigation on behalf of migrant workers fell outside of scope of their authority, those complaints were properly addressed to Corporation itself, not to district court in civil rights action. *Strait v. Mehlenbacher*, D.C.N.Y.1981, 526 F.Supp. 581.

6. Notice

Where Legal Services Corporation renotified the public of certain challenged funding decisions by publishing notice in the Federal Register, notice was adequate and complied with requirements of pertinent code section pertaining to public notification of grant applications or proposed contracts or projects pertaining to legal assistance. *Spokane County Legal Services, Inc. v. Legal Services Corp.*, D.C.Wash.1977, 433 F.Supp. 278.

7. Summary judgment

Where issues raised by defendant's motion for summary judgment were moot in light of amended complaint, motion for summary judgment was denied. *Spokane County Legal Services, Inc. v. Legal Services Corp.*, D.C.Wash.1977, 433 F.Supp. 278.

8. Due process

Plaintiffs, nonprofit corporations providing legal services to low income persons in various counties of eastern Washington, were not denied procedural due process in the action taken by the Corporation to terminate financial support for their programs, even though Corporation appointed special assistant to its president to conduct the hearing requested by plaintiffs on the proposed transfer of funding; there was no suggestion that the hearing examiner had any personal bias or animosity against plaintiffs or had a pecuniary interest in the controversy, and the appointment of a Corporation employee to conduct the hearing was specifically authorized by federal regulation. *Spokane County Legal Services, Inc. v. Legal Services Corp.*, C.A.Wash.1980, 614 F.2d 662.

Legal services to indigent persons who do not own property rights with respect to obtaining grants of federal funds with respect to such activities, and such organization was denied neither procedural nor substantive due process when federal legal services corporation, not acting arbitrarily or capriciously, failed to grant it federal funds in connection with program to furnish legal services to indigents in specific county. *Legal Services Corp. of Prince George's County, Md. v. Ehrlich*, D.C.Md.1978, 457 F.Supp. 1058.

9. Appointments

Nonprofit legal services corporation's attorneys could not be appointed to represent state criminal defendants in light of corporation's determination that it did not have sufficient resources to devote to a criminal proceeding and where attorneys appointed to represent insolvent defendants were to be paid a fee, costs and expenses and there had been no showing that other adequate representation was unavailable. *Central Florida Legal Services, Inc. v. Eastmoore*, D.C.Fla.1981, 517 F.Supp. 497.

In view of determination by legal services corporation that representation of indigent criminal defendants was inconsistent with its primary responsibility to provide legal assistance in civil matters, order of trial court appointing attorney employed by legal services corporation to serve as counsel in a criminal proceeding directly contravened federal law and regulations concerning legal services, and such federal law and regulations did not violate U.S.C.A.Const.Amend. 10 even though Florida Supreme Court had inherent power and duty to prescribe standards of conduct for Florida bar. *Central Florida Legal Services, Inc. v. Perry*, Fla.App. 5 Dist.1981, 406 So.2d 111.

Circuit court judge was without authority to appoint attorney to represent defendant in criminal case, where that attorney was employed full time by legal services office funded primarily by federal Legal Services Corporation, which funding was restricted by federal law to use in providing legal assistance in noncriminal proceedings to persons financially unable to afford such assistance, notwithstanding local practice of appointing attorneys who regularly appear in the court to represent indigents accused of crime. *Mid-Missouri Legal Services Corp. v. Kinder*, Mo.App.1983, 656 S.W.2d 309.

9a. Availability of adequate representation

Under this subchapter, nonprofit legal services corporation was prohibited from using funds to provide legal assistance in fee-generating case unless other adequate representation was unavailable. *Central Florida Legal Services, Inc. v. Eastmoore*, D.C.Fla.1981, 517 F.Supp. 497.

9b. Representation in individual capacity

Full-time attorney member of non-profit legal services corporation, who, under this subchapter, was prohibited from outside practice of law and was subject to disciplinary action if he violated such rule, would not be required to undertake criminal representation in his individual capacity as member of state Bar and county bar association without using funds of corporation. *Central Florida Legal Services, Inc. v. Eastmoore*, D.C.Fla. 1981, 517 F.Supp. 497.

187 U.S.C.A.—13
 1992 Supp.Pamph.

Alleged 47-035 by legal aid organization in Mississippi, violation of federal funds to further opposition to Proposition 9 through both mail and telephone communications were not sufficient to constitute pattern of racketeering activity required to state civil RICO claim; even if scheme existed and mail and telephone were used to facilitate it, it was at most isolated and presented no threat of continuing. *Jarvis v. Regan*, C.A.9 (Cal.) 1987, 833 F.2d 149.

Complaints to procedural violations by federal legal services corporation of statutory requirements with respect to selection of organizations to receive grants for furnishing legal services to indigent persons could not prevail in view of fact that neither this subchapter nor Administrative Procedures Act, sections 551 et seq. and 701 et seq. of Title 5, required hearing, on any specific procedural course of conduct, before such grants are made. *Legal Services Corp. of Prince George's County, Md. v. Ehrlich*, D.C.Md.1978, 457 F.Supp. 1058.

11. Remand

Complaint's allegations that the Corporation's decision to transfer funding of legal services programs to a statewide program was arbitrary and capricious, and that subsec. (a)(3) of this section was violated because the delivery system selected by Corporation did not result in the "economical and effective delivery of legal assistance to persons in both urban and rural areas" raised issues requiring reversal of the district court's decision and a remand for review of the whole record, or those portions thereof relied upon by the parties. *Spokane County Legal Services, Inc. v. Legal Services Corp.*, C.A.Wash.1980, 614 F.2d 662.

12. Review

District court, in reviewing Corporation's decision to transfer the funding of legal services programs to a statewide program, was to utilize this standard: if there was a rational basis for the agency decision and it was supported by some evidence, the decision should be accepted by the reviewing court. *Spokane County Legal Services, Inc. v. Legal Services Corp.*, C.A.Wash.1980, 614 F.2d 662.

13. Standing to sue

Claim by proponents of Proposition 9 that legal services organizations' expenditure of federal tax dollars for advancement of private political cause constituted violation of First Amendment necessitating injunctive relief was rendered moot; election which was basis of present controversy was held several years ago, and thus there was no threat of real or immediate injury, and incident was unlikely to be repeated; given Government's disapproval of use of funds for political activities, it was unlikely that another "special needs" grant to legal aid organizations to conduct similar political activities would be made. *Jarvis v. Regan*, C.A.9 (Cal.) 1987, 833 F.2d 149.

Grantee of funds under this subchapter which alleged that specific procedural rights guaranteed to it under this subchapter and regulations were violated by grantor legal services corporation in terminating its funds and, that, as result, its corporate existence was being terminated had alleged distinct and palpable injury that was directly attributable to challenged conduct and, therefore,

375

374 Nonprofit corporation
 engaged in providing

had standing to sue. San Juan Legal Services, Inc. v. Legal Services Corp., C.A.Puerto Rico 1981, 635 F.2d 434.

14. Appropriation legislation

Congressional passage of annual appropriation legislation with respect to Legal Services Corpora-

PUBLIC HEALTH AND WELFARE

tion, following publication of rule by Corporation prohibiting funding of local legal service agencies for purposes of participating in redistricting litigation, did not constitute Congressional approval of rule. Texas Rural Legal Aid, Inc. v. Legal Services Corp., D.D.C.1990, 740 F.Supp. 980.

§ 2996g. Records and reports

(a) Authority to require reports

The Corporation is authorized to require such reports as it deems necessary from any grantee, contractor, or person or entity receiving financial assistance under this subchapter regarding activities carried out pursuant to this subchapter.

(b) Authority to require records; access to records

The Corporation is authorized to prescribe the keeping of records with respect to funds provided by grant or contract and shall have access to such records at all reasonable times for the purpose of insuring compliance with the grant or contract or the terms and conditions upon which financial assistance was provided.

(c) Annual report to President and Congress; contents

The Corporation shall publish an annual report which shall be filed by the Corporation with the President and the Congress. Such report shall include a description of services provided pursuant to section 2996(a)(2)(C)(i) and (ii) of this title.

(d) Copies and retention of reports

Copies of all reports pertinent to the evaluation, inspection, or monitoring of any grantee, contractor, or person or entity receiving financial assistance under this subchapter shall be submitted on a timely basis to such grantee, contractor, or person or entity, and shall be maintained in the principal office of the Corporation for a period of at least five years subsequent to such evaluation, inspection, or monitoring. Such reports shall be available for public inspection during regular business hours, and copies shall be furnished, upon request, to interested parties upon payment of such reasonable fees as to Corporation may establish.

(e) Publication in Federal Register of rules, regulations, guidelines and instructions

The Corporation shall afford notice and reasonable opportunity for comment to interested parties prior to issuing rules, regulations, and guidelines, and it shall publish in the Federal Register at least 30 days prior to their effective date all its rules, regulations, guidelines, and instructions.

(Pub.L. 88-452, Title X, § 1008, as added Pub.L. 93-355, § 2, July 25, 1974, 88 Stat. 886, and amended Pub.L. 95-222, § 9(b)(2), Dec. 28, 1977, 91 Stat. 1621.)

HISTORICAL AND STATUTORY NOTES

1977 Amendments

Subsec. (c). Pub.L. 95-222 added provisions setting forth required contents of the annual report.

Effective Date of 1977 Amendment

Amendment by Pub.L. 95-222 effective on Dec. 28, 1977, see section 17(b) of Pub.L. 95-222, set out as a note under section 2996 of this title.

Legislative History

For legislative history and purpose of Pub.L. 93-353, see 1974 U.S. Code Cong. and Adm. News, p. 3872. See, also, Pub.L. 93-222, 1977 U.S. Code Cong. and Adm. News, p. 4503.

NOTES OF DECISIONS

section 1988 of this title, for time spent by them on basis of reconstructed time records as long as those reconstructed records were substantially reconstructed and were reasonably accurate. Anderson v. Redman, D.C.Del.1979, 474 F.Supp. 511.

Access to records 4
Basis for recovery 1
Injunction 3
Notice and comment 2

1. Basis for recovery

Counsel for plaintiffs could recover fees under Civil Rights Attorney's Fees Awards Act of 1976,

PUBLIC HEALTH AND WELFARE

2. Notice and comment

Legal Services Corporation Instruction 83-9 which requires that national support centers allocate no more than 10 percent of fiscal 1984 corporation funds for direct representation in court, etc., and which provides that no 1984 funds may be utilized for branch offices of support centers and provides for termination of support center contracts if those constraints are not adhered to, is subject to notice and comment requirements of subsec. (e) of this Section. National Senior Citizens Law Center, Inc. v. Legal Services Corp., D.C.D.C.1984, 581 F.Supp. 1362, affirmed 751 F.2d 1391, 243 U.S.App.D.C. 172.

3. Injunction

Preliminary injunction issued restraining Legal Services Corporation from enforcing Instruction 83-9, which requires national support centers to allocate no more than ten percent of fiscal year 1984 Corporation funds for direct representation and prohibits utilization of funds for branch offices, because the required notice and comment was lacking, the legislative history indicated that funding for national support centers must be maintained at same level and under same conditions as prior grants and the LSC failed to provide an explanation for its major departure from past practice. National Senior Citizens Law Center, Inc. v. Legal Services Corp., D.C.D.C.1984, 581 F.Supp. 1362, affirmed 751 F.2d 1391, 243 U.S.App.D.C. 172.

§ 2996h. Audits

(a) Annual audit; availability of records; filing and inspection of report

(1) The accounts of the Corporation shall be audited annually. Such audits shall be conducted in accordance with generally accepted auditing standards by independent certified public accountants who are certified by a regulatory authority of the jurisdiction in which the audit is undertaken.

(2) The audits shall be conducted at the place or places where the accounts of the Corporation are normally kept. All books, accounts, financial records, reports, files, and other papers or property belonging to or in use by the Corporation and necessary to facilitate the audits shall be made available to the person or persons conducting the audits; and full facilities for verifying transactions with the balances and securities held by depositories, fiscal agents, and custodians shall be afforded to any such person.

(3) The report of the annual audit shall be filed with the General Accounting Office and shall be available for public inspection during business hours at the principal office of the Corporation.

(b) Audit by General Accounting Office

(1) In addition to the annual audit, the financial transactions of the Corporation for any fiscal year during which Federal funds are available to finance any portion of its operations may be audited by the General Accounting Office in accordance with such rules and regulations as may be prescribed by the Comptroller General of the United States.

(2) Any such audit shall be conducted at the place or places where accounts of the Corporation are normally kept. The representatives of the General Accounting Office shall have access to all books, accounts, financial records, reports, files, and other papers or property belonging to or in use by the Corporation and necessary to facilitate the audit; and full facilities for verifying transactions with the balances and securities held by depositories, fiscal agents, and custodians shall be afforded to such representatives. All such books, accounts, financial records, reports, files, and other papers or property of the Corporation shall remain in the possession and custody of the Corporation throughout the period beginning on the date such

4. Access to records

Plain language of Legal Services Corporation Act, created right of access to documents limited only by statute itself and contract between Legal Services Corporation (LSC) and county legal aid society, and, thus, district court lacked authority to impose artificial "necessary and reasonable" requirement on right of access. Multnomah Legal Services Workers Union v. Legal Services Corp., C.A.9 (Or.) 1991, 936 F.2d 1547.

Section of collective bargaining agreement between county legal aid service and union which precluded disclosure of union members' personnel files save by consent or court order was not void on ground that it conflicted with legal services corporation's legal mandate to monitor legal aid programs funded by it; legal service corporation's mandate required that document requests be reasonable and necessary and was not facially contradictory to bargaining agreement provision. Multnomah Legal Services Workers Union v. Multnomah County Legal Aid Service, Inc., D.Or.1989, 723 F.Supp. 1398.

Legal Services Corporation's obligation to evaluate and review its grant programs and to ensure compliance with the law provided sufficient statutory authority to support broad right of access to documents set forth in condition of its grant. National Clients Council, Inc. v. Legal Services Corp., D.C.D.C.1985, 617 F.Supp. 480.

possession or custody commences and ending three years after such date, but the General Accounting Office may require the retention of such books, accounts, financial records, reports, files, papers, or property for a longer period under section 67(b) of Title 31.

(3) A report of such audit shall be made by the Comptroller General to the Congress and to the President, together with such recommendations with respect thereto as he shall deem advisable.

(c) Annual financial audit of recipient persons or bodies

(1) The Corporation shall conduct, or require each grantee, contractor, or person or entity receiving financial assistance under this subchapter to provide for, an annual financial audit. The report of each such audit shall be maintained for a period of at least five years at the principal office of the Corporation.

(2) The Corporation shall submit to the Comptroller General of the United States copies of such reports, and the Comptroller General may, in addition, inspect the books, accounts, financial records, files, and other papers or property belonging to or in use by such grantee, contractor, or person or entity, which relate to the disposition or use of funds received from the Corporation. Such audit reports shall be available for public inspection, during regular business hours, at the principal office of the Corporation.

(d) Attorney-client privilege

Notwithstanding the provisions of this section or section 2996g of this title, neither the Corporation nor the Comptroller General shall have access to any reports or records subject to the attorney-client privilege.

(Pub.L. 88-452, Title X, § 1009, as added Pub.L. 93-355, § 2, July 25, 1974, 88 Stat. 387, and amended Pub.L. 95-222, § 14, Dec. 28, 1977, 91 Stat. 1623.)

HISTORICAL AND STATUTORY NOTES

1977 Amendment

Subsec. (b)(2). Pub.L. 95-222 added provisions relating to duration of retention of books, etc., by the Corporation.

Effective Date of 1977 Amendment

Amendment by Pub.L. 95-222 effective on Dec. 28, 1977, see section 17(b) of Pub.L. 95-222, set out as a note under section 2996 of this title.

§ 2996i. Financing

(a) Authorization of appropriations

There are authorized to be appropriated for the purpose of carrying out the activities of the Corporation, \$90,000,000 for fiscal year 1975, \$100,000,000 for fiscal year 1976, and such sums as may be necessary for fiscal year 1977. There are authorized to be appropriated for the purpose of carrying out the activities of the Corporation \$205,000,000 for the fiscal year 1978, and such sums as may be necessary for each of the two succeeding fiscal years. The first appropriation may be made available to the Corporation at any time after six or more members of the Board have been appointed and qualified. Appropriations for that purpose shall be made for not more than two fiscal years, and shall be paid to the Corporation in annual installments at the beginning of each fiscal year in such amounts as may be specified in Acts of Congress making appropriations.

(b) Availability of funds

Funds appropriated pursuant to this section shall remain available until expended.

(c) Non-Federal funds

Non-Federal funds received by the Corporation, and funds received by any recipient from a source other than the Corporation, shall be accounted for and reported as receipts and disbursements separate and distinct from Federal funds; but any funds so received for the provision of legal assistance shall not be expended by recipients for any purpose prohibited by this subchapter, except that this

provision shall not be construed to prevent recipients from receiving other public funds or tribal funds (including foundation funds benefiting Indians or Indian tribes) and expending them in accordance with the purposes for which they are provided, or to prevent contracting or making other arrangements with private attorneys, private law firms, or other State or local entities of attorneys, or with legal aid societies having separate public defender programs, for the provision of legal assistance to eligible clients under this subchapter.

(d) Limitations on grant or contract authority

Not more than 10 percent of the amounts appropriated pursuant to subsection (a) of this section for any fiscal year shall be available for grants or contracts under section 2996e(a)(3) of this title in any such year.

(Pub.L. 88-452, Title X, § 1010, as added Pub.L. 93-355, § 2, July 25, 1974, 88 Stat. 388, and amended Pub.L. 95-222, §§ 5(c), 15, Dec. 28, 1977, 91 Stat. 1619, 1623.)

HISTORICAL AND STATUTORY NOTES

1977 Amendment

Subsec. (a). Pub.L. 95-222, § 15, added provisions authorizing appropriations for fiscal year 1978 and the two succeeding fiscal years, and substituted provisions requiring appropriations to be made for not more than two fiscal years and payments in annual installments at the beginning of each fiscal year in appropriated amounts, for provisions requiring appropriations to be for not more than two fiscal years, and, if for more than one year, in payments in annual installments at the beginning of each fiscal year in appropriated amounts.

Subsec. (d). Pub.L. 95-222, § 5(c), added subsec. (d).

Effective Date of 1977 Amendment

Section 17(a)(2) of Pub.L. 95-222 provided that: "The amendment made by section 15 of this Act [amending subsec. (a) of this section] shall be effective with respect to fiscal years beginning after September 30, 1977."

Amendment of subsec. (d) by Pub.L. 95-222 effective on Dec. 28, 1977, see section 17(b) of Pub.L. 95-222, set out as a note under section 2996 of this title.

Legislative History

For legislative history and purpose of Pub.L. 93-355, see 1974 U.S. Code Cong. and Adm. News, p. 3872. See, also, Pub.L. 95-222, 1977 U.S. Code Cong. and Adm. News, p. 4503.

CODE OF FEDERAL REGULATIONS

Non-Corporation funds, see 45 CFR 1610.1 et seq.

LIBRARY REFERENCES

United States — 82.

C.J.S. United States § 122.

NOTES OF DECISIONS

State determination of fund use

Generally 1
Agency review 3
Sanctions 2

1. State determination of fund use—Generally

Legal Services Corporation could not impose funding sanction upon recipient of state and federal legal aid funds based on recipient's participation in litigation challenging state abortion legislation, where state agency had determined that such participation was appropriate use of state funds. National Center for Youth Law v. Legal Services Corp., N.D. Cal. 1990, 749 F.Supp. 1013.

2. — Sanctions

Recipient of legal aid funds used state funds in matter related to needs of legal services clients

when it participated in litigation challenging state law requiring minor to obtain parental consent before obtaining abortion, precluding Legal Services Corporation from imposing funding sanction; although no minors were named as plaintiffs in the litigation, recipient's client base was indigent minors, and it sought to enforce their right to privacy through the litigation. National Center for Youth Law v. Legal Services Corp., N.D. Cal. 1990, 749 F.Supp. 1013.

3. — Agency review

Legal Services Corporation may not review de novo state agency's determination of eligibility for state legal services grant program and supplant state's decision with its own. National Center for Youth Law v. Legal Services Corp., N.D. Cal. 1990, 749 F.Supp. 1013.

§ 2996j. Special limitations

The Corporation shall prescribe procedures to insure that—

(1) financial assistance under this subchapter shall not be suspended unless grantee, contractor, or person or entity receiving financial assistance under

this subchapter has been given reasonable notice and opportunity to show cause why such action should not be taken; and

(2) financial assistance under this subchapter shall not be terminated, an application for refunding shall not be denied, and a suspension of financial assistance shall not be continued for longer than thirty days, unless the grantee, contractor, or person or entity receiving financial assistance under this subchapter has been afforded reasonable notice and opportunity for a timely, full, and fair hearing, and, when requested, such hearing shall be conducted by an independent hearing examiner. Such hearing shall be held prior to any final decision by the Corporation to terminate financial assistance or suspend or deny funding. Hearing examiners shall be appointed by the Corporation in accordance with procedures established in regulations promulgated by the Corporation.

(Pub.L. 88-452, Title X, § 1011, as added Pub.L. 93-355, § 2, July 25, 1974, 88 Stat. 388, and amended Pub.L. 95-222, § 16, Dec. 28, 1977, 91 Stat. 1624.)

HISTORICAL AND STATUTORY NOTES

1977 Amendment

Par. (2). Pub.L. 95-222 added provisions relating to function and appointment of an independent hearing examiner, and the time for any hearings.

Effective Date of 1977 Amendment

Amendment by Pub.L. 95-222 effective on Dec. 28, 1977, see section 17(b) of Pub.L. 95-222, set out as a note under section 2996 of this title.

Legislative History

For legislative history and purpose of Pub.L. 93-355, see 1974 U.S.Code Cong. and Adm.News, p. 3872. See, also, Pub.L. 95-222, 1977 U.S.Code Cong. and Adm.News, p. 4503.

CODE OF FEDERAL REGULATIONS

Financial assistance suspension procedures, see 45 CFR 1623.1 et seq.

Financial termination procedures, see 45 CFR 1606.1 et seq.

Restrictions on certain activities, see 45 CFR 1612.1 et seq.

NOTES OF DECISIONS

Hearing

Generally 1

Waiver 1a

Pleadings 3

Review 2

1. Hearing—Generally

Proposed withholding by nonprofit corporation which was established to provide legal assistance to the poor of portion of local legal services organization's fiscal 1983 funds in order to offset unexpended funds carried over from fiscal year 1982 constituted a termination of grant award necessitating notice and hearing. *East Arkansas Legal Services v. Legal Services Corp.*, 1984, 742 F.2d 1472, 239 U.S.App.D.C. 319, certiorari denied 105 S.Ct. 1395, 470 U.S. 1028, 84 L.Ed.2d 784.

In view of evaluation of grantee legal services program and grantee's failure to attempt to correct deficiencies pointed out in 1975 evaluation until week 1977 evaluation began, nonprofit legal services corporation created by Congress under this subchapter had ample ground for concluding, after report and recommendations of hearing examiner, that legal services program's funding under this subchapter should be terminated, and grantee was not deprived of full, fair and timely hearing. *San Juan Legal Services, Inc. v. Legal Services Corp.*, C.A.Puerto Rico 1981, 655 F.2d 434.

Plaintiffs, nonprofit corporations providing legal services to low income persons in various

counties of eastern Washington, were not denied procedural due process in the action taken by the Corporation to terminate financial support for their programs, even though Corporation appointed special assistant to its president to conduct the hearing requested by plaintiffs on the proposed transfer of funding; there was no suggestion that the hearing examiner had any personal bias or animosity against plaintiffs or had a pecuniary interest in the controversy, and the appointment of a Corporation employee to conduct the hearing was specifically authorized by federal regulation. *Spokane County Legal Services, Inc. v. Legal Services Corp.*, C.A.Wash.1980, 614 F.2d 662.

Legal Services Corporation was required to afford a hearing to regional training centers before it could deny refunding to them. *Massachusetts Law Reform Institute, Inc. v. Legal Services Corp.*, D.C.D.C.1984, 601 F.Supp. 415.

If Corporation decides to refund grantee receiving funds under provision governing grants directly relating to "delivery of legal assistance," such grantee would also be entitled to full and fair hearing. *Massachusetts Law Reform Institute v. Legal Services Corp.*, D.C.D.C.1984, 581 F.Supp. 1179, affirmed 737 F.2d 1206, 238 U.S.App.D.C. 59.

Decision of legal services corporation to deny funding to farm worker division of legal services agency was not a nullity because rendered beyond 20-day limit specified in applicable rule, where corporation's president's decision was rendered after 20-day period provided by regulation, but satisfied more general requirement of this section

of "timely" consideration, given fact that corporation provided plaintiff with interim funding not only during time matter was pending before president, but for an additional 30 days after his decision. *Neighborhood Legal Services, Inc. v. Legal Services Corp.*, D.C.Conn.1979, 466 F.Supp. 1148.

1a. — Waiver

State legal services centers did not waive their rights to hearing concerning Corporation decision not to renew 1983 grants by acceptance of disclaimer included in 1981 letters concerning 1982 grants where disclaimer appeared to reflect Corporation's concern that it not be called upon to entertain successive requests for 1983 funds. *Massachusetts Law Reform Institute v. Legal Services Corp.*, D.C.D.C.1984, 581 F.Supp. 1179, affirmed 737 F.2d 1206, 238 U.S.App.D.C. 59.

§ 2996k. Coordination

The President may direct that appropriate support functions of the Federal Government may be made available to the Corporation in carrying out its activities under this subchapter, to the extent not inconsistent with other applicable law.

(Pub.L. 88-452, Title X, § 1012, as added Pub.L. 93-355, § 2, July 25, 1974, 88 Stat. 388.)

HISTORICAL AND STATUTORY NOTES

Legislative History

For legislative history and purpose of Pub.L. 93-355, see 1974 U.S.Code Cong. and Adm.News, p. 3872.

EXECUTIVE ORDERS

EXECUTIVE ORDER NO. 11874

July 25, 1975, 40 F.R. 31737

DELEGATION OF FUNCTIONS TO DIRECTOR OF OFFICE OF MANAGEMENT AND BUDGET

By virtue of the authority vested in me by Section 1012 of the Economic Opportunity Act of 1964, as amended by the Legal Services Corporation Act of 1974 (88 Stat. 388, 42 U.S.C. 2996k) [this section], and Section 301 of Title 3 of the United States Code [section 301 of Title 3, The President], and as President of the United States, the Director of the Office of Management and Budget is hereby designated and empowered to exercise the authority vested in the President by said Section 1012 of the Economic Opportunity

Act of 1964, as amended [this section], to direct that appropriate support functions of the Federal Government may be made available to the Legal Services Corporation in carrying out its activities, to the extent not inconsistent with other applicable law. Such functions shall be provided under terms and conditions as may be agreed upon by the Legal Services Corporation and the Federal agencies involved.

GERALD R. FORD

§ 2996l. Reservation of right to repeal, alter, or amend

The right to repeal, alter, or amend this subchapter at any time is expressly reserved.

(Pub.L. 88-452, Title X, § 1013, as added Pub.L. 93-355, § 2, July 25, 1974, 88 Stat. 388.)

HISTORICAL AND STATUTORY NOTES

Legislative History

For legislative history and purpose of Pub.L. 93-355, see 1974 U.S.Code Cong. and Adm.News, p. 3872.

CHAPTER 90—NEIGHBORHOOD AND CITY REINVESTMENT, SELF-HELP AND REVITALIZATION

SUBCHAPTER I—NEIGHBORHOOD REINVESTMENT CORPORATION

Sec.

- 8101. Congressional findings and declaration of purpose.
- 8102. Neighborhood Reinvestment Corporation.
 - (a) Establishment.
 - (b) Implementation and expansion of demonstration activities.
 - (c) Principal office.
 - (d) Exemption from taxation.
- 8103. Board of Directors.
 - (a) Membership.
 - (b) Election of chairman.
 - (c) Terms of office.
 - (d) Compensation and expenses.
 - (e) Bylaws, policies and administrative provisions.
 - (f) Director absences; designated representatives.
 - (g) Quorum.
 - (h) Application of other laws.
 - (i) Meetings of board.
- 8104. Officers and employees.
 - (a) Employment, compensation and benefits.
 - (b) Appointment of executive director.
 - (c) Appointment and removal of employees by executive director.
 - (d) Prohibition of political tests and qualifications in selection, etc., of personnel.
 - (e) Employee status; applicability of administrative and cost standards of Office of Management and Budget.
- 8105. Powers and duties of corporation.
 - (a) Continuance of work of Urban Reinvestment Task Force regarding neighborhood housing services programs and preservation projects.
 - (b) General administrative powers.
 - (c) Contracting powers.
 - (d) Non-profit nature of corporation.
- 8106. Reports and audits.
 - (a) Annual report to President and Congress.
 - (b) Annual audit of accounts.
 - (c) Additional audits by General Accounting Office.
 - (d) Audit of grantees and contractors of corporation.

CH. 90 NEIGHBORHOOD REINVESTMENT, ETC.

42 § 8101

Sec.

- 8106. Reports and audits—Continued
 - (e) Annual financial audit.
- 8107. Appropriations.
 - (a) Authorization.
 - (b) Availability of funds until expended.
 - (c) Accounting and reporting of non-Federal funds.
 - (d) Preparation of business-type budget.

SUBCHAPTER II—NEIGHBORHOOD SELF-HELP DEVELOPMENT

8121 to 8124. Repealed.

SUBCHAPTER III—LIVABLE CITIES

- 8141. Congressional findings.
- 8142. Statement of purpose.
- 8143. Definitions.
- 8144. Grants to or contracts with organizations.
 - (a) Authorization; purposes.
 - (b) Establishment of criteria and procedures for evaluation and selection of projects; scope of criteria.
 - (c) Application requirements.
 - (d) Consultation requirements.
 - (e) Regulations respecting matching requirements; waiver, etc.
 - (f) Certification of application.
 - (g) Available funds not to supplant other public or private funds.
 - (h) Availability of funds for administrative expenses.
- 8145. Coordination and development of program with other Federal and non-Federal programs.
- 8146. Authorization of appropriations.

SUBCHAPTER I—NEIGHBORHOOD REINVESTMENT CORPORATION

§ 8101. Congressional findings and declaration of purpose

(a) The Congress finds that—

(1) the neighborhood housing services demonstration of the Urban Reinvestment Task Force has proven its worth as a successful program to revitalize older urban neighborhoods by mobilizing public, private, and community resources at the neighborhood level; and

(2) the demand for neighborhood housing services programs in cities throughout the United States warrants the creation of a public corporation to institutionalize and expand the neighborhood housing services program and other programs of the present Urban Reinvestment Task Force.

(b) The purpose of this subchapter is to establish a public corporation which will continue the joint efforts of the Federal financial supervisory agencies and the Department of Housing and Urban Development to promote reinvestment in older neighborhoods by local financial institutions working cooperatively with community people and local government, and which will continue the nonbureaucratic approach of the Urban Reinvestment Task Force, relying largely on local initiative for the specific design of local programs.

(Pub.L. 95-557, Title VI, § 602, Oct. 31, 1978, 92 Stat. 2115.)

Historical Note

Short Title. Section 601 of Title VI of Pub.L. 95-557 provided that: "This title [enacting this subchapter] may be cited as the 'Neighborhood Reinvestment Corporation Act'."

Section 701 of Title VII of Pub.L. 95-557, which provided that such title, which was classified to subchapter II of this chapter, was to be cited as the "Neighborhood Self-Help Development Act of 1978", was repealed by

Pub.L. 97-35, Title III, § 313(a), Aug. 13, 1981, 95 Stat. 398.

Section 801 of Title VIII of Pub.L. 95-557 provided that: "This title [enacting subchapter III of this chapter] may be cited as the 'Livable Cities Act of 1978'."

Legislative History. For legislative history and purpose of Pub.L. 95-557, see 1978 U.S. Code Cong. and Adm. News, p. 4773.

Code of Federal Regulations

Neighborhood Reinvestment Corporation,

Federally assisted programs, nondiscrimination in, see 24 CFR 4104.1 et seq.

Grant applications, program information for, see 24 CFR 4101.1 et seq.

Organization, see 24 CFR 4100.1 et seq.

Office of Neighborhood Reinvestment, establishment of by Federal Home Loan Bank Board, see 12 CFR 522.85 to 522.87.

Library References

United States 53(9), 82(3).

C.J.S. United States §§ 70, 122.

§ 8102. Neighborhood Reinvestment Corporation

(a) Establishment

There is established a Neighborhood Reinvestment Corporation (hereinafter referred to as the "corporation") which shall be a body corporate and shall possess the powers, and shall be subject to the direction and limitations specified herein.

(b) Implementation and expansion of demonstration activities

The corporation shall implement and expand the demonstration activities carried out by the Urban Reinvestment Task Force.

(c) Principal office

The corporation shall maintain its principal office in the District of Columbia or at such other place the corporation may from time to time pre-

(d) Exemption from taxation

The corporation, including its franchise, activities, assets, and income, shall be exempt from all taxation now or hereafter imposed by the United States, by any territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority, except that any real property of the corporation shall be subject to State, territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed.

(Pub.L. 95-557, Title VI, § 603, Oct. 31, 1978, 92 Stat. 2115; Pub.L. 96-399, Title III, § 315(1), Oct. 8, 1980, 94 Stat. 1645.)

Historical Note

1980 Amendment. Subsec. (a). Pub.L. 96-399 struck out "National" preceding "Neighborhood".

Code Cong. and Adm. News, p. 4773. See, also, Pub.L. 96-399, 1980 U.S. Code Cong. and Adm. News, p. 3506.

Legislative History. For legislative history and purpose of Pub.L. 95-557, see 1978 U.S.

§ 8103. Board of Directors

(a) Membership

The corporation shall be under the direction of a board of directors made up of the following members:

- (1) the Chairman of the Federal Home Loan Bank Board;
- (2) the Secretary of Housing and Urban Development;
- (3) a member of the Board of Governors of the Federal Reserve System, to be designated by the Chairman of the Board of Governors of the Federal Reserve System;
- (4) the Chairman of the Federal Deposit Insurance Corporation;
- (5) the Comptroller of the Currency; and
- (6) the Administrator of the National Credit Union Administration.

(b) Election of chairman

The Board shall elect from among its members a chairman who shall serve for a term of two years, except that the Chairman of the Federal Home Loan Bank Board shall serve as Chairman of the Board of Directors for the first such two-year term.

(c) Terms of office

Each director of the corporation shall serve ex officio during the period he holds the office to which he is appointed by the President.

(d) Compensation and expenses

The directors of the corporation, as full-time officers of the United States, shall serve without additional compensation but shall be reimbursed for

45 U.S.C. as the Consolidated Rail Corporation or such other corporate name as may be duly adopted by the Corporation.

§ 741

(b) Status

The Corporation shall be a for-profit corporation established under the laws of a State and shall not be an agency or instrumentality of the Federal Government. The Corporation shall be deemed a common carrier by railroad under section 10102 of Title 49, shall be subject to the provisions of this Act and, to the extent not inconsistent with such Act and subtitle IV of Title 49, shall be subject to applicable State law. The principal office of the Corporation or of its principal railroad operating subsidiary shall be located in Philadelphia in the Commonwealth of Pennsylvania.

(c) Incorporators

(1) The members of the executive committee of the Association shall be the incorporators of the Corporation and shall take whatever steps are necessary to establish the Corporation, including the filing of articles of incorporation.

(2) Notwithstanding any provision of State law, after February 5, 1976, the members of the executive committee of the Association (including duly authorized representatives of members who are authorized by this chapter to be represented) and the chief executive officer and chief operating officer of the Corporation shall adopt the bylaws of the Corporation and serve as the Board of Directors of the Corporation until all members of the Board of Directors of the Corporation have been selected in accordance with subsection (d) of this section. The chief executive officer shall serve as chairman of such Board until a chairman thereof is selected pursuant to subsection (d) of this section, after which time such chairman shall serve at the pleasure of such Board.

(d) Board of Directors

(1) Notwithstanding any provision of State law, the articles of incorporation and bylaws of the Corporation shall provide that the Board of Directors of the Corporation shall consist of 13 members selected in accordance with the articles and bylaws of the Corporation, as follows:

(A) six individuals selected by the holders of the Corporation's debentures and series A preferred stock voting as one class, with every \$100 principal amount of debentures, and every \$100 liquidation amount of series A preferred stock each receiving one vote for directors;

(B) three individuals selected by the holders of the Corporation's series B preferred stock; and

(C) two individuals selected by the holders of the Corporation's common stock.

(2) The chief executive officer and the chief operating officer of the Corporation shall also serve on the Board, but the chief executive officer and chief operating officer of the Corporation shall not be entitled to vote on the election or removal of either. In the event a vacancy occurs on the Board of Directors due to death, disability or resignation of a director, such vacancy shall be filled only by a vote of the holders of the class of securities that initially elected such director.

(e) Initial capitalization

(1) The Corporation is authorized to issue debentures, series A preferred stock, series B preferred stock, common stock, contingent interest notes, and other securities.

(2) Debentures and series A preferred stock shall be issued initially to the Association. Series B preferred stock and common stock shall be issued initially to the estates of railroads in reorganization in the region, to railroads leased, operated, and controlled by railroads in reorganization in the region, and to other persons leased, operated or controlled by a railroad in reorganization who are transferors of rail properties in exchange for rail properties transferred to the Corporation pursuant to the final system plan. Notwithstanding any other provisions of State or Federal law, the series B preferred stock and common stock shall have terms and conditions not inconsistent with the final system plan. As a condition of its investment in the Corporation, the Association may require that the Corporation adopt limitations consistent with the final system plan on the circumstances under which dividends on the series B preferred stock and common stock are payable so long as any of the debentures or series A preferred stock are outstanding. Notwithstanding anything to the contrary in the final system plan, the initial authorized number of shares of series B preferred stock may be 35,000,000, and the Corporation may issue initially for the purpose of the deposit required under section 743(a)(1) of this title such numbers of shares of series B preferred and common stock as the Association shall certify to the Special Court pursuant to section 719(c)(1)(3)¹ of this title, including any modifications in such numbers of shares as may be ordered by the Special Court for the purpose of, and in connection with, such deposit and certification.

(f) Officers

The officers of the Corporation shall include a chief executive officer and a chief operating officer, who shall be appointed by the Board of Directors and who shall serve at the pleasure of the Board; and such other officers as shall be provided for in the bylaws of the Corporation.

(g) Voting trustees

For and during the period between the deposit of securities of the Corporation with the special court, in accordance with section 743(a) of this title, and the distribution of such securities, in accordance with section 743(c) of this title, the special court shall, within 30 days after the date of conveyance pursuant to section 743(b)(1) of this title, appoint one or more voting trustees for each class of securities which is so deposited. Such voting trustees shall, on behalf of the distributees, exercise the rights of the holders of such securities as their interests may appear. Within 30 days after such appointment, such voting trustees shall select members of the Board of Directors of the Corporation on behalf of the holders of the class of securities whose rights they exercise pursuant to this subsection.

(h) Annual report

The Corporation shall transmit to the Congress and the President, not later than 90 days after the end of each fiscal year, a comprehensive and detailed report on all activities and accomplishments of the Corporation during the preceding fiscal year.

have perpetual succession with the powers, limitations, and restrictions hereinafter contained, and no other.

(R.S. § 5579; Feb. 27, 1877, c. 69, 19 Stat. 253; Mar. 12, 1894, c. 36, 28 Stat. 41.)

HISTORICAL AND STATUTORY NOTES

Codifications

R.S. § 5579 derived from Acts Aug. 10, 1846, c. 178, § 1, 9 Stat. 102; Mar. 20, 1871, c. 1, 17 Stat. 1.

R.S. §§ 5579 to 5594 (codified as sections 41 to 46, 48, 50, 51 to 53, 54 to 57 and 67 of this title) constituted Title 73 of the Revised Statutes, entitled "The Smithsonian Institution." A preamble to these sections was as follows: "James Smithson, esquire, of London, in the kingdom of Great Britain, having by his last will and testament given the whole of his property to the United States of America, to found, at Washington, under the name of the 'Smithsonian Institution,' an establishment for the increase and diffusion of knowledge among men; and the United States having, by an act of Congress, received said property and accepted said trust; therefore, for the faithful execution of said trust, according to the will of the liberal and enlightened donor."

R.S. § 5579, as originally enacted, constituted the President, the Vice-President, the Secretaries of State, the Treasury, War, and the Navy, the Postmaster-General, the Attorney-General, the Chief Justice, the Commissioner of the Patent Office, and the Governor of the District of

Columbia, and such persons as they might elect honorary members, an establishment by the name of the "Smithsonian Institution," for the purposes and with the powers specified in the section as set forth here.

Amendments

1894 Amendment. Act Mar. 12, 1894 substituted "the Chief Justice, and heads of executive departments" for "the Secretary of State, the Secretary of the Treasury, the Secretary of War, the Secretary of the Navy, the Postmaster-General, the Attorney General, the Chief Justice, the Commissioner of Patents, the governor of the District of Columbia, and other such persons as they may elect honorary members".

1877 Amendment. Act Feb. 27, 1877 substituted "Patents" for "Patent Office".

Short Title

1966 Amendment. Pub.L. 89-674, § 1, Oct. 15, 1966, 80 Stat. 953, provided: "That this Act [enacting section 65a of this title and provisions set out as notes under section 65a of this title, and repealing section 65 of this title] may be cited as the 'National Museum Act of 1966'."

CROSS REFERENCES

Congressional right of repeal, see 20 USCA § 67.
Disbursements of funds, see 20 USCA § 57.

LIBRARY REFERENCES

American Digest System

Corporations and special instrumentalities, see United States §53(1 to 19).
Creation of executive offices, see United States §29.
Public improvements and works, see United States §56.

Encyclopedias

Corporations and special instrumentalities, see C.J.S. United States §§ 65 to 70.
Creation of executive offices, see C.J.S. United States § 34.
Public improvements and works, see C.J.S. United States § 72.

WESTLAW ELECTRONIC RESEARCH

United States cases: 393k[add key number].
See, also, WESTLAW guide following the Explanation pages of this volume.

NOTES OF DECISIONS

Increase and diffusion of knowledge 2 Independent nature of Institution 1

1. Independent nature of Institution
The Smithsonian Institution is independent of any of the executive departments mentioned in former § 1 [now 101] of Title 5. 1907, 26 Op.Atty.Gen. 209.

2. Increase and diffusion of knowledge

Under statutory directive to museum of natural history to operate so as to

increase and diffuse knowledge among men, museum's presentation of evolution exhibits did not go beyond authorized purposes of scientific research and educating the public on current state of scientific knowledge. *Crowley v. Smithsonian Inst.*, D.C.D.C.1978, 462 F.Supp. 725, affirmed 636 F.2d 738, 205 U.S.App. D.C. 30.

§ 42. Board of Regents; members

The business of the Institution shall be conducted at the city of Washington by a Board of Regents, named the Regents of the Smithsonian Institution, to be composed of the Vice President, the Chief Justice of the United States, three Members of the Senate, three Members of the House of Representatives, and nine other persons, other than Members of Congress, two of whom shall be resident in the city of Washington, and seven of whom shall be inhabitants of some State, but no two of them of the same State.

(R.S. § 5580; Mar. 12, 1894, c. 36, 28 Stat. 41; Dec. 15, 1970, Pub. L. 91-551, § 1(a), 84 Stat. 1439.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1970 Act. Senate Report No. 91-1031, see 1970 U.S. Code Cong. and Adm. News, p. 4967.

Codifications

R.S. § 5580 derived from Acts Aug. 10, 1846, c. 178, § 3, 9 Stat. 103; Jan. 10, 1865, c. 11, 13 Stat. 420; Mar. 20, 1871, c. 1, 17 Stat. 1.

Amendments

1970 Amendment. Pub.L. 91-551 authorized three additional persons on the Board of Regents.

1894 Amendment. Act Mar. 12, 1894 struck out "The Governor of the District of Columbia," following "the Chief Justice of the United States,".

CROSS REFERENCES

Congressional right of repeal, see 20 USCA § 67.
Disbursement of funds, see 20 USCA § 57.
National Zoological Park, administration by Regents of Smithsonian Institution, see 20 USCA § 81.

LIBRARY REFERENCES

American Digest System

Corporations and special instrumentalities, see United States §53(1 to 19).
Creation of executive offices, see United States §29.
Public improvements and works, see United States §56.

Encyclopedias

Corporations and special instrumentalities, see C.J.S. United States §§ 65 to 70.

Sec.

- 80q-3. Board of Trustees of the National Museum of the American Indian.
 (a) In general.
 (b) General duties and powers.
 (c) Sole authority.
 (d) Authority.
 (e) Initial appointments to the Board of Trustees.
 (f) Subsequent appointments to the Board of Trustees.
 (g) Quorum.
 (h) Expenses.
- 80q-4. Director and staff of the National Museum.
 (a) In general.
 (b) Offer of employment to Heye Foundation employees.
 (c) Applicability of certain civil service laws.
- 80q-5. Museum facilities.
 (a) National Museum Mall facility.
 (b) National Museum Heye Center facility.
 (c) Museum Support Center facility.
 (d) Minimum square footage.
 (e) Authority to contract with GSA.
 (f) Limitation on obligation of Federal funds.
- 80q-6. Custom House office space and auditorium.
 (a) Repairs and alterations.
 (b) Authorization of appropriation.
- 80q-7. Audubon Terrace.
 (a) In general.
 (b) Determination of charges.
 (c) Definition.
- 80q-8. Board of Regents functions with respect to certain agreements and programs.
 (a) Priority to be given to Indian organizations with respect to certain agreements.
 (b) Indian programs.
 (c) Indian Museum Management Fellowships.
 (d) Authorization of appropriations.
- 80q-9. Inventory, identification, and return of Indian human remains and Indian funerary objects in the possession of the Smithsonian Institution.
 (a) Inventory and identification.
 (b) Notice in case of identification of tribal origin.
 (c) Return of Indian human remains and associated Indian funerary objects.
 (d) Return of Indian funerary objects not associated with Indian human remains.
 (e) Interpretation.
 (f) Authorization of appropriations.
- 80q-10. Special committee to review the inventory, identification, and return of Indian human remains and Indian funerary objects.
 (a) Establishment; duties.
 (b) Membership.
 (c) Access.
 (d) Pay and expenses of members.
 (e) Rules and administrative support.
 (f) Report and termination.

Sec.

- 80q-10. Special committee to review the inventory, identification, and return of Indian human remains and Indian funerary objects.
 (g) Nonapplicability of the Federal Advisory Committee Act.
 (h) Authorization of appropriations.
- 80q-11. Inventory, identification, and return of Native Hawaiian human remains and Native Hawaiian funerary objects in the possession of the Smithsonian Institution.
 (a) In general.
 (b) Definitions.
- 80q-12. Grants by the Secretary of the Interior to assist Indian tribes with respect to agreements for the return of Indian human remains and Indian funerary objects.
 (a) In general.
 (b) Authorization of appropriations.
- 80q-13. Grants by the Secretary of the Interior to assist Indian organizations with respect to renovation and repair of museum facilities and exhibit facilities.
 (a) Grants.
 (b) Indian organization contribution.
 (c) Tribal Museum Endowment Fund.
 (d) Annual report.
- 80q-14. Definitions.
- 80q-15. Authorization of appropriations.
 (a) Funding.
 (b) Period of availability.

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SUBCHAPTER I—CHARTER PROVISIONS

§ 41. Incorporation of Institution

The President, the Vice President, the Chief Justice, and the heads of executive departments are constituted an establishment by the name of the Smithsonian Institution for the increase and diffusion of knowledge among men, and by that name shall be known and

Creation of executive offices, see C.J.S. United States § 34.
Public improvements and works, see C.J.S. United States § 72.

WESTLAW ELECTRONIC RESEARCH

United States cases: 393k[add key number].
See, also, WESTLAW guide following the Explanation pages of this volume.

§ 43. Appointment of regents; terms of office; vacancies

The regents to be selected shall be appointed as follows: The Members of the Senate by the President thereof; the Members of the House by the Speaker thereof; and the nine other persons by joint resolution of the Congress. The Members of the House so appointed shall serve for the term of two years; and on every alternate fourth Wednesday of December a like number shall be appointed in the same manner to serve until the fourth Wednesday in December, in the second year succeeding their appointment. The Senators so appointed shall serve during the term for which they shall hold, without reelection, their office as Senators. Vacancies, occasioned by death, resignation, or otherwise, shall be filled as vacancies in committees are filled. The regular term of service for the other nine members shall be six years; and new elections thereof shall be made by joint resolutions of Congress. Vacancies occasioned by death, resignation, or otherwise may be filled in like manner by joint resolution of Congress.

(R.S. § 5581; Dec. 15, 1970, Pub. L. 91-551, § 1(b), (c), 84 Stat. 1440.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1970 Act. Senate Report No. 91-1031, see 1970 U.S. Code Cong. and Adm. News, p. 4967.

Codifications

R.S. § 5581 derived from Act Aug. 10, 1846, c. 178, § 3, 9 Stat. 103.

Amendments

1970 Amendment. Pub. L. 91-551 authorized the appointment of three additional members of the Board by joint resolution of the Congress.

CROSS REFERENCES

Congressional right of repeal, see 20 USCA § 67.
Disbursement of funds, see 20 USCA § 57.

LIBRARY REFERENCES

American Digest System

Appointment, qualification and tenure of officers, see United States § 35.
Creation of executive offices, see United States § 29.

Encyclopedias

Appointment, qualification and tenure of officers, see C.J.S. United States §§ 35, 37, 62 to 64.

Creation of executive offices, see C.J.S. United States § 34.

WESTLAW ELECTRONIC RESEARCH

United States cases: 393k[add key number].
See, also, WESTLAW guide following the Explanation pages of this volume.

§ 44. Organization of board; expenses; gratuitous services

The Board of Regents shall meet in the city of Washington and elect one of their number as chancellor, who shall be the presiding officer of the Board of Regents, and called the chancellor of the Smithsonian Institution, and a suitable person as Secretary of the institution, who shall also be the secretary of the Board of Regents. The board shall also elect three of their own body as an executive committee, and shall fix the time for the regular meetings of the board; and, on application of any three of the regents to the Secretary of the institution, it shall be his duty to appoint a special meeting of the Board of Regents, of which he shall give notice, by letter, to each of the members; and, at any meeting of the board, eight shall constitute a quorum to do business. Each member of the board shall be paid his necessary traveling and other actual expenses, in attending meetings of the board, which shall be audited by the executive committee, and recorded by the Secretary of the board; but his service as regent shall be gratuitous.

(R.S. § 5582; Dec. 15, 1970, Pub. L. 91-551, § 1(d), 84 Stat. 1440.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1970 Act. Senate Report No. 91-1031, see 1970 U.S. Code Cong. and Adm. News, p. 4967.

Codifications

R.S. § 5582 derived from Act Aug. 10, 1846, c. 178, § 3, 9 Stat. 103.

Amendments

1970 Amendment. Pub. L. 91-551 increased the number of members required to constitute a quorum from five to eight.

CROSS REFERENCES

Congressional right of repeal, see 20 USCA § 67.
Disbursement of funds, see 20 USCA § 57.

LIBRARY REFERENCES

American Digest System

Creation of executive offices, see United States § 29.
Particular executive departments, see United States § 33.
Public improvements and works, see United States § 56.

Encyclopedias

Creation of executive offices, see C.J.S. United States § 34.
Particular executive departments, see C.J.S. United States § 33.
Public improvements and works, see C.J.S. United States § 72.

WESTLAW ELECTRONIC RESEARCH

United States cases: 393k[add key number].
See, also, WESTLAW guide following the Explanation pages of this volume.

§ 45. Special meetings of members

The members of the institution may hold stated and special meetings, for the supervision of the affairs of the institution and the advice and instruction of the Board of Regents, to be called in the manner provided for in the by-laws of the institution, at which the President, and in his absence the Vice President, shall preside. (R.S. § 5585.)

HISTORICAL AND STATUTORY NOTES

Codifications

R.S. § 5585 derived from Act Aug. 10, 1846, c. 178, § 8, 9 Stat. 103.

CROSS REFERENCES

Congressional right of repeal, see 20 USCA § 67.
Disbursement of funds, see 20 USCA § 57.

LIBRARY REFERENCES

American Digest System

Authority and powers of officers and agents and exercise thereof, see United States §40.

Encyclopedias

Authority and powers of officers and agents and exercise thereof, see C.J.S. United States §§ 38 to 40.

WESTLAW ELECTRONIC RESEARCH

United States cases: 393k[add key number].
See, also, WESTLAW guide following the Explanation pages of this volume.

§ 46. Duties of Secretary

The Secretary of the Board of Regents shall take charge of the building and property of the institution, and shall, under their direction, make a fair and accurate record of all their proceedings, to be preserved in the institution until no longer needed in conducting current business; and shall also discharge the duties of librarian and of keeper of the museum, and may, with the consent of the Board of Regents, employ assistants.

(R.S. § 5583; Oct. 25, 1951, c. 562, § 2(4), 65 Stat. 639.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1951 Act. House Report No. 1102, see 1951 U.S.Code Cong. and Adm.Service, p. 2434.

Codifications

R.S. § 5583 derived from Act Aug. 10, 1846, c. 178, § 7, 9 Stat. 105.

Amendments

1951 Amendment. Act Oct. 25, 1951 inserted "until no longer needed in conducting current business".

CROSS REFERENCES

Congressional right of repeal, see 20 USCA § 67.
Disbursement of funds, see 20 USCA § 57.
Management and disposition of records, see 44 USCA §§ 2101 et seq., 2301 et seq., 2501 et seq., 3101 et seq., and 3301 et seq.
Statement of expenditures, see 20 USCA § 49.

LIBRARY REFERENCES

American Digest System

Duties of officers and agents and performance thereof, see United States §41.

Encyclopedias

Duties of officers and agents and performance thereof, see C.J.S. United States § 41.

WESTLAW ELECTRONIC RESEARCH

United States cases: 393k[add key number].
See, also, WESTLAW guide following the Explanation pages of this volume.

§ 46a. Employment of aliens by Secretary

The Secretary of the Smithsonian Institution, subject to adequate security and other investigations as he may determine to be appropriate, and subject further to a prior determination by him that no qualified United States citizen is available for the particular position involved, is authorized to employ and compensate aliens in a scientific or technical capacity at authorized rates of compensation without regard to statutory provisions prohibiting payment of compensation to aliens.

(Pub. L. 88-549, Aug. 31, 1964, 78 Stat. 754.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1964 Act. Senate Report No. 1488, see 1964 U.S.Code Cong. and Adm.News, p. 3338.

LIBRARY REFERENCES

American Digest System

Appointment, qualification and tenure of officers, see United States §35.

Encyclopedias

Appointment, qualification and tenure of officers, see C.J.S. United States §§ 35, 37, 62 to 64.

WESTLAW ELECTRONIC RESEARCH

United States cases: 393k[add key number].
See, also, WESTLAW guide following the Explanation pages of this volume.

§ 47. Acting Secretary

The chancellor of the Smithsonian Institution may, by an instrument in writing filed in the office of the Secretary thereof, designate

and appoint a suitable person to act as Secretary of the Institution when there shall be a vacancy in said office, and whenever the Secretary shall be unable from illness, absence, or other cause to perform the duties of his office; and in such case the person so appointed may perform all the duties imposed on the Secretary by law until the vacancy shall be filled or such inability shall cease. The said chancellor may change such designation and appointment from time to time as the interests of the Institution may in his judgment require.

(May 13, 1884, c. 44, 23 Stat. 21.)

HISTORICAL AND STATUTORY NOTES

Prior Provisions

Act May 13, 1884 is derived from Act Jan. 24, 1879, c. 21, 20 Stat. 264.

LIBRARY REFERENCES

American Digest System

Appointment, qualification and tenure of officers, see United States § 35.

Encyclopedias

Appointment, qualification and tenure of officers, see C.J.S. United States §§ 35, 37, 62 to 64.

WESTLAW ELECTRONIC RESEARCH

United States cases: 393k[add key number].

See, also, WESTLAW guide following the Explanation pages of this volume.

§ 48. Salary and removal of Secretary and assistants

The Secretary and his assistants shall, respectively, receive for their services such sum as may be allowed by the Board of Regents; and shall be removable by the Board of Regents whenever, in their judgment, the interests of the institution require such removal. (R.S. § 5584.)

HISTORICAL AND STATUTORY NOTES

Codifications

R.S. § 5584 derived from Act Aug. 10, 1846, c. 178, § 7, 9 Stat. 105.

Provisions which related to semi-annual payments on the first day of January and July have been omitted.

CROSS REFERENCES

Congressional right of repeal, see 20 USCA § 67.
Disbursement of funds, see 20 USCA § 57.

LIBRARY REFERENCES

American Digest System

Appointment, qualification and tenure of officers, see United States § 35.

Encyclopedias

Appointment, qualification and tenure of officers, see C.J.S. United States §§ 35, 37, 62 to 64.

WESTLAW ELECTRONIC RESEARCH

United States cases: 393k[add key number].

See, also, WESTLAW guide following the Explanation pages of this volume.

§ 49. Statement of expenditures

The Secretary shall submit to Congress annually at the beginning of each regular session thereof a detailed statement of the expenditures of the preceding fiscal year, under appropriations for "International Exchanges," "North American Ethnology," and the "National Museum."

(Oct. 2, 1888, c. 1069, 25 Stat. 529.)

CROSS REFERENCES

Annual report of salaries, see 20 USCA § 58.

Printing and distribution of Smithsonian Institution reports, see 44 USCA § 1341.

LIBRARY REFERENCES

American Digest System

Duties of officers and agents and performance thereof, see United States § 41.

Encyclopedias

Duties of officers and agents and performance thereof, see C.J.S. United States § 41.

WESTLAW ELECTRONIC RESEARCH

United States cases: 393k[add key number].

See, also, WESTLAW guide following the Explanation pages of this volume.

§ 50. Reception and arrangement of specimens and objects of art

Whenever suitable arrangements can be made from time to time for their reception, all objects of art and of foreign and curious research, and all objects of natural history, plants, and geological and mineralogical specimens belonging to the United States, which may be in the city of Washington, in whosoever custody they may be, shall be delivered to such persons as may be authorized by the Board of Regents to receive them, and shall be so arranged and classified in the building erected for the institution as best to facilitate the examination and study of them; and whenever new specimens in natural history, geology, or mineralogy are obtained for the museum of the institution, by exchanges of duplicate specimens, which the Regents may in their discretion make, or by donation, which they may receive, or otherwise, the Regents shall cause such new specimens to be appropriately classed and arranged. The minerals, books, manuscripts, and other property of

CHAPTER 2—ORGANIZATION

Sec.

- 201. United States Postal Service.
- 202. Board of Governors.
- 203. Postmaster General; Deputy Postmaster General.
- 204. Assistant Postmasters General; General Counsel; Judicial Officer.
- 205. Procedures of the Board of Governors.
- 206. Advisory Council.
- 207. Seal.
- 208. Reservation of powers.

§ 201. United States Postal Service

There is established, as an independent establishment of the executive branch of the Government of the United States, the United States Postal Service.

Pub.L. 91-375, Aug. 12, 1970, 84 Stat. 720.

Historical Note

Effective Date. Section effective July 1, 1971, pursuant to Resolution No. 71-9 of the Board of Governors. See section 15(a) of Pub.L. 91-375, set out as an Effective Date note preceding section 101 of this title.

Transfer of Functions; Abolition of Office. Section 4(a) of Pub.L. 91-375 provided that: "There are hereby transferred to the United States Postal Service all the functions, powers, and duties of the Post Office Department and the Postmaster General of the Post Office Department, and the Post Office Department and the office of Postmaster General of the Post Office Department are abolished."

Provisions of section 4(a) of Pub.L. 91-375 effective within 1 year after Aug. 12, 1970, on date established therefor by the Board of Governors of the United States Postal Service and published by it in the Federal Register, see section 15(a) of Pub.L. 91-375, set out as an Effective Date note preceding section 101 of this title.

Transitional Expenses. Expenses of United States Postal Service from Aug. 12, 1970, until date of commencement of operations of Postal Service deemed administrative expenses of Post Office Department, see section 12 of Pub.L. 91-375, set out as a note under section 2004 of this title.

Cross References

Postal Service defined, see section 102 of this title.

Library References

Post Office — 3.

C.J.S. Post Office § 4 et seq.

Code of Federal Regulations

Organizational principles, see 39 CFR 221.1 et seq.

Regions, see 39 CFR 225.1 et seq.

Regulatory coverage, see 39 CFR 211.1 et seq.

Ch. 2

ORGANIZATION

39 § 202

Notes of Decisions

Competition with private carriers 2
Independent nature of Service 1

accounts and to acquire and lease property. Beneficial Finance Co. of New York, Inc. v. Dallas, C.A.N.Y.1978, 571 F.2d 125.

1. Independent nature of Service

Congressional purpose, in establishing Service was to permit Service to operate in "business-like" fashion; to such end, Congress removed Service from political sphere and authorized it to act as an independent establishment with powers equivalent to private business enterprise, such as power to make contracts, keep

2. Competition with private carriers

Apart from limitations imposed by sections 601 to 606 of this title and sections 1603 to 1606 of Title 18 regarding "Letter mail", the Service competes with private carriers in the delivery of mail. Beneficial Finance Co. of New York, Inc. v. Dallas, C.A.N.Y.1978, 571 F.2d 125.

§ 202. Board of Governors

(a) The exercise of the power of the Postal Service shall be directed by a Board of Governors composed of 11 members appointed in accordance with this section. Nine of the members, to be known as Governors, shall be appointed by the President, by and with the advice and consent of the Senate, not more than 5 of whom may be adherents of the same political party. The Governors shall elect a Chairman from among the members of the Board. The Governors shall be chosen to represent the public interest generally, and shall not be representatives of specific interests using the Postal Service, and may be removed only for cause. Each Governor shall receive a salary of \$10,000 a year plus \$300 a day for not more than 30 days of meetings each year and shall be reimbursed for travel and reasonable expenses incurred in attending meetings of the Board. Nothing in the preceding sentence shall be construed to limit the number of days of meetings each year to 30 days.

(b) The terms of the 9 Governors shall be 9 years, except that the terms of the 9 Governors first taking office shall expire as designated by the President at the time of appointment, 1 at the end of 1 year, 1 at the end of 2 years, 1 at the end of 3 years, 1 at the end of 4 years, 1 at the end of 5 years, 1 at the end of 6 years, 1 at the end of 7 years, 1 at the end of 8 years, and 1 at the end of 9 years, following the appointment of the first of them. Any Governor appointed to fill a vacancy before the expiration of the term for which his predecessor was appointed shall serve for the remainder of such term.

(c) The Governors shall appoint and shall have the power to remove the Postmaster General, who shall be a voting member of the Board. His pay and term of service shall be fixed by the Governors.

(d) The Governors and the Postmaster General shall appoint and

shall be a voting member of the Board. His term of service shall be fixed by the Governors and the Postmaster General and his pay by the Governors.

Pub.L. 91-375, Aug. 12, 1970, 84 Stat. 720.

Historical Note

Effective Date. Section effective Aug. 12, 1970, see section 15(a) of Pub.L. 91-375, set out as an Effective Date note preceding section 101 of this title.

Savings Provision. Payment to Governors of Board of Governors of Postal Service of \$300 a day for not more than

60 days of meetings in each of first 2 years following effective date of this section [see Effective Date note above], notwithstanding this section, see section 5(g) of Pub.L. 91-375, set out as a Savings Provisions note preceding section 101 of this title.

Cross References

Board of Governors, Board, and Governors defined, see section 102 of this title.
Laws relating to federal employees inapplicable to individuals appointed under this section, see section 1005 of this title.
Postal career service as not including individuals appointed under this section, see section 1001 of this title.
Review of rates of pay of Governors by Commission on Executive, Legislative, and Judicial Salaries, see section 356 of Title 2, The Congress.

Library References

Post Office § 3.

C.J.S. Post Office § 4 et seq.

Code of Federal Regulations

Composition, etc., of Board of Governors, see 39 CFR 3.1 et seq.
General and technical provisions, see 39 CFR 2.1 et seq.
Meetings, see 39 CFR 6.1 et seq., 7.1 et seq.
Officers, see 39 CFR 4.1 et seq.
Organizational principles, see 39 CFR 221.1 et seq.
Regulatory coverage, see 39 CFR 211.1 et seq.
Reporting requirements, see 39 CFR 8.1 et seq.
Special and standing committees, see 39 CFR 5.1 et seq.
Statements of policy, see 39 CFR 1.1 et seq.

§ 203. Postmaster General; Deputy Postmaster General

The chief executive officer of the Postal Service is the Postmaster General appointed under section 202(c) of this title. The alternate chief executive officer of the Postal Service is the Deputy Postmaster General appointed under section 202(d) of this title.

Pub.L. 91-375, Aug. 12, 1970, 84 Stat. 721.

Historical Note

Effective Date. Section effective Aug. 12, 1970, see section 15(a) of Pub.L. 91-375, set out as an Effective Date note preceding section 101 of this title.

Order of Succession. For order of succession in case of absence, disability or

vacancy in office of both the Postmaster General and Deputy Postmaster General, see Ex.Ord.No.11313, Oct. 15, 1966, 31 F.R. 13417, set out as a note under section 3347 of Title 5, Government Organization and Employees.

Code of Federal Regulations

Authority and communication relationships see 39 CFR 223.1 et seq.
Composition, etc., of Board of Governors, see 39 CFR 3.1 et seq.
Delegations of authority, see 39 CFR 222.1 et seq.
General and technical provisions, see 39 CFR 2.1 et seq.
Groups and departments, see 39 CFR 224.1 et seq.
Officers, see 39 CFR 4.1 et seq.
Organizational principles, see 39 CFR 221.1 et seq.
Regions, see 39 CFR 225.1 et seq.
Reporting requirements, see 39 CFR 8.1 et seq.
Special and standing committees, see 39 CFR 5.1 et seq.
Statements of policy, see 39 CFR 1.1 et seq.

Notes of Decisions

Conclusiveness of predecessor's decisions

Discretion of Postmaster General 1
Evidence 8
Failure to exercise powers 3
Injunctions 9
Liability for official acts 4
Parties 6
Presumptions 7
Scope of judicial review 5

4. Liability for official acts

The act of the head of one of the departments of the government in calling the attention of any person having business with such department to a statute in any way relating to such business cannot be made the foundation of a cause of action against such officers, not even if it be alleged that what that officer did was done maliciously. *Spalding v. Vilas*, Dist.Col.1896, 16 S.Ct. 631, 161 U.S. 483, 40 L.Ed. 780.

1. Discretion of Postmaster General

The law-making power intended to give to the Postmaster General great power of discretion in the management of the mails and post roads, and committed much to his opinion and good judgment. Such a policy is necessary, for no such service can be strictly mapped out and defined by statute, and its changing needs require the attention of an executive officer vested with power of management. *Griffith v. U. S.*, 1887, 22 Ct.Cl. 165, appeal dismissed 11 S.Ct. 1005, 141 U.S. 212, 35 L.Ed. 719.

2. Conclusiveness of predecessor's decisions

The Postmaster General is not bound by the construction placed by a decision of a predecessor in office so as to preclude him from revoking a certificate of entry of a publication as second-class matter, which had been issued by such predecessor, where no vested right has been created by such certificate. *Columbian Correspondence College v. Wynne*, 1905, 25 App.D.C. 149, appeal dismissed 28 S.Ct. 758, 200 U.S. 615, 50 L.Ed. 621.

3. Failure to exercise powers

The failure for a number of years of the Postmaster General to exercise an authority granted to him by law does not abrogate the power. *Louisville & N. R. Co. v. U. S.*, 1918, 53 Ct.Cl. 222.

5. Scope of judicial review

Under former section 369 of Title 5, the Postmaster General was justified in revoking a second-class mail permit granted to a newspaper, if it had come to be so edited as to contain other than mailable matter, and the conclusion of the Postmaster General, in revoking such permit that the publisher had published nonmailable matter will not be disturbed by the courts, unless they are clearly of the opinion that it is wrong. *U. S. ex rel. Milwaukee Social Democratic Pub. Co. v. Burleson*, 1921, 41 S.Ct. 352, 255 U.S. 407, 65 L.Ed. 704.

Where the management of the Post Office Department [now United States Postal Service] is placed in the hands of the Postmaster General and assistants, the courts will not interfere where palpable error does not appear in the ruling of the Department in deciding to which addressee certain mail matter belongs as between two claimants. *Central Trust Co. v. Central Trust Co. of Illinois*, Ill. 1910, 30 S.Ct. 341, 216 U.S. 251, 54 L.Ed. 469, 17 Ann.Cas. 1066. See, also, *National Life Ins. Co. of United States v. National Life Ins. Co.*, Ill.1908, 28 S.Ct. 541, 209 U.S. 317, 62 L.Ed. 808.

Courts will not interfere with discretion of Postmaster General in superintending business of Post Office Department [now United States Postal Service].

Sec.

- 831w. Acquisition of real or personal property; payment by delivery of power; sale or lease of vacant land for industrial purposes.
- 831x. Condemnation proceedings; institution by Corporation; venue.
- 831y. Net proceeds over expense payable into Treasury.
- 831y-1. Approval of plans by Board as condition precedent to construction and operation; restraining action without approval; other laws unaffected.
- 831z. Authorization of appropriations.
- 831aa. Laws repealed.
- 831bb. Reservation of right to amend or repeal.
- 831cc. Separability of provisions.
- 831dd. Liberal construction of chapter; sale of surplus lands.

Cross References

- Actions involving Tennessee Valley Authority, jurisdiction of United States Claims Court, see section 1491 of Title 28, Judiciary and Judicial Procedure.
- Effective date for order of Federal Energy Regulatory Commission requiring Tennessee Valley Authority to enter into contract for sale or delivery of power, see section 824k of this title.
- Grant of easement for rights-of-way for public roads and streets on or across lands acquired by United States for river and harbor improvement not applicable to lands held or acquired by Tennessee Valley Authority, see section 558c of Title 33, Navigation and Navigable Rivers.
- River and harbor improvement, lands held or acquired by Tennessee Valley Authority not subject to exchange, see section 558b of Title 33.
- Rural electrification, loan by Administrator of Rural Electrification Administration to discharge or refinance debts owed to Tennessee Valley Authority, see section 904 of Title 7, Agriculture.

§ 831. Creation; short title

For the purpose of maintaining and operating the properties now owned by the United States in the vicinity of Muscle Shoals, Alabama, in the interest of the national defense and for agricultural and industrial development, and to improve navigation in the Tennessee River and to control the destructive flood waters in the Tennessee River and Mississippi River Basins, there is created a body corporate by the name of the "Tennessee Valley Authority" (hereinafter referred to as the "Corporation"). The board of directors first appointed shall be deemed the incorporators, and the incorporation shall be held to have been effected from the date of the first meeting of the board. This chapter may be cited as the "Tennessee Valley Authority Act of 1933."

(May 18, 1933, c. 32, § 1, 48 Stat. 58.)

Cross References

- Applicability of prompt payment provisions to Tennessee Valley Authority, see section 3901 of Title 31, Money and Finance.

Federal Practice and Procedure

Right to eminent domain, see Wright, Miller & Cooper: Jurisdiction § 3814.

Code of Federal Regulations

Federal power marketing agency regulations, see 18 CFR 300.1 et seq.
Procedure and policies, see 18 CFR Chapter XIII.

Library References

Electricity §=1, 1½, 11.
Eminent Domain §=8, 45, 166 et seq.
Levees and Flood Control §=1.
Navigable Waters §=22.
United States §=53, 82, 85, 91.
C.J.S. Electricity §§ 1 to 10, 24 to 34.

C.J.S. Eminent Domain §§ 22, 65 et seq., 209.
C.J.S. Levees and Flood Control § 4.
C.J.S. Navigable Waters §§ 36, 43.
C.J.S. United States §§ 65, 122, 123, 126.

Notes of Decisions

Authority as instrumentality of United States
1
Constitutionality 1
Declaratory judgment 6
Purpose 2
Remedies and relief 5
State regulation and control 4

1. Constitutionality

This chapter is constitutional. *Goodpasture v. Tennessee Val. Authority*, C.A.Tenn. 1970, 434 F.2d 760.

1. Purpose

The Authority was created for primary purposes of promoting navigation and controlling floods, which purposes rendered constitutional this chapter creating the Authority. *Grant v. Tennessee Valley Authority*, D.C.Tenn.1942, 49 F.Supp. 564.

1. Authority as instrumentality of United States

The Authority exercises an executive or administrative function in its activities which prior to its establishment rested with the Division of the executive branch of the government, and is a governmental agency or instrumentality of the United States. *Tennessee Valley Authority v. Kinzer*, C.C.A.Tenn. 1944, 142 F.2d 833, 56 Am.Bankr.Rep.N.S. 153.

The Authority is agency performing wholly governmental services and is instrumentality of United States. *PRI Pipe Supports v. Tennessee Valley Authority*, D.C.Miss.1980, 494 F.Supp. 974.

The Authority is the United States in action, an arm of the government and an agency performing wholly governmental service. *Knickerbocker v. Tennessee Val. Authority*

The Authority is a wholly owned corporate agency and instrumentality of the United States, created by this chapter. U.S. ex rel. and for Use of Tennessee Val. Authority v. Easement and Right-of-Way Over Two Tracts of Land, in Logan County, Ky., D.C. Ky.1965, 246 F.Supp. 263, affirmed 375 F.2d 120.

4. State regulation and control

The Authority as an "agency of the federal government" is not subject to the jurisdiction of state courts and is free from the state's regulation or control. *City of Middlesboro v. Kentucky Utilities Co.*, 1940, 146 S.W.2d 48, 284 Ky. 833.

5. Remedies and relief

Preferred stockholders of power company, though entitled to demand that board of directors take legal steps to extricate corporation from allegedly invalid transactions and agreements with the Authority, could not insist that directors sue to obtain general declaration of unconstitutionality of this chapter in all its bearings or a decision of abstract questions as to the right of Authority and company in possible contingencies. *Ashwander v. Tennessee Valley Authority*, Ala.1936, 56 S.Ct. 466, 297 U.S. 288, 80 L.Ed. 688, rehearing denied 56 S.Ct. 588, 297 U.S. 728, 80 L.Ed. 1011.

6. Declaratory judgment

Where Wilson Dam was sufficient to supply requirements of the Authority's contract with power company for interchange of hydroelectric energy and for purchase of company's transmission lines, stockholders attacking in equity, in the right of the company, the validity of the transaction, were entitled only to determination as to constitutional authority for construction of Wilson Dam and

sions, of electric energy there generated, but were not entitled to determination or declaratory decree as to pronouncements, policies, program, motives, and desires of the Authority and its directors so far as not resulting in action constituting actual or threatened interference with company's or stockholders'

rights, nor to general declaration as to validity of this chapter creating the Authority, since such other matters presented no justiciable controversy. *Ashwander v. Tennessee Valley Authority*, Ala. 1936, 56 S.Ct. 466, 297 U.S. 288, 80 L.Ed. 688, rehearing denied 56 S.Ct. 588, 297 U.S. 728, 80 L.Ed. 1011.

§ 831a. Directors of Authority

(a) Composition of board; appointment and designation

The board of directors of the Corporation (hereinafter referred to as the "board") shall be composed of three members, to be appointed by the President, by and with the advice and consent of the Senate. In appointing the members of the board, the President shall designate the chairman. All other officials, agents, and employees shall be designated and selected by the board.

(b) Terms of office; successors

The terms of office of the members first taking office after May 18, 1933 shall expire as designated by the President at the time of nomination, one at the end of the third year, one at the end of the sixth year, and one at the end of the ninth year, after May 18, 1933. A successor to a member of the board shall be appointed in the same manner as the original members and shall have a term of office expiring nine years from the date of the expiration of the term for which his predecessor was appointed.

(c) Vacancies

Any member appointed to fill a vacancy in the board occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term.

(d) Quorums

Vacancies in the board so long as there shall be two members in office shall not impair the powers of the board to execute the functions of the Corporation, and two of the members in office shall constitute a quorum for the transaction of the business of the board.

(e) Citizenship; compensation; Government housing; reimbursement for expenses; outside business

Each of the members of the board shall be a citizen of the United States. The compensation of each member of the board shall be paid by the Corporation as current expenses. Each member of the board, in addition to his salary, shall be permitted to occupy as his residence one of the dwelling houses owned by the Government in the vicinity of Muscle Shoals, Alabama, the same to be designated by the President of the United States. Members of the board shall be reimbursed by the Corporation for actual expenses (including traveling and subsistence expenses) incurred by them in the performance of the duties vested in the board by this chapter. No member of said board shall, during his continuance in office, be engaged in any other business, but each member shall devote himself to the work of the Corporation.

(f) Conflicts of interest

No director shall have financial interest in any public-utility corporation engaged in the business of distributing and selling power to the public nor in any corporation engaged in the manufacture, selling, or distribution of fixed nitrogen or fertilizer, or any ingredients thereof, nor shall any member have any interest in any business that may be adversely affected by the success of the Corporation as a producer of concentrated fertilizers or as a producer of electric power.

(g) Function of board

The board shall direct the exercise of all the powers of the Corporation.

(h) Confidence in Authority

All members of the board shall be persons who profess a belief in the feasibility and wisdom of this chapter.

(May 18, 1933, c. 32, § 2, 48 Stat. 59.)

Historical Note

Codification. Provisions covering the compensation of members of the board have been omitted as compensation of the Chairman and members of the board is covered by sections 5314 and 5315 of Title 5, Government Organization and Employees.

Emergency Preparedness Functions. For assignment of certain emergency preparedness

functions to the Board of Directors of the Tennessee Valley Authority, see Parts 1, 27, and 30 of Ex.Ord. No. 11490, Oct. 28, 1969, 34 F.R. 17567, set out as a note under section 2251 of Title 50, Appendix, War and National Defense.

§ 831b. Officers and employees; wages of laborers and mechanics; application of employees' compensation provisions

The board shall without regard to the provisions of Civil Service laws applicable to officers and employees of the United States, appoint such managers, assistant managers, officers, employees, attorneys, and agents, as are necessary for the transaction of its business, fix their compensation, define their duties, and provide a system of organization to fix responsibility and promote efficiency. Any appointee of the board may be removed in the discretion of the board. No regular officer or employee of the Corporation shall receive a salary in excess of that received by the members of the board.

All contracts to which the Corporation is a party and which require the employment of laborers and mechanics in the construction, alteration, maintenance, or repair of buildings, dams, locks, or other projects shall contain a provision that not less than the prevailing rate of wages for work of a similar nature prevailing in the vicinity shall be paid to such laborers or mechanics.

In the event any dispute arises as to what are the prevailing rates of wages, the question shall be referred to the Secretary of Labor for determination, and his decision shall be final. In the determination of such prevailing rate or rates, due regard shall be given to those rates which have been secured through collective agreement by representatives of employers

Where such work as is described in the two preceding paragraphs is done directly by the Corporation the prevailing rate of wages shall be paid in the same manner as though such work had been let by contract.

Insofar as applicable, the benefits of subchapter I of chapter 81 of Title 5 shall extend to persons given employment under the provisions of this chapter.

(May 18, 1933, c. 32, § 3, 48 Stat. 59; June 6, 1972, Pub.L. 92-310, Title II, § 225(a), 86 Stat. 206.)

Historical Note

References in Text. The Civil Service laws, referred to in text, are set forth in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of that title. Offices and positions in the Tennessee Valley Authority were specifically excepted from the provisions of the Ramspeck Act (Act Nov. 26, 1940, c. 919, Title I, § 1, 54 Stat. 1211), which authorized the President to cover into the classified (competitive) civil service any offices or positions in the executive branch.

Codification. In the last par., "subchapter I of chapter 81 of Title 5" was substituted for "the Act entitled 'An Act to provide compensation for employees of the United States suffering injuries while in the performance of their duties, and for other purposes,' approved September 7, 1916, as amended" on authority of Pub.L. 89-554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

1972 Amendment. Pub.L. 92-310 amended provisions which permitted the board to require bonds from managers, assistant managers, officers, employees, attorneys, and agents.

Legal Representation. Federal Courts Improvement Act of 1982 [Pub.L. 97-164, Apr. 2, 1982, 96 Stat. 25] not to affect the authority of the Tennessee Valley Authority to represent itself by attorneys of its own choosing, see section 169 of Pub.L. 97-164, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

Customs Courts Act of 1980 as not affecting authority of Tennessee Valley Authority under this chapter to represent itself by attorneys of its choosing, see Pub.L. 96-417, Title VII, § 705, Oct. 10, 1980, 94 Stat. 1748, set out as a note under section 251 of Title 28.

Legislative History. For legislative history and purpose of Pub.L. 92-310, see 1972 U.S. Code Cong. and Adm. News, p. 2364.

Cross References

Government physician as meaning any individual employed as physician or dentist who is paid under this section for purposes of physicians comparability allowances, see section 5305 of Title 5, Government Organization and Employees.

Limitation on pay fixed by administrative action as not impairing authority under this section, see section 5373 of Title 5.

West's Federal Practice Manual

Where to find the law, see § 1511.

Notes of Decisions

Arbitration, classification of personnel 4
Civil service laws 1
Classification of personnel
Generally 3
Arbitration 4
Compensation of injured employees
Generally 7
Workmen's compensation laws 8
Duty to bargain 5

Employee of independent contractor, liability to injured employee 10
Exhaustion of administrative remedies 10
Indemnification, liability to injured employee 11
Independent contractor employee, liability to injured employee 10
Indispensable parties 15

Interpretation of labor-management agreement 13
Liability to injured employee
Generally 9
Employee of independent contractor 10
Indemnification 11
Waiver of immunity 12
Retirement system 2
Union preference clause 6
Waiver of immunity, liability to injured employee 12
Contractor's compensation laws, compensation of injured employees 8

1. Civil service laws

This section making civil service laws inapplicable to employees of the Authority shows that such employees are regarded as being substantially employed by the United States. *Ray v. Tennessee Valley Authority*, C.C.A. 10, 93 F.2d 726.

2. Retirement system

This section providing that the board of directors of the Authority shall appoint employees, fix their compensation, define their duties, and "provide a system of organization to fix responsibility and promote efficiency", applied as interpretative regulation, and the rules and regulations setting up retirement were reasonably adapted to the administration of this section and valid, and subsequent recognition by Congress gives them the force and effect of law. *Tennessee Valley Authority v. Kinzer*, C.C.A. Tenn. 84, 143 F.2d 833, 56 Am. Bankr. Rep. N.S. 12.

3. Classification of personnel—Generally

Provision of this section that the Board shall appoint such managers, assistant managers, officers, employees, attorneys, and agents is necessary for the transaction of its business, define their duties, and provide a system of organization to fix responsibility and promote efficiency does not impose a mandatory statutory duty upon the Board to classify its personnel and determine its management staff. *Tennessee Valley Trades and Labor Council v. Tennessee Valley Authority*, D.C. Tenn. 1980, 488 F.Supp. 146, appeal dismissed 672 F.2d 918.

4. Arbitration

Issue whether the Board was bound to negotiate or otherwise arbitrate the dispute over classification of its personnel under the provisions of the collective bargaining agreement with union representing those employees was a matter to be determined on facts of the terms and provisions of the

agreement. *Tennessee Valley Trades and Labor Council v. Tennessee Valley Authority*, D.C. Tenn. 1980, 488 F.Supp. 146, appeal dismissed 672 F.2d 918.

5. Duty to bargain

Authority employees' allegations of conspiracy between Authority and Tennessee Valley Trades and Labor Council were insufficient; in any event, Authority could not be held liable as conspirator for bargaining with Council since it was bound to do so under general agreement with Council. *Coleman v. Tennessee Valley Trades and Labor Council*, D.C. Tenn. 1975, 396 F.Supp. 671.

6. Union preference clause

Union preference clause in Tennessee Valley Authority's collective bargaining agreement with union did not violate nonunion job applicant's rights under U.S.C.A. Const. Amendments 1 and 5. *McDavid v. Tennessee Valley Authority*, D.C. Tenn. 1982, 555 F.Supp. 72.

7. Compensation of injured employees—Generally

The exclusive remedy of injured employees of the Authority is under chapter 81 of Title 5, and state laws, including common law, do not apply, notwithstanding provision of section 831c of this title subjecting the Authority to suit. *Posey v. Tennessee Valley Authority*, C.C.A. Ala. 1938, 93 F.2d 726.

The remedy of injured employee of the Authority is not action in district court under the Federal Employees Compensation Act, former section 751 et seq. [now 8101 et seq.] of Title 5, but proper proceedings before United States Employees' Compensation Commission, and he cannot bring such action in any event without first exhausting his administrative remedies. *White v. Tennessee Val. Authority*, D.C. Tenn. 1945, 58 F.Supp. 776.

8. — Workmen's compensation laws

An employee of the Authority is not entitled to benefits of the Alabama Workmen's Compensation Act, Code 1940, Title 26, § 253 et seq., in case of accidental injuries arising out of and in course of his employment. *Breeding v. Tennessee Valley Authority*, 1942, 9 So.2d 6, 243 Ala. 240.

9. Liability to injured employee—Generally

Even though the Authority participated in a safety inspection program in connection with work conducted by independent contractor, Good Samaritan doctrine was inapplicable and did not furnish basis for permitting injured employee of contractor to recover

1956 Amendment. Subsec. (e). Act Aug. 8, 1956 eliminated provisions which limited expenditures to not more than \$3,000,000 in any fiscal year, restricted the balance of the fund to not more than \$5,000,000 at the end of any fiscal year, and required the Secretary of the Interior to retransfer funds in excess of the \$5,000,000 to the Secretary of Agriculture.

1954 Amendment. Act July 1, 1954 amended section generally further to encourage the distribution of fishery products.

Transfer of Functions. Transfer of functions to Secretary of Commerce from Secretary of the Interior in view of: the creation of the National Oceanic and Atmospheric Administration in the Department of Commerce and the Office of Administrator of such Administration; the abolition of the Bureau of Commercial Fisheries in the Interior Department and the Office of Director of such Bureau; transfers of functions, including functions formerly vested by law in the Secretary of the Interior or the Interior Department which were administered through the Bureau of Commercial Fisheries or were primarily related to such Bureau, exclusive of certain enumerated

functions with respect to Great Lakes fishery research, Missouri River Reservoir research, Gulf Breeze Biological Laboratory, and Trans-Alaska pipeline investigations; and transfer of marine sport fish program of Bureau of Sport Fisheries and Wildlife by 1970 Reorg. Plan No. 4, eff. Oct. 3, 1970, 35 F.R. 15827, 84 Stat. 2000, set out in the Appendix to Title 5, Government Organization and Employees.

Continuation of Authorization for Transfer of Funds. Section 12(a) of Act Aug. 8, 1956 provided that: "The authorization for the transfer of certain funds from the Secretary of Agriculture to the Secretary of the Interior and their maintenance in a separate fund as contained in section 2(a) of the Act of August 11, 1939, as amended July 1, 1954 (68 Stat. 376) [subsection (a) of this section], shall be continued for the year ending June 30, 1957, and each year thereafter."

Legislative History. For legislative history and purpose of Act July 1, 1954, see 1954 U.S. Code Cong. and Adm. News, p. 2477. See, also, Act Aug. 8, 1956, 1956 U.S. Code Cong. and Adm. News, p. 4590; Pub. L. 89-348, 1966 U.S. Code Cong. and Adm. News, p. 4243.

Library References

United States § 53(8).

C.J.S. United States § 70.

COMMODITY CREDIT CORPORATION

§ 714. Creation and purpose of Corporation

For the purpose of stabilizing, supporting, and protecting farm income and prices, of assisting in the maintenance of balanced and adequate supplies of agricultural commodities, products thereof, foods, feeds, and fibers (hereinafter collectively referred to as "agricultural commodities"), and of facilitating the orderly distribution of agricultural commodities, there is created a body corporate to be known as Commodity Credit Corporation (hereinafter referred to as the "Corporation"), which shall be an agency and instrumentality of the United States, within the Department of Agriculture, subject to the general supervision and direction of the Secretary of Agriculture (hereinafter referred to as the "Secretary").

June 29, 1948, c. 704, § 2, 62 Stat. 1070; June 7, 1949, c. 175, § 1, 63 Stat. 154.

Historical Note

1949 Amendment. Act June 7, 1949 placed the general supervision and direction of the Commodity Credit Corporation in the Secretary of Agriculture.

Effective Date. Section 18 of Act June 29, 1948 provided that sections 714 to 714d of this title shall take effect as of midnight June 30, 1948.

Short Title. Congress in enacting sections 714 to 714p of this title provided by section 1 of Act June 29, 1948, that they should be popularly known as the "Commodity Credit Corporation Charter Act".

Exceptions from Transfer of Functions. Functions of the corporations of the Department of Agriculture, the boards of directors and officers of such corporations; the Advisory Board of the Commodity Credit Corporation; and the Farm Credit Administration or any agency, officer or entity of, under, or subject

to the supervision of the Administration were excepted from the functions of officers, agencies and employees transferred to the Secretary of Agriculture by 1953 Reorg. Plan No. 2, § 1, eff. June 4, 1953, 18 F.R. 3219, 67 Stat. 633, set out in the Appendix to Title 5, Government Organization and Employees.

Legislative History. For legislative history and purpose of Act June 29, 1948, see 1948 U.S. Code Cong. Service, p. 2138. See also, Act June 7, 1949, 1949 U.S. Code Cong. Service, p. 1328.

Cross References

Commodity Credit Corporation incorporated under laws of Delaware, see section 713 et seq. of this title.

Library References

United States § 53(4).

C.J.S. United States § 66.

Code of Federal Regulations

Agriculture Department, nondiscrimination in federally assisted programs, see 7 CFR 15.1 et seq.
Cotton, policies governing requirements for loans, etc., see 7 CFR 1427.1 et seq.
Farm storage facilities, policies, procedures and requirements governing loans, see 7 CFR 1474.1 et seq.
Feed grains export programs, see 7 CFR 1484.101 et seq.
Food distribution, policies and administration, see 7 CFR 250.1 et seq.
Grains and other crop commodities, policies governing price support loans and purchases, etc., see 7 CFR 1421.1 et seq.
Tobacco,
Policy statement and procedures governing inspection, price support, etc., see 7 CFR 29.1 et seq.
Terms and conditions of export program, see 7 CFR 1490.1 et seq.

Notes of Decisions

Generally 2
Agency of United States 8
Purpose 1

Under sections 714 to 714p of this title it was contemplated that Commodity Credit Corporation would make loan contracts in administering tobacco price support program and that it was to make payments in form of loans. Id.

1. Purpose

The Commodity Credit Corporation is an administrative device established by Congress for the purpose of carrying out the federal farm program with public funds. *Rainwater v. U. S.*, Ark. 1958, 78 S.Ct. 946, 356 U.S. 390, 2 L.Ed.2d 996. See, also, *U. S. v. Luxon*, D.C.Ky. 1958, 166 F.Supp. 25.

One of objectives of Commodity Credit Corporation is to assure minimum price to farmers by placing a floor under price of certain agricultural commodities. *Tennessee Burley Tobacco Growers' Ass'n v. Commodity Credit Corp.*, C.A.Tenn. 1965, 350 F.2d 34, certiorari denied 86 S.Ct. 886, 383 U.S. 907, 15 L.Ed.2d 662.

Purpose of sections 714 to 714p of this title creating Commodity Credit Corporation and regulations thereunder is to support prices of agricultural commodities. *In re Wille*, 1968, 308 N.Y.S.2d 520, 61 Misc.2d 992, affirmed 296 N.Y.S.2d 283, 31 A.D.2d 721, affirmed 254 N.E.2d 224, 25 N.Y.2d 619, 306 N.Y.S.2d 7, reargument denied 267 N.E.2d 904, 26 N.Y.2d 831, 309 N.Y.S.2d 360, certiorari denied 90 S.Ct. 2201, 2202, 399 U.S. 910, 26 L.Ed.2d 562.

Legislative intent in creating Commodity Credit Corporation was to aid producers by securing for them a certain percentage of parity for their products. *Range v. Tennessee Burley Tobacco Growers Ass'n*, 1956, 298 S.W.2d 545, 41

Historical Note

References in Text. Sections 713a-1 and 713a-2 of this title, referred to in text, were repealed by Pub.L. 87-155, § 1, Aug. 17, 1961, 75 Stat. 391. See sections 713a-11 and 713a-12 of this title.

Effective Date. Section effective June 30, 1948, see section 18 of Act June 29, 1948, set out as a note under section 714 of this title.

Exceptions from Transfer of Functions. Functions of the corporations of the Department of Agriculture, the boards of directors and officers of such corporations; the Advisory Board of the Com-

modity Credit Corporation; and the Farm Credit Administration or any agency, officer or entity of, under, or subject to the supervision of the Administration were excepted from the functions of officers, agencies and employees transferred to the Secretary of Agriculture by 1963 Reorg. Plan No. 2, § 1, eff. June 4, 1963, 18 F.R. 3219, 67 Stat. 633, set out in the Appendix to Title 5, Government Organization and Employees.

Legislative History. For legislative history and purpose of Act June 29, 1948, see 1948 U.S. Code Cong. Service, p. 2138.

Library References

United States Ⓢ53(7).

C.J.S. United States § 70.

§ 714f. Use of funds

The Corporation is authorized to use in the conduct of its business all its funds and other assets, including capital and net earnings therefrom, and all funds and other assets which have been or may hereafter be transferred or allocated to, borrowed by, or otherwise acquired by it.

June 29, 1948, c. 704, § 8, 62 Stat. 1072.

Historical Note

Effective Date. Section effective June 30, 1948, see section 18 of Act June 29, 1948, set out as a note under section 714 of this title.

Exceptions from Transfer of Functions. Functions of the corporations of the Department of Agriculture, the boards of directors and officers of such corporations; the Advisory Board of the Commodity Credit Corporation; and the Farm Credit Administration or any agency, officer or entity of, under, or subject

to the supervision of the Administration were excepted from the functions of officers, agencies and employees transferred to the Secretary of Agriculture by 1963 Reorg. Plan No. 2, § 1, eff. June 4, 1963, 18 F.R. 3219, 67 Stat. 633, set out in the Appendix to Title 5, Government Organization and Employees.

Legislative History. For legislative history and purpose of Act June 29, 1948, see 1948 U.S. Code Cong. Service, p. 2138.

Cross References

Reimbursement of appropriations available for classing or grading agricultural commodities without charge from nonadministrative funds of Corporation, see section 410 of Title 7, Agriculture.
Transfer of nonadministrative funds of Commodity Credit Corporation for classing and grading purposes, see section 414a of Title 7.

Library References

United States Ⓢ53(7).

C.J.S. United States § 70.

§ 714g. Board of Directors**Composition; appointment, tenure and compensation; quorum; duties**

(a) The management of the Corporation shall be vested in a board of directors (hereinafter referred to as the "Board"), subject to the general supervision and direction of the Secretary. The Secretary shall be an ex officio director and shall serve as Chairman of the Board. The Board shall consist of six members (in addition to the Secretary), who shall be appointed by the President by and with the advice and consent of the Senate. In addition to their duties as members of the Board, such appointed members shall perform such other duties as may be prescribed by the Secretary. Each appointed member of the Board shall receive compensation under chapter 51 and subchapter III of chapter 53 of Title 5, except that any such member who holds another office or position under the Federal Government the compensation for which exceeds such rate may elect to receive compensation at the rate provided for such other office or position in lieu of the compensation provided by this section. A majority of the directors shall constitute a quorum of the Board and action shall be taken only by a majority vote of those present.

Advisory board; composition, tenure and compensation; meetings; duties

(b) In addition to the Board of Directors there shall be an advisory board reflecting broad agricultural and business experience in its membership and consisting of five members who shall be appointed by the President, and who shall serve at the pleasure of the President. Not more than three of such members shall belong to the same political party. The advisory board shall meet at the call of the Secretary, who shall require it to meet not less often than once each ninety days; shall survey the general policies of the Corporation, including its policies in connection with the purchase, storage, and sale of commodities, and the operation of lending and price-support programs; and shall advise the Secretary with respect thereto. Members of the advisory board shall receive for their services as members compensation of not to exceed \$50 per diem when actually engaged in the performance of their duties as such, together with their necessary traveling expenses while going to and coming from meetings.

June 29, 1948, c. 704, § 9, 62 Stat. 1072; June 7, 1949, c. 175, § 3, 63 Stat. 155; Oct. 28, 1949, c. 782, Title XI, § 1106(a), 63 Stat. 972.

Historical Note

Codification. Provisions of subsec. (a) which authorized payment of compensation to each appointed member of the Board at a rate not in excess of the maximum payable under the Classification Act of 1949, as may be fixed by the Secretary, were omitted since the posi-

tions are now in the classified civil service and subject to the applicable compensation schedules.

The authority for covering excepted positions into the classified civil service was given the President by former section 631a of Title 5.

and 5102 of Title 5. For the power of the Civil Service Commission to determine the applicability of those sections to specific positions, see section 5102 of Title 5.

1949 Amendments. Act Oct. 28, 1949 substituted "Classification Act of 1949" for "Classification Act of 1923", which, for purposes of codification, was translated as "chapter 51 and subchapter III of chapter 53 of Title 5".

Act June 7, 1949 brought the Board under the direct control of the Secretary who will serve as Chairman of the Board, and added subsec. (b) to provide for the appointment and duties of an advisory board.

Effective Date. Section effective June 30, 1948, see section 18 of Act June 29, 1948, set out as a note under section 714 of this title.

Library References

United States Ⓒ53(5).

C.J.S. United States § 67.

Code of Federal Regulations

Board of Contract Appeals, organization, functions and procedures, see 7 CFR 24.1 et seq., 2400.1 et seq.

Notes of Decisions

1. Eligibility

An employee of the federal government outside the Department of Agriculture is not disqualified by such employment from membership on the advisory board of the Commodity Credit Corporation. 1958, 41 Op.Atty.Gen., Jan. 22.

This section creating the advisory board does not prohibit membership on

the board by persons otherwise employed by the United States, and a congressional committee report describing the advisory board's members as "outside" individuals did not show any clear intention to prohibit membership to those who, while not employed in the Department of Agriculture, are employed by the federal government in some other capacity. Id.

Legislative History. For legislative history and purpose of Act June 29, 1948, see 1948 U.S.Code Cong.Service, p. 2138. See, also, Act June 7, 1949, 1949 U.S.Code Cong.Service, p. 1328; Act Oct. 28, 1949, 1949 U.S.Code Cong.Service, p. 2383.

the board by persons otherwise employed by the United States, and a congressional committee report describing the advisory board's members as "outside" individuals did not show any clear intention to prohibit membership to those who, while not employed in the Department of Agriculture, are employed by the federal government in some other capacity. Id.

§ 714h. Officers and employees; appointment; duties

The Secretary shall appoint such officers and employees as may be necessary for the conduct of the business of the Corporation, define their authority and duties, delegate to them such of the powers vested in the Corporation as he may determine. With the exception of experts, appointments shall be made pursuant to the civil service laws and chapter 51 and subchapter III of chapter 53 of Title 5.

June 29, 1948, c. 704, § 10, 62 Stat. 1073; June 7, 1949, c. 175, § 4, 63 Stat. 156; Oct. 28, 1949, c. 782, Title XI, § 1106(a), 63 Stat. 972; June 6, 1972, Pub.L. 92-310, Title II, § 224(b), 86 Stat. 206.

Historical Note

References in text. The civil service laws, referred to in text, are set forth in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of that Title.

Codification. "Chapter 51 and subchapter III of chapter 53 of Title 5" was substituted for "the Classification Act of 1949" on authority of section 7(b) of Pub.L. 80-554, Sept. 6, 1968, 80 Stat. 631, section 1 of which enacted Title 5, Government Organization and Employees.

1972 Amendment. Pub.L. 92-310 eliminated provisions which permitted the Secretary to designate officers and employees to be bonded, and which authorized the Corporation to pay the premium on the bonds.

1949 Amendments. Act Oct. 28, 1949 substituted "Classification Act of 1949" for "Classification Act of 1923", which, for purposes of codification, was translated as "chapter 51 and subchapter III of chapter 53 of Title 5".

Act June 7, 1949 permitted the Secretary to appoint the officers and employees of the Corporation and defined their authority and duties.

Effective Date. Section effective June 30, 1948, see section 18 of Act June 29, 1948, set out as a note under section 714 of this title.

Exceptions from Transfer of Functions. Functions of the corporations of the Department of Agriculture, the boards of directors and officers of such corporations; the Advisory Board of the Commodity Credit Corporation; and the

Farm Credit Administration or any agency, officer or entity of, under, or subject to the supervision of the Administration were excepted from the functions of officers, agencies and employees transferred to the Secretary of Agriculture by 1963 Reorg. Plan No. 2, § 1, eff. June 4, 1963, 18 F. R. 3219, 67 Stat. 633, set out in the Appendix to Title 5, Government Organization and Employees.

Sales Manager. Pub.L. 87-367, Title I, § 103(11), Oct. 4, 1961, 75 Stat. 789, repealed such part of section 101 of Act Aug. 4, 1955, c. 451, ch. I, 69 Stat. 451, which authorized the position of sales manager in the Commodity Credit Corporation to be placed in grade 17 of the General Schedule of the Classification Act of 1949, now covered by section 5332 of Title 5, Government Organization and Employees.

Positions existing prior to Oct. 4, 1961, compensation thereof and appointments thereto unaffected by changes made by Pub.L. 87-367 and positions in grades 16, 17 and 18 of the General Schedule of the Classification Act of 1949 prior to Oct. 4, 1961, to remain in respective grades, until appropriate action is taken under Title I of Pub.L. 87-367 and section 5108 of Title 5, see section 104 of Pub.L. 87-367.

Legislative History. For legislative history and purpose of Act June 29, 1948, see 1948 U.S.Code Cong.Service, p. 2138. See, also, Act June 7, 1949, 1949 U.S.Code Cong.Service, p. 1328; Act Oct. 28, 1949, 1949 U.S.Code Cong.Service, p. 2383; Pub.L. 92-310, see 1972 U.S.Code Cong. and Adm.News, p. 2364.

Library References

United States Ⓒ53(5).

C.J.S. United States § 67.

Code of Federal Regulations

Board of Contract Appeals, organization, functions and procedures, see 7 CFR 24.1 et seq., 2400.1 et seq.

Notes of Decisions

1. Employees' acts, liability for

United States cannot be bound by any act of its employees in conflict with policy of sections 714 to 714p of this title creating Commodity Credit Corporation. In re Wille, 1968, 308 N.Y.S.2d 520, 61

Misc.2d 992, affirmed 296 N.Y.S.2d 283, 31 A.D.2d 721, affirmed 254 N.E.2d 224, 25 N.Y.2d 619, 306 N.Y.S.2d 7, reargument denied 257 N.E.2d 904, 26 N.Y.2d 831, 309 N.Y.S.2d 360, certiorari denied 90 S.Ct. 2201, 2202, 399 U.S. 910, 26 L.Ed.2d 562.

Foreign Assistance Act of 1961 is classified generally to subpart IX of part II of subchapter I (section 2218) of chapter 32 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2151 of this title and Tables.

The Foreign Assistance Act of 1969, referred to in par. (4), is Pub.L. 91-175, Dec. 30, 1969, 83 Stat. 805 as amended. The Inter-American Foundation was es-

tablished by section 401 of that Act, which is classified to section 290f of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2151 of this title and Tables.

Short Title

1980 Act. Section 501 of Pub.L. 96-533 provided: "This title [enacting this subchapter] may be cited as the 'African Development Foundation Act'."

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

§ 290h-1. African Development Foundation

(a) Establishment of Foundation

There is established a body corporate to be known as the "African Development Foundation" (hereafter in this subchapter referred to as the "Foundation").

(b) Principal and branch offices

The Foundation shall establish a principal office in the United States and may establish such branch offices in Africa as may be necessary to carry out its functions.

(Pub. L. 96-533, Title V, § 503, Dec. 16, 1980, 94 Stat. 3152.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1980 Act. House Report No. 96-884
(Parts I and II) and House Conference

Report No. 96-1471, see 1980 U.S. Code
Cong. and Adm. News, p. 6540.

LIBRARY REFERENCES

American Digest System

Aid to other nations, see War and National Emergency § 46.

Encyclopedias

Aid to other nations, see C.J.S. War and National Defense § 61.

WESTLAW ELECTRONIC RESEARCH

War and national emergency cases: 402k [add key number].

See, also, WESTLAW guide following the Explanation pages of this volume.

§ 290h-2. Congressional declaration of purposes

(a) Purposes of Foundation

In order to enable the people of African countries to develop their potential, fulfill their aspirations, and enjoy better, more productive lives, the purposes of the Foundation shall be—

- (1) to strengthen the bonds of friendship and understanding between the people of Africa and the United States;
- (2) to support self-help activities at the local level designed to enlarge opportunities for community development;
- (3) to stimulate and assist effective and expanding participation of Africans in their development process; and
- (4) to encourage the establishment and growth of development institutions which are indigenous to particular countries in Africa and which can respond to the requirements of the poor in those countries.

(b) Implementation

The Foundation shall carry out the purposes specified in subsection (a) of this section in cooperation with, and in response to, organizations indigenous to Africa which are representative of the needs and aspirations of the poor in Africa and, in carrying out such purposes, the Foundation shall, to the extent possible, coordinate its development assistance activities with the activities of the United States Government and private, regional, and international organizations.

(Pub. L. 96-533, Title V, § 504, Dec. 16, 1980, 94 Stat. 3152.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1980 Act. House Report No. 96-884
(Parts I and II) and House Conference

Report No. 96-1471, see 1980 U.S. Code
Cong. and Adm. News, p. 6540.

LIBRARY REFERENCES

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Aid to other nations, see War and National Emergency § 46.

Encyclopedias

Aid to other nations, see C.J.S. War and National Defense § 61.

WESTLAW ELECTRONIC RESEARCH

War and national emergency cases: 402k [add key number].

See, also, WESTLAW guide following the Explanation pages of this volume.

§ 290h-3. Functions of Foundation

(a) Types of programs; project limitations; dissemination of project insights

- (1) In order to carry out the purposes set forth in section 290h-2 of this title, the Foundation may make grants, loans, and loan guarantees to any African private or public group, (including public international organizations), association, or other entity engaged in peaceful activities for—

(A) the fostering of local development institutions and the support of development efforts initiated by communities themselves;

(B) the development of self-evaluation techniques by participants in projects supported under this section, for the purpose of transferring experience gained in such projects to similar development activities;

(C) development research by Africans and the transfer of development resources, expertise, and knowledge within Africa;

(D) the procurement of such technical or other assistance as is deemed appropriate by the recipient of such grant, loan, or guarantee, to carry out the purposes of this subchapter; and

(E) other projects that would carry out the purposes set forth in section 290h-2 of this title.

(2) The total amount of grants, loans, and loan guarantees that may be made under this section for a project may not exceed \$250,000.

(3) The Foundation may disseminate to the American public and to United States and multilateral development institutions insights gained from African development projects assisted under this subchapter.

(b) Community project priorities; disbursement of funds by recipients to other African entities

In making grants, loans, and loan guarantees under subsection (a) of this section, the Foundation shall give priority to projects which community groups undertake to foster their own development and in the initiation, design, implementation, and evaluation of which there is the maximum feasible participation of the poor. Where appropriate and in keeping with the purposes of this subchapter, the Foundation may make such grants, loans, and loan guarantees to African entities which are representative and knowledgeable of, and sensitive to, the needs and aspirations of the poor and which would disburse funds acquired under such grants, loans, and loan guarantees to other African entities to carry out the purposes of this subchapter.

(Pub.L. 96-533, Title V, § 505, Dec. 16, 1980, 94 Stat. 3152; Pub.L. 100-461, Title II, Oct. 1, 1988, 102 Stat. 2268-13.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1980 Act. House Report No. 96-884 (Parts I and II) and House Conference Report No. 96-1471, see 1980 U.S. Code Cong. and Adm. News, p. 6540.

Amendments
1988 Amendment. Subsec. (a). Pub.L. 100-461 inserted "(including public international organizations)" after "public group".

LIBRARY REFERENCES

American Digest System

Aid to other nations, see War and National Emergency § 46.

Encyclopedias

Aid to other nations, see C.J.S. War and National Defense § 61.

WESTLAW ELECTRONIC RESEARCH

War and national emergency cases: 402k [add key number].

See, also, WESTLAW guide following the Explanation pages of this volume.

§ 290h-4. Powers of Foundation

(a) General provisions

The Foundation, as a corporation—

(1) shall have perpetual succession unless dissolved by an Act of Congress;

(2) may sue and be sued, complain, and defend, in its corporate name in any court of competent jurisdiction;

(3) may adopt, alter, and use a seal, which shall be judicially noticed;

(4) may prescribe, amend, and repeal such rules and regulations as may be necessary for carrying out the functions of the Foundation;

(5) may make and perform such contracts and other agreements with any individual, corporation, or other private or public entity however designated and wherever situated, as may be necessary for carrying out the functions of the Foundation;

(6) may determine and prescribe the manner in which its obligations shall be incurred and its expenses allowed and paid, including expenses for representation not exceeding \$10,000 in any fiscal year;

(7) may, as necessary for carrying out the functions of the Foundation, employ and fix the compensation of not to exceed the following number of persons at any one time: 25 during the fiscal year 1981, 50 during the fiscal year 1982, and 75 thereafter;

(8) may lease, purchase, or otherwise acquire, own, hold, improve, use, or otherwise deal in and with such property (real, personal, or mixed) or any interest therein, wherever situated, as may be necessary for carrying out the functions of the Foundation;

(9) may accept gifts or donations of services or of property (real, personal, or mixed), tangible or intangible, in furtherance of the purposes of this subchapter;

War and national emergency cases: 402k [add key number].
See, also, WESTLAW guide following the Explanation pages of this volume.

(10) may use the United States mails in the same manner and on the same conditions as the executive departments of the Government;

(11) may, with the consent of any agency of the United States, use the information, services, facilities, and personnel of that agency in carrying out the purposes of this subchapter; and

(12) shall have such other powers as may be necessary and incident to carrying out this subchapter.

(b) Nonprofit entity; restriction on use of moneys; conflict of interests

The Foundation shall be a nonprofit corporation and shall have no capital stock. No part of its revenue, earnings, or other income or property shall inure to the benefit of any of its directors, officers, or employees, and such revenue, earnings, or other income or property shall only be used for carrying out the purposes of this subchapter. No director, officer, or employee of the corporation shall in any manner directly or indirectly participate in the deliberation upon or the determination of any question affecting his or her personal interests or the interests of any corporation, partnership, or organization in which he or she is directly or indirectly interested.

(c) Tax exemption

The Foundation, including its franchise and income, shall be exempt from taxation now or hereafter imposed by the United States, by any territory or possession of the United States, or by any State, county, municipality, or local taxing authority.

(d) Termination of Foundation and liquidation of assets

Upon termination of the corporate life of the Foundation its assets shall be liquidated and, unless otherwise provided by Congress, shall be transferred to the United States Treasury as the property of the United States.

(Pub. L. 96-533, Title V, § 506, Dec. 16, 1980, 94 Stat. 3153.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports Report No. 96-1471, see 1980 U.S. Code
1980 Act. House Report No. 96-884 Cong. and Adm. News, p. 6540.
(Parts I and II) and House Conference

LIBRARY REFERENCES

Administrative Law

Official seal, see 22 C.F.R. § 1503.1 et seq.

American Digest System

Aid to other nations, see War and National Emergency § 46.

Encyclopedias

Aid to other nations, see C.J.S. War and National Defense § 61.

§ 290h-5. Management of Foundation

(a) Board of directors; membership; designation of Chairperson and Vice Chairperson; appointment considerations; term; vacancies

(1) The management of the Foundation shall be vested in a board of directors (hereafter in this subchapter referred to as the "Board") composed of seven members appointed by the President, by and with the advice and consent of the Senate. The President shall designate one member of the Board to serve as Chairperson of the Board and one member to serve as Vice Chairperson of the Board. Five members of the Board shall be appointed from private life. Two members of the Board shall be appointed from among officers and employees of agencies of the United States concerned with African affairs. All members of the Board shall be appointed on the basis of their understanding of and sensitivity to community level development processes. Members of the Board shall be appointed so that no more than four members of the Board are members of any one political party.

(2) Members of the Board shall be appointed for terms of six years, except that of the members first appointed, as designated by the President at the time of their appointment, two shall be appointed for terms of two years and two shall be appointed for terms of four years. A member of the Board appointed to fill a vacancy occurring before the expiration of the term for which that member's predecessor was appointed shall be appointed only for the remainder of that term. Upon the expiration of his or her term a member shall continue to serve until a successor is appointed and shall have qualified.

(b) Compensation, actual, necessary, and transportation expenses

Members of the Board shall serve without additional compensation, but may be reimbursed for actual and necessary expenses not exceeding \$100 per day, and for transportation expenses, while engaged in their duties on behalf of the Foundation.

(c) Quorum

A majority of the Board shall constitute a quorum.

(d) President of Foundation; appointment and compensation; employment of experts and consultants

(1) The Board of Directors shall appoint a president of the Foundation on such terms as the Board may determine. The president

of the Foundation shall receive compensation at a rate not to exceed that provided for level IV of the Executive Schedule under section 5315 of Title 5.

(2) Experts and consultants may be employed by the Board as authorized by section 3109 of Title 5.

(e) **Advisory council; membership; appointment considerations; consultations with council; compensation, travel, and other expenses**

(1) The Board shall establish an advisory council to be composed of such number of individuals as may be selected by the Board from among individuals knowledgeable about development activities in Africa. The advisory council may include African recipients of grants, loans, or loan guarantees under this subchapter.

(2) The Board shall, at least once each year, consult the advisory council concerning the objectives and activities of the Foundation.

(3) Members of the advisory council shall receive no compensation for their services but may be allowed travel and other expenses in accordance with section 5703 of Title 5 which are incurred by them in the performance of their functions under this subsection.

(Pub. L. 96-533, Title V, § 507, Dec. 16, 1980, 94 Stat. 3154; Pub.L. 101-167, Title II, Nov. 21, 1989, 103 Stat. 1209.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1980 Act. House Report No. 96-884 (Parts I and II) and House Conference Report No. 96-1471, see 1980 U.S.Code Cong. and Adm.News, p. 6540.

Amendments

1989 Amendment. Subsec. (a)(1). Pub.L. 101-167 added provision that members of the Board shall be appointed so that no more than 4 members of

the Board are members of any one political party.

Amendment by Pub.L. 101-167 Not to Affect Prior Appointments.

Pub.L. 101-167, Title II, Nov. 21, 1989, 103 Stat. 1209, provided in part: "That the amendment to section 507(a)(1) of such Act [subsec. (a)(1) of this section] shall not affect an appointment made to the Board prior to the date of enactment of this Act [Nov. 21, 1989]."

LIBRARY REFERENCES

American Digest System

Aid to other nations, see War and National Emergency ¶46.

Encyclopedias

Aid to other nations, see C.J.S. War and National Defense § 61.

WESTLAW ELECTRONIC RESEARCH

War and national emergency cases: 402k [add key number].
See, also, WESTLAW guide following the Explanation pages of this volume.

§ 290h-6. Government corporation control provisions applicable

The Foundation shall be subject to the provisions of chapter 91 of Title 31 applicable to wholly owned Government corporations. (Pub. L. 96-533, Title V, § 508, Dec. 16, 1980, 94 Stat. 3155.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1980 Act. House Report No. 96-884 (Parts I and II) and House Conference Report No. 96-1471, see 1980 U.S.Code Cong. and Adm.News, p. 6540.

Codifications

"The provisions of chapter 91 of Title 31 applicable to wholly owned Govern-

ment corporations" was substituted in text for "Title I of the Government Corporation Control Act [31 U.S.C.A. § 846 et seq.]" on authority of Pub.L. 97-258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

LIBRARY REFERENCES

American Digest System

Aid to other nations, see War and National Emergency ¶46.

Encyclopedias

Aid to other nations, see C.J.S. War and National Defense § 61.

WESTLAW ELECTRONIC RESEARCH

War and national emergency cases: 402k [add key number].

See, also, WESTLAW guide following the Explanation pages of this volume.

§ 290h-7. Limitation on spending authority

Any authority provided by this subchapter involving the expenditure of funds (other than the funds made available pursuant to section 290h-8 of this title) shall be effective for a fiscal year only to such extent or in such amounts as are provided in advance in appropriation Acts.

(Pub. L. 96-533, Title V, § 509, Dec. 16, 1980, 94 Stat. 3155.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1980 Act. House Report No. 96-884 (Parts I and II) and House Conference

Report No. 96-1471, see 1980 U.S.Code Cong. and Adm.News, p. 6540.

LIBRARY REFERENCES

American Digest System

Aid to other nations, see War and National Emergency ¶46.

Encyclopedias

Aid to other nations, see C.J.S. War and National Defense § 61.

WESTLAW ELECTRONIC RESEARCH

War and national emergency cases: 402k [add key number].

See, also, WESTLAW guide following the Explanation pages of this volume.

Section

- 635k. Apportionment of losses incurred on loans, guarantees, and insurance; reimbursement; contingent obligations.
- 635l. Authorization for appropriation of funds for losses.
- 635m. Loans, guarantees, and insurance subject to the provisions of this chapter.
- 635n. Prohibition of loans, guarantees, and insurance as to sales of defense articles or services.

SUBCHAPTER III—TIED AID CREDIT EXPORT SUBSIDIES

- 635o. Congressional statement of purpose.
- 635p. Presidential mandate to negotiate; objectives.
- 635q. Establishment of tied aid credit program in United States Export-Import Bank.
- (a) Establishment and elements of program; cooperation with Trade and Development Program and private institutions and entities.
- (b) Purpose of program.
- (c) Fund.
- (d) Availability of concessional financing or grants.
- 635r. Establishment of tied aid credit program administered by the Trade and Development Program.
- (a) Establishment and elements of program.
- (b) Combination of funds with financing by Export-Import Bank or private commercial financing.
- (c) Limitation on use of Agency funds; authorization for establishment of fund.
- (d) Use of Economic Support Funds.
- 635s. Implementation.
- 635t. Definitions.

WESTLAW ELECTRONIC RESEARCH

WESTLAW supplements United States Code Annotated and is useful for additional research. Enter a citation in Insta-Cite for display of any parallel citations and case history. Enter a constitution, statute or rule citation in a case law database for cases of interest.

Example query for Insta-Cite: IC 726 F.2d 1292

Example query for statute: "12 U.S." "12 U.S.C.* * *" "Title 12" 1823(c)

Also, see the WESTLAW Electronic Research Guide following the Explanation.

SUBCHAPTER I—GENERAL PROVISIONS

CROSS REFERENCES

International narcotics control, see 22 USCA § 2291.

Trade credit insurance program, see 22 USCA § 2184.

§ 635. Powers and functions of Bank

of general banking business; use of mails; publication of documents, reports, contracts, etc.; use of assets and allocated or borrowed money; payment of dividends; medium-term financing; dissemination of information; enhancement of medium-term program

There is created a corporation with the name Export-Import Bank of the United States, which shall be an agency of the United States of America. The objects and purposes of the bank shall be to aid in financing and to facilitate exports and imports and the exchange of commodities and services between the United States or any of its Territories or insular possessions and any foreign country or the agencies or nationals thereof. In connection with and in furtherance of its objects and purposes, the bank is authorized and empowered to do a general banking business except that of circulation to receive deposits; to purchase, discount, rediscount, sell, and negotiate, with or without its endorsement or guaranty, and to discount bankers' acceptances, cable transfers, and other evidences of indebtedness; to guarantee, insure, coinsure, and reinsure against political and credit risks of loss; to purchase, sell, and guarantee securities but not to purchase with its funds any stock in any other corporation except that it may acquire any such stock through the enforcement of any lien or pledge or otherwise to satisfy a previously contracted indebtedness to it; to accept bills and drafts drawn upon it; to issue letters of credit; to purchase and sell coin, bullion, and exchange; to borrow and to lend money; to perform any act herein authorized in participation with any other person, including any individual, partnership, corporation, or association; to adopt, alter, and use a corporate seal, which shall be officially noticed; to sue and to be sued, to complain and to defend in any court of competent jurisdiction; to represent itself or to contract for representation in all legal and arbitral proceedings outside the United States; and the enumeration of the foregoing powers shall not be deemed to exclude other powers necessary to the achievement of the objects and purposes of the bank. The bank shall be entitled to the use of the United States mails in the same manner and upon the same conditions as the executive departments of the Government. The Bank is authorized to publish or arrange for the publication of any documents, reports, contracts, or other

12 § 635

Note 4

Hamilton Bank v. Export-Import Bank of U.S., E.D.Pa.1986, 634 F.Supp. 195.

The statutory authority of this section allowing a corporate instrumentality to "sue and be sued" should be construed as a complete waiver of sovereign immunity, and thus a wholly owned Government corporation with Eximbank's powers may resolve contract claims by arbitration. 1979 (Counsel-Inf.Op.) 3 Op.O. L.C. 226.

5. Transactions with Communist countries

The national interest exception to the prohibition within this section against guarantees, insurance, or extensions of credit by the Export-Import Bank in connection with certain Communist country transactions requires transmission of the President's determination that a particular transaction is in the national interest to the Congress within thirty days after making the same. 1974, 42 Op.Atty.Gen. 479.

6. Jurisdiction

Insured's claim against federal export credit insurer for breach of contract did not arise under act of Congress regulating commerce, and thus was not subject to original jurisdiction of federal district courts and was not removable from state court, merely because insurer had been appointed agent by government agency authorized by Congress to issue federal export credit insurance. Gensplit Finance Corp. v. Foreign Credit Ins. Ass'n, D.C.Wis.1985, 616 F.Supp. 1504.

In view of fact that Export-Import Bank of the United States is a bank that functions independently of general control of the United States Treasury, is in control and possession of its own assets and liabilities, and, as a separate entity and from its own assets, is liable for a loss occurring on any insurance it has

BANKS AND BANKING

extended up to \$100,000,000, suit against bank to recover \$5,000,000 on insurance policy issued by bank was not one with in exclusive jurisdiction of court of claims since, if judgment was entered against bank, it would not require satisfaction from public treasury. Enterprise Tools, Inc. v. Export-Import Bank of the U.S., D.C.Ark.1983, 564 F.Supp. 704.

Fact that Congress, in creating Export-Import Bank, authorized it to be sued in any court indicated that federal courts were not to have exclusive jurisdiction over actions in which Bank might be involved as party. Lance Intern., Inc. v. Aetna Cas. & Sur. Co., D.C.N.Y.1987, 200 F.Supp. 349.

7. Removal of actions

Insured's claim against federal export credit insurer for breach of contract did not arise under federal law, and thus was not removable, simply because insurer was acting as agent of government agency which Congress had authorized to issue federal export credit insurance. Gensplit Finance Corp. v. Foreign Credit Ins. Ass'n, D.C.Wis.1985, 616 F.Supp. 1504.

Suit against Export-Import Bank, a federal corporation, and against private co-insurers for damages for breach of export credit insurance policy was not removable to federal District Court, even though Bank which was principal defendant, would have right to remove if it had been sued alone, where facts and issues were substantially identical as to all defendants, no claim or issue arose under, or involving interpretation or construction of federal law, and questions of interpretation would relate to provisions of insurance policy and not federal law. Lance Intern., Inc. v. Aetna Cas. & Sur. Co., D.C.N.Y.1987, 200 F.Supp. 349.

EXPORT-IMPORT BANK

12 § 635a

(a) President and First Vice President of the Bank; appointment; duties

There shall be a President of the Export-Import Bank of the United States, who shall be appointed by the President of the United States by and with the advice and consent of the Senate, and who shall serve as chief executive officer of the Bank. There shall be a First Vice President of the Bank, who shall be appointed by the President of the United States by and with the advice and consent of the Senate, who shall serve as President of the Bank during the absence or disability of or in the event of a vacancy in the office of President of the Bank, and who shall at other times perform such functions as the President of the Bank may from time to time prescribe.

(b) Board of Directors; composition; oath; terms; duties; quorum; by-laws

(1) There shall be a Board of Directors of the Bank consisting of the President of the Export-Import Bank of the United States, who shall serve as Chairman, the First Vice President who shall serve as Vice Chairman, and three additional persons appointed by the President of the United States by and with the advice and consent of the Senate.

(2) Of the five members of the Board, not more than three shall be members of any one political party.

(3) [Omitted]

(4) Before entering upon his duties, each of the directors shall take an oath faithfully to discharge the duties of his office.

(5) The directors, in addition to their duties as members of the Board, shall perform such additional duties and may hold such other offices in the administration of the Bank as the President of the Bank may from time to time prescribe.

(6) A majority of the Board of Directors shall constitute a quorum.

(7) The Board of Directors shall adopt, and may from time to time amend, such bylaws as are necessary for the proper management and functioning of the Bank, and shall, in such bylaws, designate the vice presidents and other officers of the Bank and prescribe their duties.

(8) The terms of the directors, including the President and the First Vice President of the Bank, appointed under this section shall be four years, except that—

(i) during their terms of office, the directors shall serve at the pleasure of the President of the United States;

§ 635a. Management of Bank

(a) Establishment as independent agency

The Export-Import Bank of the United States shall constitute an independent agency of the United States and neither the Bank nor any of its functions, powers, or duties shall be transferred to or consolidated with any other department, agency, or corporation of the Government unless the Congress shall otherwise by law provide.

(II) the term of any director appointed after November 30, 1983 to serve before January 20, 1985, shall expire on January 20, 1985;

(III) of the directors first appointed to serve beginning on or after January 21, 1985, two directors (other than the President and First Vice President of the Bank) shall be appointed for terms of two years, as designated by the President of the United States at the time of their appointment; and

(IV) any director first appointed to serve for a term beginning on any date after January 21, 1985, shall serve only for the remainder of the period for which such director would have been appointed if such director's term had begun on January 21, 1985. If such term would have expired before the date on which such director's term actually begins, the term of such director shall be the four-year period, or remainder thereof, as if such director had been preceded by a director whose term had begun on January 21, 1985.

(B) Of the five members of the Board appointed by the President, not less than one such member shall be selected from among the small business community and shall represent the interests of small business.

(C) Any person chosen to fill a vacancy shall be appointed only for the unexpired term of the director whom such person succeeds.

(D) Any director whose term has expired may be reappointed.

(E) Any director whose term has expired may continue to serve on the Board of Directors until the earlier of—

(I) the date on which such director's successor is qualified; or

(II) the end of the 6-month period beginning on the date such director's term expires.

(d) **Advisory Committee; appointment; composition; meetings; advice to Bank; report to Congress**

(1)(A) There is established an Advisory Committee to consist of twelve members who shall be appointed by the Board of Directors on the recommendation of the President of the Bank.

(B) Such members shall be broadly representative of production, commerce, finance, agriculture, labor, services, and State government.

(2) Not less than three members appointed to the Advisory Committee shall be representative of the small business community.

(3) The Advisory Committee shall meet at least once each quarter.

(4) The Advisory Committee shall advise the Bank on its progress, and shall submit, with the report specified in section 6351(A) of this title, its own comments to the Congress on the extent to which the Bank is meeting its mandate to provide competition for financing to expand United States exports, and any suggestions for improvements in this regard.

Abstaining from personal interests

No director, officer, attorney, agent, or employee of the Bank shall in any manner, directly or indirectly, participate in the deliberation upon or the determination of any question affecting such individual's personal interests, or the interests of any corporation, partnership or association in which such individual is directly or indirectly personally interested.

July 31, 1945, c. 341, § 3, 59 Stat. 527; Aug. 9, 1954, c. 660, § 1, 68 Stat. 677; Dec. 13, 1968, Pub.L. 90-267, § 1(a), (d), 82 Stat. 47, 49; Nov. 30, 1983, Pub.L. 98-181, Title VI, §§ 613, 614(a), 620(b), 97 Stat. 1255, 1261; Oct. 15, 1986, Pub.L. 99-472, § 18, 100 Stat. 1205.)

HISTORICAL AND STATUTORY NOTES

Section Notes and Legislative Reports

1949 Act. Senate Report No. 882 and Conference Report No. 1411, see 1949 U.S. Code Cong. Service, p. 2143.

1954 Act. House Report No. 2270, see 1954 U.S. Code Cong. and Adm. News, p. 172.

1980 Act. Senate Report No. 2642 and Conference Report No. 2935, see 1956 U.S. Code Cong. and Adm. News, p. 3725.

1980 Act. House Report No. 256 and Conference Report No. 1103, see 1968 U.S. Code Cong. and Adm. News, p. 1727.

1980 Act. Senate Report No. 98-275, House Conference Report No. 98-551, and Two Related Reports, see 1983 U.S. Code Cong. and Adm. News, p. 1768.

1986 Act. House Conference Report No. 98-956 and Statement by President, see 1986 U.S. Code Cong. and Adm. News, p. 3072.

Citations

Provisions of subsecs. (b) and (c)(3) which prescribed the annual compensation of the President, the First Vice President, and other members of the Board of Directors were omitted to conform to the provisions of the Executive schedule. See sections 5314 and 5315 of Title 5, Government Organizations and Employ-

Subsec. (e), prior to amendment by Act Aug. 9, 1954, provided for management of the affairs of the Bank by the former Board of Trustees until Oct. 31, 1945, or until at least two members of the Board of Directors qualified as such, whichever was earlier.

Amendments

1986 Amendment. Subsec. (c)(8)(E). Pub.L. 99-472, § 18, added subpar. (E).

1983 Amendment. Subsec. (c)(1), (2). Pub.L. 98-181, § 614(a)(1), redesignated existing first and second sentences as pars. (1) and (2), respectively.

Subsec. (c)(3). Pub.L. 98-181, § 614(a)(1), redesignated existing third sentence as par. (3). See Codification note under this section to account for omission of that sentence's provisions from text.

Subsec. (c)(4). Pub.L. 98-181, § 614(a)(1), redesignated existing fourth sentence as par. (4).

Subsec. (c)(5). Pub.L. 98-181, § 614(a)(1), (2), designated existing fifth sentence as par. (5), and, in par. (5), as so designated, substituted "The directors, in addition" for "Terms of the directors shall be at the pleasure of the President of the United States, and the directors, in addition".

(2) Interim appointments

Any member appointed to fill a vacancy occurring before the expiration of the term for which such member's predecessor was appointed shall be appointed only for the remainder of such term.

(3) Continuation of service

The Chairperson, Vice Chairperson, and each appointed member may continue to serve after the expiration of the term of office to which such member was appointed until a successor has been appointed and qualified.

(d) Vacancy**(1) In general**

Any vacancy on the Board of Directors shall be filled in the manner in which the original appointment was made.

(2) Acting officials may serve

In the event of a vacancy in the office of the Comptroller of the Currency or the office of Director of the Office of Thrift Supervision and pending the appointment of a successor, or during the absence or disability of the Comptroller or such Director, the acting Comptroller of the Currency or the acting Director of the Office of Thrift Supervision, as the case may be, shall be a member of the Board of Directors in the place of the Comptroller or Director.

(e) Ineligibility for other offices**(1) Postservice restriction****(A) In general**

No member of the Board of Directors may hold any office, position, or employment in any insured depository institution or any depository institution holding company during—

- (i) the time such member is in office; and
- (ii) the 2-year period beginning on the date such member ceases to serve on the Board of Directors.

(B) Exception for members who serve full term

The limitation contained in subparagraph (A)(ii) shall not apply to any member who has ceased to serve on the Board of Directors after serving the full term for which such member was appointed.

(2) Restriction during service

No member of the Board of Directors may—

(A) be an officer or director of any insured depository institution, depository institution holding company, Federal Reserve bank, or Federal home loan bank; or

(B) hold stock in any insured depository institution or depository institution holding company.

(3) Certification

Upon taking office, each member of the Board of Directors shall certify under oath that such member has complied with this subsection and such certification shall be filed with the secretary of the Board of Directors.

(Sept. 21, 1950, c. 967, § 2[2], 64 Stat. 873; Sept. 8, 1959, Pub. L. 86-230, § 19, 73 Stat. 460; Nov. 30, 1983, Pub.L. 98-181, Title VII, § 702(a), 97 Stat. 1267; Aug. 9, 1989, Pub.L. 101-73, Title II, §§ 201(a)(1), 203(a), 103 Stat. 187, 188.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1950 Act. House Report No. 2564, and Conference Report No. 3049, see 1950 U.S.Code Cong.Service, p. 3765.

1959 Act. Senate Report No. 730, see 1959 U.S.Code Cong. and Adm.News, p. 2232.

1983 Act. Senate Report No. 98-275, House Conference Report No. 98-551, and Two Related Reports, see 1983 U.S. Code Cong. and Adm.News, p. 1768.

1989 Act. House Report No. 101-54 and House Conference Report No. 101-209, see 1989 U.S.Code Cong. and Adm.News, p. 86.

Amendments

1989 Amendment. Pub.L. 101-73, § 201(a)(1), directed that "insured depository institution" be substituted for "insured bank" wherever appearing.

Pub.L. 101-73, § 203(a), divided existing provisions into subsecs. (a) to (e), and in such subsecs. made other changes relating to the make-up and operation of the Board.

1983 Amendment. Pub.L. 98-181 added provision that each such appointive member may continue to serve after the expiration of his term until a successor has been appointed and qualified.

1959 Amendment. Pub.L. 86-230 provided for membership of the Acting Comptroller of the Currency on the Board of Directors during the absence or disability of the Comptroller instead of

only during his absence from Washington.

Separability of Provisions

If any provision of Pub.L. 101-73 or the application thereof to any person or circumstance is held invalid, the remainder of Pub.L. 101-73 and the application of the provision to other persons not similarly situated or to other circumstances not to be affected thereby, see section 1221 of Pub.L. 101-73, set out as a note under section 1811 of this title.

Prior Provisions

Section is derived from subsec. (b) of former § 264 of this title. See Codification note set out under § 1811 of this title.

Compensation of Board of Directors

Compensation of Chairman and members of Board, see §§ 5314 and 5315 of Title 5, Government Organization and Employees.

Transition Provision

Section 203(b) of Pub.L. 101-73 provided that:

"(1) **Chairperson.**—Notwithstanding any provision of section 2 of the Federal Deposit Insurance Act [this section], the Chairman of the Board of Directors of the Federal Deposit Insurance Corporation on the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 [Aug. 9, 1989] may continue to serve as the

12 § 1811

Note 1

Congress had power to create a corporation as an agency of the government to fulfill governmental purposes and to endow such corporation with powers of private corporation. *U.S. v. Doherty*, D.C.Neb.1937, 18 F.Supp. 793.

2. Purpose

Policies behind creation of Corporation are promoting stability of, and confidence in, nation's banking system. *Gunter v. Hutcheson*, C.A.Ga.1982, 674 F.2d 862, certiorari denied 103 S.Ct. 60, 459 U.S. 826, 74 L.Ed.2d 63, rehearing denied 103 S.Ct. 477, 459 U.S. 1059, 74 L.Ed.2d 624.

This chapter set up system of insurance, primary function of which was stabilizing or promoting the stability of banks. *First State Bank of Hudson County v. U.S.*, C.A.N.J.1979, 599 F.2d 558, certiorari denied 100 S.Ct. 662, 444 U.S. 1013, 62 L.Ed.2d 642.

The purpose of this section was to stabilize or to promote the stability of banks and to aid the federal government in its evergrowing financial transactions. *Doherty v. U.S.*, C.A.Neb.1938, 94 F.2d 495, certiorari denied 58 S.Ct. 763, 303 U.S. 658, 82 L.Ed. 1117.

This chapter was intended to prevent runs on banks by depositors, to preserve solvency of insured banks, and thus to keep open the channels of trade and commercial exchange. *Weir v. U.S.*, C.A.Ind.1937, 92 F.2d 634, certiorari denied 58 S.Ct. 368, 369, 302 U.S. 761, 82 L.Ed. 590, rehearing denied 58 S.Ct. 479, 480, 302 U.S. 781, 82 L.Ed. 603.

Congressional purpose in creating the Corporation was to promote soundness of banking and to aid the government in discharge of its fiscal transactions. *Freeling v. Federal Deposit Ins. Corp.*, D.C.Okl.1962, 221 F.Supp. 955, affirmed 326 F.2d 971. See, also, *Federal Deposit Ins. Corp. v. First Mortg. Investors*, D.C. Wis.1980, 485 F.Supp. 445.

The chief function of the Federal Deposit Insurance Corporation is to insure deposits of all banks entitled to insurance under the law, to extent of \$5,000 for each depositor, and second function of the corporation is to act as receiver for insured banks which fail. *Ghent v. Cliffside Park Title Guarantee & Trust Co.*, 1938, 199 A. 416, 16 N.J.Misc. 308.

BANKS AND BANKING Ch. 16

3. Law governing

Federal law controls in cases involving the rights of the Corporation. *Federal Deposit Ins. Corp. v. Meo*, C.A.Cal.1974, 505 F.2d 790.

Where bank acquired in ordinary good-faith transaction a promissory note of corporation personally guaranteed by individual defendants and both note and the guarantee provided that note and guarantee would be governed by and construed in accordance with laws of state of New York, Federal Deposit Insurance Corporation was to be bound by terms of the instrument, and no federal statute or overriding policy conferred on Federal Deposit Insurance Corporation as liquidator or receiver greater powers than bank itself had before insolvency, and state law, including McKinney's N.Y. RPAPL § 1371, was applicable. *Federal Deposit Ins. Corp. v. Forte*, 1981, 440 N.Y.S.2d 500, 109 Misc.2d 546, affirmed 463 N.Y.S.2d 844, 94 A.D.2d 59.

4. Nature of Federal Deposit Insurance Corporation

Federal Deposit Insurance Corporation is a governmental institution. *U.S. v. Doherty*, D.C.Neb.1937, 18 F.Supp. 793. See, also, *Federal Deposit Ins. Corp. v. Mangiaracina*, 1938, 198 A. 777, 16 N.J.Misc. 203.

5. State banks as federal instrumentalities

Congress can employ state corporations, including state banks with their consent, as instrumentalities of the United States. *U.S. v. Doherty*, D.C.Neb. 1937, 18 F.Supp. 793.

6. Power of banks to guarantee deposits

Banks have no general power to guarantee each other's deposits directly or through an organization, with or without limitation, since such power is matter of legislative, not banking policy. *O'Connor v. Bankers Trust Co.*, 1936, 289 N.Y.S. 252, 159 Misc. 920, affirmed 1 N.Y.S.2d 641, 253 A.D. 714, affirmed 16 N.E.2d 302, 278 N.Y. 649.

7. Crediting insurance premiums between agencies

The Federal Savings and Loan Corporation and this Corporation are two wholly separate government insurance agencies, and plaintiff which converted from savings and loan association to

Ch. 16 FEDERAL DEPOSIT INSURANCE CORP.

12 § 1812

mutual savings bank was not entitled to have the "unearned" portion of 12-month premium paid to Federal Savings and Loan Corporation primary reserve credited to its account with this

Corporation. *North New York Sav. Bank v. Federal Sav. and Loan Ins. Corp.*, 1975, 515 F.2d 1355, 169 U.S.App. D.C. 384.

§ 1812. Management

(a) Board of Directors

(1) In general

The management of the Corporation shall be vested in a Board of Directors consisting of 5 members—

(A) 1 of whom shall be the Comptroller of the Currency;

(B) 1 of whom shall be the Director of the Office of Thrift Supervision; and

(C) 3 of whom shall be appointed by the President, by and with the advice and consent of the Senate, from among individuals who are citizens of the United States.

(2) Political affiliation

After February 28, 1993, not more than 3 of the members of the Board of Directors may be members of the same political party.

(b) Chairperson and Vice Chairperson

(1) Chairperson

1 of the appointed members shall be designated by the President, by and with the advice and consent of the Senate, to serve as Chairperson of the Board of Directors for a term of 5 years.

(2) Vice Chairperson

1 of the appointed members shall be designated by the President, by and with the advice and consent of the Senate, to serve as Vice Chairperson of the Board of Directors.

(3) Acting Chairperson

In the event of a vacancy in the position of Chairperson of the Board of Directors or during the absence or disability of the Chairperson, the Vice Chairperson shall act as Chairperson.

(c) Terms

(1) Appointed members

Each appointed member shall be appointed for a term of 6 years.

Encyclopedias

Federal Home Loan Banks, see C.J.S. Banks and Banking §§ 928 to 940.
Financial instrumentalities organized by United States, see C.J.S. United States § 70.

Law Reviews

The secondary mortgage market—a catalyst for change in real estate transactions. Robin Paul Malloy, 39 Southwestern (Tex.) L.J. 991 (1986).

WESTLAW ELECTRONIC RESEARCH

Banking cases: 52k [add key number].
United States cases: 393k [add key number].
See, also, WESTLAW guide following the Explanation pages of this volume.

§ 1452. Federal Home Loan Mortgage Corporation

(a) Creation; Board of Directors; Chairman; principal office; member of each Federal home loan bank; liabilities, conditions, and limitations

There is created the Federal Home Loan Mortgage Corporation, which shall be a body corporate and shall be under the direction of a Board of Directors composed of the members of the Federal Home Loan Bank Board, who shall serve as such without additional compensation. The Chairman of the Federal Home Loan Bank Board shall be the Chairman of the Board of Directors. The principal office of the Corporation shall be in the District of Columbia or at such other place as the Corporation may from time to time prescribe. The Corporation shall be a member of each Federal home loan bank and, except as otherwise provided by the Federal Home Loan Bank Board, shall have all the benefits, powers, and privileges, and in the exercise thereof shall be subject to all liabilities, conditions, and limitations (except those relating to Federal home loan bank stock and subscriptions thereto and those under provisions of the Federal Home Loan Bank Act [12 U.S.C.A. § 1421 et seq.] preceding section 9 [12 U.S.C.A. § 1429]) which are provided by the terms of such Act or other Federal statute for members of any such bank.

(b) Powers of Corporation

The Corporation shall have power (1) to adopt, alter, and use a corporate seal; (2) to have succession until dissolved by Act of Congress; (3) to make and enforce such bylaws, rules, and regulations as may be necessary or appropriate to carry out the purposes or provisions of this chapter; (4) to make and perform contracts, agreements, and commitments; (5) to prescribe and impose fees and charges for services by the Corporation; (6) to settle, adjust, and compromise, and with or without consideration or benefit to the Corporation to release or waive in whole or in part, in advance or otherwise, any claim, demand, or right of, by, or against the Corporation; (7) to sue and be sued, complain and defend, in any

State, Federal, or other court; (8) to acquire, take, hold, and own, and to deal with and dispose of any property; and (9) to determine its necessary expenditures and the manner in which the same shall be incurred, allowed, and paid, and appoint, employ, and fix and provide for the compensation and benefits of officers, employees, attorneys, and agents, all without regard to any other law except as may be provided by the Corporation or by laws hereafter enacted by the Congress expressly in limitation of this sentence. Nothing in this chapter or any other law shall be construed to prevent the appointment, employment, and provision for compensation and benefits, as an officer, employee, attorney, or agent of the Corporation, of any officer, employee, attorney, or agent of any department, establishment, or corporate or other instrumentality of the Government, including any Federal home loan bank or member thereof. The Corporation, with the consent of any such department, establishment, or instrumentality, including any field services thereof, may utilize and act through any such department, establishment, or instrumentality and may avail itself of the use of information, services, facilities, and personnel thereof, and may pay compensation therefor, and all of the foregoing are hereby authorized to provide the same to the Corporation as it may request.

(c) Investment of funds; designation as depository, custodian, or agent for Corporation of any Federal Reserve bank, Federal home loan bank, or any bank designated as depository of public money.

Funds of the Corporation may be invested in such investments as the Board of Directors may prescribe. Any Federal Reserve bank or Federal home loan bank, or any bank as to which at the time of its designation by the Corporation there is outstanding a designation by the Secretary of the Treasury as a general or other depository of public money, may be designated by the Corporation as a depository or custodian or as a fiscal or other agent of the Corporation, and is hereby authorized to act as such depository, custodian, or agent. When designated for that purpose by the Secretary of the Treasury, the Corporation shall be a depository of public money, under such regulations as may be prescribed by the Secretary of the Treasury, and may also be employed as fiscal or other agent of the United States, and it shall perform all such reasonable duties as such depository or agent as may be required of it.

(d) Exemption from Federal, State, and local taxation; exception; applicability of other provisions

The Corporation, including its franchise, activities, capital, reserves, surplus, and income, shall be exempt from all taxation now or hereafter imposed by any territory, dependency, or possession of the United States or by any State, county, municipality, or local

§ 290e. Congressional declaration of policy

The Congress of the United States, recognizing that the diseases of mankind, because of their widespread prevalence, debilitating effects, and heavy toll in human life, constitute a major deterrent to the efforts of many peoples to develop their economic resources and productive capacities, and to improve their living conditions, declares it to be the policy of the United States to continue and strengthen mutual efforts among the nations for research against diseases such as heart disease and cancer. In furtherance of this policy, the Congress invites the World Health Organization to initiate studies looking toward the strengthening of research and related programs against these and other diseases common to mankind or unique to individual regions of the globe.

(June 14, 1948, c. 469, § 6, as added June 30, 1958, Pub. L. 85-477, c. V, § 502(m), 72 Stat. 275.)

HISTORICAL AND STATUTORY NOTES**Revision Notes and Legislative Reports**

1958 Act. Senate Report No. 1627 and Conference Report No. 2038, see 1958 U.S. Code Cong. and Adm. News, p. 2755.

LIBRARY REFERENCES**American Digest System**

International organizations, see International Law § 10.45.

Precautions against contagious and infectious diseases, see Health and Environment § 23.

Encyclopedias

International organizations, see C.J.S. International Law §§ 63 to 68.

Precautions against contagious and infectious diseases, see C.J.S. Health and Environment §§ 18 to 21.

WESTLAW ELECTRONIC RESEARCH

Health and environment cases: 199k [add key number].

International law cases: 221k [add key number].

See, also, WESTLAW guide following the Explanation pages of this volume.

§ 290e-1. International Agency for Research on Cancer; authorization of appropriations; limitation

There are hereby authorized to be appropriated such sums as may be necessary for the annual payment by the United States of its share of the expenses of the International Agency for Research on Cancer as determined in accordance with article VIII of the Statute of the International Agency for Research on Cancer, except that in no event shall that payment for any year exceed 16 per centum of all contributions assessed Participating Members of the Agency for that year.

(Pub. L. 92-494, Oct. 14, 1972, 86 Stat. 811.)

HISTORICAL AND STATUTORY NOTES**Codifications**

Section was not enacted as part of Act June 14, 1948, c. 469, 62 Stat. 441, which comprises this subchapter.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

SUBCHAPTER XXI—INTER-AMERICAN FOUNDATION**CROSS REFERENCES**

United States assistance defined for purposes of international narcotics control, see 22 USCA § 2291.

§ 290f. Inter-American Foundation**(a) Establishment**

There is created as an agency of the United States of America a body corporate to be known as the Inter-American Foundation (hereinafter in this section referred to as the "Foundation").

(b) Congressional declaration of purpose

The future of freedom, security, and economic development in the Western Hemisphere rests on the realization that man is the foundation of all human progress. It is the purpose of this section to provide support for developmental activities designed to achieve conditions in the Western Hemisphere under which the dignity and the worth of each human person will be respected and under which all men will be afforded the opportunity to develop their potential, to seek through gainful and productive work the fulfillment of their aspirations for a better life, and to live in justice and peace. To this end, it shall be the purpose of the Foundation, primarily in cooperation with private, regional, and international organizations, to—

(1) strengthen the bonds of friendship and understanding among the peoples of this hemisphere;

(2) support self-help efforts designed to enlarge the opportunities for individual development;

(3) stimulate and assist effective and ever wider participation of the people in the development process;

(4) encourage the establishment and growth of democratic institutions, private and governmental, appropriate to the requirements of the individual sovereign nations of this hemisphere.

In pursuing these purposes, the Foundation shall place primary emphasis on the enlargement of educational opportunities at all levels, the production of food and the development of agriculture, and the improvement of environmental conditions relating to health, maternal and child care, family planning, housing, free trade union development, and other social and economic needs of the people.

(c) Programs and projects to achieve purposes

The Foundation shall carry out the purposes set forth in subsection (b) of this section primarily through and with private organizations, individuals, and international organizations by undertaking or sponsoring appropriate research and by planning, initiating, assisting, financing, administering, and executing programs and projects designed to promote the achievement of such purposes.

(d) Coordination of activities with national and international agencies

In carrying out its functions under this section, the Foundation shall, to the maximum extent possible, coordinate its undertakings with the developmental activities in the Western Hemisphere of the various organs of the Organization of American States, the United States Government, international organizations, and other entities engaged in promoting social and economic development of Latin America.

(e) Powers and functions

The Foundation, as a corporation—

(1) shall have perpetual succession unless sooner dissolved by an Act of Congress;

(2) may adopt, alter, and use a corporate seal, which shall be judicially noticed;

(3) may make and perform contracts and other agreements with any individual, corporation, or other body of persons however designated whether within or without the United States of America, and with any government or governmental agency, domestic or foreign;

(4) shall determine and prescribe the manner in which its obligations shall be incurred and its expenses, including expenses for representation (not to exceed \$10,000 in any fiscal year), allowed and paid;

(5) may, as necessary for the transaction of the business of the Foundation, employ, and fix the compensation of not to exceed one hundred persons at any one time;

(6) may acquire by purchase, devise, bequest, or gift, or otherwise lease, hold, and improve, such real and personal

property as it finds to be necessary to its purposes, whether within or without the United States, and in any manner dispose of all such real and personal property held by it and use as general funds all receipts arising from the disposition of such property;

(7) shall be entitled to the use of the United States mails in the same manner and on the same conditions as the executive departments of the Government;

(8) may, with the consent of any board, corporation, commission, independent establishment, or executive department of the Government, including any field service thereof, avail itself of the use of information, services, facilities, officers, and employees thereof in carrying out the provisions of this section;

(9) may accept money, funds, property, and services of every kind by gift, devise,¹ bequest, grant, or otherwise, and make advances, grants, and loans to any individual, corporation, or other body of persons, whether within or without the United States of America, or to any government or governmental agency, domestic or foreign, when deemed advisable by the Foundation in furtherance of its purposes;

(10) may sue and be sued, complain, and defend, in its corporate name in any court of competent jurisdiction; and

(11) shall have such other powers as may be necessary and incident to carrying out its powers and duties under this section.

(f) Disposal of assets on liquidation

Upon termination of the corporate life of the Foundation all of its assets shall be liquidated and, unless otherwise provided by Congress, shall be transferred to the United States Treasury as the property of the United States.

(g) Board of directors; number, term, and appointment

The management of the Foundation shall be vested in a board of directors (hereafter in this section referred to as the "Board") composed of nine members appointed by the President, by and with the advice and consent of the Senate, one of whom he shall designate to serve as Chairman of the Board and one of whom he shall designate to serve as Vice Chairman of the Board. Six members of the Board shall be appointed from private life. Three members of the Board shall be appointed from among officers or employees of agencies of the United States concerned with inter-American affairs. Members of the Board shall be appointed for terms of six years, except that of the members first appointed two shall be appointed for terms of two years and two shall be appointed

property as it finds to be necessary to its purposes, whether within or without the United States, and in any manner dispose of all such real and personal property held by it and use as general funds all receipts arising from the disposition of such property;

(7) shall be entitled to the use of the United States mails in the same manner and on the same conditions as the executive departments of the Government;

(8) may, with the consent of any board, corporation, commission, independent establishment, or executive department of the Government, including any field service thereof, avail itself of the use of information, services, facilities, officers, and employees thereof in carrying out the provisions of this section;

(9) may accept money, funds, property, and services of every kind by gift, device, bequest, grant, or otherwise, and make advances, grants, and loans to any individual, corporation, or other body of persons, whether within or without the United States of America, or to any government or governmental agency, domestic or foreign, when deemed advisable by the Foundation in furtherance of its purposes;

(10) may sue and be sued, complain, and defend, in its corporate name in any court of competent jurisdiction; and

(11) shall have such other powers as may be necessary and incident to carrying out its powers and duties under this section.

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The management of the Foundation shall be vested in a board of directors (hereafter in this section referred to as the "Board") composed of nine members appointed by the President, by and with the advice and consent of the Senate, one of whom he shall designate to serve as Chairman of the Board and one of whom he shall designate to serve as Vice Chairman of the Board. Six members of the Board shall be appointed from private life. Three members of the Board shall be appointed from among officers or employees of agencies of the United States concerned with Inter-American affairs. Members of the Board shall be appointed for terms of six years, except that of the members first appointed two shall be appointed for terms of two years and two shall be appoint-

ed for terms of four years, as designated by the President at the time of their appointment. A member of the Board appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term; but upon the expiration of his term of office a member shall continue to serve until his successor is appointed and shall have qualified. Members of the Board shall be eligible for reappointment.

(h) Reimbursement of expenses

Members of the Board shall serve without additional compensation, but shall be reimbursed for travel expenses, including per diem in lieu of subsistence, in accordance with section 5703 of Title 5, while engaged in their duties on behalf of the corporation.

(i) Board; authority

The Board shall direct the exercise of all the powers of the Foundation.

(j) Rules and regulations; quorum of the Board

The Board may prescribe, amend, and repeal bylaws, rules, and regulations governing the manner in which the business of the Foundation may be conducted and in which the powers granted to it by law may be exercised and enjoyed. A majority of the Board shall be required as a quorum.

(k) Authority of the Board to appoint committees

In furtherance and not in limitation of the powers conferred upon it, the Board may appoint such committees for the carrying out of the work of the Foundation as the Board finds to be for the best interests of the Foundation, each committee to consist of two or more members of the Board, which committees, together with officers and agents duly authorized by the Board and to the extent provided by the Board, shall have and may exercise the powers of the Board in the management of the business and affairs of the Foundation.

(l) President of Foundation; appointment and compensation; employment of experts and consultants

(1) The chief executive officer of the Foundation shall be a President who shall be appointed by the Board of Directors on such terms as the Board may determine. The President shall receive compensation at the rate provided for level IV of the Executive Schedule under section 5315 of Title 5.

(2) Experts and consultants, or organizations thereof, may be employed as authorized by section 3109 of Title 5.

40 § 872. Pennsylvania Avenue Development Corporation

(a) Establishment

There is hereby created a body corporate to be known as the Pennsylvania Avenue Development Corporation (hereinafter referred to as the "Corporation").

(b) Dissolution

The Corporation shall be dissolved upon completion, as determined by the Board of Directors, of its implementation of the development plan provided for in section 874 of this title. Upon dissolution, assets remaining after all the obligations and indebtedness of the Corporation has been fulfilled and paid or satisfied shall be the assets of the United States.

(c) Board of Directors; composition

The powers and management of the Corporation shall be vested in a Board of Directors consisting of fifteen members, as follows:

- (1) The Secretary of the Interior;
- (2) The Secretary of the Treasury;
- (3) The Secretary of Housing and Urban Development;
- (4) The Secretary of Transportation;
- (5) The Administrator of General Services;
- (6) The Mayor of the District of Columbia;
- (7) The Chairman, Council of the District of Columbia; and
- (8) Eight, at least four of whom shall be residents and who are registered voters of the District of Columbia, appointed by the President from private life, who shall have knowledge and experience in one or more fields of history, architecture, city planning, retailing, real estate, construction, or government.

(d) Alternate directors

Each member of the Board of Directors specified in paragraphs (1) through (7) of subsection (c) of this section may designate another official to serve on the Board in his stead if unable to serve in person.

(e) Term of office

Each member of the Board of Directors appointed under paragraph (8) of subsection (c) of this section shall serve for a term of six years from the expiration of his predecessor's term; except that (1) any Director appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and (2) the terms of office of the Directors first taking office shall begin on October 27, 1972, and shall expire as designated at the time of appointment, two at the end of two years, two at the end of four years, and four at the end of six years. A Director may continue to serve until his successor has qualified.

(f) Chairman

The President shall designate a Chairman and a Vice Chairman from among the members of the Board of Directors, chosen from private life.

(g) Nonvoting membership on board

The Chairman, upon his appointment, shall invite to serve on the Board of Directors as nonvoting members the following:

- (1) The Chairman of the Commission of Fine Arts;
- (2) The Chairman of the National Capital Planning Commission;
- (3) The Secretary of the Smithsonian Institution;
- (4) The Director of the National Gallery of Art;
- (5) The Architect of the Capitol;
- (6) The Archivist of the United States;
- (7) The Chairman of the District of Columbia, Commission on the Arts; and
- (8) The Director of the District of Columbia Department of Housing and Community Development.

(h) Compensation

Members of the Board of Directors who are officers or employees of the Federal or District of Columbia government shall receive no additional compensation by virtue of their membership on the Board. Other members of the Board, when engaged in the activities of the Corporation, shall be entitled to receive compensation at the daily equivalent of the rate for GS-18 of the General Schedule, and travel expenses, including per diem in lieu of subsistence, as authorized by law (5 U.S.C. 5703(b)-(d) and 5707) for persons in the Government service employed intermittently.

(i) Meetings; quorum

The Board of Directors shall meet at the call of the Chairman, who shall require it to meet not less often than once each three months. A majority of the voting members of the Board of Directors (or their designated alternates) shall constitute a quorum.

(j) Advisory Board

There shall be established a nonvoting Advisory Board of seven members appointed by the Chairman from among tenants and owners of real property within the development area. The Advisory Board shall meet at least twice annually with the Board of Directors, and shall otherwise offer such advice and assistance as may be of benefit to the Board of Directors during preparation of the development plan.

(Pub.L. 92-578, § 3, Oct. 27, 1972, 86 Stat. 1267; Pub.L. 95-629, Title I, § 101(1)(a) to (c), Nov. 10, 1978, 92 Stat. 3635; Pub.L. 98-141, § 8(c)(1), Oct. 31, 1983, 97 Stat. 910.)

Historical Note

References in Text. The General Schedule, referred to in subsec. (h), is set out under section 5332 of Title 5, Government Organization and Employees.

Section 5703 of Title 5, referred to in subsec. (h), was amended generally by Pub.L. 94-22, § 4, May 19, 1975, 89 Stat. 85, and as so amended does not contain subsecs. (b) to (d).

1983 Amendment. Subsec. (c)(7). Pub.L. 98-141 added the number designation "(7)" preceding "The Chairman, Council of the District of Columbia", thereby correcting an error that had been created in 1978 as the result of faulty directory language in section 101(1)(b)

of Pub.L. 95-629 which, in the process of substituting "The Chairman, Council of the District of Columbia" for "The Chairman, District of Columbia Council" had deleted the number designation of that item.

1978 Amendment. Subsec. (c)(6). Pub.L. 95-629, § 101(1)(a), substituted "The Mayor of the District of Columbia" for "The Commissioner of the District of Columbia".

Subsec. (c)(7). Pub.L. 95-629, § 101(1)(b), substituted "The Chairman, Council of the District of Columbia" for "The Chairman, District of Columbia Council".

Subsec. (g)(8). Pub.L. 95-629, § 101(1)(c), substituted "The Director of the District of Columbia Department of Housing and Community Development" for "The Chairman of the District of Columbia Redevelopment Land Agency".

Archivist of the United States. References to Archivist of the United States deemed to refer to Archivist appointed under section 2103 of Title 44, Public Printing and Documents, with respect to functions transferred by Pub.L. 98-497 or an amendment made by Pub.L. 98-497 and exercised after Apr. 1, 1985, see sections 106 and 108 of Pub.L. 98-497, set out as notes under section 2102 of Title 44.

Termination of Advisory Boards. Advisory boards in existence on Jan. 5, 1973, to termi-

nate not later than the expiration of the two-year period following Jan. 5, 1973, unless, in the case of a board established by the President or an officer of the Federal Government, such board is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a board established by the Congress, its duration is otherwise provided by law, see sections 3(2) and 14 of Pub.L. 92-463, Oct. 6, 1972, 86 Stat. 770, set out in Appendix 2 to Title 5, Government Organization and Employees.

Legislative History. For legislative history and purpose of Pub.L. 92-578, see 1972 U.S. Code Cong. and Adm. News, p. 4721. See, also, Pub.L. 98-141, 1983 U.S. Code Cong. and Adm. News, p. 1308.

Cross References

Wholly owned government corporation defined to include Pennsylvania Avenue Development Corporation, see section 9101 of Title 31, Money and Finance.

Code of Federal Regulations

Pennsylvania Avenue Development Corporation, see 36 CFR Chap. IX.

Library References

District of Columbia ⇐23.
United States ⇐57.

C.J.S. District of Columbia § 9.
C.J.S. United States § 74.

§ 873. Board of Directors

(a) Executive Director and other officers and employees

The Board of Directors shall have the power to appoint and fix the compensation and duties of the Executive Director and such other officers and employees of the Corporation as may be necessary for the efficient administration of the Corporation; the Executive Director and two other officers of the Corporation may be appointed and compensated without regard to the provisions of Title 5 governing appointments in the competitive service and chapter 51 and subchapter III of chapter 53 of Title 5.

(b) Procurement of services of experts

The Board of Directors is authorized to procure the temporary (not in excess of one year) or intermittent services of city planners, architects, engineers, appraisers, and other experts or consultants or organizations thereof in accordance with section 3109 of Title 5, but at rates for individuals not in excess of the rate in effect for grade GS-18 of the General Schedule.

(c) Administrative services

Administrative services shall be provided by the General Services Administration on a reimbursable basis.

(Pub.L. 92-578, § 4, Oct. 27, 1972, 86 Stat. 1268; Pub.L. 93-427, § 1, Oct. 1, 1974, 88

Historical Note

References in Text. The provisions of title 5 governing appointments in the competitive service, referred to in subsec. (a), are classified to section 3301 et seq. of Title 5, Government Organization and Employees.

The General Schedule, referred to in subsec. (b), is set out under section 5332 of Title 5.

1978 Amendment. Subsec. (a). Pub.L. 95-629 substituted "subchapter III of chapter 53" for "subchapter 53".

1974 Amendment. Subsec. (b). Pub.L. 93-427 added subsec. (b). Former subsec. (b) was redesignated subsec. (c).

Subsec. (c). Pub.L. 93-427 redesignated former subsec. (b) as subsec. (c).

Legislative History. For legislative history and purpose of Pub.L. 92-578, see 1972 U.S. Code Cong. and Adm. News, p. 4721. See, also, Pub.L. 93-427, 1974 U.S. Code Cong. and Adm. News, p. 5414.

Code of Federal Regulations

Pennsylvania Avenue Development Corporation, see 36 CFR Chap. IX.

Library References

District of Columbia ⇐23.
United States ⇐57.

C.J.S. District of Columbia § 9.
C.J.S. United States § 74.

§ 874. Development plan

(a) Contents

The development plan for the development area shall include, but not be limited to: (1) the types of uses, both public and private, to be permitted; (2) criteria for the design and appearance of buildings, facilities, open spaces, and other improvements; (3) an estimate of the current values of all properties to be acquired; (4) an estimate of the relocation costs which would be incurred in carrying out the provisions of section 877 of this title; (5) an estimate of the cost of land preparation for all properties to be acquired; (6) an estimate of the reuse values of the properties to be acquired; (7) a program for the staging of a proposed development, including a detailed description of the portion of the program to be scheduled for completion by 1976; (8) a determination of the marketability of such development; (9) an estimate of the development costs, both public and private; (10) a thorough study of the economic impact of such development, including the impact on the local tax base, the metropolitan area as a whole, and the existing business activities within the development area; and (11) the procedures (including both interim and long-term arrangements) to be used in carrying out and insuring continuing conformance to the development plan.

(b) Cooperation in preparation

The development plan provided for in subsection (a) of this section shall be prepared with the cooperation of the Department of the Interior, the General Services Administration, and the District of Columbia government, with the maximum feasible use of their staffs and other resources on a reimbursable basis by the Corporation.

(c) Submittal to Secretary of the Interior and Mayor of District of Columbia; public hearings

After the development plan has been completed and approved by the Board of Directors of the Corporation, it shall be submitted to the Secretary of the Interior and the Mayor of the District of Columbia. The Secretary of the Interior, within ninety days, shall notify the Corporation of his approval of the plan.

all part of the Farm Credit System (12 USC 2001 et seq.)

12 § 2277a

BANKS AND BANKING Ch. 23

(A) on or before January 5, 1989, on behalf of any System Bank; and

(B) after such date, which, when issued, is issued on behalf of any insured System bank.

(4) Insured System bank

The term "insured System bank" means any System bank whose participation in notes, bonds, debentures, and other obligations issued under subsection (c) or (d) of section 2153 of this title is insured under this part.

(5) Receiver

The term "receiver" means a receiver or conservator appointed by the Farm Credit Administration for a System institution.

(6) State

The term "State" means any of the 50 States, the District of Columbia, any Territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Virgin Islands.

Pub.L. 92-181, Title V, § 5.51, as added Pub.L. 100-233, Title III, § 302, Jan. 6, 1988, 101 Stat. 1611, and amended Pub.L. 100-399, Title III, § 302(a), (b), Aug. 17, 1988, 102 Stat. 994.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1971 Act. House Report No. 92-593 and House Conference Report No. 92-679, see 1971 U.S.Code Cong. and Adm.News, p. 2091.

1988 Act. House Report No. 100-295(I) and House Conference Report No. 100-490, see 1987 U.S.Code Cong. and Adm.News, p. 2723.

Amendments

1988 Amendment. Par. (3). Pub.L. 100-399, § 302(a), in subpar. (A) substituted "January 5, 1989" for "January 6,

1988" and in subpar. (B) inserted "which, when issued, is issued" before "on behalf".

Par. (5). Pub.L. 100-399, § 302(b), substituted "for" for "to liquidate".

Effective Dates

1988 Act. Amendment by Pub.L. 100-399 effective as if enacted immediately after the enactment of Pub.L. 100-233, which was approved on Jan. 6, 1988, see section 1001(a) of Pub.L. 100-399, set out as a note under section 2002 of this title.

CROSS REFERENCES

Insured obligation for purposes of appointment of a conservator or receiver for System institutions, see 12 USCA § 2183.

State for purposes of Agricultural Mortgage Secondary Market, see 12 USCA § 2279aa.

LIBRARY REFERENCES

American Digest System

United States agricultural finance instrumentalities, see United States ¶53(7).

Encyclopedias

United States agricultural finance instrumentalities, see C.J.S. United States § 70.

Ch. 23 FARM CREDIT SYSTEM

12 § 2277a-2

WESTLAW ELECTRONIC RESEARCH

United States cases: 393k[add key number].

See, also, WESTLAW guide following the Explanation pages of this volume.

§ 2277a-1. Establishment of Farm Credit System Insurance Corporation

There is hereby established the Farm Credit System Insurance Corporation which shall insure, in accordance with this part, the timely payment of principal and interest on notes, bonds, debentures, and other obligations issued under subsection (c) or (d) of section 2153 of this title on behalf of one or more System banks all of which are entitled to the benefits of insurance under this part.

(Pub.L. 92-181, Title V, § 5.52, as added Pub.L. 100-233, Title III, § 302, Jan. 6, 1988, 101 Stat. 1611.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports port No. 100-490, see 1987 U.S.Code
1988 Act. House Report No. Cong. and Adm.News, p. 2723.
100-295(I) and House Conference Re-

LIBRARY REFERENCES

American Digest System

United States agricultural finance instrumentalities, see United States ¶53(7).

Encyclopedias

United States agricultural finance instrumentalities, see C.J.S. United States § 70.

WESTLAW ELECTRONIC RESEARCH

United States cases: 393k[add key number].

See, also, WESTLAW guide following the Explanation pages of this volume.

§ 2277a-2. Board of Directors

(a) Establishment

The Corporation shall be managed by a Board of Directors that shall consist of the members of the Farm Credit Administration Board.

(b) Chairman

The Board of Directors shall be chaired by any Board member other than the Chairman of the Farm Credit Administration Board.

(Pub.L. 92-181, Title V, § 5.53, as added Pub.L. 100-233, Title III, § 302, Jan. 6, 1988, 101 Stat. 1611.)

§ 2277a-6. Overpayment and underpayment of premiums; remedies

(a) Overpayments

The Corporation may refund to any insured System bank any premium payment made by the bank exceeding the amount due the Corporation.

(b) Underpayments

(1) Recovery

The Corporation, in a suit brought at law or in equity in any court of competent jurisdiction, may recover from any insured System bank the amount of any unpaid premium lawfully payable by the bank to the Corporation, whether or not the bank has filed any certified statement under section 2277a-5 of this title, and whether or not suit has been brought to compel the bank to file any such statement.

(2) Limitation

Any action or proceeding for the recovery of any premium due the Corporation under paragraph (1), or for the recovery of any amount paid to the Corporation exceeding the amount due the Corporation, shall be brought within 5 years after the right accrued for which the claim is made. If an insured System bank has filed with the Corporation a false or fraudulent certified statement with the intent to evade, in whole or in part, the payment of a premium, the claim shall not be deemed to have accrued until the Corporation discovers that the certified statement is false or fraudulent.

(c) Failure to file statement or pay premium

(1) Forfeiture of rights

If any insured System bank fails to file any certified statement required to be filed by such bank under section 2277a-5 of this title or fails to pay any premium required to be paid by such bank under any provision of this part, and if the bank does not correct such failure within 30 days after the Corporation gives written notice to an officer of the bank, citing this subsection and stating that the bank has failed to so file or pay as required by law, all the rights, privileges, and franchises of the bank granted to it under this chapter shall be thereby forfeited.

(2) Enforcement

The Corporation may bring an action to enforce this subsection against any such bank in any court of competent jurisdiction for the judicial district in which the bank is located.

(3) Liability of directors

Every director who participated in or assented to a failure (described in paragraph (1)) shall be held personally liable for all consequential damages.

(d) Effect on other remedies

The remedies provided in subsections (b) and (c) of this section shall not be construed as limiting any other remedies against any insured System bank, but shall be in addition thereto.

(Pub.L. 92-181, Title V, § 5.57, as added Pub.L. 100-233, Title III, § 302, Jan. 6, 1988, 101 Stat. 1613, and amended Pub.L. 100-399, Title III, § 302(g), (h), Aug. 17, 1988, 102 Stat. 994.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1988 Act. House Report No. 100-295(I) and House Conference Report No. 100-490, see 1987 U.S. Code Cong. and Adm. News, p. 2723.

Subsec. (b)(2). Pub.L. 100-399, § 302(h), substituted "bank has filed" for "bank has made or filed".

Amendments

1988 Amendment. Subsec. (b)(1). Pub.L. 100-399, § 302(g), struck out "made any report of condition required under section 2277a-4 of this title or" after "bank has" and "make any such report or" after "bank to".

Effective Dates

1988 Act. Amendment by Pub.L. 100-399 effective as if enacted immediately after the enactment of Pub.L. 100-233, which was approved on Jan. 6, 1988, see section 1001(a) of Pub.L. 100-399, set out as a note under section 2002 of this title.

LIBRARY REFERENCES

American Digest System

United States agricultural finance instrumentalities, see United States ¶53(7).

Encyclopedias

United States agricultural finance instrumentalities, see C.J.S. United States § 70.

WESTLAW ELECTRONIC RESEARCH

United States cases: 393k[add key number].

See, also, WESTLAW guide following the Explanation pages of this volume.

§ 2277a-7. General corporate powers

On January 6, 1988, the Corporation shall become a body corporate and as such shall have the following powers:

(1) Seal

The Corporation may adopt and use a corporate seal.

(2) Succession

The Corporation may have succession until dissolved by an Act of Congress.

(3) Contracts

The Corporation may make contracts.

(4) Legal actions

(A) In general

The Corporation may sue and be sued, complain and defend, in any court of law or equity, State or Federal.

(B) Jurisdiction

All suits of a civil nature at common law or in equity to which the Corporation shall be a party shall be deemed to arise under the laws of the United States, and the United States district courts shall have original jurisdiction thereof, without regard to the amount in controversy, and the Corporation, without bond or security, may remove any such action, suit, or proceeding from a State court to the United States district court for the district or division embracing the place where the same is pending by following any procedure for removal then in effect.

(C) Attachment and execution

No attachment or execution may be issued against the Corporation or its property before final judgment in any suit, action, or proceeding in any State, county, municipal, or United States court.

(D) Agent for service of process

The Board of Directors shall designate an agent on whom service of process may be made in any State or jurisdiction in which any insured System bank is located.

(5) Officers and employees

(A) In general

The Corporation may appoint by its Board of Directors such officers and employees as are not otherwise provided for in this part, define their duties, fix their compensation, and require bonds of them and fix the penalty thereof, and dismiss at pleasure such officers or employees.

(B) Employees of the United States

Nothing in this chapter or any other Act shall be construed to prevent the appointment and compensation, as an

officer or employee of the Corporation, of any officer or employee of the United States in any board, commission, independent establishment, or executive department thereof.

(6) Bylaws

The Corporation may prescribe, by its Board of Directors, bylaws not inconsistent with law, regulating the manner in which its general business may be conducted, and the privileges granted to it by law may be exercised and enjoyed.

(7) Incidental powers

The Corporation may exercise by its Board of Directors, or duly authorized officers or agents, all powers specifically granted by the provisions of this part, and such incidental powers as shall be necessary to carry out the powers so granted.

(8) Information

The Corporation may, when necessary, make examinations of, and require information and reports from, System institutions, as provided in this part.

(9) Receiver

The Corporation may act as receiver.

(10) Rules and regulations

The Corporation may prescribe by its Board of Directors such rules and regulations as it considers necessary to carry out this part (except to the extent that authority to issue such rules and regulations has been expressly and exclusively granted to any other regulatory agency).

(Pub.L. 92-181, Title V, § 5.58, as added Pub.L. 100-233, Title III, § 302, Jan. 6, 1988, 101 Stat. 1614, and amended Pub.L. 100-399, Title III, § 302(i), Aug. 17, 1988, 102 Stat. 994.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1988 Act. House Report No. 100-295 (1) and House Conference Report No. 100-490, see 1987 U.S. Code Cong. and Adm. News, p. 2723.

Amendments
1988 Amendment. Par. (5)(A). Pub.L. 100-399 substituted "define" for "to define" and "dismiss" for "to dismiss".

Effective Dates

1988 Act. Amendment by Pub.L. 100-399 effective as if enacted immediately after the enactment of Pub.L. 100-233, which was approved on Jan. 6, 1988, see section 1001(a) of Pub.L. 100-399, set out as a note under section 2002 of this title.

(c) Failure to file statement or pay premium

(1) In general

Any insured System bank that willfully fails or refuses to file any certified statement or pay any premium required under this part shall be subject to a penalty of not more than \$100 for each day that such violations continue, which penalty the Corporation may recover for its use.

(2) Applicability

This subsection shall not apply to conduct with respect to any default that is due to a dispute between the insured System bank and the Corporation over the amount of such premium if such bank deposits security satisfactory to the Corporation for payment on final determination of the issue.

(d) Employment of persons convicted of criminal offenses

(1) In general

Except with the prior written consent of the Farm Credit Administration, it shall be unlawful for any person convicted of any criminal offense involving dishonesty or a breach of trust to serve as a director, officer, or employee of any insured System bank.

(2) Penalty

For each willful violation of paragraph (1), the bank involved shall be subject to a penalty of not more than \$100 for each day during which the violation continues, which the Corporation may recover for its use.

(Pub.L. 92-181, Title V, § 5.65, as added Pub.L. 100-233, Title III, § 302, Jan. 6, 1988, 101 Stat. 1619.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports 100-490, see 1987 U.S.Code Cong. and 1988 Act. House Report No. 100-295 Adm.News, p. 2723.
(I) and House Conference Report No.

LIBRARY REFERENCES

American Digest System

United States agricultural finance instrumentalities, see United States §53(7).

Encyclopedias

United States agricultural finance instrumentalities, see C.J.S. United States § 70.

WESTLAW ELECTRONIC RESEARCH

United States cases: 393k[add key number].

See, also, WESTLAW guide following the Explanation pages of this volume.

SUBCHAPTER VI—ASSISTANCE TO FARM CREDIT SYSTEM

PART A—ASSISTANCE BOARD

§ 2278a. Establishment of Board

(a) Charters

On the date which is 15 days after January 6, 1988, the Farm Credit Administration shall revoke the charter of the Farm Credit System Capital Corporation (hereinafter referred to in this subchapter as the "Capital Corporation") and shall charter the Farm Credit System Assistance Board (hereinafter referred to in this chapter as the "Assistance Board") that, subject to this part, shall be a Federal-ly chartered instrumentality of the United States.

(b) Use of Capital Corporation staff

During the 90-day period beginning on the date of the revocation of the charter of the Capital Corporation, the Assistance Board may temporarily employ, by contract or otherwise under reasonable and necessary terms and conditions, such staff of the Capital Corporation as is necessary to facilitate and effectuate an orderly transition to, and commencement of, the Assistance Board, and the termination of the affairs of the Capital Corporation.

(Pub.L. 92-181, Title VI, § 6.0, as added Pub.L. 100-233, Title II, § 201, Jan. 6, 1988, 101 Stat. 1585.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports 100-490, see 1987 U.S.Code Cong. and 1988 Act. House Report No. 100-295 Adm.News, p. 2723.
(I) and House Conference Report No.

CROSS REFERENCES

Requirement of establishing affirmative action program, see 12 USCA § 2219c.

LIBRARY REFERENCES

American Digest System

United States agricultural finance instrumentalities, see United States §53(7).

Encyclopedias

United States agricultural finance instrumentalities, see C.J.S. United States § 70.

WESTLAW ELECTRONIC RESEARCH

United States cases: 393k[add key number].

See, also, WESTLAW guide following the Explanation pages of this volume.

§ 2278a-1. Purposes

The purposes of the Assistance Board shall be to carry out a program to provide assistance to, and protect the stock of borrow-

ers of, the institutions of the Farm Credit System, and to assist in restoring System institutions to economic viability and permitting such institutions to continue to provide credit to farmers, ranchers, and the cooperatives of such, at reasonable and competitive rates. (Pub.L. 92-181, Title VI, § 6.1, as added Pub.L. 100-233, Title II, § 201, Jan. 6, 1988, 101 Stat. 1585.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports 100-490, see 1987 U.S.Code Cong. and 1988 Act. House Report No. 100-295 Adm.News, p. 2723.
(1) and House Conference Report No.

LIBRARY REFERENCES

American Digest System

United States agricultural finance instrumentalities, see United States §53(7).

Encyclopedias

United States agricultural finance instrumentalities, see C.J.S. United States § 70.

WESTLAW ELECTRONIC RESEARCH

United States cases: 393k[add key number].

See, also, WESTLAW guide following the Explanation pages of this volume.

§ 2278a-2. Board of Directors

(a) Membership

The Board of Directors of the Assistance Board (hereinafter referred to in this part as the "Board of Directors") shall consist of three members—

- (1) one of which shall be the Secretary of the Treasury;
- (2) one of which shall be the Secretary of Agriculture; and
- (3) one of which shall be an agricultural producer experienced in financial matters, and appointed by the President, by and with the advice and consent of the Senate.

(b) Chairman

The Board of Directors shall elect annually a Chairman from among the members of the Board.

(c) Terms of office, succession, and vacancies

(1) Terms of office and succession

The term of each member of the Board of Directors shall expire when the Assistance Board is terminated.

(2) Vacancies

Vacancies on the Board of Directors shall be filled in the same manner as the vacant position was previously filled.

(d) Compensation of Board members

Members of the Board of Directors—

(1) appointed under paragraphs (1) and (2) of subsection (a) of this section shall receive reasonable allowances for necessary expenses of travel, lodging, and subsistence incurred in attending meetings and other activities of the Assistance Board, as set forth in the bylaws issued by the Board of Directors, except that such level shall not exceed the maximum fixed by subchapter 1¹ of chapter 57 of Title 5 for officers and employees of the United States; and

(2) appointed under paragraph (3) of subsection (a) of this section shall receive compensation for the time devoted to meetings and other activities at a daily rate not to exceed the daily rate of compensation prescribed for Level III of the Executive Schedule under section 5314 of Title 5 and reasonable allowances for necessary expenses of travel, lodging, and subsistence incurred in attending meetings and other activities of the Assistance Board, as set forth in the bylaws issued by the Board of Directors, except that such level shall not exceed the maximum fixed by subchapter 1¹ of chapter 57 of Title 5 for officers and employees of the United States.

(e) Rules and records

The Board of Directors of the Assistance Board shall adopt such rules as it may deem appropriate for the transaction of the business of the Assistance Board, and shall keep permanent and accurate records and minutes of its acts and proceedings.

(f) Quorum required

A quorum shall consist of two members of the Board of Directors. All decisions of the Board shall require an affirmative vote of at least a majority of the members voting.

(g) Chief executive officer

A chief executive officer of the Assistance Board shall be selected by the Board of Directors of the Assistance Board and shall serve at the pleasure of the Board.

(Pub.L. 92-181, Title VI, § 6.2, as added Pub.L. 100-233, Title II, § 201, Jan. 6, 1988, 101 Stat. 1586.)

¹ So in original. Probably should be "I".

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports 100-490, see 1987 U.S.Code Cong. and 1988 Act. House Report No. 100-295 Adm.News, p. 2723.
(1) and House Conference Report No.

LIBRARY REFERENCES

American Digest System

United States agricultural finance instrumentalities, see United States 53(7).

Encyclopedias

United States agricultural finance instrumentalities, see C.J.S. United States § 70.

WESTLAW ELECTRONIC RESEARCH

United States cases: 393k[add key number].

See, also, WESTLAW guide following the Explanation pages of this volume.

§ 2278a-3. Corporate powers

(a) In general

The Assistance Board shall be a body corporate that shall have the power to—

- (1) operate under the direction of its Board of Directors;
- (2) adopt, alter, and use a corporate seal, which shall be judicially noted;

(3) provide for one or more vice presidents, a secretary, a treasurer, and such other officers, employees, and agents, as may be necessary, define their duties, and require surety bonds or make other provisions against losses occasioned by acts of such persons;

(4) hire, promote, compensate, and discharge officers and employees of the Assistance Board, without regard to Title 5, except that no such officer or employee shall receive an annual rate of basic pay in excess of the rate prescribed for Level III of the Executive Schedule under section 5314 of Title 5;

(5) prescribe by its Board of Directors its bylaws, that shall be consistent with law, and that shall provide for the manner in which—

- (A) its officers, employees, and agents are selected;
- (B) its property is acquired, held, and transferred;
- (C) its general operations are to be conducted; and
- (D) the privileges granted by law are exercised and enjoyed;

(6) with the consent of any executive department or independent agency, use the information, services, staff, and facilities of such in carrying out this subchapter;

(7) enter into contracts and make advance, progress, or other payments with respect to such contracts;

(8) sue and be sued in its corporate name, and complain and defend in courts of competent jurisdiction;

(9) acquire, hold, lease, mortgage, or dispose of, at public or private sale, real and personal property, and otherwise exercise all the usual incidents of ownership of property necessary and convenient to its operations;

(10) obtain insurance against loss;

(11) modify or consent to the modification of any contract or agreement to which it is a party or in which it has an interest under this subchapter;

(12) deposit its securities and its current funds with any member bank of the Federal Reserve System or any insured State nonmember bank (within the meaning of section 1813 of this title) and pay fees therefor and receive interest thereon as may be agreed; and

(13) exercise other powers as set forth in this subchapter, and such other incidental powers as are necessary to carry out its powers, duties, and functions in accordance with this subchapter.

(b) Power to remove; jurisdiction

Notwithstanding any other provision of law, any civil action, suit, or proceeding to which the Assistance Board is a party shall be deemed to arise under the laws of the United States, and the United States District Court for the District of Columbia shall have exclusive jurisdiction over such. The Assistance Board may, without bond or security, remove any such action, suit, or proceeding from a State court to the United States District Court for the District of Columbia.

(Pub.L. 92-181, Title VI, § 6.3, as added Pub.L. 100-233, Title II, § 201, Jan. 6, 1988, 101 Stat. 1587, and amended Pub.L. 100-399, Title II, § 201(a), (b), Aug. 17, 1988, 102 Stat. 990.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1988 Act. House Report No. 100-295 (1) and House Conference Report No. 100-490, see 1987 U.S. Code Cong. and Adm. News, p. 2723.

Amendments

1988 Amendment. Subsec. (a)(12). Pub.L. 100-399, § 201(a), substituted "(within the meaning of section 1813 of this title)" for "(as defined in section 1813(b) of this title)".

Subsec. (b). Pub.L. 100-399, § 201(b), substituted "exclusive" for "original".

Effective Dates

1988 Act. Amendment by Pub.L. 100-399 effective as if enacted immedi-

ately after the enactment of Pub.L. 100-233, which was approved on Jan. 6, 1988, see section 1001(a) of Pub.L. 100-399, set out as a note under section 2002 of this title.

Hiring, Promotion, Compensation and Discharge of Employees

Pub.L. 100-460, Title V, Oct. 1, 1988, 102 Stat. 2259, provided in part that: "Officers and employees of the Farm Credit System Assistance Board shall be hired, promoted, compensated, and discharged in accordance with title 5, United States Code [Title 5, Government Organization and Employees]."

PART B—FINANCIAL ASSISTANCE CORPORATION

§ 2278b. Establishment of Corporation

Not later than 5 days after January 6, 1988, the Farm Credit Administration shall charter the Farm Credit System Financial Assistance Corporation (hereinafter referred to in this chapter as the "Financial Assistance Corporation") which shall be—

- (1) an institution of the Farm Credit System; and
- (2) a Federally chartered instrumentality of the United States.

(Pub.L. 92-181, Title VI, § 6.20, as added Pub.L. 100-233, Title II, § 201, Jan. 6, 1988, 101 Stat. 1595.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1988 Act. House Report No. 100-295
(1) and House Conference Report No. 100-490, see 1987 U.S.Code Cong. and Adm.News, p. 2723.

Financial Report
Section 206 of Pub.L. 100-233 provided that:

"During the period beginning September 30, 2001, and ending December 31, 2001, the Farm Credit Administration shall review and evaluate the financial condition of the Farm Credit System and report to the Secretary of the Treasury

and the appropriate committees of Congress on—

"(1) the general financial condition of each System institution;

"(2) the total outstanding principal of debt obligations issued under section 6.26 of the Farm Credit Act of 1971 [section 2278b-6 of this title] (as added by section 201 of this Act); and

"(3) the ability of each System institution to retire, at par value, preferred stock issued by the institution in accordance with section 6.27 of the Farm Credit Act of 1971 [section 2278b-7 of this title] (as added by section 201 of this Act)."

LIBRARY REFERENCES

American Digest System
United States agricultural finance instrumentalities, see United States ¶53(7).
Encyclopedias
United States agricultural finance instrumentalities, see C.J.S. United States § 70.

WESTLAW ELECTRONIC RESEARCH

United States cases: 393k[add key number].
See, also, WESTLAW guide following the Explanation pages of this volume.

§ 2278b-1. Purpose

The purpose of the Financial Assistance Corporation shall be to carry out a program to provide capital to institutions of the Farm Credit System that are experiencing financial difficulty.

(Pub.L. 92-181, Title VI, § 6.21, as added Pub.L. 100-233, Title II, § 201, Jan. 6, 1988, 101 Stat. 1595.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports 100-490, see 1987 U.S.Code Cong. and 1988 Act. House Report No. 100-295 Adm.News, p. 2723.
(1) and House Conference Report No.

LIBRARY REFERENCES

American Digest System
United States agricultural finance instrumentalities, see United States ¶53(7).
Encyclopedias
United States agricultural finance instrumentalities, see C.J.S. United States § 70.

WESTLAW ELECTRONIC RESEARCH

United States cases: 393k[add key number].
See, also, WESTLAW guide following the Explanation pages of this volume.

§ 2278b-2. Board of Directors**(a) Board of Directors****(1) Composition**

The Board of Directors of the Financial Assistance Corporation (hereinafter referred to in this part as the "Board of Directors") shall consist of the Board of Directors of the Federal Farm Credit Banks Funding Corporation.

(2) Chairman

The Board of Directors shall elect annually a Chairman from among the members of the Board.

(3) Compensation

The members of the Board of Directors shall receive compensation for the time devoted to meetings and other activities of the Board and reasonable allowances for necessary expenses of travel, lodging, and subsistence incurred in attending meetings and other activities of the Board of Directors in amounts not exceeding levels set by the Farm Credit Administration Board.

(b) Rules and records

The Board of Directors shall adopt such rules as it may deem appropriate for the transaction of its business and shall keep permanent and accurate records and minutes of its acts and proceedings.

(c) Quorum required

No business may be conducted at a meeting of the Board of Directors unless a quorum of the members of the Board is present, and a vote to approve an action requires a majority vote of the members voting.

(d) Chief executive officer

A chief executive officer of the Financial Assistance Corporation shall be selected by the Board of Directors and shall serve at the pleasure of the Board.

(Pub.L. 92-181, Title VI, § 6.22, as added Pub.L. 100-233, Title II, § 201, Jan. 6, 1988, 101 Stat. 1595, and amended Pub.L. 100-399, Title II, § 201(o), Aug. 17, 1988, 102 Stat. 991.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1988 Act. House Report No. 100-295 (1) and House Conference Report No. 100-490, see 1987 U.S.Code Cong. and Adm.News, p. 2723.

Amendments

1988 Amendment. Subsec. (a)(1). Pub.L. 100-399 substituted "part" for "chapter".

Effective Dates

1988 Act. Amendment by Pub.L. 100-399 effective as if enacted immediately after the enactment of Pub.L. 100-233, which was approved on Jan. 6, 1988, see section 1001(a) of Pub.L. 100-399, set out as a note under section 2002 of this title.

LIBRARY REFERENCES

American Digest System

United States agricultural finance instrumentalities, see United States § 53(7).

Encyclopedias

United States agricultural finance instrumentalities, see C.J.S. United States § 70.

WESTLAW ELECTRONIC RESEARCH

United States cases: 393k[add key number].

See, also, WESTLAW guide following the Explanation pages of this volume.

§ 2278b-3. Stock

The Financial Assistance Corporation shall issue stock with a par value of \$5 to System institutions, as provided for in this part, and such stock shall not be transferable.

(Pub.L. 92-181, Title VI, § 6.23, as added Pub.L. 100-233, Title II, § 201, Jan. 6, 1988, 101 Stat. 1595.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1988 Act. House Report No. 100-295 (1) and House Conference Report No.

100-490, see 1987 U.S.Code Cong. and Adm.News, p. 2723.

LIBRARY REFERENCES

American Digest System

United States agricultural finance instrumentalities, see United States § 53(7).

Encyclopedias

United States agricultural finance instrumentalities, see C.J.S. United States § 70.

WESTLAW ELECTRONIC RESEARCH

United States cases: 393k[add key number].

See, also, WESTLAW guide following the Explanation pages of this volume.

§ 2278b-4. Corporate powers

(a) In general

The Financial Assistance Corporation shall have the power to—

(1) operate under the direction of its Board of Directors;

(2) adopt, alter, and use a corporate seal, which shall be judicially noted;

(3) provide for such officers, employees, and agents, including joint employees with the Funding Corporation, as may be necessary, define their duties, and require surety bonds or make other provisions against losses occasioned by acts of such persons;

(4) adopt a salary scale for officers and employees of the Financial Assistance Corporation, in accordance with the directives of the Board of Directors;

(5) prescribe by its Board of Directors bylaws, that are not inconsistent with law, and that shall provide for the manner in which—

(A) its officers, employees, and agents are selected;

(B) its property is acquired, held, and transferred;

(C) its general business is conducted; and

(D) the privileges granted by law are exercised and enjoyed;

(6) enter into contracts and make advance, progress, or other payments with respect to such contracts;

(7) sue and be sued in its corporate name and complain and defend in courts of competent jurisdiction;

(8) acquire, hold, lease, mortgage, or dispose of, at public or private sale, real and personal property, and otherwise exercise all the usual incidents of ownership of property necessary and convenient to its business;

(9) obtain insurance against loss;

(10) modify or consent to the modification of any contract or agreement to which it is a party or in which it has an interest under this part;

(11) borrow from any commercial bank on its own individual responsibility and on such terms and conditions as it may determine with the approval of the Farm Credit Administration;

MEMORANDUM

TO: Shirley Sagawa
Jack Lew

FROM: Catherine Milton

RE: The Inter-American Foundation

DATE: April 2, 1993

This organization has an excellent reputation -- thought the enclosed report would be of interest to you. See pp. 7, 10, 18, 23, 35, 37, and 39.

The Inter-American Foundation in the Making

by Robert W. Mashek

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IAF · 1515 Wilson Blvd · Rosslyn, VA 22209

THE INTER-AMERICAN FOUNDATION

IN THE MAKING

by

Robert W. Mashek

PREFACE

In the spring of 1981, the Inter-American Foundation is celebrating its tenth anniversary. To commemorate the occasion, I invited Robert Mashek of our staff to write about our gestation. Bob has been the Director for our Caribbean and Brazil Region since early 1979; previously, he was a representative for Mexico and for Brazil. His association with the Foundation spans not only the entire ten years of our operation but also the two years before we opened our doors, when he was a member of the Office of Management and Budget and participated in discussions with members of Congress, the White House staff, State Department officials, and development specialists about whether the Foundation was an idea whose time should come to fruition.

Before those discussions, which Bob chronicles here, were launched, the Foundation had been only a glimmer in the eye of Congress. Representative Dante Fascell of Florida became our founding father in 1969 when he introduced the bill to create the Inter-American Social Development Institute. It was renamed the Inter-American Foundation three years later. Over the past decade, we have made approximately 1,000 grants for more than \$100 million in support of initiatives by poor people in Latin America

and the Caribbean. In so doing, we have sought to put into practice the vision of Mr. Fascell, his colleagues in Congress, and our other founders, including the original members of the Board of Directors--Augustin Hart, George Lodge, Charles Meyer, John Richardson, Charles Robinson, Luis Ferré, and John Hannah--and our first president, William Dyal.

Together, they created the guiding idea of the Foundation as a small, independent entity working directly with non-governmental groups in the region, responding to their proposals as they organize and manage them, and building relations on the basis of mutual respect and shared learning. Both the Congress and our Board believed that poor people were capable of organizing themselves for their own development and that such groups were deserving of our support on their own terms. That this idea, which was radical for a governmental agency ten years ago, has become part of today's orthodoxy is testimony to the wisdom of our founders. At the same time, the ingenuity and commitment of our grantees, together with the energy and dedication of our staff, sustain the idea and give it renewed vitality.

Peter D. Bell
President
Inter-American Foundation

CONTENTS

Author's Note	iv
I. The Backdrop (1960's)	1
II. Congress Pulls a Surprise (1969)	5
III. The Administration Huddles (January to April 1970)	15
IV. The West Wing Acts (April to August 1970)	21
V. The Board Takes Charge (September 1970 to March 1971)	25
VI. ISDI Takes Shape (March to May 1971)	41

AUTHOR'S NOTE

In the ensuing pages, I recount the events that brought to life the Inter-American Foundation (IAF), first known as the Inter-American Social Development Institute (ISDI). The fact that it just turned ten years of age is my pretext for telling how it was born.

Its founders did not have in mind creating another, standard governmental agency. Some of its uncommon birthmarks are its resemblance to a private foundation, its derivation of identity from the programs it would support rather than preconceived ideas, and its focus on human beings rather than on techniques or fields of endeavor. While a commonplace objection to government today is that it controls and meddles in people's lives, the IAF set out to encourage people to do more for themselves without telling them what to do. And while foreign aid is often seen as a perennial subsidy with little noticeable effect, the IAF set out to help the poor become more self-reliant. Its blend of idealism and pragmatism sometimes bewilders ideologues. Its concern for ideals such as justice, equity, and human rights is usually associated with traditional liberalism. On the other hand, its intent to enable people to solve their everyday problems and make a better life through their

own efforts is equated with classic conservatism. Although there are bits of truth in these contentions, each is as useful as half a silhouette in defining the nature of an object.

The account you are about to read is only the prologue to the history of the organization in action. It covers only the formative days--from early 1969, when the House Committee on Foreign Affairs began to produce the legislative blueprint for ISDI, to May of 1971, when the Board of Directors formally set its policies and guidelines for operations. Since ISDI was IAF's name during that time, I shall call it ISDI when referring to the institution in that period. Succeeding chapters would certainly be as interesting as the prelude--hopefully, someone will write them--but also less meaningful without it.

While a fine overture may survive a dreary opus, there is no known analogue among public agencies. I would scarcely bother with a prologue if I thought the subsequent acts were prosaic. In my view, the aftermath in this case is consistent with and worthy of the prelude; the ten years of experience hold some significance. The fledgling agency went on to discover and support hundreds of citizen groups working in democratically organized ways on the problems associated with poverty: illiteracy, sickness and

disease, unemployment, capital scarcity, local disunity, in sum, a fragile hold on the stuff of life. Many Latin American and Caribbean groups are still surprised that an agency of the U.S. Government would honor their ideas, efforts, and terms by both supporting and listening to them. It has built a solid form of mutual respect and understanding among the peoples of this hemisphere on a modest, human scale.

While official relations among countries have fluctuated and while governments have come and gone, over the years IAF has maintained a steady course, preserved its autonomy, and earned bipartisan respect from the U.S. Congress and the Administrations of the 1970's. It has demonstrated that small amounts of capital, when added to meager savings and much work of the people themselves, can go a long way. And it showed that this could be done with low overhead costs, without dissipating its resources on bureaucratic motion, while still being accountable. Be it as a harbinger, a spark, or a sign of the times--I am not sure--it has been a factor in the trend of the 1970's for international development assistance programs of all kinds to try to help people at the bottom of the social and economic ladder.

Conceding that these are the views of one who has a stake of a decade's work in the enterprise--and whose nearsightedness may make mountains of anthills and craters of burrows--I ask the reader's indulgence.

If those who did so much to conceive, shape, and bring ISDI to life find this account of some value, I shall be satisfied. Should others find something useful in it, all the better. In addition, I hope that this glimpse into the past may increase the understanding of those who have something to do with the IAF today but who were not present in its beginnings--Caribbean and Latin American groups supported by the IAF, current IAF personnel, and inquisitive onlookers.

To Robert Culbertson, Marian Czarnecki, William Dyal, Dante Fascell, Luis Ferré, John Hannah, Godfrey Harris, Augustin Hart, George Cabot Lodge, Charles Meyer, Arnold Nachmanoff, John Richardson, Charles Robinson, Irving Tragen, and Viron Vaky go my appreciation for their counsel and reminiscences, which were essential to me in telling as complete and true a story as possible. For his encouragement and interest, I am grateful to Peter Bell, who was the first to convince me of worth in the undertaking.

Robert W. Mashek
April 30, 1981

I. The Backdrop

By 1969, Americans were dissatisfied and divided on issues concerning their assistance to other nations. The mood in Washington was to make significant changes, but there was no consensus on any major count. Many expectations, held earlier in the decade for the Alliance for Progress, were reduced to delusion and cynicism. There were multiple views about why the United States should or should not give aid and what could be expected as a result. The justifications were as diverse as the criticisms; one person's point was another's counterpoint. Whereas no one disputed that aid should be in the national interest, the notions about what precisely the national interest was and how it could best be served were varied and sometimes contradictory. The inconclusive debates among Congress, the Administration, and constituencies produced minor changes only, which were usually reductions in funding.

Four broad goals of foreign aid, often conflicting in practice far more than in theory, competed for primacy: economic growth, the promotion of democracy, the strengthening of military allies, and the alleviation of poverty. A major driving force was to prevent the spread of communism. Overriding these goals for foreign aid was the more or less

constant national objective of strengthening the commercial, investment, political, military, and cultural interests of the United States in the world.

While economic growth in developing countries was little contested as a desirable end in itself, the scorecard revealed that authoritarian governments of recent origin were frequently orchestrating the most rapidly expanding economies. The assumption that economic gains among affluent strata of societies would trickle down to the poor was losing its currency. The decade, which began with great optimism about the future of democracy, saw constitutional governments begin to recede before autocracies. Some of the constitutional republics were losing the struggle to grow economically, stagnating in the process of institutionalizing and bureaucratizing public benefits for many demanding interest groups. Some of the staunchest political and military allies of the United States among the developing nations were run by persons whose pursuit of power and self-enrichment was impoverishing their own people. Other regimes that instituted revolutionary changes to meet the material needs of the masses dogmatized anti-Americanism and tried to shroud their despotism in the rhetoric of freedom and justice.

Perhaps the most baffling and frustrating dilemma in a period of general economic growth was the concomitant increase in the multitudes of the poor. By just about every indicator, poverty was expanding in absolute if not proportional terms. Penniless country folk were pouring into city slums by the millions. High unemployment rates were edging higher. The distribution of wealth and income was becoming more inequitable. Added to the tally of problems were environmental damage, social confusion, and cultural disruption.

An official war on poverty and hunger had been declared with panache. However, both the Vietnam War and the war on poverty and hunger began to elude the stadium version of victory and defeat. People, whose imaginations were fired earlier by the notion of an abstract frontier, began to feel tricked. The presumption that Americans could do practically anything, no matter how difficult, became tempered and even rejected in a crisis of self-confidence. It became routine to blame the United States for making matters worse for the world. The social and the political changes within the United States during the 1960's were projecting themselves into the international arena. U.S. officialdom began to look for escape routes from the labyrinth of issues beleaguering foreign aid; shifting responsibility to multilateral institutions was one possibility.

The Administration of Richard Nixon took office in January of 1969. Not knowing what to do about foreign aid, it formed a task force headed by Rudolph Peterson to review the matter and submit recommendations--for changes, to be sure. At the same time, the World Bank had a commission led by former Canadian Prime Minister Lester Pierson at work on global development issues. Until these groups completed their work by early 1970, no one expected any changes in the universe of international development assistance.

II. Congress Pulls a Surprise

In a Guatemala City hotel room in late 1968, Marian Czarnecki and Robert Culbertson talked late into the night about the bedeviling state of U.S. foreign aid. Czarnecki was the staff director of the House Foreign Affairs Committee. Culbertson was the Deputy Assistant Secretary of State for Social and Civic Development in the State Department's Bureau of Inter-American Affairs. They had gone for a brief visit to Guatemala with Congressmen Dante Fascell, Bradford Morse, John Culver, and Donald Fraser to see the AID programs there.

This delegation believed that AID's program was still too exclusively made up of capital transfers justified on the basis of classical macroeconomic growth models that left aside questions of who gained and in what ways. They saw the years of the Alliance for Progress pass, accompanied by substantial economic growth in Latin America but without much change in the position of the poor majority. They knew that only a minute percentage of AID monies was going to help organizations representative of the Latin American masses.

These men had been among the protagonists for making more funds available to Latin American local, community programs in which people of scarce resources and opportunities could participate. They felt that people generally should have a more active role in the shaping of their nations' development and in the reaping of benefits. Over the years, the Congress amended foreign aid legislation to increase programs for small farmers' cooperatives and community development. Title IX had been added to the Foreign Assistance Act in 1966 to emphasize further the importance it placed on popular participation and social and civic development. AID accommodated the Congressional directive by setting up offices of social and civic development in its regional bureaus and earmarking a small amount of funds for these programs. The new offices made grants to U.S. private organizations which carried out programs and projects with private organizations abroad. The bulk of AID's program continued intact.

Nonetheless, a struggle ensued in the bureaucracy. In 1968, Title IX found a supporter in the person of Covey Oliver, the Assistant Secretary of State for Inter-American Affairs. Oliver elevated social and civic development in the State and AID structure to the level of deputy assistant

secretary and named Culbertson to the position. The change in the organization resulted in additional support in a few Latin American countries for the cooperative movement and for private, national development foundations.

As that night in Guatemala City grew old, Czarnecki and Culbertson, weary of trying to make AID make up for its shortcomings in promoting popular participation in development, seized upon an idea already in circulation among Title IX advocates: to create a new agency for social and civic development. They would have it be a public corporation, independent of AID and the cabinet departments, so that it could chart its own course. It would work only with Latin America and the Caribbean because a regional entity stood a better chance of getting through Congress than one of worldwide responsibility. The House Subcommittee on Inter-American Affairs, chaired by Fascell, could focus its concerns and efforts of several years upon a separate, regional program. Since governments were quick to subscribe to the goals of popular participation in the development of their countries but unwilling or unable to fulfill these goals, the new agency would support the organizations of the peoples themselves.

The next morning, Czarnecki outlined the idea to Fascell. Fascell was enthusiastic and urged Czarnecki to proceed with the staff work and the draft legislation.

Over the succeeding months, Czarnecki did just that, with the help primarily of Culbertson and Herman Kleine of AID and Anne Brownell Sloan of the International Development Foundation. Fascell encouraged and counseled them along the way and found ready support for the new agency among his colleagues on the Inter-American Affairs Subcommittee. The House Committee on Foreign Affairs reported out a draft bill to that effect on November 6, 1969.

The draft legislation came as a surprise to the Office of Management and Budget (OMB).^{*} It was, of course, only one among hundreds of such draft bills sent by Congress to the OMB, which has a clearinghouse function to coordinate among the various interested departments and agencies the formulation of a unified Administration position on proposed legislation. This bill called for the establishment of an "Inter-American Social Development Institute" (ISDI).^{**}

It was a curiosity to those looking at it for the first time. The legislative language echoed phrases of the Alliance for Progress. Its overall purpose was to:

^{*}In 1969, this staff arm of the Presidency was still named the Bureau of the Budget. Its name was changed in mid-1970. It will be called OMB throughout this paper.

^{**}ISDI was re-named "Inter-American Foundation" in 1972.

...provide support for developmental activities designed to achieve conditions in the Western Hemisphere under which the dignity and the worth of each human person will be respected and under which all men will be afforded the opportunity to develop their potential, to seek through gainful and productive work the fulfillment of their aspirations for a better life, and to live in justice and peace.

Other purposes of the organization were to:

- (1) strengthen the bonds of friendship and understanding among the peoples of this hemisphere;
- (2) support self-help efforts designed to enlarge the opportunities for individual development;
- (3) stimulate and assist effective and ever wider participation of the people in the development process; and
- (4) encourage the establishment and growth of democratic institutions, private and governmental, appropriate to the requirements of the individual sovereign nations of this hemisphere.

The provisions allowed a broad range of action for providing aid to countries of the Western Hemisphere. ISDI was directed to "place primary emphasis on the enlargement of educational opportunities at all levels, the production of food and the development of agriculture, and the improvement of environmental conditions relating to health, maternal and child care, family planning, housing, free trade union development, and other social and economic needs of the people." That covered just about everything except infrastructure, balance of payments support, and heavy industry.

It also had a dazzling range of choice among collaborators. The Institute could work "primarily through and with private organizations, individuals, and international organizations," but it would "make and perform contracts and other agreements with any individual, corporation, or other body of persons however designated whether within or without the United States of America, and with any government or governmental agency, domestic or foreign." It could do its work in nearly ever imaginable way "by undertaking or sponsoring appropriate research and by planning, initiating, assisting, financing, administering, and executing programs and projects designed to promote the achievement of such purposes."

✓ ISDI was established as a U.S. Government Corporation subject to the provisions of the Government Corporation Control Act. It was to have a part-time, unpaid Board of Directors of seven members, four from the private sector and three from agencies of the United States concerned with inter-American affairs. The staff would be limited to 100. The bill provided that up to \$50 million from the budget of the Agency for International Development (AID) for fiscal years 1970 and 1971 would be available to it. In contrast to the usual governmental practice of providing public monies on an annual basis only, these funds would remain available to ISDI until expended without regard to fiscal years.

The Report of the Committee on Foreign Affairs of the House of Representatives, dated November 6, 1969, was more specific in giving reasons for ISDI's being and in criticizing U.S. foreign aid:

First, that during the past 8 years all too little United States assistance has reached the masses of the Latin American people or made a visible impact on their daily lives;

Second, that the social development goals of the Act of Bogotá, the Charter of Punta del Este and the Declaration of American Presidents, whose objectives of expanding opportunity for the great majority of people form the very cornerstone of the Alliance for Progress, are not being achieved in any substantial, meaningful sense; and

Third, that while Alliance for Progress programs operating at the government-to-government level had done an impressive job in promoting industrial and economic growth of Latin America, they have proved much less effective in responding to the requirements of social and civic change on that continent.

By proposing ISDI, the Congress was acting on its conclusion that social and civic development could not be adequately fostered by existing foreign aid structures. The House Committee intended that ISDI "assist in rectifying those shortcomings and in restoring the necessary and proper balance between the economic and social objectives of inter-American cooperation and development." It thought that ISDI could "help to overcome an important gap in the machinery of the Alliance for Progress."

The Committee Report made it quite clear that ISDI should operate through private rather than governmental channels. The Committee Report reflected the interests of U.S. private organizations by noting that there were "some 800 non-profit organizations in the United States which are presently involved in social development activities in Latin America." It went on to note that "the Committee believes that a number of development assistance programs presently administered by AID can and should be transferred to the Institute....," including "promotion of cooperatives, credit unions, savings and loan associations," etc.

The Report also stressed that ISDI should be independent from the rest of the Government in order to be insulated from political currents affecting international relations. Some Congressmen let it be known that if ISDI were staffed by old foreign aid hands, they would withdraw their support. All in all, there was a clearer picture of what should be avoided than of what should be done.

The Administration had to formulate a position on the bill. Most of the interested parties in the Executive Branch were mildly taken with the prospect of a small, new foreign aid agency; it would be the first in 10 years. Although the AID bureaucracy was generally indifferent to ISDI, it contained factions for and against. Believing

a better program could be carried out by a separate agency, the people in social and civic development helped the process of creation, sometimes on the sly, and believed that they would be part of the new agency. AID central offices, however, were loath to relinquish control over any part of the bilateral program. The leadership of the State Department's Bureau of Inter-American Affairs--Covey Oliver, Robert Sayre, and Viron Vaky--were knowledgeable and supportive of the bill from the time it was in the drafting stage.

Nonetheless, sympathetic inclinations were subordinated to an interest in good and orderly government. The Executive Branch hedged its position. It endorsed the objectives of the bill but asked that Congress defer action until the Peterson Task Force had completed its work and the President had submitted to the Congress in 1970 his proposals for a reorganization of foreign aid. A letter, relaying this message, was duly cleared through the Executive Branch and signed by the AID Administrator, Dr. John Hannah.

The letter had a short life. Receiving it by messenger, Mr. Fascell glanced at it, refused to accept it, and returned it forthwith to Administrator Hannah. Ignoring the proprieties of clearing such communications with OMB, Dr. Hannah sent a new, brief letter, stating unequivocally his support for ISDI and encouraging enactment. Fascell

proceeded to organize bipartisan support for the bill in both houses of Congress. He received vital backing from Senators Fulbright and Church and Representatives Morse, Fraser, Maillard, and Culver.

On the first workday of 1970, the Administration learned with some perplexity that on December 30, Congress had enacted the bill, Public Law 91-175, establishing ISDI as Part IV of the Foreign Assistance Act. The Senate-House conference had readily agreed to it, and it had not been subjected to any floor debate in either the Senate or the House. People in the Executive Branch were amazed that Fascell managed to muster enough support among both Democrats and Republicans in Congress to establish a new agency, especially one that did not have the Administration's support.

III. The Administration Huddles

The Congress surprised the Administration by demonstrating its ability to come to a consensus on a new move in foreign aid. With nearly a year in office, President Nixon had done little more than to state his intention to build a "mature partnership." Precisely how relationships were to be refashioned remained unspecified. The only sign of a new approach was talk about channeling more foreign aid through the multilateral institutions, primarily the World Bank and the Inter-American Development Bank, and less through the bilateral programs, primarily AID.

It was not self-evident that ISDI, a new U.S. agency inter-American in name only, was consistent with the general policy intent. The same ambiguity applied to the Overseas Private Investment Corporation (OPIC), another U.S. Government agency created by Congress at the same time. The rationale for increasing levels of support through multilateral institutions was that it would insulate U.S. foreign aid to some degree from direct, bilateral involvement in the internal affairs of foreign nations. It was not lost upon the middle-level staff of the Administration that, while it was apparently looking for ways to diminish U.S. involvement in other countries, ISDI could be seen as a new

U.S. effort to influence the internal workings of other societies. U.S. academicians and governmental officials generally acknowledged that Latin American societies would have to undergo considerable internal changes if the well-being of their peoples was to be improved. But whether the U.S. Government should assume a role in abetting such change, at home or abroad, was debatable. Making alterations in the very fabric of society along predictable lines--at times labeled "social engineering"-- was considered far too inexact to be a science and too contentious to be widely accepted as a proper function of the U.S. Government in its own domestic affairs. The failure of the Alliance for Progress to produce significant reform in Latin America left many unwilling even to think about another attempt. Reflecting a more hands-off posture towards the affairs of other countries, President Nixon was declaring a new partnership, the importance of national dignity and sovereignty, and other nations' responsibility for their own economic and social development. In this light, ISDI appeared to be a reversion to an assumption of the 1960's that the United States was responsible for the development of other countries.

Since the Administration had considered passage of the bill improbable, it had failed to analyze the proposal thoroughly and professionally. The organizational form, a U.S. Government corporation, had been tailored for revenue-

producing enterprises such as the Panama Canal Company or the Tennessee Valley Authority, not for agencies which meant to give, not make, money. The legislation was general enough to encompass all of AID's technical assistance and grant programs in all of its fields of endeavor, be they health, housing, agriculture, family planning, education, or "other social and economic needs of the people." As such, there was no apparent division of labor between the social, economic, and political development functions of ISDI and those of AID, which was left with its social and civic development mandate intact under Title IX of the Foreign Assistance Act. The legislation in force not only permitted but directed both agencies to operate the same kind of programs. The general, resoundingly stated purposes of ISDI, which suggested changing the face of the Western Hemisphere, seemed almost comically outsized for a staff of 100 and a budget of \$50 million for an undefined period.

Nevertheless, the appearance of ISDI presented an attractive opportunity for government funding of private organizations. Through the 1960's, there was strong official fascination with the use of private organizations to carry out foreign affairs programs. AID was supporting many U.S. private organizations in social development programs overseas. But these organizations complained that AID

had an obsession with fitting their activities into its country plans and refused to fund projects of a scope less than nationwide. They also chafed under what they believed to be burdensome reporting requirements, delayed payments for work performed, and lack of assurance regarding future funding. While interest in the role of private organizations in international programs was growing, however, the amounts of money available to them were declining. The AID budget itself was in gradual decline. U.S. private organizations, including the large foundations, were allocating a greater percentage of their resources to U.S. domestic social experiments. For these reasons, the U.S. private organizations that relied heavily on government funding for their foreign operations were the constituency that supported the creation of ISDI. Among them were the American Institute for Free Labor Development, the Pan American Development Foundation, the International Development Foundation, the Overseas Education Fund of the League of Women Voters, the Cooperative League of the U.S.A., Credit Union National Association, and Partners of the Americas.

During the late 1960's, the U.S. political establishment had affirmed its interest in an international role for private organizations. In 1967, President Johnson formed a

Committee on Overseas Voluntary Activities to assess the value of private organizations after the Central Intelligence Agency (CIA) had terminated funding for a few such organizations. The Committee recommended that a new entity be formed to make grants to U.S. private voluntary organizations doing work overseas consistent with national interests. In the late 1960's, a number of bills were introduced in Congress proposing to establish an independent board or commission that would make grants to individuals and private entities. These proposals varied in focus, but all of them envisaged a worldwide rather than a regional organization. None of the bills was enacted; their sponsors could never find enough congressional support.

Soon after taking office in early 1969, President Nixon asked Governor Nelson Rockefeller to visit Latin America and to advise him on courses of action to take in relations with those countries. In his report, Rockefeller pointed out the need for change in the social structures of Latin American nations. He recommended establishing, among other entities, a Western Hemisphere Institute for Education, Science, and Culture. Although superficially resembling ISDI, Rockefeller's Institute intended to support the Science and Education Fund of the Organization of

American States (OAS) and general programs in formal education, scientific research, and the plastic and performing arts within a government-to-government context.

With this background in mind, the Administration did not seriously think of deferring or ignoring the implementation of the bill creating ISDI. Later that year, it would need the support of Congress for its proposals to reorganize foreign aid. Furthermore, it would have been difficult for anyone to strongly oppose a proposition as modest as ISDI. Officials at the highest level did not focus on it. Those individuals in the Executive Office who had something to do with ISDI favored a completely new attempt at handling foreign aid, especially to see whether funds could reach people who really needed aid. Possible discrepancies with overall policies were speculative since such policies were not yet formed.

For the larger world of affairs, it seemed sufficiently persuasive to say that: a) ISDI was another expression of the special relationship between Latin America and the United States; and b) it recognized private sector expertise and initiative in international development. In a pragmatic sense, it had no serious account against it; for the foreseeable future, it would cost nothing extra because its \$50 million would be transferred from the AID budget.

IV. The West Wing Acts

Responsibility for the next step in creating ISDI rested in the offices of the National Security Council (NSC) of the White House. In those days, the NSC was headed by Henry A. Kissinger. His advisors for Latin America were Viron Vaky and Arnold Nachmanoff, who were the chief stewards of ISDI for several months. The task at hand was to select nominees for the Board of Directors. Several months of delicate negotiations ensued between the White House overseers of political appointments, who wished to select candidates purely on the basis of political patronage, and Vaky and Nachmanoff, who insisted that Board members should have some experience in Latin American affairs or in foreign assistance as well as political acceptability to the Administration. The NSC argued that broad and bipartisan congressional interest in ISDI made it advisable for the Administration to nominate persons qualified for the responsibilities of Board membership. Carefully relying on support from Congressmen and key private citizens with Republican credentials, the NSC won its point on every nominee chosen.

While the selection of nominees for the Board proceeded, the NSC advisors had the first two documents concerning ISDI issued from the West Wing of the White House on

May 25, 1970. The first was a memorandum from Kissinger to the Director of OMB and the Administrator of AID. It announced the President's decision to establish ISDI and to soon nominate a Board of Directors. It directed OMB to handle ISDI's funding, to assist the Board in setting up ISDI, and to review by June 30, 1971, ISDI's functions and funding. The review was to include ISDI's relationship to reorganized aid programs, be it a part of a worldwide agency or a non-governmental entity.

President Nixon signed the second document, which simply directed the AID Administrator to transfer to ISDI \$10 million, the first installment of the \$50 million total. AID made the transfer on May 28. ISDI now existed--as account No. 11X4031 in the Bureau of Accounts of the Treasury Department.

The West Wing was again silent on ISDI to the world beyond until August 17 when the Office of the White House Press Secretary announced the President's nomination of the seven Board members:

Chairman: Augustin S. Hart, Jr., Executive Vice President, Quaker Oats Co.;

Vice Chairman: George Cabot Lodge, Lecturer, Harvard Business School;

Charles A. Meyer, Assistant Secretary of State for Inter-American Affairs;

John Richardson, Jr., Assistant Secretary of
State for Educational and Cultural Affairs;

Charles W. Robinson, President, Marcona Corporation of San Francisco;

Luis A. Ferré, Governor of Puerto Rico; and

John A. Hannah, Administrator of AID.

Two days later, on August 19, Vaky and Nachmanoff managed to have the White House Press Secretary release another statement on ISDI, wired by President Nixon from Yugoslavia, where he was on a state visit. Two paragraphs are worth quoting, for this is the only White House statement issued to date that comments on the substance and operations of ISDI:

The Institute will provide grant support for innovative, experimental programs undertaken primarily by private, non-profit organizations. It is designed as a pilot project to bring the dynamism of U.S. and Latin American private groups to bear on development problems through people-to-people programs, and to help broaden the participation of individuals in the processes of development.

The Institute will be limited in size and scope of operations to help keep it on a path of creative innovation. It will be separate from existing government agencies, and it will not have personnel permanently assigned abroad. It is my hope that the Institute will develop a fresh approach to support new and experimental efforts by private organizations to contribute to social and institutional development, particularly in the areas of education and agriculture. The Board of Directors will, of course, establish detailed operating guidelines for the Institute.

The communique reflected the White House resolve to keep ISDI separated from the foreign affairs agencies. It assigned to OMB the job of helping the Board form ISDI and repeated the instruction that OMB "conduct by June 1971 a review of the operations and funding requirements, including its relationship to any new organizational arrangements for foreign aid programs which may be proposed."

V. The Board Takes Charge

On September 21, 1970, the Senate confirmed the appointments of Board members Hart, Lodge, Meyer, Richardson, and Hannah. Under Secretary of State John Irwin administered the oath of office to these five members on October 2 in a ceremony at the State Department. The Senate confirmed the nominations of Robinson and Ferré on October 17.

The Senate hearings on these nominations contain some interesting insights into the kind of thinking that gave rise to the new organization:

Senator Frank Church: My understanding is that, for one thing, this Institute will give us an opportunity to avoid administering aid on a strictly government-to-government basis, which has had the unfortunate tendency of identifying the United States with every kind of totalitarian regime imaginable and with very sour political consequences. So one objective is to reach around the government-to-government umbilical cord and to experiment with aid projects that involve private groups and business groups, labor groups, charitable foundations and the like in Latin countries. I also believe that the Institute is conceived to be a kind of catalyst which will undertake to give as much latitude as possible to Latins in determining what projects are needed in actually administering the aid programs.

Augustin Hart, Jr.: I think the intent is certainly very clear to me, which is to be innovative, to endeavor to find things to do that have not been done before, and ways to do them that are different from the way they have been done. I think the essential element here is one of innovation.

George Cabot Lodge, (citing a program in Panama): And all along it has been extremely difficult for this kind of an enterprise to get support from AID, for a variety of reasons. I think the most important of which is that AID has to work through the local government, and frequently local governments regard things like this as being a problem. I would see this organization as being the sort that would be eligible for assistance from ISDI. It is absolutely essential to the long run political development of the country. It is thoroughly indigenous. There are no Americans around telling anybody what to do.

There was a noteworthy exchange in the hearing on the potential impact of ISDI:

Fulbright: Would you think it fair to say that ISDI is also devoted to the prevention of Communism developing in Latin America?

Lodge: It all depends on how you look at it, sir. ISDI, as it says in its purposes, has the objective of, I think, building a political condition where any kind of totalitarianism will be alien, and so it has as its purpose creating a condition where totalitarianism of any sort will not grow.

Church: That is a very big task, considering how large the plant has grown already. How realistic is it to expect that the work of this Institute or any other aid program that we might undertake in Latin America can have much impact upon the politics of these countries? Haven't we gone through a period when we really believed we could mold the political institutions with our know-how and our hope and our interventions, and hasn't the result of the last decade pretty well demonstrated the futility of that kind of thinking?

Lodge: Yes, I think you are right. What I do think, though, is that the work of the Institute can help create a condition where it is Latin Americans themselves who decide their fate, and that may be more or less democratic, more or less totalitarian, but it will be they who will be deciding, and I think that is the most we can hope for.

On October 3, the Board met for the first time in formal session in the Old Executive Office Building. They heard briefings from the NSC, OMB, AID, the Inter-American Development Bank, the Peace Corps, and the State Department's Bureau of Educational and Cultural Affairs. Representatives of the Executive Office (NSC and OMB) outlined the kinds of policy and programmatic decisions the Board would have to make eventually and urged them, if they needed any urging at all, to take their own counsel independent of any existing agencies, especially those in foreign affairs. At this meeting the Board decided to commission studies of existing aid programs for Latin America and of programmatic options for ISDI, to begin the search for top managers, to approve a budget request, and to pursue the questions of permanent office location and a change in the organization's name.

Between October of 1970 and March 1971, the Board met monthly in Washington, D.C., with the exception of a meeting in San Juan, Puerto Rico in February of 1971. Straightaway, they set themselves to work in several areas to bring the organization into being. They appointed Arnold Nachmanoff of NSC and Robert Mashek of OMB to supervise all staff work and asked AID to provide administrative sup-

port until permanent staff were selected. The following is a summary of developments in those areas that commanded the Board's attention during those months.

A. The ISDI Study Group

The Board was determined not to rush into operations uninformed. First of all, they wanted information on existing programs and time to seek counsel and to deliberate. They were definitely not prepared simply to take over programs being funded by AID. They formed a Study Group, headed by Irving Tragen, to do a survey of assistance for social and civic development in Latin America and the Caribbean, to interview as many people as possible for their recommendations, and to present program alternatives for ISDI. Assisting Tragen in the interviews and the formulation of programmatic options were Godfrey Harris, James Ragan, and J. William Wenrich, all former Foreign Service Officers who had returned to the private sector. Thomas Riegert, detailed to the Group from AID, supervised the survey of existing programs. Arnold Nachmanoff was designated to oversee the work of the Study Group on behalf of the Board.

At the end of January, 1971, the Group presented three final reports: "Program Alternatives for the Inter-American Social Development Institute," "Report on the Survey of Social and Civic Development Programs," and "Report on Interviews Conducted."

Although the Study Group and its reports received slight mention after ISDI went into action, they not only provided much useful information but also pointed the way toward the policies and the method of operation that were eventually adopted. Later, as a new ISDI staff gathered and developed its own dynamics, the reports quickly receded from the institutional consciousness. After 10 years, it is worthwhile to recapitulate the highlights of these reports.

1. The "Program Alternatives" began with the statement of objectives that were later accepted almost verbatim by the ISDI management:

- Greater as well as more equitable distribution of income, goods, and services within Latin and Caribbean societies.
- Greater opportunity for people to participate in the critical decisions and processes which affect their lives.
- Amelioration of societal conflicts which result from the development process and forging of linkages among conflicting groups.

The report is a concise and original summary of a massive amount of information. It described the full range of activities that ISDI would support. Its delineation of possible roles for the organization included the "Funder" role that ISDI assumed and the "Stimulator," "Broker," and "Research Center" functions it took on as sidelines in varying degrees from time to time.

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2. The "Report on the Survey of Social and Civic Development Programs" identified over \$600 million that international institutions, U.S. public and private organizations, and European entities furnished in 1969 for social development in Latin American and the Caribbean. The following program categories were included: agriculture, community development, cooperatives, education and manpower, health and nutrition, labor, leadership training, population, social research, and urban problems. Many of the Report's conclusions still have a familiar ring in 1981:

- The problems dwarf the apparently large amounts of resources allocated for social and civic development. Those benefitting from assistance are a small percentage of the poor.
- Private organizations are more active in this area than are public agencies.
- The motives of private donors are an assortment of ideologies, religious persuasions, and humanitarian impulses. Their dedication to human rights and individual development often brings out pioneering efforts.
- The multilateral institutions and U.S. bilateral programs assist governments in improving their delivery of social services; as such, the potential for innovation and substantial change may well be quite limited.
- Evaluations of programs are too limited in coverage, too narrow in scope, and too diversified in focus.

3. The "Report on Interviews Conducted" is an informative sampling of thinking about development assistance 10 years ago. From November of 1970 to January of 1971, the Study Group interviewed 219 persons, mostly Americans, representing a broad cross section of interests in hemispheric affairs. They included academicians, businessmen, foundation executives, labor and cooperative leaders, government officials, and others. A minority of them thought there was no role for a U.S. agency like ISDI to play in Latin American and the Caribbean.

Some of the preponderant opinions were as follows:

- The statement of ISDI objective (equitable distribution, participation, and societal linkages) is endorsable.
- ISDI should be a funder.
- The priorities should be to strengthen Latin and Caribbean institutions and to respond to their requests. However, opinions divided sharply on whether ISDI should support primarily U.S. organizations or Latin and Caribbean organizations, or both.
- Grants should not be subject to prior approval by the State Department or U.S. embassies nor affected by political variations in U.S. relations with a given country.
- ISDI should be sensitive and responsive to Latin American and Caribbean aspirations, open to all political and ideological affiliations, and aware that it must win Latin and Caribbean confidence in its intentions.

- Great attention should be given to: avoiding preconceptions in programming; working out projects flexibly and objectively; fully involving prospective grantees in defining objectives, benchmarks for evaluation, time frames, and resource requirements; and having grantees account fully for funds provided and results achieved, without detailed monitoring or second-guessing by ISDI staff.
- Maintain a low profile, deal openly, and mind the style of operation.
- Programs supported should give promise of continued existence on their own; thus, local resources should be available for a project.
- Have the private organizations assisted work out their relationships with their own governments.
- Special emphasis should be given to projects which, if successful, offer potential for replication elsewhere.
- The major impediments ISDI would face will be: as a U.S. Government agency, identification with past mistakes of other U.S. programs; the general ignorance about the dynamics of social and political development; and organizational and managerial weaknesses in Latin American and Caribbean entities.

In and beyond their formal meetings for the next four months, the Board engaged the substance of the reports. Whereas they felt that they should not formally set policies until an Executive Director had been named and had had a chance to study the issues and options, they wanted to agree on a general sense of direction before

interviewing candidates. During these months, they began to arrive at decisions. Wishing to reach the Latin American and Caribbean poor in ways not done by U.S. agencies before, they felt that logically ISDI should communicate with and support those people in as direct a manner as possible. Furthermore, they thought that if ISDI funds were to pass the test of benefitting the poor, ISDI would have to find out from them what they wanted to do and how. Thus, early in 1971, while the search for top management was still proceeding, the Board had decided on a responsive approach that precluded a precast program. They also began to see that they would prefer to deal directly with organizations of, for, and by the Latin American and Caribbean poor and, thus, to avoid operating through surrogate intermediaries.

B. Search for an Executive Director

At its first meeting, the Board decided to contract the management consulting firm Cresap, McCormick, and Paget, Inc., (CMP) to sketch options for organizing ISDI, to formulate job specifications for the position of Executive Director and other key personnel, and to conduct a search for candidates. By December, the Board was able to review CMP's report on alternate organizational forms and a list of dozens of potential candidates for the job. They resolved to make no decisions on organizational structure until the Executive Director was appointed.

At the end of January of 1971, the entire Board interviewed those persons they judged most qualified for the job. The job specifications were an understanding of and experience in Latin America, dedication to social change, good political judgement, personal stature, management capabilities, fluency in Spanish or Portuguese, private sector experience, and interest in innovation. Beyond these qualifications, they were looking for someone who could think and act freely beyond bureaucratic conventions, deal effectively with the official establishment, and have the patience to look for an as yet unknown clientele.

At the San Juan meeting in February, they announced the choice of William M. Dyal, Jr. as Executive Director and Irving Tragen as Deputy Executive Director. Dyal had a background of work in the Peace Corps, the Christian Life Commission, and the Baptist Foreign Missions. Tragen was a career Foreign Service Officer who had served in a number of AID capacities. Both had spent most of their professional years in Latin America. Dyal was the only finalist previously unknown to every member of the Board.

The Board was determined to conduct the selection of the senior staff members in a professional, non-political manner. The White House personnel office attempted to assert its usual prerogative of making the final decision on

executive appointments. However, the Board successfully asserted the appointment authority provided in the legislation. They protested that they understood their mandate to be the establishment of ISDI as much like a private foundation as possible and that, thus, political appointments of senior staff would impugn the private, non-partisan character of the agency. The Board suggested that White House staff suggestions should be sent to CMP and that, if there were any objections to this approach, they were ready to take the matter to the President. The White House staff was silent until Dyal was selected. When they asked about the nature of Dyal's politics, the Chairman reportedly replied, "They are above reproach." Further questioning from the White House gradually faded away, without having affected substance or the appointment of personnel.

C. The Budget

As its first meeting, the Board approved a fiscal year 1972 budgetary request to OMB. The documentation had been drafted by Mashek, the OMB examiner of U.S. assistance to Latin America. OMB attempted to allow for as much flexibility as possible in the request while making it concrete. Submitted formally on October 19, 1970, the budget plan was for \$12.1 million, of which \$10 million was for grants and \$2.1 million for overhead, and for 100 permanent personnel positions; it also projected the

transfer of an additional \$25 million from AID accounts. It also guessed that the needs for the current fiscal year, 1971, were \$5.8 million and 30 personnel positions. The Board was uncomfortable with the need to put its signature to hard and fast figures so early. But there was no choice in the matter. They were particularly wary, if not utterly opposed, to any suggestion of a budget limitation so early on. As it worked out, the budget allowed more than ample room for ISDI's first year of operations.

That first budget cycle was relatively uneventful, especially since OMB was well disposed toward ISDI and had the duty to help the Board. OMB reviewed the request it had drafted and reduced the total from \$12.1 million to \$10.9 million. It lowered the amount of AID transfers from \$25 million to \$20 million. An appeal from the Vice Chairman of the Board in January of 1971 was at the time in vain. Four months later, however, OMB directed AID to transfer \$40 million to ISDI (added to the \$10 million transfer directed by the President in August of 1970), with the thought that \$50 million would fund ISDI for several years. Since AID was having some trouble finding good placements for its loans, its program was not harmed by the transfers.

From the beginning, the Board also began representations to obtain resources from the Social Progress Trust Fund, which consisted of U.S. monies administered by the Inter-American Development Bank. These efforts finally found success in 1973.

D. Location

The question of where to locate the offices of ISDI came up for discussion at every Board meeting. There was a strong body of opinion, within the Board and elsewhere, to locate ISDI away from Washington, D.C., in order (in the words of Dante Fascell) to remove it from the "depressing influence of bureaucracy." The entire congressional delegation of Louisiana made a pitch for settling ISDI in New Orleans. Representatives of the University of California suggested Los Angeles. Although Mr. Fascell never pressured to have it located in Miami, his home district, that city was kept in mind for its proximity to the Caribbean and Latin America and its travel facilities. At their first meeting, the Board asked for a staff report on administrative and logistical conditions in several locations, including Miami, New Orleans, New York City, and White Plains, New York. It should be noted at the same

time that some Board members thought that ISDI should be located in or close to Washington, D.C., since it would perforce have much to do with the Congress, the Executive Branch, and private agencies headquartered there.

By November, the range of inquiry narrowed to the New York suburbs, Washington, D.C., and the Washington suburbs. In December, the Board asked for detailed investigation into the possibilities for setting up offices in the Washington area, with special attention to Reston, Virginia and Columbia, Maryland, two new, planned communities about 20 miles from the center of Washington. In January of 1971, the Board made a firm decision to locate ISDI in the Washington metropolitan area, but not in the District of Columbia, and to leave the choice of a specific site to the Executive Director. In consultation with the Board, Dyal chose Rosslyn, Virginia soon after his appointment.

E. The Name

From the first time the Board met in October of 1970, they were dissatisfied with the organization's name, the Inter-American Social Development Institute. It suggested an institution of research or higher education. It was extraordinarily clumsy and forgettable. The acronym, ISDI, did not connote solidity, sobriety, or style. Thus,

as soon as the Board convened, the search for a new name began. In November, they decided that the name should be "The Foundation of the Americas" or "The Americas Foundation" but asked that a check be made to see whether either name might already be in use. It was discovered that an "Americas Foundation" already existed. A change to "The Foundation of the Americas" was formally submitted as a legislative amendment in early 1971, but it was substituted by "Inter-American Foundation" at Dyal's decision a few months later. The name, Inter-American Foundation, was enacted in law early in 1972. At the same time, the title of chief executive was changed from Executive Director to President.

* * *

A topic ever present in the minds of the Board members was the autonomy of ISDI. They hoped to exclude it from the normal governmental regulations on personnel, procurement, and consultants and from accountability to the General Accounting Office and the Inspector General for Foreign Assistance. These hopes were foiled, however, for ISDI was subject to the Government Corporation Control Act. The Board was of one mind regarding the importance of ISDI's independence from the official mechanisms of foreign affairs. Interestingly enough, Meyer and Richardson of the State Department and Hannah of AID, none of them career



civil servants and all of them impatient with the lumbering bureaucracies they were trying to enliven, were especially emphatic about the need for ISDI to proceed independently in regard to both official foreign relations and governmental red tape. Dr. Hannah advised in axiomatic style, "If you don't want the answer, don't ask the question." Autonomy, then, was an objective on two fronts: substantive and administrative.

In the midst of their work, the Board had to deal with restless, interested parties. In January, for example, they received a letter signed by 19 Congressmen, expressing "concern over the lengthy delays in getting (ISDI) under way." Chairman Hart replied, describing the activities of the Board, assuring them of the desire to move as expeditiously as possible, and noting that the Board had "resisted the easy and perhaps initially more rapid course of merely taking over current programs" and had "taken great care to study and understand all relevant critical factors before making decisions which will determine the course of this exciting new initiative in foreign assistance." Others, who had an interest in ISDI but were outside the action, were critical of what they thought was a snail's pace in creating the organization, but were less straightforward in venting their views.

VI. ISDI Takes Shape

On March 16, 1971, William M. Dyal, Jr. became Executive Director and Irving Tragen Deputy Executive Director in a swearing-in ceremony in the Old Executive Office Building. The next day, ISDI opened temporary offices at 1016 16th Street, N.W., in Washington, D.C., as preparations were afoot to ready permanent offices in Rosslyn, Virginia. About 12 staff people were immediately signed up. Major preparations were in progress for a Board meeting in May when policies and operating guidelines would be formally set.

In the interim, Dyal had to testify on April 21 before the House Appropriations Subcommittee on Foreign Affairs, chaired by Rep. Otto Passman. Dyal's written statement reiterated much of the contents of the legislation, the Presidential announcements of the previous year, the findings of the ISDI Study Group, and the Board's thinking. He gave special stress to certain points, capsulized in phrases such as "people as the center of development," "not to impose values nor solutions to problems," and "sensitivity to and support of indigenous efforts by Latin American and Caribbean people themselves." At one point, he elaborated on the responsive approach that the Board had been formulating: "In talking of a new approach, I was

- The principal criterion for selecting projects was to be their probable effectiveness in causing structural changes and institutional development.
- Support would not be given to political parties or programs related to them.
- Strong preference would be given to support for Latin American and Caribbean organizations, be they local, regional, multilateral, or counterparts of U.S. institutions. The key consideration was what Latin Americans and Caribbeans wanted, not what U.S. groups or individuals wanted to give them. Support would be given to private and semi-private autonomous entities, but not governmental programs. ISDI would not fund U.S. organizations as such, but would consider working through them when circumstances warranted.
- There would be no fixed rules on geographical distribution other than a general intent to maintain some balance among large and small countries and among countries in different stages of development. Excluded were Cuba and departments or dependencies of European nations.
- No program categories or fields of endeavor were selected for concentration or exclusion, but caution was noted against entering an excessive number of fields at once.

- ISDI would use grants, loans, and other assistance techniques to support a mix of projects large and small. At the outset, there would be limitations of \$500,000 per project, \$2.0 million annually per country, and two years of funding duration.
- ISDI would avoid arrangements that might create an undue dependency on it by financing the total overhead or operations of any organization.
- The recipient organization would be responsible for its relations with its government. ISDI would not attempt to solicit government support or approval of projects or institutions, but would not participate in projects opposed by governments. It would operate openly in all countries.
- ISDI would coordinate with the rest of the U.S. Government through the government members of the Board and would provide briefings to interested U.S. Government entities periodically through the State Department.
- There would be minimal publicity on ISDI activities. While not initiating any publicity, ISDI would not discourage its recipients from publicizing their own activities and identifying ISDI with them.

mental efforts in the Caribbean and Latin America were small and often specialized in their interests. ISDI would try to expand the access of such private groups to external assistance. With this decision, the Board assumed a risk because a number of knowledgeable Americans had warned them that the Latin American and Caribbean private development sector really did not amount to much.

When the meeting of the Board of Directors closed that May 5, 1971, the staff of ISDI was ready to go to work, to put those policies and guidelines into practice. It was not a task for those who sought simplicity and serenity:

--The decision to support Latin American and Caribbean groups struck most U.S. private organizations like a thunderbolt. They felt betrayed, abandoned.

--The acquaintance of ISDI staff with Latin American and Caribbean groups was sparse. Those groups knew virtually nothing of ISDI.

--The battle lines in the staff were already being drawn over why, what, and how to learn about social development from the projects funded.

--When U.S. Ambassadors learned that ISDI grants were beyond their veto power, they reacted, some with understanding, some with misgivings, and some with force usually reserved for breaking diplomatic relations.

But all of these are lines of the continuing story.

§ 290e. Congressional declaration of policy

The Congress of the United States, recognizing that the diseases of mankind, because of their widespread prevalence, debilitating effects, and heavy toll in human life, constitute a major deterrent to the efforts of many peoples to develop their economic resources and productive capacities, and to improve their living conditions, declares it to be the policy of the United States to continue and strengthen mutual efforts among the nations for research against diseases such as heart disease and cancer. In furtherance of this policy, the Congress invites the World Health Organization to initiate studies looking toward the strengthening of research and related programs against these and other diseases common to mankind or unique to individual regions of the globe.

(June 14, 1948, c. 469, § 6, as added June 30, 1958, Pub. L. 85-477, c. V, § 502(m), 72 Stat. 275.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1958 Act. Senate Report No. 1627 and Conference Report No. 2038, see 1958 U.S. Code Cong. and Adm. News, p. 2755.

LIBRARY REFERENCES

American Digest System
International organizations, see International Law ¶10.45.
Precautions against contagious and infectious diseases, see Health and Environment ¶23.

Encyclopedias
International organizations, see C.J.S. International Law §§ 63 to 68.
Precautions against contagious and infectious diseases, see C.J.S. Health and Environment §§ 18 to 21.

WESTLAW ELECTRONIC RESEARCH

Health and environment cases: 199k [add key number].
International law cases: 221k [add key number].
See, also, WESTLAW guide following the Explanation pages of this volume.

§ 290e-1. International Agency for Research on Cancer; authorization of appropriations; limitation

There are hereby authorized to be appropriated such sums as may be necessary for the annual payment by the United States of its share of the expenses of the International Agency for Research on Cancer as determined in accordance with article VIII of the Statute of the International Agency for Research on Cancer, except that in no event shall that payment for any year exceed 16 per centum of all contributions assessed Participating Members of the Agency for that year.

(Pub. L. 92-494, Oct. 14, 1972, 86 Stat. 811.)

HISTORICAL AND STATUTORY NOTES**Codifications**

Section was not enacted as part of Act June 14, 1948, c. 469, 62 Stat. 441, which comprises this subchapter.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

SUBCHAPTER XXI—INTER-AMERICAN FOUNDATION**CROSS REFERENCES**

United States assistance defined for purposes of international narcotics control, see 22 USCA § 2291.

§ 290f. Inter-American Foundation**(a) Establishment**

There is created as an agency of the United States of America a body corporate to be known as the Inter-American Foundation (hereinafter in this section referred to as the "Foundation").

(b) Congressional declaration of purpose

The future of freedom, security, and economic development in the Western Hemisphere rests on the realization that man is the foundation of all human progress. It is the purpose of this section to provide support for developmental activities designed to achieve conditions in the Western Hemisphere under which the dignity and the worth of each human person will be respected and under which all men will be afforded the opportunity to develop their potential, to seek through gainful and productive work the fulfillment of their aspirations for a better life, and to live in justice and peace. To this end, it shall be the purpose of the Foundation, primarily in cooperation with private, regional, and international organizations, to—

- (1) strengthen the bonds of friendship and understanding among the peoples of this hemisphere;
- (2) support self-help efforts designed to enlarge the opportunities for individual development;
- (3) stimulate and assist effective and ever wider participation of the people in the development process;
- (4) encourage the establishment and growth of democratic institutions, private and governmental, appropriate to the requirements of the individual sovereign nations of this hemisphere.

In pursuing these purposes, the Foundation shall place primary emphasis on the enlargement of educational opportunities at all levels, the production of food and the development of agriculture, and the improvement of environmental conditions relating to health, maternal and child care, family planning, housing, free trade union development, and other social and economic needs of the people.

(c) Programs and projects to achieve purposes

The Foundation shall carry out the purposes set forth in subsection (b) of this section primarily through and with private organizations, individuals, and international organizations by undertaking or sponsoring appropriate research and by planning, initiating, assisting, financing, administering, and executing programs and projects designed to promote the achievement of such purposes.

(d) Coordination of activities with national and international agencies

In carrying out its functions under this section, the Foundation shall, to the maximum extent possible, coordinate its undertakings with the developmental activities in the Western Hemisphere of the various organs of the Organization of American States, the United States Government, international organizations, and other entities engaged in promoting social and economic development of Latin America.

(e) Powers and functions

The Foundation, as a corporation—

(1) shall have perpetual succession unless sooner dissolved by an Act of Congress;

(2) may adopt, alter, and use a corporate seal, which shall be judicially noticed;

(3) may make and perform contracts and other agreements with any individual, corporation, or other body of persons however designated whether within or without the United States of America, and with any government or governmental agency, domestic or foreign;

(4) shall determine and prescribe the manner in which its obligations shall be incurred and its expenses, including expenses for representation (not to exceed \$10,000 in any fiscal year), allowed and paid;

(5) may, as necessary for the transaction of the business of the Foundation, employ, and fix the compensation of not to exceed one hundred persons at any one time;

(6) may acquire by purchase, devise, bequest, or gift, or otherwise lease, hold, and improve, such real and personal

property as it finds to be necessary to its purposes, whether within or without the United States, and in any manner dispose of all such real and personal property held by it and use as general funds all receipts arising from the disposition of such property;

(7) shall be entitled to the use of the United States mails in the same manner and on the same conditions as the executive departments of the Government;

(8) may, with the consent of any board, corporation, commission, independent establishment, or executive department of the Government, including any field service thereof, avail itself of the use of information, services, facilities, officers, and employees thereof in carrying out the provisions of this section;

(9) may accept money, funds, property, and services of every kind by gift, devise, bequest, grant, or otherwise, and make advances, grants, and loans to any individual, corporation, or other body of persons, whether within or without the United States of America, or to any government or governmental agency, domestic or foreign, when deemed advisable by the Foundation in furtherance of its purposes;

(10) may sue and be sued, complain, and defend, in its corporate name in any court of competent jurisdiction; and

(11) shall have such other powers as may be necessary and incident to carrying out its powers and duties under this section.

(f) Disposal of assets on liquidation

Upon termination of the corporate life of the Foundation all of its assets shall be liquidated and, unless otherwise provided by Congress, shall be transferred to the United States Treasury as the property of the United States.

(g) Board of directors; number, term, and appointment

The management of the Foundation shall be vested in a board of directors (hereafter in this section referred to as the "Board") composed of nine members appointed by the President, by and with the advice and consent of the Senate, one of whom he shall designate to serve as Chairman of the Board and one of whom he shall designate to serve as Vice Chairman of the Board. Six members of the Board shall be appointed from private life. Three members of the Board shall be appointed from among officers or employees of agencies of the United States concerned with Inter-American affairs. Members of the Board shall be appointed for terms of six years, except that of the members first appointed two shall be appointed for terms of two years and two shall be appoint-

ed for terms of four years, as designated by the President at the time of their appointment. A member of the Board appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term; but upon the expiration of his term of office a member shall continue to serve until his successor is appointed and shall have qualified. Members of the Board shall be eligible for reappointment.

(h) Reimbursement of expenses

Members of the Board shall serve without additional compensation, but shall be reimbursed for travel expenses, including per diem in lieu of subsistence, in accordance with section 5703 of Title 5, while engaged in their duties on behalf of the corporation.

(i) Board; authority

The Board shall direct the exercise of all the powers of the Foundation.

(j) Rules and regulations; quorum of the Board

The Board may prescribe, amend, and repeal bylaws, rules, and regulations governing the manner in which the business of the Foundation may be conducted and in which the powers granted to it by law may be exercised and enjoyed. A majority of the Board shall be required as a quorum.

(k) Authority of the Board to appoint committees

In furtherance and not in limitation of the powers conferred upon it, the Board may appoint such committees for the carrying out of the work of the Foundation as the Board finds to be for the best interests of the Foundation, each committee to consist of two or more members of the Board, which committees, together with officers and agents duly authorized by the Board and to the extent provided by the Board, shall have and may exercise the powers of the Board in the management of the business and affairs of the Foundation.

(l) President of Foundation; appointment and compensation; employment of experts and consultants

(1) The chief executive officer of the Foundation shall be a President who shall be appointed by the Board of Directors on such terms as the Board may determine. The President shall receive compensation at the rate provided for level IV of the Executive Schedule under section 5315 of Title 5.

(2) Experts and consultants, or organizations thereof, may be employed as authorized by section 3109 of Title 5.

(m) Establishment of Council; consultation by the Board; reimbursement of expenses of members of the Council

In order to further the purposes of the Foundation there shall be established a Council to be composed of such number of individuals as may be selected by the Board from among individuals knowledgeable concerning developmental activities in the Western Hemisphere. The Board shall, from time to time, consult with the Council concerning the objectives of the Foundation. Members of the Council shall receive no compensation for their services but shall be entitled to reimbursement in accordance with section 5703 of Title 5 for travel and other expenses incurred by them in the performance of their functions under this subsection.

(n) Nonprofit nature of the Foundation; conflict of interests

The Foundation shall be a nonprofit corporation and shall have no capital stock. No part of its revenue earnings, or other income or property shall inure to the benefit of its directors, officers, and employees and such revenue, earnings, or other income, or property shall be used for the carrying out of the corporate purposes set forth in this section. No director, officer, or employee of the corporation shall in any manner directly or indirectly participate in the deliberation upon or the determination of any question affecting his personal interests or the interests of any corporation, partnership, or organization in which he is directly or indirectly interested.

(o) Personnel; service in foreign governments or agencies

When approved by the Foundation, in furtherance of its purpose, the officers and employees of the Foundation may accept and hold offices or positions to which no compensation is attached with governments or governmental agencies of foreign countries.

(p) Service of employees of other agencies in the Foundation; rights and privileges

The Secretary of State shall have authority to detail employees of any agency under his jurisdiction to the Foundation under such circumstances and upon such conditions as he may determine. Any such employee so detailed shall not lose any privileges, rights, or seniority as an employee of any such agency by virtue of such detail.

(q) Establishment of principal and branch offices

The Foundation shall establish a principal office. The Foundation is authorized to establish agencies, branch offices, or other offices in any place or places within the United States or elsewhere

in any of which locations the Foundation may carry on all or any of its operations and business.

(r) Exemption from tax

The Foundation, including its franchise and income, shall be exempt from taxation now or hereafter imposed by the United States, or any territory or possession thereof, or by any State, county, municipality, or local taxing authority.

(s) Authorization of appropriations

(1) Notwithstanding any other provision of law, not to exceed an aggregate amount of \$50,000,000 of the funds made available for the fiscal years 1970 and 1971 to carry out part I of the Foreign Assistance Act of 1961 [22 U.S.C.A. § 2151 et seq.] shall be available to carry out the purposes of this section. Funds made available to carry out the purposes of this section under the preceding sentence are authorized to remain available until expended.

(2) There are authorized to be appropriated \$11,969,000 for fiscal year 1986 and \$12,969,000 for fiscal year 1987 (not less than \$1,000,000 of which shall be for Haiti) to carry out the purposes of this section. Amounts appropriated under this paragraph are authorized to remain available until expended.

(t) Application of chapter 91 of Title 31

The Foundation shall be subject to the provisions of chapter 91 of Title 31.

(u) Interest on funds invested pending disbursement

When, with the permission of the Foundation, funds made available to a grantee under this section are invested pending disbursement, the resulting interest is not required to be deposited in the United States Treasury if the grantee uses the resulting interest for the purposes for which the grant was made. This subsection applies with respect to both interest earned before and interest earned after August 24, 1982.

(Pub. L. 91-175, Pt. IV, § 401, Dec. 30, 1969, 83 Stat. 821; Pub. L. 92-226, Pt. IV, § 406(2)-(5), Feb. 7, 1972, 86 Stat. 34; Pub. L. 95-105, Title V, § 508, Aug. 17, 1977, 91 Stat. 859; Pub.L. 97-241, Title V, § 501, Aug. 24, 1982, 96 Stat. 297; Pub.L. 98-164, Title X, § 1001, Nov. 22, 1983, 97 Stat. 1051; Pub.L. 99-83, Title VII, § 708, Aug. 8, 1985, 99 Stat. 243; Pub.L. 99-529, Title II, § 202(e), Title IV, § 403(a), Oct. 24, 1986, 100 Stat. 3012, 3019.)

¹ So in original. Probably should be "devise".

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1969 Act. Senate Report No. 91-603 and Conference Report No. 91-767, see 1969 U.S.Code Cong. and Adm.News, p. 2611.

1972 Act. Senate Report Nos. 92-431, 92-432 and Senate Conference Report No. 92-590, see 1972 U.S.Code Cong. and Adm.News, p. 1883.

1977 Act. Senate Report No. 95-194 and House Conference Report No. 95-537, see 1977 U.S.Code Cong. and Adm.News, p. 1625.

1982 Act. Senate Report No. 97-71 and House Conference Report No. 97-693, see 1982 U.S.Code Cong. and Adm.News, p. 651.

1983 Act. House Report No. 98-130 and House Conference Report No. 98-563, see 1983 U.S.Code Cong. and Adm.News, p. 1484.

1985 Act. Senate Report No. 99-34 and House Conference Report No. 99-237, see 1985 U.S.Code Cong. and Adm.News, p. 158.

1986 Act. Senate Report No. 99-385, Related Reports, and Statement by President, see 1986 U.S.Code Cong. and Adm. News, p. 5047.

References in Text

The Foreign Assistance Act of 1961, referred to in subsec. (s)(1), is Pub.L. 87-195, Sept. 4, 1961, 75 Stat. 424, as amended. Part I of the Foreign Assistance Act of 1961 is classified generally to subchapter I (section 2151 et seq.) of chapter 32 of this title. For provisions deeming references to subchapter I to include parts IV (section 2346 et seq.), VI (section 2348 et seq.), and VIII (section 2349aa et seq.) of subchapter II of chapter 32, see section 202(b) of Pub.L. 92-228, set out as a note under section 2346 of this title, and sections 2348c and 2349aa-5 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2151 of this title and Tables.

Codifications

In subsec. (t), "chapter 91 of Title 31" was substituted for "the Government Corporation Control Act [31 U.S.C.A. § 841 et seq.]" on authority of Pub.L. 97-258, § 4(b), Sept. 13, 1982, 96 Stat.

1067, the first section of which enacted Title 31, Money and Finance.

Amendments

1986 Amendment. Subsec. (g). Pub.L. 99-529, § 403(a), substituted "nine members appointed" for "seven members appointed" and "Six members of the Board shall" for "Four members of the Board shall".

Subsec. (s)(2). Pub.L. 99-529, § 202(e), substituted "\$12,969,000 for fiscal year 1987 (not less than \$1,000,000 of which shall be for Haiti)" for "\$11,969,000 for fiscal year 1987".

1985 Amendment. Subsec. (s)(2). Pub.L. 99-83 substituted provisions authorizing appropriations of \$11,969,000 for fiscal years 1986 and 1987, for provisions authorizing appropriations of \$16,000,000 for each of the fiscal years 1984 and 1985.

1983 Amendment. Subsec. (s)(2). Pub.L. 98-164 substituted "\$16,000,000 for the fiscal year 1984 and \$16,000,000 for the fiscal year 1985" for "\$12,000,000 for the fiscal year 1982 and \$12,800,000 for the fiscal year 1983".

1982 Amendment. Subsec. (h). Pub.L. 97-241, § 501(b), substituted "travel expenses, including per diem in lieu of subsistence, in accordance with section 5703 of Title 5" for "actual and necessary expenses not in excess of \$50 per day, and for transportation expenses".

Subsec. (s)(2). Pub.L. 97-241, § 501(a), substituted "\$12,000,000 for the fiscal year 1982 and \$12,800,000 for the fiscal year 1983" for "\$25,000,00 for each of the fiscal years 1979 and 1980".

Subsec. (u). Pub.L. 97-241, § 501(c), added subsec. (u).

1977 Amendment. Subsec. (s). Pub.L. 95-105 designated existing provisions as par. (1) and added par. (2).

1972 Amendment. Pub.L. 92-226, § 406(3), substituted "Foundation" for "Institute" wherever appearing in subsecs. (b) third and fourth sentences, (c), (d), (e) introductory text, (e)(5), (9), (f), (g), (i), (j), (k), (l), (m) to (r) and (t).

Subsec. (a). Pub.L. 92-226, § 406(2), substituted "Inter-American Foundation" and "Foundation" for "Inter-American

SUBTITLE VI—MISCELLANEOUS

Chapter	Sec.
91. Government Corporations	9101
93. Sureties and Surety Bonds	9301
95. Government Pension Plan Protection	9501
97. Miscellaneous	9701

CHAPTER 91—GOVERNMENT CORPORATIONS

Sec.

- 9101. Definitions.
- 9102. Establishing and acquiring corporations.
- 9103. Budgets of wholly owned Government corporations.
- 9104. Congressional action on budgets of wholly owned Government corporations.
- 9105. Audits.
- 9106. Audit reports.
- 9107. Accounts.
- 9108. Obligations.
- 9109. Exclusion of a wholly owned Government corporation from this chapter.

Cross References

- Agency defined to include government corporation subject to this chapter for purposes of provisions relating to training of government employees, see section 4101 of Title 5, Government Organization and Employees.
- Applicability of this chapter to Administrator, Bonneville Power Administration, see section 838i of Title 16, Conservation.
- Authority of Commodity Credit Corporation to issue obligations for purpose of carrying out annual budget programs, see section 713a-4 of Title 15, Commerce and Trade.
- Budget to include recommendations on return of government capital to Treasury by mixed-ownership corporation, see section 1105 of this title.
- Executive agency defined to exclude corporation, agency, or instrumentality subject to this chapter for purposes of section 3501 et seq. of this title, see section 3501 of this title.
- Payment of additional amount by government corporation for cost of administration of employees' compensation provisions, see section 8147 of Title 5, Government Organization and Employees.
- Specific powers of Commodity Credit Corporation, see section 714c of Title 15, Commerce and Trade.

§ 9101. Definitions

In this chapter—

- (1) "Government corporation" means a mixed-ownership Government corporation and a wholly owned Government corporation.
- (2) "mixed-ownership Government corporation" means—
 - (A) Amtrak.
 - (B) the Central Bank for Cooperatives.
 - (C) the Federal Deposit Insurance Corporation.

- (D) the Federal Home Loan Banks.
 (E) the Federal Intermediate Credit Banks.
 (F) the Federal Land Banks.
 (G) the National Credit Union Administration Central Liquidity Facility.
 (H) the Regional Banks for Cooperatives.
 (I) the Rural Telephone Bank when the ownership, control, and operation of the Bank are converted under section 410(a) of the Rural Electrification Act of 1936 (7 U.S.C. 950(a)).
 (J) the United States Railway Association.
 (3) "wholly owned Government corporation" means—
 (A) the Commodity Credit Corporation.
 (B) the Export-Import Bank of the United States.
 (C) the Federal Crop Insurance Corporation.
 (D) Federal Prison Industries, Incorporated.
 (E) the Federal Savings and Loan Insurance Corporation.
 (F) the Government National Mortgage Association.
 (G) the Overseas Private Investment Corporation.
 (H) the Pennsylvania Avenue Development Corporation.
 (I) the Pension Benefit Guaranty Corporation.
 (J) the Rural Telephone Bank until the ownership, control, and operation of the Bank are converted under section 410(a) of the Rural Electrification Act of 1936 (7 U.S.C. 950(a)).
 (K) the Saint Lawrence Seaway Development Corporation.
 (L) the Secretary of Housing and Urban Development when carrying out duties and powers related to the Federal Housing Administration Fund.
 (M) the Tennessee Valley Authority.

(Pub.L. 97-258, Sept. 13, 1982, 96 Stat. 1041; Pub.L. 97-258, § 2(f)(1), Sept. 13, 1982, 96 Stat. 1062; Pub.L. 97-452, § 1(26), Jan. 12, 1983, 96 Stat. 2478.)

Historical and Revision Notes

1982 Act

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
9101(1)	(no source)	
9101(2)	31:856	Dec. 6, 1945, ch. 557, § 201, 59 Stat. 600; July 26, 1956, ch. 741, § 201(a)(2), (3), 70 Stat. 667; Oct. 30, 1970, Pub.L. 91-518, § 804, 84 Stat. 1340; May 7, 1971, Pub.L. 92-12, § 4, 85 Stat. 37; Jan. 2, 1974, Pub.L. 93-236, §§ 202(g)(1), 301(f) (last sentence), 87 Stat. 992, 1005; Feb. 5, 1976, Pub.L. 94-210, § 612(b), 90 Stat. 108; Aug. 20, 1978, Pub.L. 95-351, § 301(a), 92 Stat. 513; Nov. 10, 1978, Pub.L. 95-630, § 1805, 92 Stat. 3724

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
9101(3)	31:846	Dec. 6, 1945, ch. 577, § 101, 59 Stat. 597, Aug. 10, 1948, ch. 832, § 501(b) (less proviso), 62 Stat. 1283; June 30, 1949, ch. 285, § 13, 63 Stat. 356; May 13, 1954, ch. 201, § 6, 68 Stat. 95; July 26, 1956, ch. 741, § 201(a)(1), 70 Stat. 667; June 30, 1958, Pub.L. 85-477, § 502(c), 72 Stat. 272; Oct. 4, 1961, Pub.L. 87-353, § 3(u), 75 Stat. 774; May 25, 1967, Pub.L. 90-19, § 4, 81 Stat. 20; Aug. 1, 1968, Pub.L. 90-448, §§ 807(c), 1719(d), 82 Stat. 544, 610; Dec. 30, 1969, Pub.L. 91-175, § 501, 83 Stat. 825; Oct. 27, 1972, Pub.L. 92-578, § 15, 86 Stat. 1274; Sept. 2, 1974, Pub.L. 93-406, § 4002(g)(3), 88 Stat. 1005.

Explanatory Notes

Clause (1) is included because a number of the provisions of the chapter apply to mixed-ownership and wholly owned Government corporations, and the term "Government corporation" provides a simple phrase to refer to both of those kinds of corporations.

In clause (2)(A), "Amtrak" is substituted for "National Railroad Passenger Corporation" to conform to section 103(1) of the Rail Passenger Service Act (45 U.S.C. 502(1)) [section 502(1) of Title 45, Railroads].

In clause (2)(I), the words "when the ownership, control, and operation of the Bank are converted under section 410(a) of the Rural Electrification Act of 1936 (7 U.S.C. 950(a))" are added because of 7:943(c) and 950(a) [sections 943(c) and 950(a) of Title 7, Agriculture].

In clause (3), the words "Regional Agricultural Credit Corporations" are omitted because the corporations were merged with and liquidated by the Regional Agricultural Credit Corporation of Washington, D.C., which was dissolved on April 16, 1949. The words "Farmers Home Corporation" are omitted because the corporation never was activated. The words "Federal Surplus Commodities Corporation" are omitted because the corporation and the Division of Marketing and Marketing Agreements were consolidated into the Surplus Marketing Administration, which was merged into the Agricultural Marketing Administration, which was dissolved on March 14, 1947. The words "Reconstruction Finance Corporation" are omitted because the corporation was abolished on June 30, 1957. The words "Defense Plant Corporation; Defense Supplies Corporation; Metals Reserve Company; Rubber Reserve Company" are omitted because the corporations and companies were dissolved on July 1, 1945. The words "War Damage Corporation" are

omitted because the corporation was terminated on January 22, 1947. The words "the RFC Mortgage Company" are omitted because the company was transferred to the Reconstruction Finance Corporation, which was abolished on June 30, 1957. The words "Disaster Loan Corporation" are omitted because the corporation was dissolved on July 1, 1945. The words "Inland Waterways Corporation" are omitted because the corporation was liquidated on July 19, 1963. The words "Warrior River Terminal Company" are omitted because the company was transferred to the Inland Waterways Corporation, which was liquidated on July 13, 1963. The words "Virgin Islands Corporation" are omitted because the corporation was dissolved on July 1, 1966. The words "United States Spruce Production Corporation" are omitted because the corporation was dissolved on December 12, 1946. The words "Institute of Inter-American Affairs" are omitted because the institute was transferred to the Foreign Operations Administration, which was abolished on May 9, 1955. The words "Institute of Inter-American Transportation" are omitted because the institute was dissolved August 24, 1949. The words "Inter-American Educational Foundation, Incorporated" are omitted because the foundation was succeeded by the Institute of Inter-American Affairs, which was transferred to the Foreign Operations Administration, which was abolished on May 9, 1955. The words "Inter-American Navigation Corporation" are omitted because the corporation was dissolved on February 25, 1947. The words "Prenimradio, Incorporated" are omitted because Prenimradio, Incorporated was dissolved May 10, 1949. The words "Cargoes, Incorporated" are omitted because Cargoes, Incorporated was dissolved April 30, 1945. The words "Export-Import Bank of the United States" are substituted for

"Export-Import Bank of Washington" because of section 1(a) of the Act of March 13, 1968 (Pub.L. 90-267, 82 Stat. 47) [see Tables volume]. The words "Petroleum Reserves Corporation" are omitted because the corporation was transferred to the Office of Economic Warfare, which was consolidated into the Foreign Economic Administration, which was transferred to the Reconstruction Finance Corporation and changed to the War Assets Corporation. The War Assets Corporation was dissolved as soon as practicable after March 25, 1946. The words "Rubber Development Corporation" are omitted because the certificate of incorporation expired on June 30, 1947. The words "U.S. Commercial Company" are omitted because the company was liquidated after June 30, 1948. The words "Smaller War Plants Corporation" are omitted because the corporation was abolished on June 30, 1947. The words "Defense Homes Corporation" are omitted because the corporation was liquidated on June 30, 1948. The words "Home Owners' Loan Corporation" are omitted because the corporation was dissolved on February 3, 1954. The words "United States Housing Corporation" are omitted because the corporation was terminated on September 8, 1952. The words "Panama Railroad Company" (subsequently changed to "Panama Canal Company" by section 2(a)(2) of the Act of September 26, 1950 (ch. 1049, 64 Stat. 1038)), are omitted because of 22:ch. 51 [section 3601 et seq. of Title 22, Foreign Relations and Intercourse]. The words "Tennessee Valley Associated Cooperatives, Incorporated" are omitted because the corporation was dissolved on January 18, 1950.

In clause (3)(J), the words "until the ownership, control, and operation of the Bank are converted under section 410(a) of the Rural Electrification Act of 1936 (7 U.S.C. 950(a))" are added because of 7:943(c) and 950(a) [sections 943(c) and 950(a) of Title 7, Agriculture] Clause (L) is substituted for the "Federal Housing Administration" because of section 5 of the Department of Housing and Urban Development Act (Pub.L. 89-174, 79 Stat. 669) [see Tables volume].

1983 Act

This amends 31:9101(2) [par. (2) of this section] because the National Consumer Cooperative Bank is no longer a mixed-ownership Government corporation. Section 396(h)(1) [amended former section 856 of this

title] and (i) [set out as a note under section 3011 of Title 12, Banks and Banking] of the Omnibus Budget Reconciliation Act of 1981 (Pub.L. 97-35, 95 Stat. 440) provided that the Bank would cease being a mixed-ownership Government corporation on the day after the Final Government Equity Redemption Date. Section 501(36) of the Act of December 23, 1981 (Pub.L. 97-101, 95 Stat. 1440), provided that the Redemption Date was December 31, 1981.

References in Text. Section 410(a) of the Rural Electrification Act of 1936, referred to in pars. (2)(I) and (3)(J), is section 410(a) of Act May 20, 1936, c. 432, Title IV, as added May 7, 1971, Pub.L. 92-12, § 2, 85 Stat. 36, which is classified to section 950(a) of Title 7, Agriculture.

1983 Amendment. Par. (2)(K). Pub.L. 97-452 struck out par. (2)(K) relating to the National Consumer Cooperative Bank which entailed no change in text because this amendment had already been made by Pub.L. 97-258. See 1982 Amendment note below.

1982 Amendment. Par. (2)(K). Pub.L. 97-258, § 2(f)(1), struck out subpar. (K) relating to the National Consumer Cooperative Bank.

Effective Date of 1983 Amendment. Section 2(i) of Pub.L. 97-452 provided in part that the amendment to this section by Pub.L. 97-452 is effective as of Sept. 13, 1982. See section 2(i) of Pub.L. 97-452, set out as an Effective Date of 1983 Amendment note under section 3331 of this title.

Effective Date of 1982 Amendment. Section 2(f) of Pub.L. 97-258 provided in part that the amendment to par. (2)(K) would be effective on Jan. 1, 1982.

Federal National Mortgage Association. Act Aug. 2, 1954, c. 649, Title II, § 202, 68 Stat. 622, provided: "The Federal National Mortgage Association, established pursuant to the provisions of title III of the National Housing Act as in effect prior to July 1, 1948, and named in section 101 of the Government Corporation Control Act, as amended [former section 846 of this title] shall be the body corporate referred to in section 302 of Title III of the National Housing Act, as amended by the Housing Act of 1954 [section 1717 of Title 12]".

Legislative History. For legislative history and purpose of Pub.L. 97-452, see 1983 U.S. Code Cong. and Adm. News, p. 4301.

Library References

United States Ⓔ53(1).

C.J.S. United States § 65.

Notes of Decisions

1. Mixed-ownership Government corporation

Civil Air Patrol is not a "mixed-ownership government corporation" whose financial transactions are required to be audited annually by General Accounting Office. *Pearl v. U.S.*, C.A.Okl.1956, 230 F.2d 243.

Civil Air Patrol was not a wholly owned government corporation of type listed in former section 846 of this title whose financial transactions and operations were kept under annual scrutiny by Congress. *Id.*

§ 9102. Establishing and acquiring corporations

An agency may establish or acquire a corporation to act as an agency only by or under a law of the United States specifically authorizing the action.

(Pub.L. 97-258, Sept. 13, 1982, 96 Stat. 1042.)

Historical and Revision Notes

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
9102	31:869(a)	Dec. 6, 1945, ch. 557, § 304(a), 59 Stat. 602.

Explanatory Notes

The word "agency" is substituted for "officer or agency of the Federal Government or by any Government corporation" and "agency or instrumentality of the United States" because of section 101 of the revised title [section 101 of this title], for consistency, and because a Government corporation is an "in-

strumentality of the United States Government". The word "establish" is substituted for "created, organized" to eliminate unnecessary words. The words "on or after December 6, 1945" are omitted as executed. The words "law of the United States" are substituted for "Act of Congress" for consistency.

Library References

United States Ⓔ53(2).

C.J.S. United States § 65.

§ 9103. Budgets of wholly owned Government corporations

(a) Each wholly owned Government corporation shall prepare and submit each year to the President a business-type budget in a way, and before a date, the President prescribes by regulation for the budget program.

(b) The budget program for each wholly owned Government corporation shall—

(1) contain estimates of the financial condition and operations of the corporation for the current and following fiscal years and the condition and results of operations in the last fiscal year;

(2) contain statements of financial condition, income and expense, and sources and use of money, an analysis of surplus or deficit, and additional statements and information to make known the financial condition and operations of the corporation, including estimates of op-

erations by major activities, administrative expenses, borrowings, the amount of United States Government capital that will be returned to the Treasury during the fiscal year, and appropriations needed to restore capital impairments; and

(3) provide for emergencies and contingencies and otherwise be flexible so that the corporation may carry out its activities.

(c) The President shall submit the budget programs submitted by wholly owned Government corporations (as changed by the President) as part of the budget submitted to Congress under section 1105 of this title. The President thereafter may submit changes in a budget program of a corporation at any time.

(Pub.L. 97-258, Sept. 13, 1982, 96 Stat. 1042.)

Historical and Revision Notes

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
9103(a)	31:847 (1st sentence).....	Dec. 6, 1945, ch. 557, § 102, 59 Stat. 598; Sept. 12, 1950, ch. 946, § 105, 64 Stat. 834.
9103(b)	31:847 (2d-last sentences).....	
9103(c)	31:848	Dec. 6, 1945, ch. 557, § 103, 59 Stat. 598.

Explanatory Notes

In subsection (a), the word "President" is substituted for "Office of Management and Budget" because sections 101 and 102(a) of Reorganization Plan No. 2 of 1970 (eff. July 1, 1970, 84 Stat. 2085) [set out under section 501 of this title] designated the Bureau of the Budget as the Office of Management and Budget and transferred all functions of the Bureau to the President. The words "in a way, and before a date, the President prescribes" are substituted for "under such rules and regulations as the President may establish as to the date of submission, the form and content, the classifications of data, and the manner in which such budget program shall be prepared and presented" to eliminate unnecessary words.

In subsection (b), before clause (1), the word "budget" is substituted for "budget program" for consistency and to eliminate unnecessary words. In clause (1), the words "actual" and "completed" are omitted as sur-

plus. In clause (2), the words "as are necessary or desirable", "types of", "together with", and "funds" are omitted as surplus. In clause (3), the words "as authorized by law" are omitted as surplus.

In subsection (c), the words "may change" are substituted for "as modified, amended, or revised by" to eliminate unnecessary words. The word "budget" is substituted for "budget programs", and the word "submit" is substituted for "transmitted", for consistency. The word "annual" is omitted as surplus. The word "thereafter" is added for clarity. The text of 31:848 [former section 848 of this title] (last par.) is omitted as unnecessary.

Fiscal Year Transition Period of July 1, 1976, Through September 30, 1976, Deemed Fiscal Year. Fiscal year transition period of July 1, 1976, through Sept. 30, 1976, deemed fiscal year for purposes of this section, see section 201(31) of Pub.L. 94-274, Title II, Apr. 21, 1976, 90 Stat. 390, set out as a note under section 343 of Title 7, Agriculture.

Cross References

Annual budget for synthetic rubber disposal program, see section 1941g of Appendix to Title 50, War and National Defense.
Budgets for disaster loan fund and business loan and investment fund, see section 633 of Title 15, Commerce and Trade.
Veterans' Canteen Service, preparation and submission of budget, see section 4206 of Title 38, Veterans' Benefits.

Library References

United States 653(8).

C.J.S. United States § 70.

§ 9104. Congressional action on budgets of wholly owned Government corporations

(a) Congress shall—

(1) consider budget programs for wholly owned Government corporations the President submits;

(2) make necessary appropriations authorized by law;

(3) make corporate financial resources available for operating and administrative expenses; and

(4) provide for repaying capital and the payment of dividends.

(b) This section does not—

(1) prevent a wholly owned Government corporation from carrying out or financing its activities as authorized under another law;

(2) affect section 26 of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831y); or

(3) affect the authority of a wholly owned Government corporation to make a commitment without fiscal year limitation.

(Pub.L. 97-258, Sept. 13, 1982, 96 Stat. 1043.)

Historical and Revision Notes

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
9104(a)	31:849 (1st sentence).....	Dec. 6, 1945, ch. 557, § 104, 59 Stat. 598; restated July 30, 1947, ch. 358, § 307, 61 Stat. 584.
9104(b)	31:849 (2d, last sentences)	

Explanatory Notes

In subsection (a), the words "budgets for wholly owned Government corporations" are substituted for "Budget programs" for clarity and consistency. The words "legislation . . . be enacted", "as may be", "for expenditure", "corporate funds or other", "or limiting the use thereof", "as the Congress may determine", and "funds" are omitted as surplus.

In subsection (b), the word "existing" is omitted as surplus. In clause (1), the word "another" is added for clarity. In clause (3), the words "contracts or other" and "reference to" are omitted as surplus.

References in Text. Section 26 of the Tennessee Valley Authority Act of 1933, referred to in subsec. (b)(2), is section 26 of Act May 18, 1933, c. 32, 48 Stat. 71, which is classified to section 831y of Title 16, Conservation.

Cross References

Appropriation defined to include funds made available by statute under this section for purposes of provisions relating to—
Employment of experts and consultants, see section 3109 of Title 5, Government Organization and Employees.
Protective clothing and equipment, see section 7903 of Title 5
Travel, transportation and subsistence, see section 5721 of Title 5.

Authority of Commodity Credit Corporation to make contracts and commitments without regard to fiscal year limitations, see section 713a-10 of Title 15, Commerce and Trade. Budgets for disaster loan fund and business loan and investment fund, see section 633 of Title 15.

Consideration and enactment of budget for Government Printing Office revolving fund as prescribed by this section, see section 309 of Title 44, Public Printing and Documents.

Library References

United States § 53(8).

C.J.S. United States § 70.

§ 9105. Audits

(a)(1) Under regulations of the Comptroller General, the Comptroller General shall audit financial transactions of—

(A) wholly owned Government corporations; and

(B) mixed-ownership Government corporations during periods in which capital of the United States Government is invested in a mixed-ownership Government corporation.

(2) The Comptroller General shall audit each Government corporation at least once every 3 years. The Comptroller General shall audit the Federal Savings and Loan Insurance Corporation and Federal home loan banks on a calendar year basis.

(b) In conducting an audit under subsection (a) of this section, the Comptroller General—

(1) to the greatest extent the Comptroller General considers practicable, shall use reports of examinations of a Government corporation that a supervising administrative agency makes; and

(2) without regard to section 3709 of the Revised Statutes (41 U.S.C. 5), may make a contract for professional services with a firm or organization for a temporary period or special purpose.

(c) An audit under subsection (a) of this section shall be conducted consistent with principles and procedures applicable to commercial corporate transactions where the accounts of a Government corporation usually are kept. A Government corporation shall—

(1) make available to the Comptroller General for audit all records and property of, or used by, the corporation that are necessary for the audit; and

(2) provide the Comptroller General with facilities for verifying transactions with the balances or securities held by depositories, fiscal agents, or custodians.

(d) Regulations prescribed under subsection (a) of this section may provide that any part of an account of an accountable official about a financial transaction of a wholly owned Government corporation sent to the Comptroller General for settlement may be kept at the office of the corporation and that the Comptroller General may settle any part of the account on the basis of an examination during an audit. This subsection does not affect the

authority of the Tennessee Valley Authority under section 9(b) of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831h(b)).

(e) The Comptroller General shall pay the cost of an audit under this section. A Government corporation shall reimburse the Comptroller General for the cost of the audit as determined by the Comptroller General. The Comptroller General shall deposit the reimbursement in the Treasury as miscellaneous receipts. Except as expressly provided by law, a Government corporation may not pay the cost of a private audit of the financial records of the corporation.

(f) An audit under subsection (a) of this section is in place of an audit of the financial transactions of a Government corporation the Comptroller General is required to make in reporting to Congress or the President under another law.

(g) Necessary amounts are authorized to be appropriated to the Comptroller General to carry out this section.

(Pub.L. 97-258, Sept. 13, 1982, 96 Stat. 1043.)

Historical and Revision Notes

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
9105(a)	31:850 (1st sentence 1st-16th, 30th-46th words, 4th-last sentences).	Dec. 6, 1945, ch. 557, § 105, 59 Stat. 599, Aug. 30, 1964, Pub.L. 88-518, § 2(a), 78 Stat. 698, Jan. 2, 1975, Pub.L. 93-604, § 601(a), 88 Stat. 1962.
	31:857 (1st sentence 1st-26th, 39th-last words, 4th-last sentences).	Dec. 6, 1945, ch. 557, § 202, 59 Stat. 600, Aug. 30, 1964, Pub.L. 88-518, § 1(a), 78 Stat. 698, Jan. 2, 1975, Pub.L. 93-604, § 601(c), 88 Stat. 1962.
9105(b)	31:866(a) (last proviso), (b)	Dec. 6, 1945, ch. 557, § 301, 59 Stat. 601
9105(c)	31:850 (1st sentence 17th-29th words, 2d, 3d sentences).	
	31:857 (1st sentence 27th-38th words, 2d, 3d sentences).	
9105(d)	31:850 (1st sentence proviso)	
9105(e)	31:866(a) (words before 1st comma, 1st proviso), (d).	
9105(f)	31:866(c)	
9105(g)	31:866(a) (words between 1st comma and 1st proviso).	

Explanatory Notes

In the section, the words "Comptroller General" are substituted for "General Accounting Office" for consistency.

In subsection (a), the words "rules and . . . of the United States" are omitted as surplus. The words "United States" are added for consistency. The text of 31:850 [former section 850 of this title] (4th sentence) and 857 [former section 857 of this title] (4th sentence) and the words "Effective July 1, 1974" are omitted as executed.

In subsection (b)(1), the words "pursuant to law" are omitted as surplus.

In subsection (b)(2), the words "may make . . . " are substituted for "the authorized

in his discretion to employ by contract" to eliminate unnecessary words.

In subsection (c), before clause (1), the words "at the place or places" and "of the respective corporations" are omitted as surplus. The words "A Government corporation shall" are added for clarity. In clause (1), the words "make available . . . for audit all records" are substituted for "The representatives of . . . shall have access to all books, accounts, financial records, reports, files, and all other papers" for consistency and because of the restatement. The words "things, or" are omitted because they are included in "property". In clause (2), the word "shall" is omitted as surplus.

Subsection (d) is substituted for 31:850 [former section 850 of this title] (1st sentence proviso words before 7th comma) because of the restatement.

In subsection (e), the words "The Comptroller General shall pay the cost of an audit" are substituted for "The expenses of auditing the financial transactions of wholly owned and mixed-ownership Government corporations as provided in sections 850 and 857 of this title shall be borne out of appropriations to the General Accounting Office" to eliminate unnecessary words. The words "full" and "otherwise . . . funds of any . . . be used to . . . of the offices" are omitted as surplus. The words "except the cost of such audits contracted for and un-

dertaken prior to April 25, 1945" are omitted as executed.

Subsection (g) is substituted for 31:866(a) [former section 866(a) of this title] (words between 1st comma and 1st proviso) for clarity and consistency.

References in Text. Section 3709 of the Revised Statutes, referred to in subsec. (b)(2), is classified to section 5 of Title 41, Public Contracts.

Section 9(b) of the Tennessee Valley Authority Act of 1933, referred to in subsec. (d), is section 9(b) of Act May 18, 1933, c. 32, 48 Stat. 63, which is classified to section 831h(b) of Title 16, Conservation.

Cross References

Additional audits of Tennessee Valley Authority accounts by certified public accounting firms, see section 831n-4 of Title 16, Conservation.
Audit of financial transactions of Administrator, Bonneville Power Administration, see section 838i of Title 16.
Audit reports, see section 9106 of this title.
Federal Home Loan Banks, audits, see section 1431 of Title 12, Banks and Banking.

Library References

United States 53(8).

C.J.S. United States § 70.

§ 9106. Audit reports

(a) The Comptroller General shall submit to Congress a report on each audit of a Government corporation under section 9105 of this title not later than 6.5 months after the end of the last year covered by the audit. The report shall state the scope of the audit and include—

- (1) a statement (showing intercorporate relations) of assets, liabilities, capital, and surplus or deficit;
- (2) a statement of surplus or deficit analysis;
- (3) a statement of income and expenditures;
- (4) a statement of sources and the use of money;
- (5) specifically each financial transaction or undertaking the Comptroller General believes was carried out or made without authority of law;
- (6) comments and information the Comptroller General considers necessary to keep Congress informed about the operations and financial condition of the Government corporation, including a statement of impaired capital noticed and recommendations for the return of capital of the United States Government or the payment of dividends the Comptroller General believes should be made; and
- (7) other recommendations the Comptroller General considers advisable.

Ch. 91 GOVERNMENT CORPORATIONS

31 § 9107

(b) The Comptroller General shall give the President, the Secretary of the Treasury, and the Government corporation a copy of the report when it is submitted to Congress.

(Pub.L. 97-258, Sept. 13, 1982, 96 Stat. 1044.)

Historical and Revision Notes

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
9106(a)	31:851 (1st-3d sentences)	Dec. 6, 1945, ch. 557, § 106, 59 Stat. 599; Aug. 30, 1964, Pub.L. 88-518, § 2(b), 78 Stat. 698, Jan. 2, 1975, Pub.L. 93-604, § 601(b), 88 Stat. 1962.
	31:858 (1st-3d sentences)	Dec. 6, 1945, ch. 557, § 203, 59 Stat. 600; Aug. 30, 1964, Pub.L. 88-518, § 1(b), 78 Stat. 698, Jan. 2, 1975, Pub.L. 93-604, § 601(d), 88 Stat. 1963.
9106(b)	31:851 (last sentence)	
	31:858 (last sentence)	

Explanatory Notes

In subsection (a), before clause (1), the words "of a Government corporation" are added for clarity. In clause (5), the words "program, expenditure, or other", "observed in the course of the audit", and "of law" are omitted as surplus. In clause (6), the word "statement" is substituted for "report" for consistency. The words "noted in the audit" are omitted as surplus. The word "made" is

substituted for "accomplished" for consistency. In clause (7), the word "other" is added for clarity because of the restatement. The words "with respect thereto" are omitted as surplus.

In subsection (b), the words "The Comptroller General" are added for clarity.

Cross References

Additional reports of financial condition and operations of Tennessee Valley Authority by certified public accounting firms, see section 831n-4 of Title 16, Conservation.
Reports of results of audit of financial transactions of Administrator, Bonneville Power Administration, see section 838i of Title 16.

§ 9107. Accounts

(a) With the approval of the Comptroller General, a Government corporation may consolidate its cash into an account if the cash will be expended as provided by law.

(b) The Secretary of the Treasury shall keep the accounts of a Government corporation. If the Secretary approves, a Federal reserve bank or a bank designated as a depository or fiscal agent of the United States Government may keep the accounts. The Secretary may waive the requirements of this subsection.

(c)(1) Subsection (b) of this section does not apply to maintaining a temporary account of not more than \$50,000 in one bank.

(2) Subsection (b) of this section does not apply to a mixed-ownership Government corporation when the corporation has no capital of the Government.

(3) Subsection (b) of this section does not apply to the Federal Intermediate Credit Banks, the Central Bank for Cooperatives, the Regional Banks for Cooperatives, or the Federal Land Banks. However, the head of each of

those banks shall report each year to the Secretary the names of depositaries where accounts are kept. If the Secretary considers it advisable when an annual report is received, the Secretary may make a written report to the corporation, the President, and Congress.

(Pub.L. 97-258, Sept. 13, 1982, 96 Stat. 1044; Pub.L. 97-258, § 2(f)(2), Sept. 13, 1982, 96 Stat. 1062; Pub.L. 97-452, § 1(27), Jan. 12, 1983, 96 Stat. 2478.)

Historical and Revision Notes

1982 Act		
Revised Section	Source (U.S. Code)	Source (Statutes at Large)
9107(a)	31:870	Aug. 24, 1949, ch. 506, § 309, 63 Stat. 662.
9107(b)	31:867 (1st sentence less last proviso)	Dec. 6, 1945, ch. 577, § 302, 59 Stat. 601; July 26, 1956, ch. 741, § 201(a)(4), 70 Stat. 667; Aug. 20, 1978, Pub.L. 95-351, § 301(b), 92 Stat. 514.
9107(c)(1)	31:867 (1st sentence last proviso)	
9107(c)(2)	31:868(d) (1st sentence related to 31:867)	Dec. 6, 1945, ch. 577, § 303(d) (1st sentence related to § 302), 59 Stat. 602.
9107(c)(3)	31:867 (last sentence)	

Explanatory Notes

In subsection (a), the words "After June 30, 1949" are omitted as executed. The words "Government corporation" are substituted for "corporations or agencies subject to this chapter" because of section 9101(1) of the revised title [section 9101(1) of this title]. The words "notwithstanding the provisions of any other law", "or more . . . for banking and checking purposes", and "including amounts appropriated, from whatever source derived" are omitted as surplus. The words "if the cash will be expended as provided by law" are substituted for 31:870 [former section 870 of this title] (proviso) to eliminate unnecessary words.

In subsections (b) and (c), the words "banking or checking" are omitted as surplus.

In subsection (b), the words "Secretary of the Treasury" are substituted for "Treasurer of the United States" because of the source provisions restated in section 321(c) of the revised title [section 321(c) of this title]. The words "wholly owned and mixed-ownership" and "under such conditions as he may determine" are omitted as surplus.

In subsection (c)(1), the words "establishment and" and "in any one bank" are omitted as surplus.

In subsection (c)(3), the words "head of each" are added for consistency.

1983 Act

This amends 31:9107(c)(3) [subsec. (c)(3) of this section] and 9108(d)(2) [section 9108(d)(2) of this title] because the National Consumer Cooperative Bank is no longer a

mixed-ownership Government corporation. Section 396(h)(2) [which amended section 867 of this title] and (3) [which amended former section 868 of this title] and (i) [set out as a note under section 3011 of Title 12, Banks and Banking] of the Omnibus Budget Reconciliation Act of 1981 (Pub.L. 97-35, 95 Stat. 440) provided that references to the Bank in sections 302 [former section 867 of this title] and 303(d) [former section 868(d) of this title] (2d sentence) of the Government Corporation Control Act would be deleted on the day after the Final Government Equity Redemption Date. Section 501(36) of the Act of December 23, 1981 (Pub.L. 97-101, 95 Stat. 1440), provided that the Redemption Date was December 31, 1981.

1983 Amendment. Subsec. (c)(3). Pub.L. 97-452 struck out "the National Consumer Cooperative Bank," following "Regional Banks for Cooperatives," which entailed no change in text because this amendment had already been made by Pub.L. 97-258. See 1982 Amendment note below.

1982 Amendment. Subsec. (c)(3). Pub.L. 97-258, § 2(f)(2), struck out "the National Consumer Cooperative Bank," following "Regional Banks for Cooperatives,".

Effective Date of 1983 Amendment. Section 2(i) of Pub.L. 97-452 provided in part that the amendment to this section by Pub.L. 97-452 is effective as of Sept. 13, 1982. See section 2(i) of Pub.L. 97-452, set out as an Effective Date of 1983 Amendment note under section 3331 of this title.

Ch. 91 GOVERNMENT CORPORATIONS

Effective Date of 1982 Amendment. Section 2(f) of Pub.L. 97-258 provided in part that the amendment to subsec. (c)(3) would be effective on Jan. 1, 1982.

Legislative History. For legislative history and purpose of Pub.L. 97-452, see 1983 U.S. Code Cong. and Adm. News, p. 4301.

§ 9108. Obligations

(a) Before a Government corporation issues obligations and offers obligations to the public, the Secretary of the Treasury shall prescribe—

(1) the form, denomination, maturity, interest rate, and conditions to which the obligations will be subject;

(2) the way and time the obligations are issued; and

(3) the price for which the obligations will be sold.

(b) A Government corporation may buy or sell a direct obligation of the United States Government, or an obligation on which the principal, interest, or both, is guaranteed, of more than \$100,000 only when the Secretary approves the purchase or sale. The Secretary may waive the requirement of this subsection under conditions the Secretary may decide.

(c) The Secretary may designate an officer or employee of an agency to carry out this section if the head of the agency agrees.

(d)(1) This section does not apply to a mixed-ownership Government corporation when the corporation has no capital of the Government.

(2) Subsections (a) and (b) of this section do not apply to the Rural Telephone Bank (when the ownership, control, and operation of the Bank are converted under section 410(a) of the Rural Electrification Act of 1936 (7 U.S.C. 950(a))), the Federal Intermediate Credit Banks, the Central Bank for Cooperatives, the Regional Banks for Cooperatives, and the Federal Land Banks. However, the head of each of those banks shall consult with the Secretary before taking action of the kind described in subsection (a) or (b). If agreement is not reached, the Secretary may make a written report to the corporation, the President, and Congress on the reasons for the Secretary's disagreement.

(Pub.L. 97-258, Sept. 13, 1982, 96 Stat. 1045; Pub.L. 97-258, § 2(f)(2), Sept. 13, 1982, 96 Stat. 1062; Pub.L. 97-452, § 1(27), Jan. 12, 1983, 96 Stat. 2478.)

Historical and Revision Notes

1982 Act		
Revised Section	Source (U.S. Code)	Source (Statutes at Large)
9108(a)	31:868(a)	Dec. 6, 1945, ch. 557, § 303 (less (d) (1st sentence related to § 302)), 59 Stat. 601; July 26, 1956, ch. 741, § 201(a)(4), 70 Stat. 667; May 7, 1971, Pub.L. 92-12, § 5, 85 Stat. 17; Aug. 20, 1978, Pub.L. 95-351, § 301(c), 92 Stat. 514.
9108(b)	31:868(b)	
9108(c)	31:868(c)	
9108(d)	31:868(d) (less 1st sentence related to 31:867)	

Explanatory Notes

In subsections (a) and (b), the words "on or after December 6, 1945" are omitted as executed. The words "wholly owned or mixed-ownership" are omitted because of section 9101(1) of the revised title [section 9101(1) of this title].

In subsection (a), before clause (1), the word "Before" is substituted for "which are" for clarity. The words "bonds, notes, debentures, and other similar" are omitted as surplus. The words "as have been" are omitted as executed. In clause (1), the words "terms and" are omitted as surplus.

In subsection (b), the word "Government" is added for consistency. The words "for its own account and in its own right and interest, at any one time aggregating" and "his approval with respect to any transaction or classes of transactions subject to the provisions of . . . for such period of time and" are omitted as surplus.

In subsection (c), the word "agency" is substituted for "Federal agency" because of section 101 of the revised title [section 101 of this title]. The words "any of the functions vested in him by" and "for such purpose" are omitted as surplus.

In subsection (d)(2), the words "(when the ownership, control, and operation of the Bank are converted under section 410(a) of the Rural Electrification Act of 1936 (7 U.S.C. 950(a)))" are added because of 7:943(c) and 950(a) [sections 943(c) and 950(a) of Title 7, Agriculture]. The words "head of each" are added for consistency. The words "be required to" are omitted as surplus.

1983 Act

This amends 31:9107(c)(3) [section 9107(c)(3) of this title] and 9108(d)(2) [subsec. (d)(2) of this section] because the National Consumer Cooperative Bank is no longer a mixed-ownership Government corporation. Section 396(h)(2) [which amended section 867 of this title] and (3) [which amended former section 868 of this title] and (i) [set out as a note un-

der section 3011 of Title 12, Banks and Banking] of the Omnibus Budget Reconciliation Act of 1981 (Pub.L. 97-35, 95 Stat. 440) provided that references to the Bank in sections 302 [former section 867 of this title] and 303(d) [former section 868(d) of this title] (2d sentence) of the Government Corporation Control Act would be deleted on the day after the Final Government Equity Redemption Date. Section 501(36) of the Act of December 23, 1981 (Pub.L. 97-101, 95 Stat. 1440), provided that the Redemption Date was December 31, 1981.

References in Text. Section 410(a) of the Rural Electrification Act of 1936, referred to in subsec. (d)(2), is section 410(a) of Act May 20, 1936, c. 432, Title IV, as added May 7, 1971, Pub.L. 92-12, § 2, 85 Stat. 36, which is classified to section 950(a) of Title 7, Agriculture.

1983 Amendment. Subsec. (d)(2). Pub.L. 97-452 struck out "the National Consumer Cooperative Bank," following "the Regional Banks for Cooperatives," which entailed no change in text because this amendment had already been made by Pub.L. 97-258. See 1982 Amendment note below.

1982 Amendment. Subsec. (d)(2). Pub.L. 97-258, § 2(f)(2), struck out "the National Consumer Cooperative Bank," following "Regional Banks for Cooperatives."

Effective Date of 1983 Amendment. Section 2(i) of Pub.L. 97-452 provided in part that the amendment to this section by Pub.L. 97-452, is effective as of Sept. 13, 1982. See section 2(i) of Pub.L. 97-452, set out as an Effective Date of 1983 Amendment note under section 3331 of this title.

Effective Date of 1982 Amendment. Section 2(f) of Pub.L. 97-258 provided in part that the amendment to subsec. (d)(2) would be effective on Jan. 1, 1982.

Legislative History. For legislative history and purpose of Pub.L. 97-452, see 1983 U.S. Code Cong. and Adm. News, p. 4301.

§ 9109. Exclusion of a wholly owned Government corporation from this chapter

When the President considers it practicable and in the public interest, the President shall include in the budget submitted to Congress under section 1105 of this title a recommendation that a wholly owned Government corporation be deemed to be an agency (except a corporation) under chapter 11 of this title and for fiscal matters. If Congress approves the recommenda-

tion, the corporation is deemed to be an agency (except a corporation) under chapter 11 and for fiscal matters for fiscal years beginning after the fiscal year of approval and is not subject to this chapter. The corporate entity is not affected by this section.

(Pub.L. 97-258, Sept. 13, 1982, 96 Stat. 1045.)

Historical and Revision Notes

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
9109	31:852	Dec. 6, 1945, ch. 577, § 107, 59 Stat. 599

Explanatory Notes

The word "President" is substituted for "Director of the Office of Management and Budget" because sections 101 and 102(a) of Reorganization Plan No. 2 of 1970 (eff. July 1, 1970, 84 Stat. 2085) [set out under section 501 of this title] designated the Bureau of the Budget as the Office of Management and Budget and transferred all functions of the Bureau to the President. The words "with the approval of the President" are omitted because of the restatement. The word "considerers" is substituted for "deemed" for consistency. The words "in connection with the budget program of such corporation" are omitted as surplus. The words "submitted to Congress under section 1105 of this title" are added for clarity. The words "deemed to be"

are substituted for "treated . . . as if it were" for consistency. The word "agency" is substituted for "Government agency" and "establishment" because of section 101 of the revised title [section 101 of this title] and for consistency. The words "if it were", "appropriations, expenditures, receipts, accounts, and other", and "in connection with the budget program for any fiscal year" are omitted as surplus. The words "deemed to be" are substituted for "regarded as" for consistency. The words "the Budget and Accounting Act, 1921, and other provisions of law relating to appropriations, expenditures, receipts, accounts, and other" and "other than this section" are omitted as surplus.

SUBTITLE VI—MISCELLANEOUS

Chapter	Sec.
91. Government Corporations	9101
93. Sureties and Surety Bonds	9301
95. Government Pension Plan Protection	9501
97. Miscellaneous	9701

CHAPTER 91—GOVERNMENT CORPORATIONS

Sec.	
9101.	Definitions.
9102.	Establishing and acquiring corporations.
9103.	Budgets of wholly owned Government corporations.
9104.	Congressional action on budgets of wholly owned Government corporations.
9105.	Audits.
9106.	Audit reports.
9107.	Accounts.
9108.	Obligations.
9109.	Exclusion of a wholly owned Government corporation from this chapter.

Cross References

Agency defined to include government corporation subject to this chapter for purposes of provisions relating to training of government employees, see section 4101 of Title 5, Government Organization and Employees.

Applicability of this chapter to Administrator, Bonneville Power Administration, see section 838i of Title 16, Conservation.

Authority of Commodity Credit Corporation to issue obligations for purpose of carrying out annual budget programs, see section 713a-4 of Title 15, Commerce and Trade.

Budget to include recommendations on return of government capital to Treasury by mixed-ownership corporation, see section 1105 of this title.

Executive agency defined to exclude corporation, agency, or instrumentality subject to this chapter for purposes of section 3501 et seq. of this title, see section 3501 of this title.

Payment of additional amount by government corporation for cost of administration of employees' compensation provisions, see section 8147 of Title 5, Government Organization and Employees.

Specific powers of Commodity Credit Corporation, see section 714c of Title 15, Commerce and Trade.

§ 9101. Definitions

In this chapter—

- (1) "Government corporation" means a mixed-ownership Government corporation and a wholly owned Government corporation.
- (2) "mixed-ownership Government corporation" means—
 - (A) Amtrak.
 - (B) the Central Bank for Cooperatives.
 - (C) the Federal Deposit Insurance Corporation.

- (J) the Federal Home Loan Banks.
 (E) the Federal Intermediate Credit Banks.
 (F) the Federal Land Banks.
 (G) the National Credit Union Administration Central Liquidity Facility.
 (H) the Regional Banks for Cooperatives.
 (I) the Rural Telephone Bank when the ownership, control, and operation of the Bank are converted under section 410(a) of the Rural Electrification Act of 1936 (7 U.S.C. 950(a)).
 (J) the United States Railway Association.
- (3) "wholly owned Government corporation" means—
- (A) the Commodity Credit Corporation.
 (B) the Export-Import Bank of the United States.
 (C) the Federal Crop Insurance Corporation.
 (D) Federal Prison Industries, Incorporated.
 (E) the Federal Savings and Loan Insurance Corporation.
 (F) the Government National Mortgage Association.
 (G) the Overseas Private Investment Corporation.
 (H) the Pennsylvania Avenue Development Corporation.
 (I) the Pension Benefit Guaranty Corporation.
 (J) the Rural Telephone Bank until the ownership, control, and operation of the Bank are converted under section 410(a) of the Rural Electrification Act of 1936 (7 U.S.C. 950(a)).
 (K) the Saint Lawrence Seaway Development Corporation.
 (L) the Secretary of Housing and Urban Development when carrying out duties and powers related to the Federal Housing Administration Fund.
 (M) the Tennessee Valley Authority.

(Pub.L. 97-258, Sept. 13, 1982, 96 Stat. 1041; Pub.L. 97-258, § 2(f)(1), Sept. 13, 1982, 96 Stat. 1062; Pub.L. 97-452, § 1(26), Jan. 12, 1983, 96 Stat. 2478.)

Historical and Revision Notes

1982 Act

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
9101(1)	(no source)	
9101(2)	31:856	Dec. 6, 1945, ch. 557, § 201, 59 Stat. 600; July 26, 1956, ch. 741, § 201(a)(2), (3), 70 Stat. 667; Oct. 30, 1970, Pub.L. 91-518, § 804, 84 Stat. 1340; May 7, 1971, Pub.L. 92-12, § 4, 85 Stat. 37; Jan. 2, 1974, Pub.L. 93-236, §§ 202(g)(1), 301(f) (last sentence), 87 Stat. 992, 1005; Feb. 5, 1976, Pub.L. 94-210, § 612(b), 90 Stat. 108; Aug. 20, 1978, Pub.L. 95-351, § 301(a), 92 Stat. 513; Nov. 10, 1978, Pub.L. 95-630, § 1805, 92 Stat. 3724.

Revised Section	Source (U.S. Code)	Source (Sta. Large)
9101(3)	31:846	Dec. 6, 1945, ch. 577, § 101, 59 Stat. 597; Aug. 10, 1948, ch. 832, § 501(b) (less proviso), 62 Stat. 1283; June 30, 1949, ch. 285, § 13, 63 Stat. 356; May 13, 1954, ch. 201, § 6, 68 Stat. 95; July 26, 1956, ch. 741, § 201(a)(1), 70 Stat. 667; June 30, 1958, Pub.L. 85-477, § 502(c), 72 Stat. 272; Oct. 4, 1961, Pub.L. 87-353, § 3(u), 75 Stat. 774; May 25, 1967, Pub.L. 90-19, § 4, 81 Stat. 20; Aug. 1, 1968, Pub.L. 90-448, §§ 807(e), 1719(d), 82 Stat. 544, 610; Dec. 30, 1969, Pub.L. 91-175, § 501, 83 Stat. 825; Oct. 27, 1972, Pub.L. 92-578, § 15, 86 Stat. 1274; Sept. 2, 1974, Pub.L. 93-406, § 4002(g)(3), 88 Stat. 1005.

Explanatory Notes

Clause (1) is included because a number of the provisions of the chapter apply to mixed-ownership and wholly owned Government corporations, and the term "Government corporation" provides a simple phrase to refer to both of those kinds of corporations.

In clause (2)(A), "Amtrak" is substituted for "National Railroad Passenger Corporation" to conform to section 103(1) of the Rail Passenger Service Act (45 U.S.C. 502(1)) [section 502(1) of Title 45, Railroads].

In clause (2)(I), the words "when the ownership, control, and operation of the Bank are converted under section 410(a) of the Rural Electrification Act of 1936 (7 U.S.C. 950(a))" are added because of 7:943(c) and 950(a) [sections 943(c) and 950(a) of Title 7, Agriculture].

In clause (3), the words "Regional Agricultural Credit Corporations" are omitted because the corporations were merged with and liquidated by the Regional Agricultural Credit Corporation of Washington, D.C., which was dissolved on April 16, 1949. The words "Farmers Home Corporation" are omitted because the corporation never was activated. The words "Federal Surplus Commodities Corporation" are omitted because the corporation and the Division of Marketing and Marketing Agreements were consolidated into the Surplus Marketing Administration, which was merged into the Agricultural Marketing Administration, which was dissolved on March 14, 1947. The words "Reconstruction Finance Corporation" are omitted because the corporation was abolished on June 30, 1957. The words "Defense Plant Corporation; Defense Supplies Corporation; Metals Reserve Company; Rubber Reserve Company" are omitted because the corporations and companies were dissolved on July 1, 1945. The words "War Damage Corporation" are

omitted because the corporation was terminated on January 22, 1947. The words "the RFC Mortgage Company" are omitted because the company was transferred to the Reconstruction Finance Corporation, which was abolished on June 30, 1957. The words "Disaster Loan Corporation" are omitted because the corporation was dissolved on July 1, 1945. The words "Inland Waterways Corporation" are omitted because the corporation was liquidated on July 19, 1963. The words "Warrior River Terminal Company" are omitted because the company was transferred to the Inland Waterways Corporation, which was liquidated on July 13, 1963. The words "Virgin Islands Corporation" are omitted because the corporation was dissolved on July 1, 1966. The words "United States Spruce Production Corporation" are omitted because the corporation was dissolved on December 12, 1946. The words "Institute of Inter-American Affairs" are omitted because the institute was transferred to the Foreign Operations Administration, which was abolished on May 9, 1955. The words "Institute of Inter-American Transportation" are omitted because the institute was dissolved August 24, 1949. The words "Inter-American Educational Foundation, Incorporated" are omitted because the foundation was succeeded by the Institute of Inter-American Affairs, which was transferred to the Foreign Operations Administration, which was abolished on May 9, 1955. The words "Inter-American Navigation Corporation" are omitted because the corporation was dissolved on February 25, 1947. The words "Pencinradio, Incorporated" are omitted because Pencinradio, Incorporated was dissolved May 10, 1949. The words "Cargoes, Incorporated" are omitted because Cargoes, Incorporated was dissolved April 30, 1945. The words "Export-Import Bank of the United States" are substituted for

"Export-Import Bank of Washington" because of section 1(a) of the Act of March 13, 1968 (Pub.L. 90-267, 82 Stat. 47) [see Tables volume]. The words "Petroleum Reserves Corporation" are omitted because the corporation was transferred to the Office of Economic Warfare, which was consolidated into the Foreign Economic Administration, which was transferred to the Reconstruction Finance Corporation and changed to the War Assets Corporation. The War Assets Corporation was dissolved as soon as practicable after March 25, 1946. The words "Rubber Development Corporation" are omitted because the certificate of incorporation expired on June 30, 1947. The words "U.S. Commercial Company" are omitted because the company was liquidated after June 30, 1948. The words "Smaller War Plants Corporation" are omitted because the corporation was abolished on June 30, 1947. The words "Defense Homes Corporation" are omitted because the corporation was liquidated on June 30, 1948. The words "Home Owners' Loan Corporation" are omitted because the corporation was dissolved on February 3, 1954. The words "United States Housing Corporation" are omitted because the corporation was terminated on September 8, 1952. The words "Panama Railroad Company" (subsequently changed to "Panama Canal Company" by section 2(a)(2) of the Act of September 26, 1950 (ch. 1049, 64 Stat. 1038)), are omitted because of 22:ch. 51 [section 3601 et seq. of Title 22, Foreign Relations and Intercourse]. The words "Tennessee Valley Associated Cooperatives, Incorporated" are omitted because the corporation was dissolved on January 18, 1950.

In clause (3)(J), the words "until the ownership, control, and operation of the Bank are converted under section 410(a) of the Rural Electrification Act of 1936 (7 U.S.C. 950(a))" are added because of 7:943(c) and 950(a) [sections 943(c) and 950(a) of Title 7, Agriculture] Clause (L) is substituted for the "Federal Housing Administration" because of section 5 of the Department of Housing and Urban Development Act (Pub.L. 89-174, 79 Stat. 669) [see Tables volume].

1983 Act

This amends 31:9101(2) [par. (2) of this section] because the National Consumer Cooperative Bank is no longer a mixed-ownership Government corporation. Section 396(h)(1) [amended former section 856 of this

title] and (i) [set out as a note under section 3011 of Title 12, Banks and Banking] of the Omnibus Budget Reconciliation Act of 1981 (Pub.L. 97-35, 95 Stat. 440) provided that the Bank would cease being a mixed-ownership Government corporation on the day after the Final Government Equity Redemption Date. Section 501(36) of the Act of December 23, 1981 (Pub.L. 97-101, 95 Stat. 1440), provided that the Redemption Date was December 31, 1981.

References in Text. Section 410(a) of the Rural Electrification Act of 1936, referred to in pars. (2)(I) and (3)(J), is section 410(a) of Act May 20, 1936, c. 432, Title IV, as added May 7, 1971, Pub.L. 92-12, § 2, 85 Stat. 36, which is classified to section 950(a) of Title 7, Agriculture.

1983 Amendment. Par. (2)(K). Pub.L. 97-452 struck out par. (2)(K) relating to the National Consumer Cooperative Bank which entailed no change in text because this amendment had already been made by Pub.L. 97-258. See 1982 Amendment note below.

1982 Amendment. Par. (2)(K). Pub.L. 97-258, § 2(i)(1), struck out subpar. (K) relating to the National Consumer Cooperative Bank.

Effective Date of 1983 Amendment. Section 2(i) of Pub.L. 97-452 provided in part that the amendment to this section by Pub.L. 97-452 is effective as of Sept. 13, 1982. See section 2(i) of Pub.L. 97-452, set out as an Effective Date of 1983 Amendment note under section 3331 of this title.

Effective Date of 1982 Amendment. Section 2(i) of Pub.L. 97-258 provided in part that the amendment to par. (2)(K) would be effective on Jan. 1, 1982.

Federal National Mortgage Association. Act Aug. 2, 1954, c. 649, Title II, § 202, 68 Stat. 622, provided: "The Federal National Mortgage Association, established pursuant to the provisions of title III of the National Housing Act as in effect prior to July 1, 1948, and named in section 101 of the Government Corporation Control Act, as amended [former section 846 of this title] shall be the body corporate referred to in section 302 of Title III of the National Housing Act, as amended by the Housing Act of 1954 [section 1717 of Title 12]".

Legislative History. For legislative history and purpose of Pub.L. 97-452, see 1983 U.S. Code Cong. and Adm. News, p. 4301.

Library References

C.J.S. United States § 65.

United States § 53(1).

Notes of Decisions

1. Mixed-ownership Government corporation

Civil Air Patrol is not a "mixed-ownership government corporation" whose financial transactions are required to be audited annually by General Accounting Office. *Pearl v. U.S.*, C.A.Okl.1956, 230 F.2d 243.

Civil Air Patrol was not a wholly owned government corporation of type listed in former section 846 of this title whose financial transactions and operations were kept under annual scrutiny by Congress. *Id.*

§ 9102. Establishing and acquiring corporations

An agency may establish or acquire a corporation to act as an agency only by or under a law of the United States specifically authorizing the action.

(Pub.L. 97-258, Sept. 13, 1982, 96 Stat. 1042.)

Historical and Revision Notes

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
9102	31:869(a)	Dec. 6, 1945, ch. 557, § 304(a), 59 Stat. 602.

Explanatory Notes

The word "agency" is substituted for "officer or agency of the Federal Government or by any Government corporation" and "agency or instrumentality of the United States" because of section 101 of the revised title [section 101 of this title], for consistency, and because a Government corporation is an "in-

strumentality of the United States Government". The word "establish" is substituted for "created, organized" to eliminate unnecessary words. The words "on or after December 6, 1945" are omitted as executed. The words "law of the United States" are substituted for "Act of Congress" for consistency.

Library References

C.J.S. United States § 65.

United States § 53(2).

§ 9103. Budgets of wholly owned Government corporations

(a) Each wholly owned Government corporation shall prepare and submit each year to the President a business-type budget in a way, and before a date, the President prescribes by regulation for the budget program.

(b) The budget program for each wholly owned Government corporation shall—

(1) contain estimates of the financial condition and operations of the corporation for the current and following fiscal years and the condition and results of operations in the last fiscal year;

(2) contain statements of financial condition, income and expense, and sources and use of money, an analysis of surplus or deficit, and additional statements and information to make known the financial condition and operations of the corporation, including estimates of op-

erat. by major activities, administrative expenses, borrowings, the amount of United States Government capital that will be returned to the Treasury during the fiscal year, and appropriations needed to restore capital impairments; and

(3) provide for emergencies and contingencies and otherwise be flexible so that the corporation may carry out its activities.

(c) The President shall submit the budget programs submitted by wholly owned Government corporations (as changed by the President) as part of the budget submitted to Congress under section 1105 of this title. The President thereafter may submit changes in a budget program of a corporation at any time.

(Pub.L. 97-258, Sept. 13, 1982, 96 Stat. 1042.)

Historical and Revision Notes

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
9103(a)	31:847 (1st sentence).....	Dec. 6, 1945, ch. 557, § 102, 59 Stat. 598; Sept. 12, 1950, ch. 946, § 105, 64 Stat. 834.
9103(b)	31:847 (2d-last sentences).....	
9103(c)	31:848	Dec. 6, 1945, ch. 557, § 103, 59 Stat. 598.

Explanatory Notes

In subsection (a), the word "President" is substituted for "Office of Management and Budget" because sections 101 and 102(a) of Reorganization Plan No. 2 of 1970 (eff. July 1, 1970, 84 Stat. 2085) [set out under section 501 of this title] designated the Bureau of the Budget as the Office of Management and Budget and transferred all functions of the Bureau to the President. The words "in a way, and before a date, the President prescribes" are substituted for "under such rules and regulations as the President may establish as to the date of submission, the form and content, the classifications of data, and the manner in which such budget program shall be prepared and presented" to eliminate unnecessary words.

In subsection (b), before clause (1), the word "budget" is substituted for "budget program" shall be a business-type budget, or plan of operation" for consistency and to eliminate unnecessary words. In clause (1), the words "actual" and "completed" are omitted as surplus.

plus. In clause (2), the words "as are necessary or desirable", "types of", "together with", and "funds" are omitted as surplus. In clause (3), the words "as authorized by law" are omitted as surplus.

In subsection (c), the words "may change" are substituted for "as modified, amended, or revised by" to eliminate unnecessary words. The word "budget" is substituted for "budget programs", and the word "submit" is substituted for "transmitted", for consistency. The word "annual" is omitted as surplus. The word "thereafter" is added for clarity. The text of 31:848 [former section 848 of this title] (last par.) is omitted as unnecessary.

Fiscal Year Transition Period of July 1, 1976, Through September 30, 1976, Deemed Fiscal Year. Fiscal year transition period of July 1, 1976, through Sept. 30, 1976, deemed fiscal year for purposes of this section, see section 201(31) of Pub.L. 94-274, Title II, Apr. 21, 1976, 90 Stat. 390, set out as a note under section 343 of Title 7, Agriculture.

Cross References

Annual budget for synthetic rubber disposal program, see section 1941g of Appendix to Title 50, War and National Defense.
Budgets for disaster loan fund and business loan and investment fund, see section 633 of Title 15, Commerce and Trade.
Veterans' Canteen Service, preparation and submission of budget, see section 4206 of Title 38, Veterans' Benefits.

Library References

United States 53(8).

C.J.S. United States § 70.

§ 9104. Congressional action on budgets of wholly owned Government corporations

(a) Congress shall—

(1) consider budget programs for wholly owned Government corporations the President submits;

(2) make necessary appropriations authorized by law;

(3) make corporate financial resources available for operating and administrative expenses; and

(4) provide for repaying capital and the payment of dividends.

(b) This section does not—

(1) prevent a wholly owned Government corporation from carrying out or financing its activities as authorized under another law;

(2) affect section 26 of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831y); or

(3) affect the authority of a wholly owned Government corporation to make a commitment without fiscal year limitation.

(Pub.L. 97-258, Sept. 13, 1982, 96 Stat. 1043.)

Historical and Revision Notes

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
9104(a)	31:849 (1st sentence).....	Dec. 6, 1945, ch. 557, § 104, 59 Stat. 598; restated July 30, 1947, ch. 358, § 307, 61 Stat. 584.
9104(b)	31:849 (2d, last sentences)	

Explanatory Notes

In subsection (a), the words "budgets for wholly owned Government corporations" are substituted for "Budget programs" for clarity and consistency. The words "legislation . . . be enacted", "as may be", "for expenditure", "corporate funds or other", "or limiting the use thereof", "as the Congress may determine", and "funds" are omitted as surplus.

In subsection (b), the word "existing" is omitted as surplus. In clause (1), the word "another" is added for clarity. In clause (3), the words "contracts or other" and "reference to" are omitted as surplus.

References in Text. Section 26 of the Tennessee Valley Authority Act of 1933, referred to in subsec. (b)(2), is section 26 of Act May 18, 1933, c. 32, 48 Stat. 71, which is classified to section 831y of Title 16, Conservation.

Cross References

Appropriation defined to include funds made available by statute under this section for purposes of provisions relating to—
Employment of experts and consultants, see section 3109 of Title 5, Government Organization and Employees.
Protective clothing and equipment, see section 7903 of Title 5.
Travel, transportation and subsistence, see section 5721 of Title 5.

Authority of . . .modity Credit Corporation to make contracts and commitments without regard to fiscal year limitations, see section 713a-10 of Title 15, Commerce and Trade. Budgets for disaster loan fund and business loan and investment fund, see section 633 of Title 15.

Consideration and enactment of budget for Government Printing Office revolving fund as prescribed by this section, see section 309 of Title 44, Public Printing and Documents.

Library References

United States 53(8).

C.J.S. United States § 70.

§ 9105. Audits

(a)(1) Under regulations of the Comptroller General, the Comptroller General shall audit financial transactions of—

(A) wholly owned Government corporations; and

(B) mixed-ownership Government corporations during periods in which capital of the United States Government is invested in a mixed-ownership Government corporation.

(2) The Comptroller General shall audit each Government corporation at least once every 3 years. The Comptroller General shall audit the Federal Savings and Loan Insurance Corporation and Federal home loan banks on a calendar year basis.

(b) In conducting an audit under subsection (a) of this section, the Comptroller General—

(1) to the greatest extent the Comptroller General considers practicable, shall use reports of examinations of a Government corporation that a supervising administrative agency makes; and

(2) without regard to section 3709 of the Revised Statutes (41 U.S.C. 5), may make a contract for professional services with a firm or organization for a temporary period or special purpose.

(c) An audit under subsection (a) of this section shall be conducted consistent with principles and procedures applicable to commercial corporate transactions where the accounts of a Government corporation usually are kept. A Government corporation shall—

(1) make available to the Comptroller General for audit all records and property of, or used by, the corporation that are necessary for the audit; and

(2) provide the Comptroller General with facilities for verifying transactions with the balances or securities held by depositaries, fiscal agents, or custodians.

(d) Regulations prescribed under subsection (a) of this section may provide that any part of an account of an accountable official about a financial transaction of a wholly owned Government corporation sent to the Comptroller General for settlement may be kept at the office of the corporation and that the Comptroller General may settle any part of the account on the basis of an examination during an audit. This subsection does not affect the

authority of the Tennessee Valley Authority under section 5 of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831h(b)).

(e) The Comptroller General shall pay the cost of an audit under this section. A Government corporation shall reimburse the Comptroller General for the cost of the audit as determined by the Comptroller General. The Comptroller General shall deposit the reimbursement in the Treasury as miscellaneous receipts. Except as expressly provided by law, a Government corporation may not pay the cost of a private audit of the financial records of the corporation.

(f) An audit under subsection (a) of this section is in place of an audit of the financial transactions of a Government corporation the Comptroller General is required to make in reporting to Congress or the President under another law.

(g) Necessary amounts are authorized to be appropriated to the Comptroller General to carry out this section.

(Pub.L. 97-258, Sept. 13, 1982, 96 Stat. 1043.)

Historical and Revision Notes

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
9105(a)	31:850 (1st sentence 1st-16th, 30th-46th words, 4th-last sentences).	Dec. 6, 1945, ch. 557, § 105, 59 Stat. 599; Aug. 30, 1964, Pub.L. 88-518, § 2(a), 78 Stat. 698; Jan. 2, 1975, Pub.L. 93-604, § 601(a), 88 Stat. 1962.
	31:857 (1st sentence 1st-26th, 39th-last words, 4th-last sentences).	Dec. 6, 1945, ch. 557, § 202, 59 Stat. 600; Aug. 30, 1964, Pub.L. 88-518, § 1(a), 78 Stat. 698; Jan. 2, 1975, Pub.L. 93-604, § 601(c), 88 Stat. 1962.
9105(b)	31:866(a) (last proviso), (b)	Dec. 6, 1945, ch. 557, § 301, 59 Stat. 601.
9105(c)	31:850 (1st sentence 17th-29th words, 2d, 3d sentences).	
	31:857 (1st sentence 27th-38th words, 2d, 3d sentences).	
9105(d)	31:850 (1st sentence proviso)	
9105(e)	31:866(a) (words before 1st comma, 1st proviso), (d).	
9105(f)	31:866(c)	
9105(g)	31:866(a) (words between 1st comma and 1st proviso).	

Explanatory Notes

In the section, the words "Comptroller General" are substituted for "General Accounting Office" for consistency.

In subsection (a), the words "rules and . . . of the United States" are omitted as surplus. The words "United States" are added for consistency. The text of 31:850 [former section 850 of this title] (4th sentence) and 857 [former section 857 of this title] (4th sentence) and the words "Effective July 1, 1974" are omitted as executed.

In subsection (b)(1), the words "pursuant to law" are omitted as surplus.

In subsection (b)(2), the words "may make a contract" are substituted for "is authorized

in his discretion to employ by contract" to eliminate unnecessary words.

In subsection (c), before clause (1), the words "at the place or places" and "of the respective corporations" are omitted as surplus. The words "A Government corporation shall" are added for clarity. In clause (1), the words "make available . . . for audit all records" are substituted for "The representatives of . . . shall have access to all books, accounts, financial records, reports, files, and all other papers" for consistency and because of the restatement. The words "things, or" are omitted because they are included in "property". In clause (2), the word "full" is omitted as surplus.

Subsec. (b) is substituted for 31:850 [former : 50 of this title] (1st sentence proviso w/o. before 7th comma) because of the restatement.

In subsection (e), the words "The Comptroller General shall pay the cost of an audit" are substituted for "The expenses of auditing the financial transactions of wholly owned and mixed-ownership Government corporations as provided in sections 850 and 857 of this title shall be borne out of appropriations to the General Accounting Office" to eliminate unnecessary words. The words "full" and "otherwise . . . funds of any . . . be used to . . . of the offices" are omitted as surplus. The words "except the cost of such audits contracted for and un-

dertaken prior to April 25, 1945" are omitted as executed.

Subsection (g) is substituted for 31:866(a) [former section 866(a) of this title] (words between 1st comma and 1st proviso) for clarity and consistency.

References in Text. Section 3709 of the Revised Statutes, referred to in subsec. (b)(2), is classified to section 5 of Title 41, Public Contracts.

Section 9(b) of the Tennessee Valley Authority Act of 1933, referred to in subsec. (d), is section 9(b) of Act May 18, 1933, c. 32, 48 Stat. 63, which is classified to section 831h(b) of Title 16, Conservation.

Cross References

Additional audits of Tennessee Valley Authority accounts by certified public accounting firms, see section 831n-4 of Title 16, Conservation.

Audit of financial transactions of Administrator, Bonneville Power Administration, see section 838i of Title 16.

Audit reports, see section 9106 of this title.

Federal Home Loan Banks, audits, see section 1431 of Title 12, Banks and Banking.

Library References

United States ⚡53(8).

C.J.S. United States § 70.

§ 9106. Audit reports

(a) The Comptroller General shall submit to Congress a report on each audit of a Government corporation under section 9105 of this title not later than 6.5 months after the end of the last year covered by the audit. The report shall state the scope of the audit and include—

(1) a statement (showing intercorporate relations) of assets, liabilities, capital, and surplus or deficit;

(2) a statement of surplus or deficit analysis;

(3) a statement of income and expenditures;

(4) a statement of sources and the use of money;

(5) specifically each financial transaction or undertaking the Comptroller General believes was carried out or made without authority of law;

(6) comments and information the Comptroller General considers necessary to keep Congress informed about the operations and financial condition of the Government corporation, including a statement of impaired capital noticed and recommendations for the return of capital of the United States Government or the payment of dividends the Comptroller General believes should be made; and

(7) other recommendations the Comptroller General considers advisable.

(b) The Comptroller General shall give the President, the Secretary of the Treasury, and the Government corporation a copy of the report when it is submitted to Congress.

(Pub.L. 97-258, Sept. 13, 1982, 96 Stat. 1044.)

Historical and Revision Notes

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
9106(a)	31:851 (1st-3d sentences)	Dec. 6, 1945, ch. 557, § 106, 59 Stat. 599; Aug. 30, 1964, Pub.L. 88-518, § 2(b), 78 Stat. 698; Jan. 2, 1975, Pub.L. 93-604, § 601(b), 88 Stat. 1962.
	31:858 (1st-3d sentences)	Dec. 6, 1945, ch. 557, § 203, 59 Stat. 600; Aug. 30, 1964, Pub.L. 88-518, § 1(b), 78 Stat. 698; Jan. 2, 1975, Pub.L. 93-604, § 601(d), 88 Stat. 1963.
9106(b)	31:851 (last sentence)	
	31:858 (last sentence)	

Explanatory Notes

In subsection (a), before clause (1), the words "of a Government corporation" are added for clarity. In clause (5), the words "program, expenditure, or other", "observed in the course of the audit", and "of law" are omitted as surplus. In clause (6), the word "statement" is substituted for "report" for consistency. The words "noted in the audit" are omitted as surplus. The word "made" is

substituted for "accomplished" for consistency. In clause (7), the word "other" is added for clarity because of the restatement. The words "with respect thereto" are omitted as surplus.

In subsection (b), the words "The Comptroller General" are added for clarity.

Cross References

Additional reports of financial condition and operations of Tennessee Valley Authority by certified public accounting firms, see section 831n-4 of Title 16, Conservation.

Reports of results of audit of financial transactions of Administrator, Bonneville Power Administration, see section 838i of Title 16.

§ 9107. Accounts

(a) With the approval of the Comptroller General, a Government corporation may consolidate its cash into an account if the cash will be expended as provided by law.

(b) The Secretary of the Treasury shall keep the accounts of a Government corporation. If the Secretary approves, a Federal reserve bank or a bank designated as a depository or fiscal agent of the United States Government may keep the accounts. The Secretary may waive the requirements of this subsection.

(c)(1) Subsection (b) of this section does not apply to maintaining a temporary account of not more than \$50,000 in one bank.

(2) Subsection (b) of this section does not apply to a mixed-ownership Government corporation when the corporation has no capital of the Government.

(3) Subsection (b) of this section does not apply to the Federal Intermediate Credit Banks, the Central Bank for Cooperatives, the Regional Banks for Cooperatives, or the Federal Land Banks. However, the head of each of

those ba. All report each year to the Secretary the names of depositaries where accounts are kept. If the Secretary considers it advisable when an annual report is received, the Secretary may make a written report to the corporation, the President, and Congress.

(Pub.L. 97-258, Sept. 13, 1982, 96 Stat. 1044; Pub.L. 97-258, § 2(f)(2), Sept. 13, 1982, 96 Stat. 1062; Pub.L. 97-452, § 1(27), Jan. 12, 1983, 96 Stat. 2478.)

Historical and Revision Notes

1982 Act

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
9107(a)	31:870	Aug. 24, 1949, ch. 506, § 309, 63 Stat. 662.
9107(b)	31:867 (1st sentence less last proviso)	Dec. 6, 1945, ch. 577, § 302, 59 Stat. 601; July 26, 1956, ch. 741, § 201(a)(4), 70 Stat. 667; Aug. 20, 1978, Pub.L. 95-351, § 301(b), 92 Stat. 514.
9107(c)(1)	31:867 (1st sentence last proviso) ..	
9107(c)(2)	31:868(d) (1st sentence related to 31:867)	Dec. 6, 1945, ch. 577, § 303(d) (1st sentence related to § 302), 59 Stat. 602.
9107(c)(3)	31:867 (last sentence)	

Explanatory Notes

In subsection (a), the words "After June 30, 1949" are omitted as executed. The words "Government corporation" are substituted for "corporations or agencies subject to this chapter" because of section 9101(1) of the revised title [section 9101(1) of this title]. The words "notwithstanding the provisions of any other law", "or more . . . for banking and checking purposes", and "including amounts appropriated, from whatever source derived" are omitted as surplus. The words "if the cash will be expended as provided by law" are substituted for 31:870 [former section 870 of this title] (proviso) to eliminate unnecessary words.

In subsections (b) and (c), the words "banking or checking" are omitted as surplus.

In subsection (b), the words "Secretary of the Treasury" are substituted for "Treasurer of the United States" because of the source provisions restated in section 321(c) of the revised title [section 321(c) of this title]. The words "wholly owned and mixed-ownership" and "under such conditions as he may determine" are omitted as surplus.

In subsection (c)(1), the words "establishment and" and "in any one bank" are omitted as surplus.

In subsection (c)(3), the words "head of each" are added for consistency.

1983 Act

This amends 31:9107(c)(3) [subsec. (c)(3) of this section] and 9108(d)(2) [section 9108(d)(2) of this title] because the National Consumer Cooperative Bank is no longer a

mixed-ownership Government corporation. Section 396(h)(2) [which amended section 867 of this title] and (3) [which amended former section 868 of this title] and (i) [set out as a note under section 3011 of Title 12, Banks and Banking] of the Omnibus Budget Reconciliation Act of 1981 (Pub.L. 97-35, 95 Stat. 440) provided that references to the Bank in sections 302 [former section 867 of this title] and 303(d) [former section 868(d) of this title] (2d sentence) of the Government Corporation Control Act would be deleted on the day after the Final Government Equity Redemption Date. Section 501(36) of the Act of December 23, 1981 (Pub.L. 97-101, 95 Stat. 1440), provided that the Redemption Date was December 31, 1981.

1983 Amendment. Subsec. (c)(3). Pub.L. 97-452 struck out "the National Consumer Cooperative Bank," following "Regional Banks for Cooperatives," which entailed no change in text because this amendment had already been made by Pub.L. 97-258. See 1982 Amendment note below.

1982 Amendment. Subsec. (c)(3). Pub.L. 97-258, § 2(f)(2), struck out "the National Consumer Cooperative Bank," following "Regional Banks for Cooperatives,".

Effective Date of 1983 Amendment. Section 2(i) of Pub.L. 97-452 provided in part that the amendment to this section by Pub.L. 97-452 is effective as of Sept. 13, 1982. See section 2(i) of Pub.L. 97-452, set out as an Effective Date of 1983 Amendment note under section 3331 of this title.

Effective Date of 1982 Amendment. Section 2(f) of Pub.L. 97-258 provided in part that the amendment to subsec. (c)(3) would be effective on Jan. 1, 1982.

Legislative History. islative history and purpose of Pub.L. , see 1983 U.S. Code Cong. and Adm. News, p. 4301.

§ 9108. Obligations

(a) Before a Government corporation issues obligations and offers obligations to the public, the Secretary of the Treasury shall prescribe—

(1) the form, denomination, maturity, interest rate, and conditions to which the obligations will be subject;

(2) the way and time the obligations are issued; and

(3) the price for which the obligations will be sold.

(b) A Government corporation may buy or sell a direct obligation of the United States Government, or an obligation on which the principal, interest, or both, is guaranteed, of more than \$100,000 only when the Secretary approves the purchase or sale. The Secretary may waive the requirement of this subsection under conditions the Secretary may decide.

(c) The Secretary may designate an officer or employee of an agency to carry out this section if the head of the agency agrees.

(d)(1) This section does not apply to a mixed-ownership Government corporation when the corporation has no capital of the Government.

(2) Subsections (a) and (b) of this section do not apply to the Rural Telephone Bank (when the ownership, control, and operation of the Bank are converted under section 410(a) of the Rural Electrification Act of 1936 (7 U.S.C. 950(a))), the Federal Intermediate Credit Banks, the Central Bank for Cooperatives, the Regional Banks for Cooperatives, and the Federal Land Banks. However, the head of each of those banks shall consult with the Secretary before taking action of the kind described in subsection (a) or (b). If agreement is not reached, the Secretary may make a written report to the corporation, the President, and Congress on the reasons for the Secretary's disagreement.

(Pub.L. 97-258, Sept. 13, 1982, 96 Stat. 1045; Pub.L. 97-258, § 2(f)(2), Sept. 13, 1982, 96 Stat. 1062; Pub.L. 97-452, § 1(27), Jan. 12, 1983, 96 Stat. 2478.)

Historical and Revision Notes

1982 Act

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
9108(a)	31:868(a)	Dec. 6, 1945, ch. 557, § 303 (less (d) (1st sentence related to § 302)), 59 Stat. 601; July 26, 1956, ch. 741, § 201(a)(4), 70 Stat. 667; May 7, 1971, Pub.L. 92-12, § 5, 85 Stat. 37; Aug. 20, 1978, Pub.L. 95-351, § 301(c), 92 Stat. 514.
9108(b)	31:868(b)	
9108(c)	31:868(c)	
9108(d)	31:868(d) (less 1st sentence related to 31:867)	

Explanatory Notes

In subsections (a) and (b), the words "on or after December 6, 1945" are omitted as executed. The words "wholly owned or mixed-ownership" are omitted because of section 9101(1) of the revised title [section 9101(1) of this title].

In subsection (a), before clause (1), the word "Before" is substituted for "which are" for clarity. The words "bonds, notes, debentures, and other similar" are omitted as surplus. The words "as have been" are omitted as executed. In clause (1), the words "terms and" are omitted as surplus.

In subsection (b), the word "Government" is added for consistency. The words "for its own account and in its own right and interest, at any one time aggregating" and "his approval with respect to any transaction or classes of transactions subject to the provisions of . . . for such period of time and" are omitted as surplus.

In subsection (c), the word "agency" is substituted for "Federal agency" because of section 101 of the revised title [section 101 of this title]. The words "any of the functions vested in him by" and "for such purpose" are omitted as surplus.

In subsection (d)(2), the words "(when the ownership, control, and operation of the Bank are converted under section 410(a) of the Rural Electrification Act of 1936 (7 U.S.C. 950(a)))" are added because of 7:943(c) and 950(a) [sections 943(c) and 950(a) of Title 7, Agriculture]. The words "head of each" are added for consistency. The words "be required to" are omitted as surplus.

1983 Act

This amends 31:9107(c)(3) [section 9107(c)(3) of this title] and 9108(d)(2) [subsec. (d)(2) of this section] because the National Consumer Cooperative Bank is no longer a mixed-ownership Government corporation. Section 396(h)(2) [which amended section 867 of this title] and (3) [which amended former section 868 of this title] and (i) [set out as a note un-

der section 3011 of Title 12, Banks and Banking] of the Omnibus Budget Reconciliation Act of 1981 (Pub.L. 97-35, 95 Stat. 440) provided that references to the Bank in sections 302 [former section 867 of this title] and 303(d) [former section 868(d) of this title] (2d sentence) of the Government Corporation Control Act would be deleted on the day after the Final Government Equity Redemption Date. Section 501(36) of the Act of December 23, 1981 (Pub.L. 97-101, 95 Stat. 1440), provided that the Redemption Date was December 31, 1981.

References in Text. Section 410(a) of the Rural Electrification Act of 1936, referred to in subsec. (d)(2), is section 410(a) of Act May 20, 1936, c. 432, Title IV, as added May 7, 1971, Pub.L. 92-12, § 2, 85 Stat. 36, which is classified to section 950(a) of Title 7, Agriculture.

1983 Amendment. Subsec. (d)(2). Pub.L. 97-452 struck out "the National Consumer Cooperative Bank," following "the Regional Banks for Cooperatives," which entailed no change in text because this amendment had already been made by Pub.L. 97-258. See 1982 Amendment note below.

1982 Amendment. Subsec. (d)(2). Pub.L. 97-258, § 2(l)(2), struck out "the National Consumer Cooperative Bank," following "Regional Banks for Cooperatives,".

Effective Date of 1983 Amendment. Section 2(i) of Pub.L. 97-452 provided in part that the amendment to this section by Pub.L. 97-452, is effective as of Sept. 13, 1982. See section 2(i) of Pub.L. 97-452, set out as an Effective Date of 1983 Amendment note under section 3331 of this title.

Effective Date of 1982 Amendment. Section 2(l) of Pub.L. 97-258 provided in part that the amendment to subsec. (d)(2) would be effective on Jan. 1, 1982.

Legislative History. For legislative history and purpose of Pub.L. 97-452, see 1983 U.S. Code Cong. and Adm. News, p. 4301.

§ 9109. Exclusion of a wholly owned Government corporation from this chapter

When the President considers it practicable and in the public interest, the President shall include in the budget submitted to Congress under section 1105 of this title a recommendation that a wholly owned Government corporation be deemed to be an agency (except a corporation) under chapter 11 of this title and for fiscal matters. If Congress approves the recommenda-

tion, the corporation is deemed to be an agency (except a corporation) under chapter 11 and for fiscal matters for fiscal years beginning after the fiscal year of approval and is not subject to this chapter. The corporate entity is not affected by this section.

(Pub.L. 97-258, Sept. 13, 1982, 96 Stat. 1045.)

Historical and Revision Notes

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
9109	31:852	Dec. 6, 1945, ch. 577, § 107, 59 Stat. 599.

Explanatory Notes

The word "President" is substituted for "Director of the Office of Management and Budget" because sections 101 and 102(a) of Reorganization Plan No. 2 of 1970 (eff. July 1, 1970, 84 Stat. 2085) [set out under section 501 of this title] designated the Bureau of the Budget as the Office of Management and Budget and transferred all functions of the Bureau to the President. The words "with the approval of the President" are omitted because of the restatement. The word "considerers" is substituted for "deemed" for consistency. The words "in connection with the budget program of such corporation" are omitted as surplus. The words "submitted to Congress under section 1105 of this title" are added for clarity. The words "deemed to be"

are substituted for "treated . . . as if it were" for consistency. The word "agency" is substituted for "Government agency" and "establishment" because of section 101 of the revised title [section 101 of this title] and for consistency. The words "if it were", "appropriations, expenditures, receipts, accounts, and other", and "in connection with the budget program for any fiscal year" are omitted as surplus. The words "deemed to be" are substituted for "regarded as" for consistency. The words "the Budget and Accounting Act, 1921, and other provisions of law relating to appropriations, expenditures, receipts, accounts, and other" and "other than this section" are omitted as surplus.

(c) Such policies, procedures, and guidelines shall include such provisions as may be necessary to ensure that small business concerns and business concerns owned and controlled by socially and economically disadvantaged individuals will have the opportunity to participate in the performance of contracts awarded to fulfill the audit requirements of this chapter.

(Added Pub.L. 98-502, § 2(a), Oct. 19, 1984, 98 Stat. 2333.)

HISTORICAL AND STATUTORY NOTES

Legislative History

For legislative history and purpose of Pub.L. 98-502, see 1984 U.S. Code Cong. and Adm. News, p. 3955.

§ 7506. Monitoring responsibilities of the Comptroller General

The Comptroller General shall review provisions requiring financial or financial and compliance audits of recipients of Federal assistance that are contained in bills and resolutions reported by the committees of the Senate and the House of Representatives. If the Comptroller General determines that a bill or resolution contains provisions that are inconsistent with the requirements of this chapter, the Comptroller General shall, at the earliest practicable date, notify in writing—

- (1) the committee that reported such bill or resolution; and
- (2)(A) the Committee on Governmental Affairs of the Senate (in the case of a bill or resolution reported by a committee of the Senate); or
- (B) the Committee on Government Operations of the House of Representatives (in the case of a bill or resolution reported by a committee of the House of Representatives).

(Added Pub.L. 98-502, § 2(a), Oct. 19, 1984, 98 Stat. 2333.)

HISTORICAL AND STATUTORY NOTES

Legislative History

For legislative history and purpose of Pub.L. 98-502, see 1984 U.S. Code Cong. and Adm. News, p. 3955.

§ 7507. Effective date; report

(a) This chapter shall apply to any State or local government with respect to any of its fiscal years which begin after December 31, 1984.

(b) The Director, on or before May 1, 1987, and annually thereafter, shall submit to each House of Congress a report on operations under this chapter. Each such report shall specifically identify each Federal agency or State or local government which is failing to comply with this chapter.

(Added Pub.L. 98-502, § 2(a), Oct. 19, 1984, 98 Stat. 2334.)

HISTORICAL AND STATUTORY NOTES

Legislative History

For legislative history and purpose of Pub.L. 98-502, see 1984 U.S. Code Cong. and Adm. News, p. 3955.

SUBTITLE VI—MISCELLANEOUS

CHAPTER 91—GOVERNMENT CORPORATIONS

HISTORICAL AND STATUTORY NOTES

1990 Amendment

Section analysis. Pub.L. 101-576, Title III, § 306(b), Nov. 15, 1990, 104 Stat. 2854, substituted "Management" for "Audits".

§ 9101. Definitions

In this chapter—

- (1) "Government corporation" means a mixed-ownership Government corporation and a wholly owned Government corporation.
- (2) "mixed-ownership Government corporation" means—

[See main volume for text of (A) to (J)]

(K) The Financing Corporation.

(L) the Resolution Trust Corporation.

(M) the Resolution Funding Corporation.

- (3) "wholly owned Government corporation" means—

[See main volume for text of (A) to (D)]

[(E) Repealed. Pub.L. 101-73, Title III, § 307(e), Aug. 9, 1989, 103 Stat. 353]

[See main volume for text of (F) to (M)]

(As amended Pub.L. 100-86, Title III, § 303, Aug. 10, 1987, 101 Stat. 597; Pub.L. 101-73, Title III, § 307(e), Title V, §§ 501(d), 511(b)(1), Aug. 9, 1989, 103 Stat. 353, 394, 406.)

HISTORICAL AND STATUTORY NOTES

1982 Act

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
9101(1)	(no source)	
9101(2)	31:856	Dec. 6, 1945, ch. 557, § 201, 59 Stat. 600; July 26, 1956, ch. 574, § 201(a)(2), (3), 70 Stat. 667; Oct. 30, 1970, Pub.L. 91-518, § 804, 84 Stat. 1340; May 7, 1971, Pub.L. 92-12, § 4, 85 Stat. 37; Jan. 2, 1974, Pub.L. 93-236, §§ 202(a)(1), 301(f) (last sentence), 87 Stat. 992, 1005; Feb. 5, 1976, Pub.L. 94-210, § 612(b), 90 Stat. 108; Aug. 20, 1978, Pub.L. 95-351, § 301(a), 92 Stat. 313; Nov. 10, 1978, Pub.L. 95-630, § 1805, 92 Stat. 3724; Aug. 13, 1981, Pub.L. 97-35, § 396(h)(1), 95 Stat. 440.
9101(3)	31:846	Dec. 6, 1945, ch. 577, § 101, 59 Stat. 597; Aug. 10, 1948, ch. 832, § 501(b) (last proviso), 62 Stat. 1283; June 30, 1949, ch. 285, § 13, 63 Stat. 356; May 13, 1954, ch. 201, § 6, 68 Stat. 95; July 26, 1956, ch. 741, § 201(a)(1), 70 Stat. 667; June 30, 1958, Pub.L. 85-477, § 502(c), 72 Stat. 272; Oct. 4, 1961, Pub.L. 87-353, § 3(u), 75 Stat. 774; May 25, 1967, Pub.L. 90-19, § 4, 81 Stat. 20; Aug. 1, 1968, Pub.L. 90-448, §§ 807(e), 1719(d), 82 Stat. 544, 610; Dec. 30, 1969, Pub.L. 91-175, § 501, 83 Stat. 825; Oct. 27,

1989 Amendment

Par. (2)(L). Pub.L. 101-73, § 501(d), added subpar. (L).

Par. (2)(M). Pub.L. 101-73, § 511(b)(1), added subpar. (M).

Par. (3)(E). Pub.L. 101-73, § 307(e), struck out subpar. (E), which included the Federal Savings and Loan Insurance Corporation in the definition of "wholly owned Government corporation".

1987 Amendment

Par. (2)(K). Pub.L. 100-86, § 303, added subpar. (K).

Separability of Provisions

If any provision of Pub.L. 101-73 or the application thereof to any person or circumstance is held invalid, the remainder of Pub.L. 101-73 and

the application of the provision to other persons not similarly situated or to other circumstances not to be affected thereby, see section 1221 of Pub.L. 101-73, set out as a note under section 1811 of Title 12, Banks and Banking.

If any provision of Pub.L. 100-86 or the application thereof to any person or circumstance is held invalid, the remainder of Pub.L. 100-86 and the application of the provision to other persons not similarly situated or to other circumstances not to be affected thereby, see section 1205 of Pub.L. 100-86, set out as a note under section 226 of Title 12, Banks and Banking.

Legislative History

For legislative history and purpose of Pub.L. 100-86 see 1987 U.S. Code Cong. and Adm. News, p. 489. See, also, Pub.L. 101-73, 1989 U.S. Code Cong. and Adm. News, p. 86.

WEST'S FEDERAL PRACTICE MANUAL

Overseas Private Investment Corporation, see § 2167.

LAW REVIEW COMMENTARIES

Enhancing the value of the thrift franchise: A possible solution for the dilemma of the FSLIC?

C. Thomas Long, William J. Schilling, and Carol R. Van Cleef, 37 Catholic U.L. Rev. 385 (1988).

§ 9103. Budgets of wholly owned Government corporations

HISTORICAL AND STATUTORY NOTES

Explanatory Notes

In subsection (a), the word "President" is substituted for "Office of Management and Budget" because sections 101 and 102(a) of Reorganization Plan No. 2 of 1970 (eff. July 1, 1970, 84 Stat. 2085) designated the Bureau of the Budget as the Office of Management and Budget and transferred all functions of the Bureau to the President. The words "in a way, and before a date, the President prescribes by regulation for the budget program" are substituted for "under such rules and regulations as the President may establish as to the date of submission, the form and content, the classifications of data, and the manner in which such budget program shall be prepared and presented" to eliminate unnecessary words.

In subsection (b), before clause (1), the words "budget program" are substituted for "budget program shall be a business-type budget, or plan of operation" for consistency and to eliminate unnecessary words. In clause (1), the words "actual" and "completed" are omitted as surplus. In clause (2), the words "as are necessary or desirable", "types of", "together with", and "funds" are omitted as surplus. In clause (3), the words "as authorized by law" are omitted as surplus.

In subsection (c), the words "as changed" are substituted for "as modified, amended, or revised" to eliminate unnecessary words. The word "submit" is substituted for "transmitted" for consistency. The word "annual" is omitted as surplus. The word "thereafter" is added for clarity. The text of 31:848 (last par.) is omitted as unnecessary.

§ 9104. Congressional action on budgets of wholly owned Government corporations

HISTORICAL AND STATUTORY NOTES

Explanatory Notes

In subsection (a), the words "budget programs for wholly owned Government corporations" are substituted for "Budget programs" for clarity and

consistency. The words "legislation . . . be enacted", "as may be", "for expenditure", "corporate funds or other", "or limiting the use thereof", "as the Congress may determine", and "funds" are omitted as surplus.

§ 9105. Audits

(a)(1) The financial statements of Government corporations shall be audited by the Inspector General of the corporation appointed under the Inspector General Act of 1978 (5 U.S.C.App.) or by an independent external auditor, as determined by the Inspector General or, if there is no Inspector General, by the head of the corporation.

(3) Upon completion of the audit required by this subsection, the person who audits the statement shall submit a report on the audit to the head of the Government corporation, to the Chairman of the Committee on Government Operations of the House of Representatives, and to the Chairman of the Committee on Governmental Affairs of the Senate.

(4) The Comptroller General of the United States—

(A) may review any audit of a financial statement conducted under this subsection by an Inspector General or an external auditor;

(B) shall report to the Congress, the Director of the Office of Management and Budget, and the head of the Government corporation which prepared the statement, regarding the results of the review and make any recommendation the Comptroller General of the United States considers appropriate; and

(C) may audit a financial statement of a Government corporation at the discretion of the Comptroller General or at the request of a committee of the Congress.

An audit the Comptroller General performs under this paragraph shall be in lieu of the audit otherwise required by paragraph (1) of this subsection. Prior to performing such audit, the Comptroller General shall consult with the Inspector General of the agency which prepared the statement.

(5) A Government corporation shall reimburse the Comptroller General of the United States for the full cost of any audit conducted by the Comptroller General under this subsection, as determined by the Comptroller General. All reimbursements received under this paragraph by the Comptroller General of the United States shall be deposited in the Treasury as miscellaneous receipts.

(b) Upon request of the Comptroller General of the United States, a Government corporation shall provide to the Comptroller General of the United States all books, accounts, financial records, reports, files, workpapers, and property belonging to or in use by the Government corporation and its auditor that the Comptroller General of the United States considers necessary to the performance of any audit or review under this section.

(c) Activities of the Comptroller General of the United States under this section are in lieu of any audit of the financial transactions of a Government corporation that the Comptroller General is required to make under any other law.

(As amended Pub.L. 100-86, Title IV, § 403, Aug. 10, 1987, 101 Stat. 609; Pub.L. 100-233, Title VII, § 703, Jan. 6, 1988, 101 Stat. 1706; Pub.L. 100-399, Title VI, § 602, Aug. 17, 1988, 102 Stat. 1006; Pub.L. 101-73, Title V, § 511(b)(2), Aug. 9, 1989, 103 Stat. 406; Pub.L. 101-676, Title III, § 305, Nov. 15, 1990, 104 Stat. 2858.)

HISTORICAL AND STATUTORY NOTES

References in Text

The Inspector General Act of 1978, referred to in subsec. (a)(1), is Pub.L. 95-452, Oct. 12, 1978, 92 Stat. 1101, as amended, which is set out in Appendix 3 to Title 5, Government Organization and Employees.

1990 Amendment

Pub.L. 101-576, amended section generally, substituting provisions relating to audits of Government corporations, by Inspector General of corporation, independent auditor, or head of corporation, according to accepted government auditing standards; requiring reports to congressional committees; and authorizing audits, and reviews of audits, by Comptroller General, for provisions requiring auditing of wholly owned and mixed-ownership Government corporations by Comptroller General according to principles applicable to commercial corporate transactions at least once every 3 years; authorizing audits of Federal Asset Disposition Association and Federal

cies; allowing contracting for professional services; and authorizing necessary appropriations.

1989 Amendment

Subsec. (a)(2). Pub.L. 101-73, § 511(b)(2)(A), added sentence requiring the Comptroller General to audit the Resolution Funding Corporation annually.

Pub.L. 101-73, § 511(b)(2)(B), deleted "Federal Savings and Loan Insurance Corporation and" preceding "Federal home".

1988 Amendment

Subsec. (a)(4)(B)(i). Pub.L. 100-399 substituted "Corporation" for "Association".

1987 Amendments

Subsec. (a)(3). Pub.L. 100-86, § 403, added

Effective Date of 1988 Amendment

Amendment by Pub.L. 100-399 effective as if enacted immediately after the enactment of Pub.L. 100-233, which was approved on Jan. 6, 1988, see section 1001(a) of Pub.L. 100-399, set out as a note under section 2002 of Title 12, Banks and Banking.

Separability of Provisions

If any provision of Pub.L. 101-73 or the application thereof to any person or circumstance is held invalid, the remainder of Pub.L. 101-73 and the application of the provision to other persons not similarly situated or to other circumstances not to be affected thereby, see section 1221 of

Pub.L. 101-73, set out as a note under section 1811 of Title 12, Banks and Banking.

If any provision of Pub.L. 100-86 or the application thereof to any person or circumstance is held invalid, the remainder of Pub.L. 100-86 and the application of the provision to other persons not similarly situated or to other circumstances not to be affected thereby, see section 1205 of Pub.L. 100-86, set out as a note under section 226 of Title 12, Banks and Banking.

Legislative History

For legislative history and purpose of Pub.L. 100-86 see 1987 U.S. Code Cong. and Adm. News, p. 489. See, also, Pub.L. 101-73, 1989 U.S. Code Cong. and Adm. News, p. 86; Pub.L. 101-576, 1990 U.S. Code Cong. and Adm. News, p. 4030.

LIBRARY REFERENCES**§ 9106. Management reports**

(a)(1) A Government corporation shall submit an annual management report to the Congress not later than 180 days after the end of the Government corporation's fiscal year.

(2) A management report under this subsection shall include—

(A) a statement of financial position;

(B) a statement of operations;

(C) a statement of cash flows;

(D) a reconciliation to the budget report of the Government corporation, if applicable;

(E) a statement on internal accounting and administrative control systems by the head of the management of the corporation, consistent with the requirements for agency statements on internal accounting and administrative control systems under the amendments made by the Federal Managers' Financial Integrity Act of 1982 (Public Law 97-255);

(F) the report resulting from an audit of the financial statements of the corporation conducted under section 9105 of this title; and

(G) any other comments and information necessary to inform the Congress about the operations and financial condition of the corporation.

(b) A Government corporation shall provide the President, the Director of the Office of Management and Budget, and the Comptroller General of the United States a copy of the management report when it is submitted to Congress.

(As amended Pub.L. 101-576, Title III, § 306(a), Nov. 15, 1990, 104 Stat. 2854.)

HISTORICAL AND STATUTORY NOTES**References in Text**

The Federal Managers' Financial Integrity Act of 1982, referred to in subsec. (a)(2)(E), was repealed in the general revision of Title 31 by Pub.L. 97-258, Sept. 13, 1982, 96 Stat. 877, which enacted Title 31 into positive law. See, now, sections 1105, 1113 and 3512 of this title.

1990 Amendment

Pub.L. 101-576 amended section generally, substituting provisions relating to annual management report to Congress, due not later than 180 days after end of corporation's fiscal year, including statements of financial position, operations, cash flow, and internal accounting and administrative control systems, and reconciliation to bud-

dent, Director of Office of Management and Budget and Comptroller General, for provisions requiring Comptroller General to submit report on each audit under section 9105 of this title, due not later than 6.5 months after end of last year covered by audit, including statements of assets, liability, capital, surplus and deficit, surplus and deficit analysis, incomes and expenditures and sources and use of money, information on legality of each transaction, necessary comments and information, and other recommendations, with copies to be submitted to President, Secretary of Treasury and corporation.

Legislative History**§ 9107. Accounts****HISTORICAL AND STATUTORY NOTES****1982 Act**

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
9107(a)	31:870	Aug. 24, 1949, ch. 506, § 309, 63 Stat. 662.
9107(b)	31:867 (1st sentence less last provi- so)	Dec. 6, 1945, ch. 577, § 302, 59 Stat. 601; July 26, 1956, ch. 741, § 201(a)(4), 70 Stat. 667; Aug. 12, 1978, Pub.L. 95-351, § 301(b), 92 Stat. 514; Aug. 13, 1981, Pub.L. 97-35, § 396(b)(2), 95 Stat. 440.
9107(c)(1)	31:867 (1st sentence last proviso)	
9107(c)(2)	31:868(d) (1st sentence related to 31:867)	Dec. 6, 1945, ch. 577, § 303(d) (1st sentence related to § 302), 59 Stat. 602.
9107(c)(3)	31:867 (last sentence)	

§ 9108. Obligations**HISTORICAL AND STATUTORY NOTES****1982 Act**

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
9108(a)	31:868(a)	Dec. 6, 1945, ch. 577, § 303 (less (d) (1st sentence, related to § 302)), 59 Stat. 601; July 26, 1956, ch. 741, § 201(a)(4), 70 Stat. 667; May 7, 1971, Pub.L. 92-12, § 5, 85 Stat. 37; April 12, 1978, Pub.L. 95-351, § 301(c), 92 Stat. 514; Aug. 13, 1981, Pub.L. 97-35, § 396(b)(3), 95 Stat. 441.
9108(b)	31:868(b)	
9108(c)	31:868(c)	
9108(d)	31:868(d) (less 1st sentence related to 31:867)	

Explanatory Notes

In subsection (a), before clause (1), the word "Before" is substituted for "which are" for clarity. The words "bonds, notes, debentures, and other

similar" are omitted as surplus. The words "as have been" are omitted as executed. In clause (1), the words "terms and" are omitted as surplus. The restatement of the source provisions does not affect other existing laws.

§ 9109. Exclusion of a wholly owned Government corporation from this chapter**HISTORICAL AND STATUTORY NOTES****Explanatory Notes**

The word "President" is substituted for "Director of the Office of Management and Budget", because sections 101 and 102(a) of Reorganization Plan No. 2 of 1970 (eff. July 1, 1970, 84 Stat. 2085) designated the Bureau of the Budget as the Office of Management and Budget and transferred all functions of the Bureau to the President. The words "with the approval of the President" are omitted because of the restatement. The word "considers" is substituted for "deemed" for consistency. The words "in connection with the budget program of such corporation" are omitted

as surplus. The words "submitted to Congress under section 1105 of this title" are added for clarity. The words "deemed to be" are substituted for "treated as if it were" for consistency. The word "agency" is substituted for "Government agency" and "establishment" because of section 101 of the revised title and for consistency. The words "if it were", "appropriations, expenditures, receipts, accounts, and other", and "in connection with the budget program for any fiscal year" are omitted as surplus. The words "deemed to be" are substituted for "regarded as" for consistency.

§ 9110. Standards for depository institutions holding securities of a Government-sponsored corporation for customers

or (C) of section 3(a)(42) of the Securities Exchange Act of 1934. Such regulations shall apply only to a depository institution that is not a government securities broker or a government securities dealer and that holds such obligations as fiduciary, custodian, or otherwise for the account of a customer and not for its own account. Such regulations shall provide for the adequate segregation of obligations so held, including obligations which are purchased or sold subject to resale or repurchase.

(b) Violation of a regulation prescribed under subsection (a) shall constitute adequate basis for the issuance of an order under section 5239(a) or (b) of the Revised Statutes (12 U.S.C. 93(a) or (b)), section 8(b) or 8(c) of the Federal Deposit Insurance Act, section 5(d)(2) or 5(d)(3) of the Home Owners' Loan Act of 1933, section 407(e) or 407(f) of the National Housing Act, or section 206(e) or 206(f) of the Federal Credit Union Act. Such an order may be issued with respect to a depository institution by its appropriate regulatory agency and with respect to a federally insured credit union by the National Credit Union Administration.

(c) Nothing in this section shall be construed to affect in any way the powers of such agencies under any other provision of law.

(d) The Secretary shall, prior to adopting regulations under this section, determine with respect to each appropriate regulatory agency and the National Credit Union Administration Board, whether its rules and standards adequately meet the purposes of regulations to be promulgated under this section, and if the Secretary so determines, shall exempt any depository institution subject to such rules or standards from the regulations promulgated under this section.

(e) As used in this subsection—

(1) "depository institution" has the meaning given in clauses (i) through (vi) of subparagraph 19(b)(1)(A) of the Federal Reserve Act and also includes a foreign bank, an agency or branch of a foreign bank, and a commercial lending company owned or controlled by a foreign bank (as such terms are defined in the International Banking Act of 1978).

(2) "government securities broker" has the meaning prescribed in section 3(a)(43) of the Securities Exchange Act of 1934.

(3) "government securities dealer" has the meaning prescribed in section 3(a)(44) of the Securities Exchange Act of 1934.

(4) "appropriate regulatory agency" has the meaning prescribed in section 3(a)(34)(G) of the Securities Exchange Act of 1934.

(Added Pub.L. 99-571, Title II, § 201(b)(1), Oct. 28, 1986, 100 Stat. 3223.)

HISTORICAL AND STATUTORY NOTES

References in Text

Subparagraph (B) or (C) of section 3(a)(42) of the Securities Exchange Act of 1934, referred to in subsec. (a), is subpar. (B) or (C) of section 3(a)(42) of Act June 6, 1934, c. 404, Title I, as added by section 102(d) of Pub.L. 99-571, which is classified to subparagraph (B) or (C) of section 78c(a)(42) of Title 15, Commerce and Trade.

Section 5239(a) or (b) of the Revised Statutes (12 U.S.C. 93(a) or (b)), referred to in subsec. (b), is classified to section 93(a) or (b) of Title 12, Banks and Banking.

Section 5(d)(2) or 5(d)(3) of the Home Owners' Loan Act of 1933, referred to in subsec. (b), is section 5(d)(2) or (3) of Act June 13, 1933, c. 64, 48 Stat. 132, which is classified to section 1464(d)(2) or (3) of Title 12.

Section 8(b) or 8(c) of the Federal Deposit Insurance Act, referred to in subsec. (b), is section 2 [8(b) or (c)] of Act Sept. 21, 1950, c. 967, 64 Stat. 879, which is classified to section 1818(b) or (c) of Title 12.

Stat. 1260, which is classified to section 1730(e) or (f) of Title 12.

Section 206(e) or 206(f) of the Federal Credit Union Act, referred to in subsec. (b), is section 206(e) or (f) of Act June 26, 1934, c. 750, Title II, as added Oct. 19, 1970, Pub.L. 91-468, § 1(3), 84 Stat. 1003, which is classified to section 1786(e) or (f) of Title 12.

Clauses (i) through (vi) of section 19(b)(1)(A) of the Federal Reserve Act, referred to in subsec. (e)(1), are cls. (i) through (vi) of section 19(b)(1)(A) of Act Dec. 23, 1913, c. 6, 38 Stat. 27D, which are classified to clauses (i) through (vi), respectively, of section 461(b)(1)(A) of Title 12.

The International Banking Act of 1978, referred to in subsec. (e)(1), is Pub.L. 95-369, Sept. 17, 1978, 92 Stat. 607, which enacted sections 347d, 611a, and 3101 to 3108 of Title 12, amended sections 72, 378, 614, 615, 618, 619, 1813, 1815, 1817, 1818, 1820, 1821, 1822, 1823, 1828, 1829b, 1831b, and 1841 of Title 12, and enacted provisions set out as notes under sections 36, 247, 601,

Section 3(a)(43) of the Securities Exchange Act of 1934, referred to in subsec. (e)(2), is section 3(a)(43) of Act June 6, 1934, c. 404, Title I, as added by section 102(d) of Pub.L. 99-571, which is classified to section 78c(a)(43) of Title 15, Commerce and Trade.

Section 3(a)(44) of the Securities Exchange Act of 1934, referred to in subsec. (e)(3), is section 3(a)(44) of Act June 6, 1934, c. 404, Title I, as added by section 102(d) of Pub.L. 99-571, which is classified to section 78c(a)(44) of Title 15.

Section 3(a)(34)(G) of the Securities Exchange Act of 1934, referred to in subsec. (e)(4), is section 3(a)(34)(G) of Act June 6, 1934, c. 404, Title I, as added by section 102(b) of Pub.L. 99-571, which is classified to section 78c(a)(34)(G) of Title 15.

Effective Date; Promulgation of Regulations

Section to take effect 270 days after Oct. 28, 1986, except that the Secretary of the Treasury and each appropriate regulatory agency shall publish, for notice and comment, within 120 days

after Oct. 28, 1986, initial implementing regulations to become effective as temporary regulations 210 days after Oct. 28, 1986 and as final regulations not later than 270 days after Oct. 28, 1986, see sections 401 and 402 of Pub.L. 99-571, set out as notes under section 78a-5 of Title 15, Commerce and Trade.

Transitional and Savings Provisions

For effect of this section on judicial and administrative proceedings pending on the effective date hereof, on the discretion of the Federal Reserve Bank of New York, and on the jurisdiction of the Commodity Futures Trading Commission, see section 301 of Pub.L. 99-571, set out as a note under section 78a-5 of Title 15, Commerce and Trade.

Legislative History

For legislative history and purpose of Pub.L. 99-571, see 1986 U.S. Code Cong. and Adm. News, p. 5395.

LIBRARY REFERENCES

Deposits and Escrows — 2.
C.J.S. Depositories § 3.

CHAPTER 93—SURETIES AND SURETY BONDS

§ 9302. Prohibition against surety bonds for United States Government personnel

WEST'S FEDERAL FORMS

Bonds and undertakings, see §§ 1521 to 1524.

§ 9303. Use of Government obligations instead of surety bonds

WEST'S FEDERAL FORMS

Bonds and undertakings, see §§ 1521 to 1524.

LAW REVIEW COMMENTARIES

The bankruptcy of public works contractors—materialmen? Michael F. Keyes, 21 Idaho L.Rev. 561 (1985).

NOTES OF DECISIONS

Bail bond forfeiture 19

denied 108 S.Ct. 2846, 487 U.S. 1205, 101 L.Ed.2d 884.

"Stripped" U.S. Government bonds are not acceptable collateral in lieu of surety bond, since Government bonds should have attached thereon all coupons unmatured at date of deposit. *Poinier v. C.I.R.*, 1988, 90 T.C. 63.

19. Bail bond forfeiture

Obligation of surety on a bail bond forfeiture, could not be satisfied by tender of United States treasury bonds of a face value equal to amount of bail bond. *U.S. v. Madrigal*, C.A.Mich.1982, 692, F.2d 445.

§ 9304. Surety corporations

WEST'S FEDERAL FORMS

SUBTITLE II—THE BUDGET PROCESS

Chapter	Sec.
11. The Budget and Fiscal, Budget, and Program Information	1101
13. Appropriations	1301
15. Appropriation Accounting	1501

CHAPTER 11—THE BUDGET AND FISCAL, BUDGET, AND PROGRAM INFORMATION

Sec.
1101. Definitions.
1102. Fiscal year.
1103. Budget ceiling.
1104. Budget and appropriations authority of the President.
1105. Budget contents and submission to Congress.
1106. Supplemental budget estimates and changes.
1107. Deficiency and supplemental appropriations.
1108. Preparation and submission of appropriations requests to the President.
1109. Current programs and activities estimates.
1110. Year-ahead requests for authorizing legislation.
1111. Improving economy and efficiency.
1112. Fiscal, budget, and program information.
1113. Congressional information.
1114. Budget information on consulting services.

Cross References

Congressional budget and fiscal operations, see section 621 et seq. of Title 2, The Congress.

§ 1101. Definitions

In this chapter—

(1) "agency" includes the District of Columbia government but does not include the legislative branch or the Supreme Court.

(2) "appropriations" means appropriated amounts and includes, in appropriate context—

(A) funds;

(B) authority to make obligations by contract before appropriations; and

(C) other authority making amounts available for obligation or expenditure.

Historical and Revision Notes

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
1101(1)	31:2 (1st-4th pars.)	June 10, 1921, ch. 18, § 2 (1st-5th pars.), 42 Stat. 20; Apr. 3, 1939, ch. 36, § 201, 53 Stat. 565; July 31, 1953, ch. 302, § 101 (1st proviso in par. under heading "Bureau of the Budget"), 67 Stat. 299.
1101(2)	31:2 (last par.)	June 10, 1921, ch. 18, 42 Stat. 20, § 2 (last par.); added Sept. 12, 1950, ch. 946, § 101, 64 Stat. 832.

Explanatory Notes

In the section, a reference to 31:71 and 471 [former sections 71 and 471 of this title] is omitted because the definitions in the section are not used in 31:71 and 471.

Clause (1) restates the source provisions because of section 101 of the revised title [section 101 of this title]. The words "includes the District of Columbia government" are used because of existing law but the inclusion of these words is not to be interpreted as construing the extent to which the District of Columbia Self-Government and Governmental Reorganizational Act (Pub.L. 93-198, 87 Stat. 774) supersedes the provisions codified in this title. The words "of the United

States" are omitted as surplus. The text of 31:2 [former section 2 of this title] (2d-4th pars.) is omitted as unnecessary because of the restatement. The text of section 2 (3d par.) of the Budget and Accounting Act, 1921 (ch. 18, 42 Stat. 20), is omitted as obsolete because of section 501 of the revised title [section 501 of this title].

In clause (2), the word "means" is substituted for "includes", and the word "make" is substituted for "create", as being more precise. The words "appropriated amounts" are substituted for "funds" for clarity. The words "in appropriate context" are omitted as unnecessary because of the restatement.

Notes of Decisions

1. Purpose

Former section 1 et seq. of this title was intended to effect as independent a supervi-

sion of the accounts of the government as possible. *Brunswick v. Elliott*, 1939, 103 F.2d 746, 70 App.D.C. 45.

§ 1102. Fiscal year

The fiscal year of the Treasury begins on October 1 of each year and ends on September 30 of the following year. Accounts of receipts and expenditures required under law to be published each year shall be published for the fiscal year.

(Pub.L. 97-258, Sept. 13, 1982, 96 Stat. 908.)

Historical and Revision Notes

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
1102	31:1020	R.S. § 237; Oct. 1, 1890, ch. 1256, § 9, 26 Stat. 646, restated July 12, 1974, Pub.L. 93-344, § 501, 88 Stat. 321.

Explanatory Notes

The words "in all matters of accounts, receipts, expenditures, estimates, and appropriations" are omitted as being included in "fiscal". The word "prepared" is omitted as being included in "published". The words "as established by subsection (a) of this sec-

tion" are omitted as unnecessary because of the restatement. The text of 31:1020(a)(1) [former section 1020(a)(1) of this title] and the words "beginning on October 1, 1976" are omitted as executed.

Library References

C.J.S. United States § 120.

Notes of Decisions

expenses into distinct sections of time is an absolute necessity. *Sweet v. U. S.*, 1899, 34 Ct.Cl. 377.

Historical 1
Limitations 4
Necessity of fiscal year 2
Time of payment of fees 3

3. Time of payment of fees

Former section 1020 of this title did not forbid the United States commissioners [now magistrates] from demanding payment at any time of their accounts for fees, but merely provided that the fiscal year shall begin on the first of July, and that annual accounts shall be on the fiscal year. *Patterson v. U. S.*, 1886, 21 Ct.Cl. 324.

4. Limitations

Where the compensation to which an officer is entitled is an annual compensation, as it is derived from his official acts within each fiscal year, it becomes due at the end of each year, and, if not paid, a right of action then accrues, and the statute of limitations then begins to run, and the same principle applies to compensation which consists of commissions upon deposits. *Bachelor v. U. S.*, 1872, 8 Ct.Cl. 235. See, also, *Ellsworth v. U. S.*, 1878, 14 Ct.Cl. 382, affirmed 101 U.S. 170, 11 Otto. 170, 25 L.Ed. 862.

2. Necessity of fiscal year

The necessity of the situation requires that the government have a fixed time in the form of a fiscal year, and whether it be with the commencement of the calendar year or at some other fixed period is not material, but that there should be a limit to accounts and

§ 1103. Budget ceiling

Congress reaffirms its commitment that budget outlays of the United States Government for a fiscal year may be not more than the receipts of the Government for that year.

(Pub.L. 97-258, Sept. 13, 1982, 96 Stat. 908.)

Historical and Revision Notes

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
1103	31:27	Oct. 10, 1978, Pub.L. 95-439, § 7, 92 Stat. 1053; restated Oct. 7, 1980, Pub.L. 96-389, § 3, 94 Stat. 1553.

Explanatory Notes

The word "total" is omitted as surplus. The words "for a fiscal year" are substituted for "beginning with Fiscal Year 1981" because of the restatement and to eliminate executed words. The words "for that year" are added because of the restatement.

§ 1104. Budget and appropriations authority of the President

(a) The President shall prepare budgets of the United States Government under section 1105 of this title and proposed deficiency and supplemental appropriations under section 1107 of this title. To the extent practicable, the President shall use uniform terms in stating the purposes and conditions of appropriations.

(b) Except as provided in this chapter, the President shall prescribe the contents and order of statements in the budget on expenditures and estimated expenditures and statements on proposed appropriations and information submitted with the budget and proposed appropriations. The President shall include with the budget and proposed appropriations information on personnel and other objects of expenditure in the way that information was included in the budget for fiscal year 1950. However, the requirement that information be included in the budget in that way may be waived or changed by joint action of the Committees on Appropriations of both Houses of Congress. This subsection does not limit the authority of a committee of Congress to request information in a form it prescribes.

(c) When the President makes a basic change in the form of the budget, the President shall submit with the budget information showing where items in the budget for the prior fiscal year are contained in the present budget. However, the President may change the functional categories in the budget only in consultation with the Committees on Appropriations and on the Budget of both Houses of Congress.

(d) The President shall develop programs and prescribe regulations to improve the compilation, analysis, publication, and dissemination of statistical information by executive agencies. The President shall carry out this subsection through the Administrator for the Office of Information and Regulatory Affairs in the Office of Management and Budget.

(e) Under regulations prescribed by the President, each agency shall provide information required by the President in carrying out this chapter. The President has access to, and may inspect, records of an agency to obtain information.

(Pub.L. 97-258, Sept. 13, 1982, 96 Stat. 908.)

Historical and Revision Notes

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
1104(a)	31:16 (last sentence related to preparation of budgets and appropriations).	June 10, 1921, ch. 18, § 207 (last sentence related to preparation of budgets and appropriations), 42 Stat. 22, restated Sept. 12, 1950, ch. 946, § 102(c), 64 Stat. 833, Reorg. Plan No. 2 of 1970, eff. July 1, 1970, § 102(a), 84 Stat. 2085.
	31:623	June 23, 1913, ch. 3, § 3, 38 Stat. 75, Reorg. Plan No. 1 of 1939, eff. July 1, 1939, § 1, 53 Stat. 1423; Reorg. Plan No. 2 of 1970, eff. July 1, 1970, § 102(a), 84 Stat. 2085.
1104(b)	31:581	June 10, 1921, ch. 18, § 204, 42 Stat. 21, restated Sept. 12, 1950, ch. 946, § 102(c), 64 Stat. 833.

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
1104(c)	31:11d	July 12, 1974, Pub.L. 93-344, § 802, 88 Stat. 330.
	31:581a	June 10, 1921, ch. 18, § 205, 42 Stat. 21; restated Sept. 12, 1950, ch. 946, § 102(d), 64 Stat. 833.
1104(d)	31:18b	Sept. 12, 1950, ch. 946, § 103, 64 Stat. 834; Reorg. Plan No. 2 of 1970, eff. July 1, 1970, § 102(a), 84 Stat. 2085.
	44:3503 (note)	Dec. 11, 1980, Pub.L. 96-511, § 3(a), 94 Stat. 2825.
1104(e)	31:21	June 10, 1921, ch. 18, § 213, 42 Stat. 23; Reorg. Plan No. 1 of 1939, eff. July 1, 1939, § 1, 53 Stat. 1423; Reorg. Plan No. 2 of 1970, eff. July 1, 1970, § 102(a), 84 Stat. 2085.

Explanatory Notes

In the section, the word "President" is substituted for "Office" in 31:16 [former section 16 of this title] (last sentence), "President, through the Director of the Office of Management and Budget" in 31:18b [former section 18b of this title], "President and the Director of the Office of Management and Budget" in 44:3503 (note) [Delegation of Other Functions to Administrator note set out under section 3503 of Title 44, Public Printing and Documents,] and "Office of Management and Budget" in 31:21 and 623 [former sections 21 and 623 of this title], because sections 101 and 102(a) of Reorganization Plan No. 2 of 1970 (eff. July 1, 1970, 84 Stat. 2085) [set out under section 501 of this title], designated the Bureau of the Budget as the Office of Management and Budget and transferred all functions of the Bureau to the President.

In subsection (a), the words "under such rules and regulations as the President may prescribe" in 31:16 [former section 16 of this title] (last sentence) are omitted as unnecessary because of section 101 of Reorganization Plan No. 2 of 1970 [set out under section 501 of this title]. The words "use uniform terms in stating" are substituted for "make uniform the language commonly used in expressing" in 31:623 [former section 623 of this title] for consistency. The words "eliminate from all estimates unnecessary words" are omitted as unnecessary because of the authority of the President under this subsection to prepare the budget. The text of section 3 (words before semicolon) in the Act of June 23, 1913 (ch. 13, 38 Stat. 75) is omitted as superseded by 31:ch. 1 and 31:581 [former sections 1 et seq. and 581 of this title].

In subsection (b), the word "arrangement" is omitted as being included in "order". The

word "information" is substituted for "notes and other data", and the word "submitted" is substituted for "transmitted", for consistency. The words "The President shall include" are substituted for "shall be accompanied by" because of the authority of the President under subsection (a) to prepare the budget. The words "proposed appropriations" are substituted for "proposed supplemental or deficiency appropriations" because of the restatement. The word "personnel" is substituted for "personal services" for clarity. The word "way" is substituted for "manner and form" for consistency. The words "either generally or in specific cases" are omitted as surplus. The word "request" is substituted for "request and receive" to eliminate unnecessary words. The words "it prescribes" are substituted for "as they may desire in consideration of and action upon budget estimates" to eliminate unnecessary words.

In subsection (c), the words "President makes" are substituted for "is made" in 31:581a [former section 581a of this title] as being more precise. The word "information" is substituted for "explanatory notes and tables" for consistency in the revised title. The words "to Congress", "as may be necessary", and "various" are omitted as surplus. The words "The President may change" are substituted for "Any change . . . shall be made only" in 31:11d [former section 11d of this title] because the President prepares and submits the budget under 31:11 [former section 11 of this title]. The word "budget" is substituted for "Budget of the United States Government transmitted pursuant to section 11 of this title" to eliminate unnecessary words and for consistency in the chapter.

31 § 1104

In subsection (d), the word "gathering" in 31:18b [former section 18b of this title] is omitted as being included in "compilation". The text of 31:18b [former section 18b of this title] (last sentence) is omitted as unnecessary because of the restatement of the source provisions in subsection (e). The words "carry out . . . through" are substituted for "delegate to" in 44:3503 (note) [Delegation of Other Functions to Administrator note, set out under section 3503 of Title 44, Public Printing and Documents] for consistency.

In subsection (e), the word "provide" is substituted for "furnish" for consistency. The words "required by the President in carrying out this chapter" are substituted for "as

MONEY AND FINANCE Subtitle 2

the Office may from time to time require" because of section 101 of Reorganization Plan No. 2 of 1970 [set out under section 501 of this title] and to provide comparable limiting language on when information may be required. The words "the director and the assistant director, or any employee of the Office when duly authorized" are omitted because of 3:301 [section 301 of Title 3, The President]. The word "inspect" is substituted for "examine" for consistency in the revised title. The word "records" is substituted for "books, documents, papers, or records" for consistency in the revised title and with other titles of the United States Code.

EXECUTIVE ORDER NO. 9384

Ex.Ord. No. 9384, Oct. 4, 1943, 8 F.R. 13782, which related to the submission of reports to facilitate budgeting activities of the Federal Government, was revoked by Ex.Ord. No. 12113, Jan. 4, 1979, 44 F.R. 1955.

EXECUTIVE ORDER NO. 10253

June 11, 1951, 16 F.R. 5605, as amended by Ex.Ord. No. 12013, Oct. 7, 1977, 42 F.R. 54931; Ex.Ord. No. 12318, Aug. 12, 1981, 46 F.R. 42833

PROVISIONS FOR IMPROVEMENT OF WORK OF FEDERAL EXECUTIVE AGENCIES WITH RESPECT TO STATISTICAL INFORMATION

Section 1. Director of the Office of Management and Budget (hereinafter referred to as the Director) shall develop programs, and issue regulations and orders, for the improved gathering, compiling, analyzing, publishing, and disseminating of statistical information for any purpose by the various agencies in the executive branch of the Federal Government.

Sec. 2. In order to carry out the provisions of Section 1 of this order, the Director shall maintain a continuing study for the improvement of the statistical work of the agencies in the executive branch of the Federal Government with a view to obtaining the maximum benefit from the funds and facilities available for such work, giving due consideration to the constantly changing character of the various needs for statistical information both within and without the Government and, where the statistical work is primarily concerned with operating programs, giving due consideration to administrative needs, statutory requirements, and the needs involved in the development of administrative and legislative recommendations. The Director, either upon his own initiative or upon the request of any such agency, shall (a) provide for the interchange of the information calculated to improve statistical work, (b) make appropriate arrangements for improving statistical work involving relationships between two or more agencies, and (c) assist the agencies, by

other means, to improve their statistical work.

Sec. 3. The following shall be included among the objectives sought in carrying out the provisions of Section 1 hereof:

(a) To achieve an adequate program of statistical work in the agencies of the executive branch, in relation to over-all needs for statistical information, including the filling of gaps and overcoming of weaknesses in presently available statistical information.

(b) To achieve the most effective use of resources available for statistical work by the agencies, in relation to over-all needs.

(c) To minimize the burden upon those furnishing statistical data needed by the various Federal agencies.

(d) To improve the reliability and timeliness of statistical information.

(e) To achieve maximum comparability among the several statistical series and studies.

(f) To improve the presentation of statistical information and of explanations regarding the sources and reliability of such information, and regarding the limitations on the uses that can appropriately be made of it.

Sec. 4. Regulations and orders issued pursuant to Section 1 hereof shall be signed by the Director. When so signed, such regulations and orders shall require no further ap-

Ch. 11: THE BUDGET

proval and shall be adhered to by all agencies in the executive branch. Any such regulation or order may pertain to a single agency, a group of agencies, or all agencies in the executive branch.

Sec. 5. In the development of programs and the preparation of regulations and orders for issuance pursuant to Section 1 hereof, the Director shall consult Federal agencies whose activities will be substantially affected, and may consult non-Federal groups to the extent he finds it necessary to carry out the purposes of this order.

Sec. 6. The authority outlined in this order is in addition to and not in substitution for the existing authority of the Director, or of the Office of Management and Budget with respect to statistical and reporting activities. To the extent, however, that this order con-

licts with any previous Executive order affecting statistical or reporting activities, the provisions of this order shall control.

Sec. 7. As required by Section 3(a) of the Paperwork Reduction Act of 1980 (94 Stat. 2825; 44 U.S.C. § 3503 note) [set out as a note under section 3503 of Title 44, Public Printing and Documents], the Director shall redelegate to the Administrator for the Office of Information and Regulatory Affairs, Office of Management and Budget, all functions, authority, and responsibility under Section 103 of the Budget and Accounting Procedures Act of 1950 (31 U.S.C. § 18b) [former section 18b of this title] which have been vested in the Director by this Order.

Sec. 8. [Revoked by Ex.Ord. No. 12318, Aug. 21, 1981, 46 F.R. 42833.]

Cross References

Executive agency accounting systems to provide reliable accounting results that will be basis for providing financial information required under subsec. (e) of this section, see section 3512 of this title.

Library References

United States Ⓒ26.

C.J.S. United States §§ 27, 28.

Notes of Decisions

1. Construction with other laws

President's authority under former section 16 of this title to prescribe rules and regulations for preparation of budget was subject to specific requirements of government in the

Sunshine Act, section 552b of Title 5. Common Cause v. Nuclear Regulatory Commission, 1982, 674 F.2d 921, 218 U.S.App.D.C. 262.

§ 1105. Budget contents and submission to Congress

(a) During the first 15 days of each regular session of Congress, the President shall submit a budget of the United States Government for the following fiscal year. Each budget shall include a budget message and summary and supporting information. The President shall include in each budget the following:

- (1) information on activities and functions of the Government.
- (2) when practicable, information on costs and achievements of Government programs.
- (3) other desirable classifications of information.
- (4) a reconciliation of the summary information on expenditures with proposed appropriations.
- (5) except as provided in subsection (b) of this section, estimated expenditures and proposed appropriations the President decides are necessary to support the Government in the fiscal year for which the budget is submitted and the 4 fiscal years after that year.

- (6) estimated receipts of the Government in the fiscal year for which the budget is submitted and the 4 fiscal years after that year under—
 - (A) laws in effect when the budget is submitted; and
 - (B) proposals in the budget to increase revenues.
- (7) appropriations, expenditures, and receipts of the Government in the prior fiscal year.
- (8) estimated expenditures and receipts, and appropriations and proposed appropriations, of the Government for the current fiscal year.
- (9) balanced statements of the—
 - (A) condition of the Treasury at the end of the prior fiscal year;
 - (B) estimated condition of the Treasury at the end of the current fiscal year; and
 - (C) estimated condition of the Treasury at the end of the fiscal year for which the budget is submitted if financial proposals in the budget are adopted.
- (10) essential information about the debt of the Government.
- (11) other financial information the President decides is desirable to explain in practicable detail the financial condition of the Government.
- (12) for each proposal in the budget for legislation that would establish or expand a Government activity or function, a table showing—
 - (A) the amount proposed in the budget for appropriation and for expenditure because of the proposal in the fiscal year for which the budget is submitted; and
 - (B) the estimated appropriation required because of the proposal for each of the 4 fiscal years after that year that the proposal will be in effect.
- (13) an allowance for additional estimated expenditures and proposed appropriations for the fiscal year for which the budget is submitted.
- (14) an allowance for unanticipated uncontrollable expenditures for that year.
- (15) a separate statement on each of the items referred to in section 301(a)(1)–(5) of the Congressional Budget Act of 1974 (2 U.S.C. 632(a)(1)–(5)).
- (16) the level of tax expenditures under existing law in the tax expenditures budget (as defined in section 3(a)(3) of the Congressional Budget Act of 1974 (2 U.S.C. 622(a)(3))) for the fiscal year for which the budget is submitted, considering projected economic factors and changes in the existing levels based on proposals in the budget.
- (17) information on estimates of appropriations for the fiscal year following the fiscal year for which the budget is submitted for grants, contracts, and other payments under each program for which there is an authorization of appropriations for that following fiscal year when

the appropriations are authorized to be included in an appropriation law for the fiscal year before the fiscal year in which the appropriation is to be available for obligation.

(18) a comparison of the total amount of budget outlays for the prior fiscal year, estimated in the budget submitted for that year, for each major program having relatively uncontrollable outlays with the total amount of outlays for that program in that year.

(19) a comparison of the total amount of receipts for the prior fiscal year, estimated in the budget submitted for that year, with receipts received in that year, and for each major source of receipts, a comparison of the amount of receipts estimated in that budget with the amount of receipts from that source in that year.

(20) an analysis and explanation of the differences between each amount compared under clauses (18) and (19) of this subsection.

(21) a horizontal budget showing—

(A) the programs for meteorology and of the National Climate Program established under section 5 of the National Climate Program Act (15 U.S.C. 2904);

(B) specific aspects of the program of, and appropriations for, each agency; and

(C) estimated goals and financial requirements.

(22) a statement of budget authority, proposed budget authority, budget outlays, and proposed budget outlays, and descriptive information in terms of—

(A) a detailed structure of national needs that refers to the missions and programs of agencies (as defined in section 101 of this title); and

(B) the missions and basic programs.

(23) separate appropriation accounts for appropriations under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) and the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801 et seq.).

(24) recommendations on the return of Government capital to the Treasury by a mixed-ownership corporation (as defined in section 9101(2) of this title) that the President decides are desirable.

(25) a separate statement, for each agency having an Office of Inspector General, of the amount of the appropriation requested for the Office.

(b) Estimated expenditures and proposed appropriations for the legislative branch and the judicial branch to be included in each budget under subsection (a)(5) of this section shall be submitted to the President before October 16 of each year and included in the budget by the President without change.

(c) The President shall recommend in the budget appropriate action to meet an estimated deficiency when the estimated receipts for the fiscal year

31 § 1105

MONEY AND FINANCE Subtitle 2

Ch. 11 THE BUDGET

31 § 1105

for which the budget is submitted (under laws in effect when the budget is submitted) and the estimated amounts in the Treasury at the end of the current fiscal year available for expenditure in the fiscal year for which the budget is submitted, are less than the estimated expenditures for that year. The President shall make recommendations required by the public interest when the estimated receipts and estimated amounts in the Treasury are more than the estimated expenditures.

(d) When the President submits a budget or supporting information about a budget, the President shall include a statement on all changes about the current fiscal year that were made before the budget or information was submitted.

(Pub.L. 97-258, Sept. 13, 1982, 96 Stat. 908; Pub.L. 97-452, § 1(2), Jan. 12, 1983, 96 Stat. 2467.)

Historical and Revision Notes

1982 Act

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
1105(a)(1)-(14)	31-11(a) (less (5) (words after 2d comma))	June 10, 1921, ch. 18, § 201(a), 42 Stat. 20; restated Sept. 12, 1950, ch. 946, § 102(a), 64 Stat. 832; Aug. 1, 1956, ch. 814, § 1(a), 70 Stat. 782; Oct. 26, 1970, Pub.L. 91-510, § 221(a), 84 Stat. 1169; July 12, 1974, Pub.L. 93-344, § 603, 604, 88 Stat. 324.
31-19	31-19	June 10, 1921, ch. 18, § 211, 42 Stat. 22; Reorg. Plan No. 1 of 1939, eff. July 1, 1939, § 1, 53 Stat. 1423; Reorg. Plan No. 2 of 1970, eff. July 1, 1970, § 102(a), 84 Stat. 2085.
1105(a)(15)	31-11(d)	June 10, 1921, ch. 18, 42 Stat. 20, § 201(d)-(f), (g) (last sentence)-(i) (1st sentence); added July 12, 1974, Pub.L. 93-344, § 601, 88 Stat. 323.
1105(a)(16)	31-11(e)	
1105(a)(17)	31-11(h)	
1105(a)(18)-(20)	31-11(f)	
1105(a)(21)	31-25	Oct. 18, 1962, Pub.L. 87-843, § 304 (1st par.), 76 Stat. 1097; Reorg. Plan No. 2 of 1970, eff. July 1, 1970, § 102(a), 84 Stat. 2085, Sept. 17, 1978, Pub.L. 95-367, § 5(g)(2), 92 Stat. 603.
1105(a)(22)	31-11(i) (1st sentence)	
1105(a)(23)	31-11 (note)	Nov. 9, 1977, Pub.L. 95-164, § 305, 91 Stat. 1322.
1105(a)(24)	31-859	Dec. 6, 1945, ch. 557, § 204, 59 Stat. 601.
1105(b)	28-605 (last par.)	
1105(c)	31-11(a)(5) (words after 2d comma)	
1105(d)	31-13	June 10, 1921, ch. 18, § 202, 42 Stat. 21.
	31-11(g) (last sentence)	

Explanatory Notes

In the section, the word "current" is substituted for "in progress", and the word "prior" is substituted for "last completed", for consistency in the revised title.

In subsection (a), before clause (1), the text of 31-19 [former section 19 of this title] is

omitted as superseded by the broader authority of 31-11(a)(5) [former section 11(a)(5) of this title]. The words "for the following fiscal year" are added for clarity. The words "summary and supporting information" are substituted for "summary data and text, and supporting detail" in the introductory matter

of 31-11(a) [former section 11(a) of this title] for consistency. The words "in such form and detail as the President may determine" are omitted as unnecessary because of the authority of the President under section 1104(a) of the revised title [section 1104(a) of this title] to prepare the budget. The words "The President shall . . . in each budget the following" are substituted for "The Budget transmitted pursuant to subsection (a) of this section for each fiscal year shall" in 31-11(d)-(f), (h), and (i) [former section 11(d)-(f), (h), and (i) of this title] because of the restatement. The word "President" is substituted for "Office of Management and Budget" in 31-25 [former section 25 of this title] because sections 101 and 102(a) of Reorganization Plan No. 2 of 1970 (eff. July 1, 1970, 84 Stat. 2085) [set out under section 501 of this title] designated the Bureau of the Budget as the Office of Management and Budget and transferred all functions of the Bureau to the President. The words "in connection with the budget presentation for fiscal year 1964 and each succeeding year thereafter" are omitted as executed.

In subsection (a)(1), the words "information on" are added for clarity.

In subsection (a)(2), the word "Government" is added for clarity.

In subsection (a)(3), the word "information" is substituted for "data" for consistency.

In subsection (a)(5) and (6), the words "fiscal year for which the budget is submitted" are substituted for "ensuing fiscal year" the first time they appear for clarity. The words "the 4 fiscal years after that year" are substituted for "projections for the four fiscal years immediately following the ensuing fiscal year" to eliminate unnecessary words.

In subsection (a)(6), the words "proposals to increase revenues" are substituted for "revenue proposals" for consistency in the revised title.

In subsection (a)(7), the word "actual" is omitted as surplus.

In subsection (a)(8), the words "appropriations and" are substituted for "actual or" for clarity.

In subsection (a)(9), the words "fiscal year for which the budget is submitted" are substituted for "ensuing fiscal year" for clarity.

In subsection (a)(10), the words "bonded and other" are omitted as surplus.

In subsection (a)(11), the words "information the President decides" are substituted for "statements and data as in his opinion" for

clarity and consistency. The word "desirable" is substituted for "necessary or desirable" and the words "to explain" are substituted for "in order to make known", to eliminate unnecessary words.

In subsection (a)(12), before subclause (A), the word "legislation" is substituted for "new or additional legislation" to eliminate unnecessary words. The words "activity or function" are substituted for "function, activity, or authority" for consistency. The words "in addition to those functions, activities, and authorities then existing or as then being administered and operated" are omitted as surplus.

In subsection (a)(16), the words "fiscal year for which the budget is submitted" are substituted for "such fiscal year" for clarity.

In subsection (a)(17), the words "fiscal year following the fiscal year for which the budget is submitted" are substituted for "next succeeding fiscal year", the words "that following fiscal year" are substituted for "such succeeding fiscal year", and the words "fiscal year before" are substituted for "fiscal year preceding", for clarity and consistency.

In subsection (a)(18), the words "uncontrollable or" are omitted as being included in "relatively uncontrollable".

In subsection (a)(19) and (20), the word "receipts" is substituted for "revenues" for consistency in the revised title.

Subsection (a)(20) is substituted for 31-11(f) (3) [former section 11(f)(3) of this title] to eliminate unnecessary words.

In subsection (a)(21), the words "the totality of" are omitted as surplus.

In subsection (a)(22), the words "budget outlays" are substituted for "outlays" for consistency. The words "beginning with the fiscal year ending September 30, 1979" are omitted as executed.

In subsection (a)(23), the words "for appropriations" are substituted for "amounts required for appropriations" to eliminate unnecessary words. The words "for mine health and safety" and "for occupational safety and health" are omitted as unnecessary because of the restatement.

In subsection (a)(24), the words "(as defined in section 5101(2) of this title)" are added because the subsection is based on a law to which the defined term applies. The words "decides are desirable" are substituted for "may wish to make" for consistency.

In subsection (b), the words "for such years" in 31-11(a)(5) [former section 11(a)(5) of this title] (words after 2d comma) are

31 § 1105

omitted because of the restatement. The words "of the United States" and "by him" are omitted as surplus. The words "to be included in each budget under subsection (a)(5) of this section" are added because of the restatement. The words "before October 16" are substituted for "on or before October 15", and the word "change" is substituted for "revision", for consistency.

In subsection (c), the words "new taxes, loans, or other" are omitted as being included in "appropriate action". The words "in effect" are substituted for "existing" for consistency. The word "aggregate" is omitted as surplus.

In subsection (d), the words "When the President submits a budget or supporting in-

MONEY AND FINANCE Subtitle 2

formation about a budget, the President" are substituted for "The Budget transmitted pursuant to subsection (a) of this section for any fiscal year, or the supporting detail transmitted in connection therewith" because of the restatement. The word "changes" is substituted for "amendments and revisions" to eliminate unnecessary words.

The words "The President shall include in the supporting detail accompanying each Budget" are omitted as being included in the introductory provisions of 31:1105(a) [former section 1105(a) of this title]. The words "submitted on or after January 1, 1983" are omitted as executed. The words "by the President" and "if any" are omitted as surplus.

1983 Act

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
1105(a)(25)	31 App. 11(k)(1)	June 10, 1921, ch. 18, 42 Stat. 20, § 201(k)(1); added Sept. 8, 1982, Pub. L. 97-255, § 3, 96 Stat. 815.

References in Text. Section 301(a)(1)-(5) of the Congressional Budget Act of 1974, referred to in subsec. (a)(15), is section 301(a)(1) to (5) of the Congressional Budget and Impoundment Control Act of 1974, Pub. L. 93-344, Title III, July 12, 1974, 88 Stat. 306, which is classified to section 632(a)(1) to (5) of Title 2, The Congress.

Section 3(a)(3) of the Congressional Budget Act of 1974, referred to in subsec. (a)(16), is section 3(a)(3) of the Congressional Budget and Impoundment Control Act of 1974, Pub. L. 93-344, July 12, 1974, 88 Stat. 306, which is classified to section 622(a)(3) of Title 2.

Section 5 of the National Climate Program Act, referred to in subsec. (a)(21)(A), is section 5 of Pub. L. 95-367, Sept. 17, 1978, 92 Stat. 601, which is classified to section 2904 of Title 15, Commerce and Trade.

The Occupational Safety and Health Act of 1970, referred to in subsec. (a)(23), is Pub. L. 91-596, Dec. 29, 1970, 84 Stat. 1590, which is classified generally to section 651 et seq. of Title 29, Labor.

The Federal Mine Safety and Health Act of 1977, referred to in subsec. (a)(23), is the Federal Mine Safety and Health Amendments Act of 1977, Pub. L. 95-164, Nov. 9, 1977, 91 Stat. 1290, which is classified generally to section 801 et seq. of Title 30, Mineral Lands and Mining.

1983 Amendment. Subsec. (a). Pub. L. 97-452 added par. (25).

Legislative History. For legislative history and purpose of Pub. L. 97-452, see 1983 U.S. Code Cong. and Adm. News, p. 4301.

EXECUTIVE ORDER NO. 6715

FILING OF FUNCTIONAL ORGANIZATION CHARTS WITH DIRECTOR OF BUREAU OF BUDGET

By virtue of and pursuant to the authority vested in me under title 11 of the act of June 10, 1921 (ch. 18, 42 Stat. 20), it is hereby ordered as follows:

(1) Each executive department, independent establishment, and emergency agency shall file with the Director of the Bureau of the Budget [now Director of Office of Management and Budget] a functional organization chart, indicating its various existing bu-

reaus, divisions, sections, etc., and containing a description of the functions respectively performed, and shall file such additional charts from time to time, as may be necessary to show all changes made therein.

(2) Every executive department, independent establishment, and emergency agency hereafter created shall within 5 days after the appointment of the head thereof file a prelim-

Ch. 11 THE BUDGET

31 § 1106

inary functional organization chart with the Director of the Bureau of the Budget.

(3) The Director of the Bureau of the Budget is hereby authorized to prescribe, subject to the approval of the President, such rules and regulations as will indicate the in-

formation desired and the form of chart to be furnished.

FRANKLIN D. ROOSEVELT.

The White House,
May 23, 1934.

Cross References

Administrator of Veterans' Affairs, submission of report to Congress on reorganization, see section 210 of Title 38, Veterans' Benefits.

Budget estimates—

Departments of Defense, Army, Navy and Air Force, see section 2203 of Title 10, Armed Forces.

Director of Administrative Office of the United States Courts, see section 605 of Title 28, Judiciary and Judicial Procedure.

Congressional studies of provisions exempting federal agencies or agency activities or outlays from inclusion in budget, see section 661 of Title 2, The Congress.

Inclusion in budget of recommendation that wholly owned government corporation be deemed agency under this chapter, see section 9109 of this title.

Merit Systems Protection Board, annual budget of expenses included as separate item in budget, see section 1205 of Title 5, Government Organization and Employees.

Postal Service, inclusion of amounts in annual budget in budget submitted to Congress, see section 2009 of Title 39, Postal Service.

Preparation of budgets by President, see section 1104 of this title.

Recommendations for deficiency and supplemental appropriations, see section 1107 of this title.

Supplemental budget estimates and changes, see section 1106 of this title.

Veterans' Administration medical facilities, inclusion in budget of amounts necessary for operation and maintenance, see section 5010 of Title 38, Veterans' Benefits.

Veterans' Administration physicians and dentists, inclusion in budget of recommendations with respect to special pay rates, see section 4118 of Title 38.

Weapons development and procurement schedule reports, submission by Secretary of Defense to Congress, see section 139 of Title 10, Armed Forces.

Wholly owned government corporations, submission of budget programs to Congress, see section 9103 of this title.

Library References

United States 79

C.J.S. United States § 120.

Notes of Decisions

1. Effect of law

President's budget message to Congress does not have effect of law. Local 2677, Am.

Federation of Government Emp. v. Phillips, D.C.D.C. 1973, 358 F.Supp. 60.

§ 1106. Supplemental budget estimates and changes

(a) Before July 16 of each year, the President shall submit to Congress a supplemental summary of the budget for the fiscal year for which the budget is submitted under section 1105(a) of this title. The summary shall include—

(1) for that fiscal year—

(A) substantial changes in or reappraisals of estimates of expenditures and receipts;

(B) substantial obligations imposed on the budget after its submission;

(C) current information on matters referred to in section 1105(a)(8) and (9)(B) and (C) of this title; and

(D) additional information the President decides is advisable to provide Congress with complete and current information about the budget and current estimates of the functions, obligations, requirements, and financial condition of the United States Government.

(2) for the 4 fiscal years following the fiscal year for which the budget is submitted, information on estimated expenditures for programs authorized to continue in future years, or that are considered mandatory, under law; and

(3) for future fiscal years, information on estimated expenditures of balances carried over from the fiscal year for which the budget is submitted.

(b) Before April 11 and July 16 of each year, the President shall submit to Congress a statement of changes in budget authority requested, estimated budget outlays, and estimated receipts for the fiscal year for which the budget is submitted (including prior changes proposed for the executive branch of the Government) that the President decides are necessary and appropriate based on current information. The statement shall include the effect of those changes on the information submitted under section 1105(a)(1)-(14) and (b) of this title and shall include supporting information as practicable. The statement submitted before July 16 may be included in the information submitted under subsection (a)(1) of this section.

(Pub.L. 97-258, Sept. 13, 1982, 96 Stat. 911.)

Historical and Revision Notes

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
1106(a)	31.11(b), (c)	June 10, 1921, ch. 18, 42 Stat. 20, § 201(b), (c); added Aug. 25, 1958, Pub.L. 85-759, § 1, 72 Stat. 852; restated Oct. 26, 1970, Pub.L. 91-510, § 221(b), 84 Stat. 1169; July 12, 1974, Pub.L. 93-344, § 602, 88 Stat. 324
1106(b)	31.11(g) (1st-3d sentences)	June 10, 1921, ch. 18, 42 Stat. 20, § 201(g) (1st-3d sentences); added July 12, 1974, Pub.L. 93-344, § 601, 88 Stat. 323.

Explanatory Notes

In subsection (a), before clause (1), the words "Before July 16" are substituted for "on or before July 15" for consistency. The words "budget for the fiscal year for which the budget is submitted" are substituted for "Budget for the ensuing fiscal year transmitted to the Congress by the President" to eliminate unnecessary words and for consistency in the chapter. The words "in such form and detail as he may determine" are omitted as unnecessary. In clause (1)(D), the words "in summary form" and "summary of" are omitted as unnecessary. The word "necessary" is omitted as being included in "advisable". In

clauses (2) and (3), the word "information" is substituted for "summaries" because of the restatement. In clause (2), the words "programs authorized to continue in future years, or that are considered mandatory, under law" are substituted for "continuing programs which have a legal commitment for future years or are considered mandatory under existing law" for consistency.

In subsection (b), the words "Before April 11 and July 16" are substituted for "on or before April 10 and July 15", the word "changes" is substituted for "all amendments to or revisions in", and the words "budget

outlays" are substituted for "outlays", the words "fiscal year for which the budget is submitted" are substituted for "ensuing fiscal year set forth in the Budget transmitted pur-

suant to subsection (a) of this section", for consistency. The word "information" is substituted for "summary data" because of the restatement.

Library References

United States ☞ 79.

C.J.S. United States § 120.

Notes of Decisions

1. Powers of District of Columbia Council

District of Columbia Council, pursuant to its powers of ordinary legislation, can remove substantive authorization for funded project but, to extent Congress has appropriated funds for project, council can halt further expenditure only through more elaborate requirements of budget process, even though project has been formally deauthorized, and thus substantial deauthorization by council

can halt funded project during current fiscal year only if implemented by supplemental budget request Act followed by Congressional supplemental appropriations Act. (Per Ferren, J., with two Judges concurring and two Judges concurring in result.) Convention Center Referendum Committee v. District of Columbia Bd. of Elections and Ethics, D.C. App.1981, 441 A.2d 889.

§ 1107. Deficiency and supplemental appropriations

The President may submit to Congress proposed deficiency and supplemental appropriations the President decides are necessary because of laws enacted after the submission of the budget or that are in the public interest. The President shall include the reasons for the submission of the proposed appropriations and the reasons the proposed appropriations were not included in the budget. When the total proposed appropriations would have required the President to make a recommendation under section 1105(c) of this title if they had been included in the budget, the President shall make a recommendation under that section.

(Pub.L. 97-258, Sept. 13, 1982, 96 Stat. 911.)

Historical and Revision Notes

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
1107	31:14	June 10, 1921, ch. 18, § 203, 42 Stat. 21; restated Sept. 12, 1950, ch. 946, § 102(b), 64 Stat. 833

Explanatory Notes

In the section, the words "reach an aggregate which" are omitted as surplus.

Cross References

Preparation of proposed deficiency and supplemental appropriations by President, see section 1104 of this title.

Library References

United States ☞ 85.

C.J.S. United States § 123.

§ 1108. Preparation and submission of appropriations requests to the President

(a) In this section (except subsections (b)(1) and (e)), "agency" means a department, agency, or instrumentality of the United States Government.

(b)(1) The head of each agency shall prepare and submit to the President each appropriation request for the agency. The request shall be prepared and submitted in the form prescribed by the President under this chapter and by the date established by the President. When the head of an agency does not submit a request by that date, the President shall prepare the request for the agency to be included in the budget or changes in the budget or as deficiency and supplemental appropriations. The President may change agency appropriation requests. Agency appropriation requests shall be developed from cost-based budgets in the way and at times prescribed by the President. The head of the agency shall use the cost-based budget to administer the agency and to divide appropriations or amounts.

(2) An officer or employee of an agency in the executive branch may submit to the President or Congress a request for legislation authorizing deficiency or supplemental appropriations for the agency only with the approval of the head of the agency.

(c) The head of an agency shall include with an appropriation request submitted to the President a report that the statement of obligations submitted with the request contains obligations consistent with section 1501 of this title. The head of the agency shall support the report with a certification of the consistency and shall support the certification with records showing that the amounts have been obligated. The head of the agency shall designate officials to make the certifications, and those officials may not delegate the duty to make the certifications. The certifications and records shall be kept in the agency—

- (1) in a form that makes audits and reconciliations easy; and
- (2) for a period necessary to carry out audits and reconciliations.

(d) To the extent practicable, the head of an agency shall—

(1) provide information supporting the agency's budget request for its missions by function and subfunction (including the mission of each organizational unit of the agency); and

(2) relate the agency's programs to its missions.

(e) Except as provided in subsection (f) of this section, an officer or employee of an agency (as defined in section 1101 of this title) may submit to Congress or a committee of Congress an appropriations estimate or request, a request for an increase in that estimate or request, or a recommendation on meeting the financial needs of the Government only when requested by either House of Congress.

(f) The Interstate Commerce Commission shall submit to Congress copies of budget estimates, requests, and information (including personnel needs), legislative recommendations, prepared testimony for congressional hearings, and comments on legislation at the same time they are sent to the President

or the Office of Management and Budget. An officer of an agency may not impose conditions on or impair communication by the Commission with Congress, or a committee or member of Congress, about the information.

(g) Amounts available under law are available for field examinations of appropriation estimates. The use of the amounts is subject only to regulations prescribed by the appropriate standing committees of Congress.

(Pub.L. 97-258, Sept. 13, 1982, 96 Stat. 912.)

Historical and Revision Notes

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
1108(a)	(no source)	
1108(b)(1)	31:16 (last sentence related to appropriations requests).	June 10, 1921, ch. 18, § 207 (last sentence related to appropriations requests), 42 Stat. 22; restated Sept. 12, 1950, ch. 946, § 102(e), 64 Stat. 833; Reorg. Plan No. 2 of 1970, eff. July 1, 1970, § 102(a), 84 Stat. 2085.
	31:22, 23	June 10, 1921, ch. 18, §§ 214, 215, 42 Stat. 23; restated Sept. 12, 1950, ch. 946, § 102(f), (g), 64 Stat. 833; Reorg. Plan No. 2 of 1970, eff. July 1, 1970, § 102(a), 84 Stat. 2085.
	31:24(a)	June 10, 1921, ch. 18, § 216(a), 42 Stat. 23; restated Sept. 12, 1950, ch. 946, § 102(h), 64 Stat. 834; Aug. 1, 1956, ch. 814, § 1(b), 70 Stat. 782; Reorg. Plan No. 2 of 1970, eff. July 1, 1970, § 102(a), 84 Stat. 2085.
	31:24(b), (c)	June 10, 1921, ch. 18, 42 Stat. 20, § 216(b), (c); added Aug. 1, 1956, ch. 814, § 1(b), 70 Stat. 782.
1108(b)(2)	31:581b	Sept. 12, 1950, ch. 946, § 201, 64 Stat. 838; Reorg. Plan No. 2 of 1970, eff. July 1, 1970, § 102(a), 84 Stat. 2085.
1108(c)	31:200(b)	Aug. 26, 1954, ch. 935, § 1311(b), 68 Stat. 830; restated July 8, 1959, Pub.L. 86-79, § 210(a), 73 Stat. 167; Reorg. Plan No. 2 of 1970, eff. July 1, 1970, § 102(a), 84 Stat. 2085.
	31:200(c)	Aug. 26, 1954, ch. 935, § 1311(c), 68 Stat. 831.
1108(d)	31:11(i) (last sentence)	June 10, 1921, ch. 18, 42 Stat. 20, § 201(i) (last sentence), added July 12, 1974, Pub.L. 93-344, § 601, 88 Stat. 123.
1108(e)	31:15	June 10, 1921, ch. 18, § 206, 42 Stat. 21.
1108(f)	31:11(j)	June 10, 1921, ch. 18, 42 Stat. 20, § 201(j); added Feb. 5, 1976, Pub.L. 94-210, § 311, 90 Stat. 60.
1108(g)	31:22a	Aug. 7, 1953, ch. 340, § 1314, 67 Stat. 438.

Explanatory Notes

Subsection (a) is included because the source provisions restated in subsections (c), (d), (f), and (g) of the revised section are derived from laws that apply to all organizational units and branches of the United States Government rather than the units and branches included in the chapter-wide definition in section 1101 [section 1101 of this title].

In subsection (b)(1), the words "executive agency" are used instead of "agency" because of section 1101(1) of the revised title [section 1101(1) of this title] and 28:605 [section 605 of Title 28, Judiciary and Judicial Procedure]. The word "President" is substituted for "Office" in 31:16 [former section 16 of this title] (last sentence) and "Office of Management and Budget" in 31:23 and 24(a) [former sec-

tions 23 and 24(a) of this title] because sections 101 and 102(a) of Reorganization Plan No. 2 of 1970 (eff. July 1, 1970, 84 Stat. 2085) [set out under section 501 of this title] designated the Bureau of the Budget as the Office of Management and Budget and transferred all functions of the Bureau to the President. The word "prepare" is substituted for "prepare or cause to be prepared" in 31:22 [former section 22 of this title] to eliminate unnecessary words. The word "appropriations" is substituted for "regular, supplementary, or deficiency appropriations" in 31:22 and 24(a) [former sections 22 and 24(a) of this title] to eliminate unnecessary words. The words "in each year" are omitted as surplus. The words "in the form prescribed by the President under this chapter and by the date established by the President" are substituted for "on or before a date which the President shall determine" in 31:23 [former section 23 of this title], and "as the President may determine in accordance with the provisions of section 11 of this title" and "in such manner and at such times as may be determined by the President" in 31:24 [former section 24 of this title], to eliminate unnecessary words and to provide a cross reference to the authority of the President to prepare and submit budgets and appropriations request. The words "prepare the request for the executive agency to be included in the budget or changes in the budget or as deficiency or supplemental appropriations" are substituted for "cause such requests to be prepared as are necessary to enable him to include such requests with the Budget in respect to the work of such department or establishment" in 31:23 [former section 23 of this title] for clarity and because of the restatement. The word "change" is substituted for "assemble, correlate, revise, reduce, or increase" in 31:16 [former section 16 of this title] (last sentence) to eliminate unnecessary words. The words "The head of the executive agency shall use" are substituted for "shall be used by all departments and establishments and their subordinate units" and "shall be made on the basis of" in 31:24 [former section 24 of this title] as being more precise. The word "operation" is omitted as being included in "administration". The word "amounts" is substituted for "funds" for consistency in the revised title. The word "divide" is substituted for "administrative subdivisions" because of the restatement.

In subsection (b)(2), the words "An officer or employee of an executive agency" are added for clarity. The words "deficiency or supplemental appropriations" are substituted for "subsequent appropriations" for consistency.

MONEY AND FINANCE Subtitle 2

The words "the Office of Management and Budget" are omitted because sections 101 and 102(a) of Reorganization Plan No. 2 of 1970 [set out under section 501 of this title] designated the Bureau of the Budget as the Office of Management and Budget and transferred all functions of the Bureau to the President. The words "the executive agency" are substituted for "by such department or establishment, or by any organization unit thereof" to eliminate unnecessary words.

In subsection (c), before clause (1), the word "President" is substituted for "Office of Management and Budget" in 31:200(b) [former section 200(b) of this title] because sections 101 and 102(a) of Reorganization Plan No. 2 of 1970 [set out under section 501 of this title] designated the Bureau of the Budget as the Office of Management and Budget and transferred all functions of the Bureau to the President. The words "submitted with the request contains obligations consistent with" are substituted for "furnished therewith consists of valid obligations as defined in" for clarity and because of the restatement. The words "The head of the agency shall support the report with a certification of the consistency" are substituted for "Each report made pursuant to subsection (b) of this section shall be supported by certifications" in 31:200(c) [former section 200(c) of this title] for clarity. The words "duty to make certifications" are substituted for "responsibility" for consistency.

In subsection (d)(1), the words "its missions" are substituted for "its assigned mission", and the words "the mission" are substituted for "mission responsibilities", to eliminate unnecessary words.

In subsection (d)(2), the word "mission" is substituted for "agency missions" to eliminate unnecessary words.

In subsection (e), the words "Except as provided in subsection (f) of this section" are added because of the restatement. The word "financial" is substituted for "revenue" for consistency in the revised title.

In subsection (f), the word "personnel" is substituted for "manpower", and the words "at the same time" are substituted for "concurrently", for clarity. The words "officer of an agency" are substituted for "officer or agency" as being more precise. The word "prohibit" is omitted as being included in "impose conditions on or impair". The word "communication" is substituted for "free communication" to eliminate a surplus word. The words "about the information" are substituted for "with respect to any budget esti-

Ch. 11 THE BUDGET

mate or request of the Commission" for consistency and to eliminate unnecessary words.

In subsection (g), the word "Amounts" is substituted for "Funds", the word "law" is substituted for "Act", and the words "regula-

tions prescribed" are substituted for "regulations", for consistency in the revised title. The words "of Congress" are added for clarity.

Cross References

Maintenance of executive agency accounts on accrual basis to assist in preparation of cost-based budget, see section 3512 of this title.

Library References

United States 85.

C.J.S. United States § 123.

Notes of Decisions

1. Recorder of Deeds

Recorder of Deeds of the District of Columbia is required by law to submit estimates for appropriations for his office to the Com-

missioners of the District of Columbia, and to submit to hearings by the Commissioners on such estimates. 1935, 38 Op.Atty.Gen. 155.

§ 1109. Current programs and activities estimates

(a) Before November 11 of each year, the President shall submit to both Houses of Congress the estimated budget outlays and proposed budget authority that would be included in the budget for the following fiscal year if programs and activities of the United States Government were carried on during that year at the same level as the current fiscal year without a change in policy. The President shall state the estimated budget outlays and proposed budget authority by function and subfunction under the classifications in the budget summary table under the heading "Budget Authority and Outlays by Function and Agency", by major programs in each function, and by agency. The President also shall include a statement of the economic and program assumptions on which those budget outlays and budget authority are based, including inflation, real economic growth, and unemployment rates, program caseloads, and pay increases.

(b) The Joint Economic Committee shall review the estimated budget outlays and proposed budget authority and submit an economic evaluation of the budget outlays and budget authority to the Committees on the Budget of both Houses before January 1 of each year.

(Pub.L. 97-258, Sept. 13, 1982, 96 Stat. 913.)

Historical and Revision Notes

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
1109(a)	31:11(a)	July 12, 1974, Pub.L. 93-344, § 605, 88 Stat. 325.
1109(b)	31:11a(b)	

Explanatory Notes

In the section, the words "budget outlays" are substituted for "outlays" for consistency in the revised title.

In subsection (a), the words "Before November 11" are substituted for "On or before

November 10", the words "both Houses of Congress" are substituted for "the Senate and the House of Representatives", the word "following" is substituted for "ensuing", and the word "current" is substituted for "in pro-

gress", for consistency. The words "(beginning with 1975)" are omitted as executed. The words "of the United States Government" are added for clarity. The words "in such programs and activities" are omitted as surplus. The words "The President shall state" are substituted for "shall be shown", and the words "The President also shall in-

clude" are substituted for "Accompanying these estimates shall be", because of the re-statement.

In subsection (b), the words "so submitted" are omitted as unnecessary. The words "before January 1" are substituted for "on or before December 31" for consistency.

§ 1110. Year-ahead requests for authorizing legislation

A request to enact legislation authorizing new budget authority to continue a program or activity for a fiscal year shall be submitted to Congress before May 16 of the year before the year in which the fiscal year begins. If a new program or activity will continue for more than one year, the request must be submitted for at least the first and 2d fiscal years.

(Pub.L. 97-258, Sept. 13, 1982, 96 Stat. 913.)

Historical and Revision Notes

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
1110.....	31:11c.....	July 12, 1974, Pub.L. 93-344, § 607, 88 Stat. 325.

Explanatory Notes

The words "Notwithstanding any other provision of law" are omitted as unnecessary. The words "the enactment of" before "new" are omitted as surplus. The words "(beginning with the fiscal year commencing October

1, 1976)" are omitted as executed. The words "a request for the enactment of legislation authorizing the enactment of new budget authority for" are omitted for consistency in the chapter.

§ 1111. Improving economy and efficiency

To improve economy and efficiency in the United States Government, the President shall—

(1) make a study of each agency to decide, and may send Congress recommendations, on changes that should be made in—

- (A) the organization, activities, and business methods of agencies;
- (B) agency appropriations;
- (C) the assignment of particular activities to particular services; and
- (D) regrouping of services; and

(2) evaluate and develop improved plans for the organization, coordination, and management of the executive branch of the Government.

(Pub.L. 97-258, Sept. 13, 1982, 96 Stat. 913.)

Historical and Revision Notes

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
1111.....	31:18.....	June 10, 1921, ch. 18, § 209, 42 Stat. 22; Reorg. Plan No. 1 of 1939, eff. July 1, 1939, § 1, 53 Stat. 1423; Reorg. Plan No. 2 of 1970, eff. July 1, 1970, § 102(a), 84 Stat. 2085.
	31:18a.....	Sept. 12, 1950, ch. 946, § 104, 64 Stat. 834; Reorg. Plan No. 2 of 1970, eff. July 1, 1970, § 102(a), 84 Stat. 2085.

Explanatory Notes

In the section, before clause (1), the words "To improve economy and efficiency in the United States Government" are substituted for "(with a view of securing greater economy and efficiency in the conduct of the public service)" in 31:18 [former section 18 of this title] and "with a view to efficient and economical service" in 31:18a [former section 18a of this title] to eliminate unnecessary words. The word "President" is substituted for "Office of Management and Budget, when directed by the President" in 31:18 [former

section 18 of this title] and "President, through the Director of the Office of Management and Budget" in 31:18a [former section 18a of this title] because sections 101 and 102(a) of Reorganization Plan No. 2 of 1970 (eff. July 1, 1970, 84 Stat. 2085) [set out under section 501 of this title] designated the Bureau of the Budget as the Office of Management and Budget and transferred all functions of the Bureau to the President. In clause (1), the words "existing" and "detailed" are omitted as surplus.

§ 1112. Fiscal, budget, and program information

(a) In this section, "agency" means a department, agency, or instrumentality of the United States Government except a mixed-ownership Government corporation.

(b) In cooperation with the Comptroller General, the Secretary of the Treasury and the Director of the Office of Management and Budget shall establish and maintain standard data processing and information systems for fiscal, budget, and program information for use by agencies to meet the needs of the Government, and to the extent practicable, of State and local governments.

(c) The Comptroller General—

(1) in cooperation with the Secretary, the Director of the Office of Management and Budget, and the Director of the Congressional Budget Office, shall establish, maintain, and publish standard terms and classifications for fiscal, budget, and program information of the Government, including information on fiscal policy, receipts, expenditures, programs, projects, activities, and functions;

(2) when advisable, shall report to Congress on those terms and classifications, and recommend legislation necessary to promote the establishment, maintenance, and use of standard terms and classifications by the executive branch of the Government; and

(3) in carrying out this subsection, shall give particular consideration to the needs of the Committees on Appropriations and on the Budget of both Houses of Congress, the Committee on Ways and Means of the

31 § 1112

MONEY AND FINANCE Subtitle 2

House, the Committee on Finance of the Senate, and the Congressional Budget Office.

(d) Agencies shall use the standard terms and classifications published under subsection (c)(1) of this section in providing fiscal, budget, and program information to Congress.

(e) In consultation with the President, the head of each executive agency shall take actions necessary to achieve to the extent possible—

(1) consistency in budget and accounting classifications;

(2) synchronization between those classifications and organizational structure; and

(3) information by organizational unit on performance and program costs to support budget justifications.

(f) In cooperation with the Director of the Congressional Budget Office, the Comptroller General, and appropriate representatives of State and local governments, the Director of the Office of Management and Budget (to the extent practicable) shall provide State and local governments with fiscal, budget, and program information necessary for accurate and timely determination by those governments of the impact on their budgets of assistance of the United States Government.

(Pub.L. 97-258, Sept. 13, 1982, 96 Stat. 913.)

Historical and Revision Notes

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
1112(a)	31:1157	Oct. 26, 1970, Pub.L. 91-510, § 207, 84 Stat. 1168.
1112(b)	31:1151	Oct. 26, 1970, Pub.L. 91-510, §§ 201, 202(a), (b), 203(d), 84 Stat. 1167, 1168; restated July 12, 1974, Pub.L. 93-344, § 801(a), 88 Stat. 327, 328, 329.
1112(c)	31:1152(a)(1) (1st, 2d sentences), (2), (b)	
1112(d)	31:1152(a)(1) (last sentence)	
1112(e)	31:118c	Sept. 12, 1950, ch. 946, 64 Stat. 832, § 106; added Aug. 1, 1956, ch. 814, § 2(a), 70 Stat. 782; Reorg. Plan No. 2 of 1970, eff. July 1, 1970, § 102(a), 84 Stat. 2085.
1112(f)	31:1153(d)	

Explanatory Notes

In the section, the words "program information" are substituted for "program-related data and information" to eliminate unnecessary words.

In subsection (a), the words "agency" of the United States Government except a mixed-ownership Government corporation are substituted for "Federal agency" wholly owned Government corporation" for clarity and consistency in the revised title and with other titles of the United States Code. The word "establishment" is omitted as surplus. The words "government of the District of Columbia" are omitted as

superseded by sections 441-455, 501, and 736 of the District of Columbia Self-Government and Governmental Reorganization Act (Pub.L. 93-198, 87 Stat. 798, 812, 823).

In subsections (b) and (c)(1), the word "develop" is omitted as being included in "establish".

In subsection (b), the words "The development, establishment, and maintenance of such systems shall be carried out so as" are omitted as unnecessary because of the restatement.

In subsection (c)(1) and (2), the words "terms and classifications" are substituted for

Ch. 11 THE BUDGET

31 § 1113

"terminology, definitions, classifications, and codes" to eliminate unnecessary words. In clause (1), the words "The authority contained in this section shall include, but not be limited to" are omitted as surplus. In clause (2), the words "After June 30, 1975" are omitted as executed. The word "additional" is omitted as surplus. The words "establishment, maintenance, and use of" are substituted for "development, establishment, and maintenance, modification, implementation" to eliminate unnecessary words and for consistency in the revised section. The words "by the executive branch of the Government" are substituted for "executive" for clarity. The text of 31:1152(a)(2) [former section 1152(a)(2) of this title] (1st sentence) is omitted as executed. In clause (3), the

words "this subsection" are substituted for "this responsibility" because of the restatement.

In subsection (c)(1), the word "revenues" is omitted as being included in "receipts". The word "spending" is substituted for "expenditures" for consistency in the revised title.

In subsection (e), the word "President" is substituted for "Director of the Office of Management and Budget" because sections 101 and 102(a) of Reorganization Plan No. 2 of 1970 (eff. July 1, 1970, 84 Stat. 2085) [set out under section 501 of this title] designated the Bureau of the Budget as the Office of Management and Budget and transferred all functions of the Bureau to the President.

Cross References

File of information to meet recurring needs of Congress for fiscal, budget and program information, see section 1113 of this title.
Reports of Comptroller General, see section 719 of this title.

§ 1113. Congressional information

(a)(1) When requested by a committee of Congress having jurisdiction over receipts or appropriations, the President shall provide the committee with assistance and information.

(2) When requested by a committee of Congress, additional information related to the amount of an appropriation originally requested by an Office of Inspector General shall be submitted to the committee.

(b) When requested by a committee of Congress, by the Comptroller General, or by the Director of the Congressional Budget Office, the Secretary of the Treasury, the Director of the Office of Management and Budget, and the head of each executive agency shall—

(1) provide information on the location and kind of available fiscal, budget, and program information;

(2) to the extent practicable, prepare summary tables of that fiscal, budget, and program information and related information the committee, the Comptroller General, or the Director of the Congressional Budget Office considers necessary; and

(3) provide a program evaluation carried out or commissioned by an executive agency.

(c) In cooperation with the Director of the Congressional Budget Office, the Secretary, and the Director of the Office of Management and Budget, and Comptroller General shall—

(1) establish and maintain a current directory of sources of and information systems for, fiscal, budget, and program information and a brief description of the contents of each source and system;

(2) when requested, provide assistance to committees of Congress and members of Congress in obtaining information from the sources in the directory; and

(3) when requested, provide assistance to committees and, to the extent practicable, to members of Congress in evaluating the information obtained from the sources in the directory.

(d) To the extent they consider necessary, the Comptroller General and the Director of the Congressional Budget Office individually or jointly shall establish and maintain a file of information to meet recurring needs of Congress for fiscal, budget, and program information to carry out this section and sections 717 and 1112 of this title. The file shall include information on budget requests, congressional authorizations to obligate and expend, apportionment and reserve actions, and obligations and expenditures. The Comptroller General and the Director shall maintain the file and an index to the file so that it is easier for the committees and agencies of Congress to use the file and index through data processing and communications techniques.

(e)(1) The Comptroller General shall—

(A) carry out a continuing program to identify the needs of committees and members of Congress for fiscal, budget, and program information to carry out this section and section 1112 of this title;

(B) assist committees of Congress in developing their information needs;

(C) monitor recurring reporting requirements of Congress and committees; and

(D) make recommendations to Congress and committees for changes and improvements in those reporting requirements to meet information needs identified by the Comptroller General, to improve their usefulness to congressional users, and to eliminate unnecessary reporting.

(2) Before September 2 of each year, the Comptroller General shall report to Congress on—

(A) the needs identified under paragraph (1)(A) of this subsection;

(B) the relationship of those needs to existing reporting requirements;

(C) the extent to which reporting by the executive branch of the United States Government currently meets the identified needs;

(D) the changes to standard classifications necessary to meet congressional needs;

(E) activities, progress, and results of the program of the Comptroller General under paragraph (1)(B)-(D) of this subsection; and

(F) progress of the executive branch in the prior year.

(3) Before March 2 of each year, the Director of the Office of Management and Budget and the Secretary shall report to Congress on plans for

Ch. 11 THE BUDGET

meeting the needs identified under paragraph (1)(A) of this subsection, including—

(A) plans for carrying out changes to classifications to meet information needs of Congress;

(B) the status of information systems in the prior year; and

(C) the use of standard classifications.

(Pub.L. 97-258, Sept. 13, 1982, 96 Stat. 914; Pub.L. 97-452, § 1(3), Jan. 12, 1983, 96 Stat. 2467.)

Historical and Revision Notes

1982 Act

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
1113(a)	31:20	June 10, 1921, ch. 18, § 212, 42 Stat. 23; Reorg. Plan No. 1 of 1939, eff. July 1, 1939, § 1, 53 Stat. 1423; Reorg. Plan No. 2 of 1970, eff. July 1, 1970, § 102(a), 84 Stat. 2085.
1113(b)-(d)	31:1153(a)-(c)	Oct. 26, 1970, Pub.L. 91-510, § 203(a)-(c), 84 Stat. 1168; restated July 12, 1974, Pub.L. 93-344, § 801(a), 88 Stat. 328.
1113(e)(1)	31:1152(c), (d)	Oct. 26, 1970, Pub.L. 91-510, § 202(c)-(f), 84 Stat. 1167; restated July 12, 1974, Pub.L. 93-344, § 801(a), 88 Stat. 328.
1113(e)(2)	31:1152(e)	
1113(e)(3)	31:1152(f)	

Explanatory Notes

In the section, the words "committee of Congress" are substituted for "committee of either House, of any joint committee of the two Houses" and variations of the substituted phrase to eliminate unnecessary words and for consistency in the revised title and with other titles of the United States Code.

In subsection (a), the word "President" is substituted for "Office of Management and Budget" because sections 101 and 102(a) of Reorganization Plan No. 2 of 1970 (eff. July 1, 1970, 84 Stat. 2085) [set out under section 501 of this title] designated the Bureau of the Budget as the Office of Management and Budget and transferred all functions of the Bureau to the President. The word "assistance" is substituted for "aid", and the word "receipts" is substituted for "revenue", for consistency in the revised title.

In subsections (b)-(d), the words "program information" are substituted for "program-related data and information" to eliminate unnecessary words.

In subsection (b)(1) and (3), the words "to such committee or joint committee, the Comptroller General, or the Director of the Congressional Budget Office" are omitted as unnecessary because of the restatement. In clause (1), the word "kind" is substituted for

"nature" for consistency in the revised title. In clause (2), the words "that fiscal, budgetary, and program information" are substituted for "such data and information" because of the restatement.

In subsection (c), the word "inventory" is omitted as unnecessary. In clause (1), the word "develop" is omitted as being included in "establish". In clause (2), the word "obtaining" is substituted for "securing" as being more precise. In clause (3), the word "evaluating" is substituted for "appraising and analyzing" for clarity and to eliminate unnecessary words.

In subsection (d), the words "individually or jointly . . . file" are substituted for "central file or files" for clarity. The word "information" is substituted for "data and information", and the word "needs" is substituted for "requirements", for consistency in the section. The words "carry out" are substituted for "carry out the purposes of" because of the restatement. A cross reference to 31:1155-1156 [former sections 1155 and 1156 of this title] is not included because those sections are not relevant to the information file described in the source; provisions. The words "so that it is easier" are substitut-

31 § 1113

ed for "facilitate" for clarity. The word "modern" is omitted as surplus.

In subsection (e)(1)(A), the word "specify" is omitted as being included in "identify". The words "carry out" are substituted for "support the objectives" for consistency. A cross reference to 31:1154-1156 [former sections 1154 to 1156 of this title] is not included because those sections are not relevant to the continuing program described in the source provisions. In clause (B), the words "including such needs expressed in legislative requirements" are omitted as surplus. In clause (D), the word "duplicative" is omitted as being included in "unnecessary".

1983 Act

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
1113(a)(2)	31 App:11(k)(2)	June 10, 1921, ch. 18, 42 Stat. 20, § 201(k)(2); added Sept. 8, 1982, Pub.L. 97-255, § 3, 96 Stat. 815.

1983 Amendment. Subsec. (a)(1). Pub.L. 97-452, § 1(3)(A), redesignated existing provisions as par. (1).

Subsec. (a)(2). Pub.L. 97-452, § 1(3)(B), added par. (2).

Cross References

Reports of Comptroller General, see section 719 of this title.

Library References

United States 23(5).

C.J.S. United States § 26.

§ 1114. Budget information on consulting services

(a) The head of each agency shall include in the budget justification for the agency submitted each year to the Committees on Appropriations of both Houses of Congress—

- (1) amounts requested for consulting services;
- (2) the appropriation accounts from which the amounts are to be paid; and
- (3) a description of the need for the consulting services, including a list of the major programs requiring those services.

(b) The Inspector General or comparable official of each agency shall submit to Congress each year, with the budget justification for the agency, an evaluation of the progress of the agency in establishing effective management controls and improving the accuracy and completeness of the information provided to the Federal Procurement Data System on contracts for consulting services. If the agency does not have an Inspector General or

MONEY AND FINANCE Subtitle 2

In subsection (e)(2), the words "Before September 2 of each year" are substituted for "On or before September 1, 1974, and each year thereafter" for consistency.

In subsection (e)(3), the words "Before March 2 of each year" are substituted for "On or before March 1, 1975, and each year thereafter" for consistency. The word "codes" is omitted as being included in "classifications". The words "information systems" are substituted for "systems", and the words "use of standard classifications" are substituted for "classification implementations", for consistency in the revised section.

Ch. 11 THE BUDGET

comparable official, the head of the agency or officer or employee designated by the head of the agency shall submit the evaluation.
(Pub.L. 97-258, Sept. 13, 1982, 96 Stat. 916.)

Historical and Revision Notes

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
1114	31:28	July 8, 1980, Pub.L. 96-304, § 307, 94 Stat. 928. Oct. 9, 1980, Pub.L. 96-400, § 323(b), (c), 94 Stat. 1699. Oct. 13, 1980, Pub.L. 96-436, § 126, 94 Stat. 1869. Dec. 12, 1980, Pub.L. 96-514, § 309(b), (c), 94 Stat. 2984. Dec. 15, 1980, Pub.L. 96-528, § 616, 94 Stat. 3117. Dec. 23, 1981, Pub.L. 97-102, § 318, 95 Stat. 1461.

Explanatory Notes

In the section, the words "For fiscal year 1982 and thereafter" are omitted as unnecessary because of the restatement.

In subsection (b), the words "officer or employee designated" are substituted for "designee" for consistency in the revised title and with other titles of the United States Code.

SUBTITLE II—THE BUDGET PROCESS

CHAPTER 11—THE BUDGET AND FISCAL, BUDGET,
AND PROGRAM INFORMATION

§ 1101. Definitions

HISTORICAL AND STATUTORY NOTES

Explanatory Notes

In the section, a reference to 31:71 and 471 is omitted because the definitions in the section are not used in 31:71 and 471.

In clause (1), "agency" (which is defined for purposes of this title in section 101 to mean a department, agency, or instrumentality of the United States) is coextensive with and substituted for the term "department or establishment" which was defined in 31:2 as in part meaning "any executive department, independent commission, board, bureau, office, agency, or other establishment of the Government, including any independent regulatory commission or board". This definition merely restates and continues, and does not in any way change or expand, the definition in 31:2. Under that definition, entities such as the Tennessee Valley Authority that have been interpreted to be outside the purview of the definition will continue to be outside the purview in the same manner and to the same extent that they were under 31:2. The words "includes the Dis-

trict of Columbia government" are used because of existing law but the inclusion of these words is not to be interpreted as construing the extent to which the District of Columbia Self-Government and Governmental Reorganizational Act (Pub.L. 93-198, 87 Stat. 774) supersedes the provisions codified in this title. The words "of the United States" are omitted as surplus. The text of 31:2 (2d-4th pars.) is omitted as unnecessary because of the restatement. The text of section 2 (3d par.) of the Budget and Accounting Act 1921 (ch. 18, 42 Stat. 20), is omitted as obsolete because of section 501 of the revised title.

Short Title of 1984 Amendment

Pub.L. 98-501, Title II, § 201, Oct. 19, 1984, 98 Stat. 2324, provided that: "This title [enacting section 1105(e) of this title and provision set out as a note under section 1105 of this title] may be cited as the 'Federal Capital Investment Program Information Act of 1984'."

LAW REVIEW COMMENTARIES

Byrd shot: Congress takes a broad aim at government contract lobbyists. Thomas M. Susan and Clayton S. Marsh, 37 Fed.B.N. & J. 387 (1990).

§ 1104. Budget and appropriations authority of the President

[See main volume for text of (a) and (b)]

(c) When the President makes a basic change in the form of the budget, the President shall submit with the budget information showing where items in the budget for the prior fiscal year are contained in the present budget. However, the President may change the functional categories in the budget only in consultation with the Committees on Appropriations and on the Budget of both Houses of Congress. Committees of the House of Representatives and Senate shall receive prompt notification of all such changes.

[See main volume for text of (d) and (e)]

As amended Pub.L. 99-177, Title II, § 224, Dec. 12, 1985, 99 Stat. 1060.)

HISTORICAL AND STATUTORY NOTES

985 Amendment

Subsec. (c). Pub.L. 99-177, § 224, added provisions relating to notice to Committees of the House and Senate.

Effective Date of 1985 Amendment

Amendment by Pub.L. 99-177 effective Dec. 1, 1985, to apply with respect to fiscal years

beginning after Sept. 30, 1985, see section 275(a)(1) of Pub.L. 99-177, set out as a note under section 901 of Title 2, The Congress.

Legislative History

For legislative history and purpose of Pub.L. 99-177, see 1985 U.S. Code Cong. and Adm. News, p. 979.

1105. Budget contents and submission to Congress

(a) On or after the first Monday in January but not later than the first Monday in February of each year, the President shall submit a budget of the United States Government for the following fiscal year. Each budget shall include a budget message and summary and supporting information. The President shall include in each budget the following:

(25) a separate appropriation account for appropriations for each Office of Inspector General of an establishment defined under section 11(2) of the Inspector General Act of 1978.

(26) an analysis, prepared by the Office of Management and Budget after consultation with the chairman of the Council of Economic Advisers, of the budget's impact on the international competitiveness of United States business and the United States balance of payments position and shall include the following projections, based upon the best information available at the time, for the fiscal year for which the budget is submitted—

(A) the amount of borrowing by the Government in private credit markets;

(B) net domestic savings (defined as personal savings, corporate savings, and the fiscal surplus of State and local governments);

(C) net private domestic investment;

(D) the merchandise trade and current accounts;

(E) the net increase or decrease in foreign indebtedness (defined as net foreign investment); and

(F) the estimated direction and extent of the influence of the Government's borrowing in private credit markets on United States dollar interest rates and on the real effective exchange rate of the United States dollar.

(26) a separate statement of the amount of appropriations requested for the Office of National Drug Control Policy and each program of the National Drug Control Program.

(28) a separate statement of the amount of appropriations requested for the Office of Federal Financial Management.

[See main volume for text of (b) to (d)]

(e)(1) The President shall submit with materials related to each budget transmitted under subsection (a) on or after January 1, 1985, an analysis for the ensuing fiscal year that shall identify requested appropriations or new obligational authority and outlays for each major program that may be classified as a public civilian capital investment program and for each major program that may be classified as a military capital investment program, and shall contain summaries of the total amount of such appropriations or new obligational authority and outlays for public civilian capital investment programs and summaries of the total amount of such appropriations or new obligational authority and outlays for military capital investment programs. In addition, the analysis under this paragraph shall contain—

(A) an estimate of the current service levels of public civilian capital investment and of military capital investment and alternative high and low levels of such investments over a period of ten years in current dollars and over a period of five years in constant dollars;

(B) the most recent assessment analysis and summary, in a standard format, of public civilian capital investment needs in each major program area over a period of ten years;

(C) an identification and analysis of the principal policy issues that affect estimated public civilian capital investment needs for each major program; and

(D) an identification and analysis of factors that affect estimated public civilian capital investment needs for each major program, including but not limited to the following factors:

(i) economic assumptions;

(ii) engineering standards;

(iii) estimates of spending for operation and maintenance;

(iv) estimates of expenditures for similar investments by State and local governments; and

(v) estimates of demand for public services derived from such capital investments and estimates of the service capacity of such investments.

To the extent that any analysis required by this paragraph relates to any program for which Federal financial assistance is distributed under a formula prescribed by law, such analysis shall be organized by State and within each State by major metropolitan area if data are available.

(2) For purposes of this subsection, any appropriation, new obligational authority, or outlay shall be classified as a public civilian capital investment to the extent that such appropriation, authority, or outlay will be used for the construction, acquisition, or rehabilitation of any physical asset that is capable of being used to produce services or other benefits for a number of years and is not classified as a military capital investment under paragraph (3). Such assets shall include (but not be limited to)—

- (A) roadways or bridges,
- (B) airports or airway facilities,
- (C) mass transportation systems,
- (D) wastewater treatment or related facilities,
- (E) water resources projects,
- (F) hospitals,
- (G) resource recovery facilities,
- (H) public buildings,
- (I) space or communications facilities,
- (J) railroads, and
- (K) federally assisted housing.

(3) For purposes of this subsection, any appropriation, new obligational authority, or outlay shall be classified as a military capital investment to the extent that such appropriation, authority, or outlay will be used for the construction, acquisition, or rehabilitation of any physical asset that is capable of being used to produce services or other benefits for purposes of national defense and security for a number of years. Such assets shall include military bases, posts, installations, and facilities.

(4) Criteria and guidelines for use in the identification of public civilian and military capital investments, for distinguishing between public civilian and military capital investments, and for distinguishing between major and nonmajor capital investment programs shall be issued by the Director of the Office of Management and Budget after consultation with the Comptroller General and the Congressional Budget Office. The analysis submitted under this subsection shall be accompanied by an explanation of such criteria and guidelines.

(5) For purposes of this subsection—

(A) the term "construction" includes the design, planning, and erection of new structures and facilities, the expansion of existing structures and facilities, the reconstruction of a project at an existing site or adjacent to an existing site, and the installation of initial and replacement equipment for such structures and facilities;

(B) the term "acquisition" includes the addition of land, sites, equipment, structures, facilities, or rolling stock by purchase, lease-purchase, trade, or donation; and

(C) the term "rehabilitation" includes the alteration of or correction of deficiencies in an existing structure or facility so as to extend the useful life or improve the effectiveness of the structure or facility, the modernization or replacement of equipment at an existing structure or facility, and the modernization of, or replacement of parts for, rolling stock.

(f) The budget transmitted pursuant to subsection (a) for a fiscal year shall be prepared in a manner consistent with the requirements of the Balanced Budget and Emergency Deficit Control Act of 1985 that apply to that and subsequent fiscal years.

(As amended Pub.L. 98-501, Title II, § 203, Oct. 19, 1984, 98 Stat. 2324; Pub.L. 99-177, Title II, § 241, Dec. 12, 1985, 99 Stat. 1063; Pub.L. 100-119, Title I, § 106(f), Sept. 29, 1987, 101 Stat. 781; Pub.L. 100-418, Title V, § 5301, Aug. 23, 1988, 102 Stat. 1462; Pub.L. 100-504, Title I, § 108, Oct. 18, 1988, 102 Stat. 2529; Pub.L. 100-690, Title I, § 1006, Nov. 18, 1988, 102 Stat. 4187; Pub.L. 101-508, Title XII, § 13112(c), Nov. 5, 1990, 104 Stat. 1388-608; Pub.L. 101-576, Title II, § 203(b), Nov. 15, 1990, 104 Stat. 2841.)

¹So in original. Two pars. (26) have been enacted. See italic note and Effective and Termination Dates note under this section.

Termination of Amendment

For repeal, by section 1009 of Pub.L. 100-690, of amendment to this section by Pub.L. 100-690, see *Effective and Termination Dates of 1988 Amendment set out under this section*.

Termination of Subsection (a)(26)

Section 5303 of Pub.L. 100-418 provided that subsection (a)(26) of this section is effective only for fiscal years 1989, 1990, 1991, and 1992. See *Effective and Termination Dates of 1988 Amendment note below*.

Termination of Subsec. (f)

For termination date of amendment by section 275(b) of Pub.L. 99-177, see *Effective and Termination Dates note set out under section 900 of Title 2, The Congress*.

HISTORICAL AND STATUTORY NOTES

References in Text

Section 11(2) of the Inspector General Act of 1978, referred to in subsec. (a)(25), is set out in Appendix 3 to Title 5, Government Organization and Employees.

The Balanced Budget and Emergency Deficit Control Act of 1985, referred to in subsec. (f), is Title II of Pub.L. 99-177, Dec. 12, 1985, 99 Stat. 1037, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 900 of Title 2, The Congress, and Tables.

1990 Amendment

Subsec. (a). Pub.L. 101-508, § 13112(c)(1), substituted "On or after the first Monday in January but not later than the first Monday in February of each year" for "On or before the first Monday after January 3 of each year (or on or before February 5 in 1986)".

Subsec. (a)(28). Pub.L. 101-576 added par. (28).

Subsec. (f). Pub.L. 101-508, § 13112(c)(2), struck out the paragraph designation "(1)" preceding "The budget transmitted pursuant to", in that provision, which had formerly constituted par. (1), substituted "The budget transmitted pursuant to subsection (a) for a fiscal year shall be prepared in a manner consistent with the requirements of the Balanced Budget and Emergency Deficit Control Act of 1985 that apply to that and subsequent fiscal years" for "The budget transmitted pursuant to subsection (a) for a fiscal year shall be prepared on the basis of the best estimates then available, in such a manner as to ensure that the deficit for such fiscal year shall not exceed the maximum deficit amount for such fiscal year as determined under paragraph (7) of section 3 of the Congressional Budget and Impoundment Control Act of 1974", and struck out provisions formerly designated as pars. (2), (3), (4), and (5) which had directed that the deficit set forth in the budget transmitted for any fiscal year could not exceed the maximum deficit amount for such fiscal year as determined under paragraph (7) of section 3 of the Congressional Budget and Impoundment Control Act of 1974, with budget outlays and Federal revenues at such levels as the President considered most desirable and feasible, that the budget transmitted pursuant to subsection (a) for a fiscal year had to include a budget baseline estimate made in accordance with section 251(a)(6) of the Balanced

Budget and Emergency Deficit Control Act of 1985 using economic and technical assumptions consistent with the current services budget submitted under section 1109 for the fiscal year that if such budget baseline estimate differed from the estimate in the current services budget, the President would explain the differences, that the budget transmitted pursuant to subsection (a) for such fiscal year would include the information required by section 251(a)(2) of such Act (other than account-level detail) assuming that the deficit in such budget baseline were the amount estimated by the Director of the Office of Management and Budget on August 25 of the calendar year in which the fiscal year began, that paragraphs (1) and (2) would not apply with respect to fiscal year 1989 if the budget transmitted for such fiscal year provided for deficit reduction from a budget baseline deficit for such fiscal year (as defined by section 251(a)(6) of the Balanced Budget and Emergency Deficit Control Act of 1985 and based on laws in effect on January 1, 1988) equal to or greater than \$36,000,000,000, and that paragraphs (1) and (2) did not apply if a declaration of war by the Congress was in effect.

1988 Amendments

Subsec. (a)(25). Pub.L. 100-504 substituted "a separate appropriation account for appropriations for each Office of Inspector General of an establishment defined under section 11(2) of the Inspector General Act of 1978" for "a separate statement, for each agency having an Office of Inspector General, of the amount of the appropriation requested for the Office".

Subsec. (a)(26). Pub.L. 100-690, § 1006, added par. (26).

Pub.L. 100-418 temporarily added par. (26). See *Effective and Termination Dates of 1988 Amendment note below*.

1987 Amendment

Subsec. (f)(3). Pub.L. 100-119, § 106(f)(2), added par. (3). Former par. (3) was redesignated (5).

Par. (4). Pub.L. 100-119, § 106(f)(2), added par. (4).

Par. (5). Pub.L. 100-119, § 106(f)(1), redesignated former par. (3) as (5).

1985 Amendment

Subsec. (a). Pub.L. 99-177, § 241(a), substituted "On or before the first Monday after January 3 of each year (or on or before February 5 in 1986)" for "During the first 15 days of each regular session of Congress".

Subsec. (f). Pub.L. 99-177, §§ 241(b), 275(b), temporarily added subsec. (f). See Effective and Termination Dates note set out under section 900 of Title 2, The Congress.

1984 Amendment

Subsec. (e). Pub.L. 98-501 added subsec. (e).

Effective and Termination Dates of 1988 Amendments

Amendment by Pub.L. 100-690 effective Jan. 21, 1989, and repealed on date 5 years after Nov. 18, 1988, see section 1506 of Title 21, Food and Drugs, and section 1012 of Pub.L. 100-690, set out as an Effective Date note under section 1501 of Title 21.

Amendment by Pub.L. 100-504 effective 180 days after Oct. 18, 1988, see section 113 of Pub.L. 100-504, set out as a note under Inspector General Act of 1978, § 5, as amended, set out in Appendix 3 to Title 5, Government Organization and Employees.

Section 5303 of Pub.L. 100-418 provided that: "The amendment made by section 5301 [adding subsec. (a)(26) of this section] shall be effective for fiscal years 1989, 1990, 1991, and 1992, and shall be fully reflected in the budgets submitted by the President as required by section 1105(a) of title 31, United States Code [subsec. (a) of this section], for each such fiscal year, and the amendment made by section 5302 [enacting subsec. (e)(10) of section 632 of Title 2, The Congress] shall be effective for fiscal years 1989, 1990, 1991, and 1992."

Effective Date of 1985 Amendment

Amendment of subsec. (a) and enactment of subsec. (f) of this section by Pub.L. 99-177, effective Dec. 12, 1985, to apply with respect to fiscal years beginning after Sept. 30, 1985, see section 275(a)(1) of Pub.L. 99-177, set out as a note under section 901 of Title 2, The Congress.

Two-Year Budget Cycle for Coast Guard

Pub.L. 102-241, § 11, Dec. 19, 1991, 105 Stat. 2212, provided that: "Notwithstanding another law, the President is not required to submit a two-year budget request for the Coast Guard until the President is required to submit a two-year budget request for the Department of Transportation."

Pub.L. 100-448, § 24, Sept. 28, 1988, 102 Stat. 1847, provided that:

"(a) **Opinion of Congress.**—It is the opinion of the Congress that the programs and activities of the Coast Guard could be more effectively and efficiently planned and managed if funds for the Coast Guard were provided on a 2-year cycle rather than annually.

"(b) **Submission of 2-year Budget by President.**—The President shall include in the budget for fiscal year 1990 submitted to the Congress pursuant to section 1105 of title 31, United States Code [this section], a single proposed budget for the Coast Guard for fiscal years 1990 and 1991. Thereafter, the President shall submit a proposed

2-year budget for the Coast Guard every other year.

"(c) **Report.**—Not later than October 1, 1988, the Secretary of the department in which the Coast Guard is operating shall submit to the Committee on Commerce, Science, and Transportation and the Committee on Appropriations of the Senate and to the Committee on Merchant Marine and Fisheries and the Committee on Appropriations of the House of Representatives a report containing—

"(1) the Secretary's views on the advantages and disadvantages of operating the Coast Guard on a 2-year budget cycle;

"(2) the Secretary's plans for converting to a 2-year budget cycle; and

"(3) a description of any impediments (statutory or otherwise) to converting the operations of the Coast Guard to a 2-year budget cycle beginning with fiscal year 1990."

NASA Triennial Budget Requests; Estimates

Pub.L. 100-685, Title I, § 104, Nov. 17, 1988, 102 Stat. 4086, provided that: "Commencing in fiscal year 1990 and every year thereafter, the President shall submit to Congress a budget request for the National Aeronautics and Space Administration for the immediate fiscal year and the following fiscal year, and include budget estimates for the third fiscal year."

Water and Sewer Services Furnished to Government Facilities in the District of Columbia

Pub.L. 100-202, § 101(c) [Title I, § 136], Dec. 22, 1987, 101 Stat. 1329-102, provided that: "After the effective date of this Joint Resolution, the President shall include, without change, in each annual budget submitted to the Congress under section 1105 of title 31, United States Code [this section], the values estimated by the Mayor of the District of Columbia for water and water services and sanitary sewer services furnished to facilities of the United States Government under sections 106 and 212 of the District of Columbia Public Works Act of 1954, as amended (D.C. Code, sections 43-1552, 43-1612)."

Two-year Budget Cycle for the Department of Defense

Pub.L. 99-145, Title XIV, § 1405, Nov. 8, 1985, 99 Stat. 744, provided that:

"(a) **Findings.**—The Congress finds that the programs and activities of the Department of Defense could be more effectively and efficiently planned and managed if funds for the Department were provided on a two-year cycle rather than annually.

"(b) **Requirement for two-year budget proposal.**—The President shall include in the budget submitted to the Congress pursuant to section 1105 of title 31, United States Code [this section], for fiscal year 1988 a single proposed budget for the Department of Defense and related agencies for fiscal years 1988 and 1989. Thereafter, the President shall submit a proposed two-year budget for the Department of Defense and related agencies every other year.

"(c) **Report.**—Not later than April 1, 1986, the Secretary of Defense shall submit to the Committees on Armed Services and on Appropriations of

the Senate and House of Representatives a report containing the Secretary's views on the following:

"(1) The advantages and disadvantages of operating the Department of Defense and related agencies on a two-year budget cycle.

"(2) The Secretary's plans for converting to a two-year budget cycle.

"(3) A description of any impediments (statutory or otherwise) to converting the operations of the Department of Defense and related agencies to a two-year budget cycle beginning with fiscal year 1988."

Federal Capital Investment Program; Congressional Statement of Purposes

Section 201 of Pub.L. 98-501 provided that:

"The purposes of this title [enacting subsec. (e) of this section and provisions set out as notes under this section and section 1101 of this title] are—

"(1) to provide budget projections for major Federal capital investment programs;

"(2) to provide a summary of the most recent needs assessment analyses for these programs;

"(3) to provide information on the sensitivity of the needs estimates to major policy issues and technical and economic variables;

"(4) to assist the planning capabilities of State and local governments on the assessment of major capital investment programs; and

"(5) to improve legislative oversight over Federal capital investment programs."

Legislative History

For legislative history and purpose of Pub.L. 98-501, see 1984 U.S. Code Cong. and Adm. News, p. 3934. See, also, Pub.L. 99-177, 1985 U.S. Code Cong. and Adm. News, p. 979; Pub.L. 100-119, 1987 U.S. Code Cong. and Adm. News, p. 739; Pub.L. 100-418, 1988 U.S. Code Cong. and Adm. News, p. 1547; Pub.L. 100-504, 1988 U.S. Code Cong. and Adm. News, p. 3154; Pub.L. 100-690, 1988 U.S. Code Cong. and Adm. News, p. 5937.

LAW REVIEW COMMENTARIES

Rewriting the fiscal constitution: The case of Gramm-Rudman-Hollings. Kate Stith, 76 Cal. L. Rev. 593 (1988).

§ 1106. Supplemental budget estimates and changes

[See main volume for text of (a)]

(b) Before July 16 of each year, the President shall submit to Congress a statement of changes in budget authority requested, estimated budget outlays, and estimated receipts for the fiscal year for which the budget is submitted (including prior changes proposed for the executive branch of the Government) that the President decides are necessary and appropriate based on current information. The statement shall include the effect of those changes on the information submitted under section 1105(a)(1)-(14) and (b) of this title and shall include supporting information as practicable. The statement submitted before July 16 may be included in the information submitted under subsection (a)(1) of this section.

(c) Subsection (f) of section 1105 shall apply to revisions and supplemental summaries submitted under this section to the same extent that such subsection applies to the budget submitted under section 1105(a) to which such revisions and summaries relate.

(As amended Pub.L. 99-177, Title II, § 242, Dec. 12, 1985, 99 Stat. 1063.)

Amendment of Section

For termination date of amendment by section 275(b)(2)(C) of Pub.L. 99-177, see Effective and Termination Dates note set out under section 901 of Title 2, The Congress.

Termination of Subsec. (c)

For termination of amendment by section 275(b) of Pub.L. 99-177, see Effective and Termination Dates note set out under section 900 of Title 2, The Congress.

HISTORICAL AND STATUTORY NOTES

1985 Amendment

Subsec. (b). Pub.L. 99-177, § 242(a), struck out "April 11 and" preceding "July 16".

Subsec. (c). Pub.L. 99-177, §§ 242(b), 275(b), temporarily added subsec. (c). See Effective and Termination Dates note set out under section 900 of Title 2, The Congress.

Effective Date of 1985 Amendment

Amendment of subsec. (b) and enactment of subsec. (c) of this section by Pub.L. 99-177, effective Dec. 12, 1985, to apply with respect to fiscal years beginning after Sept. 30, 1985, see section 275(a)(1) of Pub.L. 99-177, set out as a note under section 901 of Title 2, The Congress.

Legislative History

For legislative history and purpose of Pub.L. 99-177, see 1985 U.S. Code Cong. and Adm. News, p. 979.

§ 1108. Preparation and submission of appropriations requests to the President

HISTORICAL AND STATUTORY NOTES

Explanatory Notes

[See main volume for text of first undesignated paragraph]

In subsection (b)(1), the word "President" is substituted for "Office" in 31:16 (last sentence) and "Office of Management and Budget" in 31:23 and 24(a) because sections 101 and 102(a) of Reorganization Plan No. 2 of 1970 (eff. July 1, 1970, 84 Stat. 2085) designated the Bureau of the Budget as the Office of Management and Budget and transferred all functions of the Bureau to the President. The word "prepare" is substituted for "prepare or cause to be prepared" in 31:22 to eliminate unnecessary words. The word "appropriations" is substituted for "regular, supplementary, or deficiency appropriations" in 31:22 and 24(a) to eliminate unnecessary words. The words "in each year" are omitted as surplus. The words "in the form prescribed by the President under this chapter and by the date established by the President" are substituted for "on or before a date which the President shall determine" in 31:23, and "as the President may determine in accordance with the provisions of section 11 of this title" and "in such manner and at such times as may be determined by the President" in 31:24, to eliminate unnecessary words and to provide a cross-reference to the authority of the President to prepare and submit budgets and appropriations request. The words "prepare the request for the agency to be included in the budget or changes in the budget or as deficiency or supplemental appro-

priations" are substituted for "cause such requests to be prepared as are necessary to enable him to include such requests with the Budget in respect to the work of such department or establishment" in 31:23 for clarity and because of the restatement. The word "change" is substituted for "assemble, correlate, revise, reduce, or increase" in 31:16 (last sentence) to eliminate unnecessary words. The words "The head of the agency shall use" are substituted for "shall be used by all departments and establishments and their subordinate units" and "shall be made on the basis of" in 31:24 as being more precise. The word "operation" is omitted as being included in "administer". The word "amounts" is substituted for "funds" for consistency in the revised title. The word "divide" is substituted for "administrative subdivisions" because of the restatement.

In subsection (b)(2), the words "deficiency or supplemental appropriations" are substituted for "subsequent appropriations" for consistency. The words "the Office of Management and Budget" are omitted because sections 101 and 102(a) of Reorganization Plan No. 2 of 1970 designated the Bureau of the Budget as the Office of Management and Budget and transferred all functions of the Bureau to the President. The words "the agency" are substituted for "by such department or establishment, or by any organization unit thereof" to eliminate unnecessary words.

[See main volume for text of remaining paragraphs]

§ 1109. Current programs and activities estimates

(a) On or before the first Monday after January 3 of each year (on or before February 5 in 1986), the President shall submit to both Houses of Congress the estimated budget outlays and proposed budget authority that would be included in the budget for the following fiscal year if programs and activities of the United States Government were carried on during that year at the same level as the current fiscal year without a change in policy. The President shall state the estimated budget outlays and proposed budget authority by function and subfunction under the classifications in the budget summary table under the heading "Budget Authority and Outlays by Function and Agency", by major programs in each function, and by agency. The President shall also include a statement of the economic and program assumptions on which those budget outlays and budget authority are based, including inflation, real economic growth, and unemployment rates, program caseloads, and pay increases.

(b) The Joint Economic Committee shall review the estimated budget outlays and proposed budget authority and submit an economic evaluation of the budget outlays and budget authority to the Committees on the Budget of both Houses before March 1 of each year.

(As amended Pub.L. 99-177, Title II, § 222, Dec. 12, 1985, 99 Stat. 1060.)

HISTORICAL AND STATUTORY NOTES

1985 Amendment

Subsec. (a). Pub.L. 99-177, § 222(a), substituted "On or before the first Monday after Janu-

ary 3 of each year (on or before February 5 in 1986)" for "Before November 11 of each year".

Subsec. (b). Pub.L. 99-177, § 222(b), substituted "March 1" for "January 1".

275(a)(1) of Pub.L. 99-177, set out as a note under section 901 of Title 2, The Congress.

Effective Date of 1985 Amendment

Amendment by Pub.L. 99-177 effective Dec. 12, 1985, to apply with respect to fiscal years beginning after Sept. 30, 1985, see section 765, Title 2, U.S. Code.

Legislative History

For legislative history and purpose of Pub.L. 99-177, see 1985 U.S. Code Cong. and Adm. News, p. 979.

CHAPTER 13—APPROPRIATIONS

Sec.

1344. Passenger carrier use.
1352. Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions.

Sec.

1353. Acceptance of travel and related expenses from non-Federal sources.

HISTORICAL AND STATUTORY NOTES

1990 Amendment

Section Analysis. Pub.L. 101-280, § 4(b)(2), May 4, 1990, 104 Stat. 157, redesignated item 1352, relating to acceptance of travel and related expenses from non-Federal sources, as item 1353.

acceptance of travel and related expenses from non-Federal sources.

Pub.L. 101-121, Title III, § 319(a)(2), Oct. 23, 1989, 103 Stat. 756, added item 1352, relating to limitation on use of appropriated funds.

1986 Amendment

Pub.L. 99-550, 1(b), Oct. 27, 1986, 100 Stat. 3070, substituted "Passenger carrier use" for "Passenger motor vehicle and aircraft use" in item 1344.

1989 Amendments

Pub.L. 101-194, Title III, § 302(b), Nov. 30, 1989, 103 Stat. 1746, added item 1352, relating to

SUBCHAPTER I—GENERAL

§ 1301. Application

HISTORICAL AND STATUTORY NOTES

Short Title of 1984 Amendment

Pub.L. 98-359, § 1, July 13, 1984, 98 Stat. 402, provided: That this Act [amending section 1322

of this title] may be cited as the "Postal Savings System Statute of Limitations Act."

LAW REVIEW COMMENTARIES

Rewriting the fiscal constitution: The case of Gramm-Rudman-Hollings. Kate Stith, 76 Cal. L.Rev. 593 (1988).

NOTES OF DECISIONS

Nominee to regulatory agency, assistance 14a

6. General or specific appropriations

Congressional appropriation that was very specifically earmarked was not a "lump-sum appropriation" that recipient agency could distribute among some or all permissible objectives as it saw fit. Blue Ocean Preservation Soc. v. Watkins, D.Hawaii 1991, 767 F.Supp. 1518.

Subsec. (d) of this section permits provision to be construed as specific appropriation, if it contains direction to pay, and designation of particular funds to be used. 1984, 63 Op.Comp.Gen. 331.

12. Use for other purposes

Nonreimbursable work details contravene requirement that funds be spent only on objects for which appropriated; and nonreimbursable work details effectively augment appropriation of receiving agency. 1986, 65 Op.Comp.Gen. 635.

Except under limited circumstances, nonreimbursable detail of employees from one agency to another violates requirement that funds be spent only for specific purposes of appropriation. 1985, 64 Op.Comp.Gen. 370.

Official expenses, including expenses incurred during the President's and vice President's travel for official purposes, may not be paid for by funds other than those appropriated for official purposes unless there is authority to the contrary such as section 439a of Title 2 permitting elected officials to accept gifts to defray expenses. 1982 (Counsel-Inf.Op.) 6 O.L.C. 214

14a. Nominee to regulatory agency, assistance

This section would appear to encompass the paying of a consultant from funds appropriated to the White House Office to assist a nominee to a regulatory agency in his confirmation hearing and to prepare the individual to assume his position, if appointed. 1978 (Counsel-Inf.Op.) 2 Op.O.L.C. 376.

CHAPTER 2—ORGANIZATION

Sec.

- 201. United States Postal Service.
- 202. Board of Governors.
- 203. Postmaster General; Deputy Postmaster General.
- 204. Assistant Postmasters General; General Counsel; Judicial Officer.
- 205. Procedures of the Board of Governors.
- 206. Advisory Council.
- 207. Seal.
- 208. Reservation of powers.

§ 201. United States Postal Service

There is established, as an independent establishment of the executive branch of the Government of the United States, the United States Postal Service.

Pub.L. 91-375, Aug. 12, 1970, 84 Stat. 720.

Historical Note

Effective Date. Section effective July 1, 1971, pursuant to Resolution No. 71-9 of the Board of Governors. See section 15(a) of Pub.L. 91-375, set out as an Effective Date note preceding section 101 of this title.

Transfer of Functions; Abolition of Office. Section 4(a) of Pub.L. 91-375 provided that: "There are hereby transferred to the United States Postal Service all the functions, powers, and duties of the Post Office Department and the Postmaster General of the Post Office Department, and the Post Office Department and the office of Postmaster General of the Post Office Department are abolished."

Provisions of section 4(a) of Pub.L. 91-375 effective within 1 year after Aug. 12, 1970, on date established therefor by the Board of Governors of the United States Postal Service and published by it in the Federal Register, see section 15(a) of Pub.L. 91-375, set out as an Effective Date note preceding section 101 of this title.

Transitional Expenses. Expenses of United States Postal Service from Aug. 12, 1970, until date of commencement of operations of Postal Service deemed administrative expenses of Post Office Department, see section 12 of Pub.L. 91-375, set out as a note under section 2004 of this title.

Cross References

Postal Service defined, see section 102 of this title.

Library References

Post Office  3.

C.J.S. Post Office § 4 et seq.

Code of Federal Regulations

Organizational principles, see 39 CFR 221.1 et seq.
Regions, see 39 CFR 225.1 et seq.
Regulatory coverage, see 39 CFR 211.1 et seq.

Ch. 2

ORGANIZATION

39 § 202

Notes of Decisions

Competition with private carriers 2
Independent nature of Service 1

accounts and to acquire and lease property. *Beneficial Finance Co. of New York, Inc. v. Dallas*, C.A.N.Y.1978, 571 F.2d 125.

1. Independent nature of Service

Congressional purpose in establishing Service was to permit Service to operate in "business-like" fashion; to such end, Congress removed Service from political sphere and authorized it to act as an independent establishment with powers equivalent to private business enterprise, such as power to make contracts, keep

2. Competition with private carriers

Apart from limitations imposed by sections 601 to 606 of this title and sections 1603 to 1606 of Title 18 regarding "letter mail", the Service competes with private carriers in the delivery of mail. *Beneficial Finance Co. of New York, Inc. v. Dallas*, C.A.N.Y.1978, 571 F.2d 125.

§ 202. Board of Governors

(a) The exercise of the power of the Postal Service shall be directed by a Board of Governors composed of 11 members appointed in accordance with this section. Nine of the members, to be known as Governors, shall be appointed by the President, by and with the advice and consent of the Senate, not more than 5 of whom may be adherents of the same political party. The Governors shall elect a Chairman from among the members of the Board. The Governors shall be chosen to represent the public interest generally, and shall not be representatives of specific interests using the Postal Service, and may be removed only for cause. Each Governor shall receive a salary of \$10,000 a year plus \$300 a day for not more than 30 days of meetings each year and shall be reimbursed for travel and reasonable expenses incurred in attending meetings of the Board. Nothing in the preceding sentence shall be construed to limit the number of days of meetings each year to 30 days.

(b) The terms of the 9 Governors shall be 9 years, except that the terms of the 9 Governors first taking office shall expire as designated by the President at the time of appointment, 1 at the end of 1 year, 1 at the end of 2 years, 1 at the end of 3 years, 1 at the end of 4 years, 1 at the end of 5 years, 1 at the end of 6 years, 1 at the end of 7 years, 1 at the end of 8 years, and 1 at the end of 9 years, following the appointment of the first of them. Any Governor appointed to fill a vacancy before the expiration of the term for which his predecessor was appointed shall serve for the remainder of such term.

(c) The Governors shall appoint and shall have the power to remove the Postmaster General, who shall be a voting member of the Board. His pay and term of service shall be fixed by the Governors.

(d) The Governors and the Postmaster General shall appoint and

shall be a voting member of the Board. His term of service shall be fixed by the Governors and the Postmaster General and his pay by the Governors.

Pub.L. 91-375, Aug. 12, 1970, 84 Stat. 720.

Historical Note

Effective Date. Section effective Aug. 60 days of meetings in each of first 2 years following effective date of this section [see Effective Date note above], notwithstanding this section, see section 5(g) of Pub.L. 91-375, set out as a Savings Provisions note preceding section 101 of this title.

Savings Provision. Payment to Governors of Board of Governors of Postal Service of \$300 a day for not more than

Cross References

Board of Governors, Board, and Governors defined, see section 102 of this title.
Laws relating to federal employees inapplicable to individuals appointed under this section, see section 1005 of this title.
Postal career service as not including individuals appointed under this section, see section 1001 of this title.
Review of rates of pay of Governors by Commission on Executive, Legislative, and Judicial Salaries, see section 356 of Title 2, The Congress.

Library References

Post Office § 3.

C.J.S. Post Office § 4 et seq.

Code of Federal Regulations

Composition, etc., of Board of Governors, see 39 CFR 3.1 et seq.
General and technical provisions, see 39 CFR 2.1 et seq.
Meetings, see 39 CFR 6.1 et seq., 7.1 et seq.
Officers, see 39 CFR 4.1 et seq.
Organizational principles, see 39 CFR 221.1 et seq.
Regulatory coverage, see 39 CFR 211.1 et seq.
Reporting requirements, see 39 CFR 8.1 et seq.
Special and standing committees, see 39 CFR 5.1 et seq.
Statements of policy, see 39 CFR 1.1 et seq.

§ 203. Postmaster General; Deputy Postmaster General

The chief executive officer of the Postal Service is the Postmaster General appointed under section 202(c) of this title. The alternate chief executive officer of the Postal Service is the Deputy Postmaster General appointed under section 202(d) of this title.

Pub.L. 91-375, Aug. 12, 1970, 84 Stat. 721.

Historical Note

Effective Date. Section effective Aug. 12, 1970, see section 15(a) of Pub.L. 91-375, set out as an Effective Date note preceding section 101 of this title.

Order of Succession. For order of succession in case of absence, disability or

vacancy in office of both the Postmaster General and Deputy Postmaster General, see Ex.Ord.No.11313, Oct. 15, 1966, 31 F.R. 13417, set out as a note under section 3347 of Title 5, Government Organization and Employees.

Code of Federal Regulations

Authority and communication relationships see 39 CFR 223.1 et seq.
Composition, etc., of Board of Governors, see 39 CFR 3.1 et seq.
Delegations of authority, see 39 CFR 222.1 et seq.
General and technical provisions, see 39 CFR 2.1 et seq.
Groups and departments, see 39 CFR 224.1 et seq.
Officers, see 39 CFR 4.1 et seq.
Organizational principles, see 39 CFR 221.1 et seq.
Regions, see 39 CFR 225.1 et seq.
Reporting requirements, see 39 CFR 8.1 et seq.
Special and standing committees, see 39 CFR 5.1 et seq.
Statements of policy, see 39 CFR 1.1 et seq.

Notes of Decisions

Conclusiveness of predecessor's decisions 3
Discretion of Postmaster General 1
Evidence 5
Failure to exercise powers 3
Injunctions 9
Liability for official acts 4
Parties 6
Presumptions 7
Scope of judicial review 5

1. Discretion of Postmaster General

The law-making power intended to give to the Postmaster General great power of discretion in the management of the mails and post roads, and committed much to his opinion and good judgment. Such a policy is necessary, for no such service can be strictly mapped out and defined by statute, and its changing needs require the attention of an executive officer vested with power of management. *Griffith v. U. S.*, 1887, 22 Ct.Cl. 165, appeal dismissed 11 S.Ct. 1005, 141 U.S. 212, 35 L.Ed. 719.

2. Conclusiveness of predecessor's decisions

The Postmaster General is not bound by the construction placed by a decision of a predecessor in office so as to preclude him from revoking a certificate of entry of a publication as second-class matter, which had been issued by such predecessor, where no vested right has been created by such certificate. *Columbian Correspondence College v. Wynne*, 1905, 25 App.D.C. 149, appeal dismissed 26 S.Ct. 758, 200 U.S. 615, 50 L.Ed. 621.

3. Failure to exercise powers

The failure for a number of years of the Postmaster General to exercise an authority granted to him by law does not abrogate the power. *Louisville & N. R. Co. v. U. S.*, 1918 53 Ct.Cl. 200.

4. Liability for official acts

The act of the head of one of the departments of the government in calling the attention of any person having business with such department to a statute in any way relating to such business cannot be made the foundation of a cause of action against such officers, not even if it be alleged that what that officer did was done maliciously. *Spalding v. Vilas*, Dist.Col.1896, 16 S.Ct. 631, 161 U.S. 483, 40 L.Ed. 780.

5. Scope of judicial review

Under former section 360 of Title 5, the Postmaster General was justified in revoking a second-class mail permit granted to a newspaper, if it had come to be so edited as to contain other than mailable matter, and the conclusion of the Postmaster General, in revoking such permit that the publisher had published nonmailable matter will not be disturbed by the courts, unless they are clearly of the opinion that it is wrong. *U. S. ex rel. Milwaukee Social Democratic Pub. Co. v. Burleson*, 1921, 41 S.Ct. 352, 255 U.S. 407, 65 L.Ed. 704.

Where the management of the Post Office Department [now United States Postal Service] is placed in the hands of the Postmaster General and assistants, the courts will not interfere where palpable error does not appear in the ruling of the Department in deciding to which addressee certain mail matter belongs as between two claimants. *Central Trust Co. v. Central Trust Co. of Illinois*, Ill. 1910, 30 S.Ct. 341, 216 U.S. 251, 54 L.Ed. 460, 17 Ann.Cas. 1066. See, also, *National Life Ins. Co. of United States v. National Life Ins. Co.*, Ill.1908, 28 S.Ct. 541, 209 U.S. 317, 52 L.Ed. 808.

Courts will not interfere with discretion of Postmaster General in superintending business of Post Office Department. *U. S. v. United States Postal Service*.

Sectlo.

- 635k. Apportionment of losses incurred on loans, guarantees, and insurance; reimbursement; contingent obligations.
- 635l. Authorization for appropriation of funds for losses.
- 635m. Loans, guarantees, and insurance subject to the provisions of this chapter.
- 635n. Prohibition of loans, guarantees, and insurance as to sales of defense articles or services.

SUBCHAPTER III—TIED AID CREDIT EXPORT SUBSIDIES

- 635o. Congressional statement of purpose.
- 635p. Presidential mandate to negotiate; objectives.
- 635q. Establishment of tied aid credit program in United States Export-Import Bank.
- (a) Establishment and elements of program; cooperation with Trade and Development Program and private institutions and entities.
- (b) Purpose of program.
- (c) Fund.
- (d) Availability of concessional financing or grants.
- 635r. Establishment of tied aid credit program administered by the Trade and Development Program.
- (a) Establishment and elements of program.
- (b) Combination of funds with financing by Export-Import Bank or private commercial financing.
- (c) Limitation on use of Agency funds; authorization for establishment of fund.
- (d) Use of Economic Support Funds.
- 635s. Implementation.
- 635t. Definitions.

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WESTLAW supplements United States Code Annotated and is useful for additional research. Enter a citation in Insta-Cite for display of any parallel citations and case history. Enter a constitution, statute or rule citation in a case law database for cases of interest.

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Example query for statute: "12 U.S." "12 U.S.C* * *" "Title 12" 1823(c)

Also, see the WESTLAW Electronic Research Guide following the Explanation.

SUBCHAPTER I—GENERAL PROVISIONS

CROSS REFERENCES

International narcotics control, see 22 USCA § 2291.

Trade credit insurance program, see 22 USCA § 2184.

§ 635. Powers and functions of Bank

of general banking business; use of mails; publication of documents, reports, contracts, etc.; use of assets and allocated or borrowed money; payment of dividends; medium-term financing; dissemination of information; enhancement of medium-term program

There is created a corporation with the name Export-Import Bank of the United States, which shall be an agency of the United States of America. The objects and purposes of the bank shall be to aid in financing and to facilitate exports and imports and the exchange of commodities and services between the United States or any of its Territories or insular possessions and any foreign country or the agencies or nationals thereof. In connection with and in furtherance of its objects and purposes, the bank is authorized and empowered to do a general banking business except that of circulation; to receive deposits; to purchase, discount, rediscount, sell, and negotiate, with or without its endorsement or guaranty, and to guarantee notes, drafts, checks, bills of exchange, acceptances, including bankers' acceptances, cable transfers, and other evidences of indebtedness; to guarantee, insure, coinsure, and reinsure against political and credit risks of loss; to purchase, sell, and guarantee securities but not to purchase with its funds any stock in any other corporation except that it may acquire any such stock through the enforcement of any lien or pledge or otherwise to satisfy a previously contracted indebtedness to it; to accept bills of drafts drawn upon it; to issue letters of credit; to purchase and sell coin, bullion, and exchange; to borrow and to lend money; to perform any act herein authorized in participation with any other person, including any individual, partnership, corporation, or association; to adopt, alter, and use a corporate seal, which shall be officially noticed; to sue and to be sued, to complain and to defend in any court of competent jurisdiction; to represent itself or to contract for representation in all legal and arbitral proceedings outside the United States; and the enumeration of the foregoing powers shall not be deemed to exclude other powers necessary to the achievement of the objects and purposes of the bank. The bank shall be entitled to the use of the United States mails in the same manner and upon the same conditions as the executive departments of the Government. The Bank is authorized to publish or arrange for the publication of any documents, reports, contracts, or other

12 § 635

Note 4

Hamilton Bank v. Export-Import Bank of U.S., E.D.Pa.1986, 634 F.Supp. 195.

The statutory authority of this section allowing a corporate instrumentality to "sue and be sued" should be construed as a complete waiver of sovereign immunity, and thus a wholly owned Government corporation with Eximbank's powers may resolve contract claims by arbitration. 1979 (Counsel-Inf.Op.) 3 Op.O. L.C. 226.

5. Transactions with Communist countries

The national interest exception to the prohibition within this section against guarantees, insurance, or extensions of credit by the Export-Import Bank in connection with certain Communist country transactions requires transmission of the President's determination that a particular transaction is in the national interest to the Congress within thirty days after making the same. 1974, 42 Op.Atty.Gen. 479.

6. Jurisdiction

Insured's claim against federal export credit insurer for breach of contract did not arise under act of Congress regulating commerce, and thus was not subject to original jurisdiction of federal district courts and was not removable from state court, merely because insurer had been appointed agent by government agency authorized by Congress to issue federal export credit insurance. Gensplit Finance Corp. v. Foreign Credit Ins. Ass'n, D.C.Wis.1985, 616 F.Supp. 1504.

In view of fact that Export-Import Bank of the United States is a bank that functions independently of general control of the United States Treasury, is in control and possession of its own assets and liabilities, and, as a separate entity and from its own assets, is liable for a loss occurring on any insurance it has

BANKS AND BANKING

extended up to \$100,000,000, suit against bank to recover \$5,000,000 on insurance policy issued by bank was not one with in exclusive jurisdiction of court of claims since, if judgment was entered against bank, it would not require exaction from public treasury. Export-Tools, Inc. v. Export-Import Bank of the U.S., D.C.Ark.1983, 564 F.Supp. 704.

Fact that Congress, in creating Export-Import Bank, authorized it to be sued in any court indicated that federal courts were not to have exclusive jurisdiction over actions in which Bank might be involved as party. Lance Intern., Inc. v. Aetna Cas. & Sur. Co., D.C.N.Y.1967, 288 F.Supp. 349.

7. Removal of actions

Insured's claim against federal export credit insurer for breach of contract did not arise under federal law, and thus was not removable, simply because insurer was acting as agent of government agency which Congress had authorized to issue federal export credit insurance. Gensplit Finance Corp. v. Foreign Credit Ins. Ass'n, D.C.Wis.1985, 616 F.Supp. 1504.

Suit against Export-Import Bank, a federal corporation, and against private co-insurers for damages for breach of export credit insurance policy was not removable to federal District Court, even though Bank which was principal defendant, would have right to remove if it had been sued alone, where facts and issues were substantially identical as to all defendants, no claim or issue arose under, or involving interpretation or construction of federal law, and questions of interpretation would relate to provisions of insurance policy and not federal law. Lance Intern., Inc. v. Aetna Cas. & Sur. Co., D.C.N.Y.1967, 288 F.Supp. 349.

EXPORT-IMPORT BANK

§ 635a

(a) President and First Vice President of the Bank; appointment; duties

There shall be a President of the Export-Import Bank of the United States, who shall be appointed by the President of the United States by and with the advice and consent of the Senate, and who shall serve as chief executive officer of the Bank. There shall be a First Vice President of the Bank, who shall be appointed by the President of the United States by and with the advice and consent of the Senate, who shall serve as President of the Bank during the absence or disability of or in the event of a vacancy in the office of President of the Bank, and who shall at other times perform such functions as the President of the Bank may from time to time prescribe.

(b) Board of Directors; composition; oath; terms; duties; quorum; bylaws

(1) There shall be a Board of Directors of the Bank consisting of the President of the Export-Import Bank of the United States, who shall serve as Chairman, the First Vice President who shall serve as Vice Chairman, and three additional persons appointed by the President of the United States by and with the advice and consent of the Senate.

(2) Of the five members of the Board, not more than three shall be members of any one political party.

(3) [Omitted]

(4) Before entering upon his duties, each of the directors shall take an oath faithfully to discharge the duties of his office.

(5) The directors, in addition to their duties as members of the Board, shall perform such additional duties and may hold such other offices in the administration of the Bank as the President of the Bank may from time to time prescribe.

(6) A majority of the Board of Directors shall constitute a quorum.

(7) The Board of Directors shall adopt, and may from time to time amend, such bylaws as are necessary for the proper management and functioning of the Bank, and shall, in such bylaws, designate the vice presidents and other officers of the Bank and prescribe their duties.

(8)(A) The terms of the directors, including the President and the First Vice President of the Bank, appointed under this section shall be four years, except that—

(i) during their terms of office, the directors shall serve at the pleasure of the President of the United States;

§ 635a. Management of Bank

(a) Establishment as independent agency

The Export-Import Bank of the United States shall constitute an independent agency of the United States and neither the Bank nor any of its functions, powers, or duties shall be transferred to or consolidated with any other department, agency, or corporation of the Government unless the Congress shall otherwise by law.

the term of any director appointed after November 30, 1983 to serve before January 20, 1985, shall expire on January 20, 1985;

(iii) of the directors first appointed to serve beginning on or after January 21, 1985, two directors (other than the President and First Vice President of the Bank) shall be appointed for terms of two years, as designated by the President of the United States at the time of their appointment; and

(iv) any director first appointed to serve for a term beginning on any date after January 21, 1985, shall serve only for the remainder of the period for which such director would have been appointed if such director's term had begun on January 21, 1985. If such term would have expired before the date on which such director's term actually begins, the term of such director shall be the four-year period, or remainder thereof, as if such director had been preceded by a director whose term had begun on January 21, 1985.

(B) Of the five members of the Board appointed by the President, not less than one such member shall be selected from among the small business community and shall represent the interests of small business.

(C) Any person chosen to fill a vacancy shall be appointed only for the unexpired term of the director whom such person succeeds.

(D) Any director whose term has expired may be reappointed.

(E) Any director whose term has expired may continue to serve on the Board of Directors until the earlier of—

(i) the date on which such director's successor is qualified; or

(ii) the end of the 6-month period beginning on the date such director's term expires.

(d) **Advisory Committee; appointment; composition; meetings; advice to Bank; report to Congress**

(1)(A) There is established an Advisory Committee to consist of twelve members who shall be appointed by the Board of Directors on the recommendation of the President of the Bank.

(B) Such members shall be broadly representative of production, commerce, finance, agriculture, labor, services, and State government.

(2) Not less than three members appointed to the Advisory Committee shall be representative of the small business community.

(3) The Advisory Committee shall meet at least once each quarter.

(4) The Advisory Committee shall advise the Bank on its production and shall submit, with the report specified in section 635(a)(1)(A) of this title, its own comments to the Congress on the manner to which the Bank is meeting its mandate to provide competition or financing to expand United States exports, and any suggestions or improvements in this regard.

Prohibiting personal interests

No director, officer, attorney, agent, or employee of the Bank shall in any manner, directly or indirectly, participate in the deliberations upon or the determination of any question affecting such individual's personal interests, or the interests of any corporation, partnership or association in which such individual is directly or indirectly personally interested.

July 31, 1945, c. 341, § 3, 59 Stat. 527; Aug. 9, 1954, c. 660, § 1, 68 Stat. 677; Oct. 13, 1968, Pub.L. 90-267, § 1(a), (d), 82 Stat. 47, 49; Nov. 30, 1983, Pub.L. 98-181, Title VI, §§ 613, 614(a), 620(b), 97 Stat. 1255, 1261; Oct. 15, 1984, Pub.L. 99-472, § 18, 100 Stat. 1205.)

HISTORICAL AND STATUTORY NOTES

Section Notes and Legislative Reports

1949 Act. Senate Report No. 882 and Conference Report No. 1411, see 1949 U.S. Code Cong. Service, p. 2143.

1954 Act. House Report No. 2270, see 1954 U.S. Code Cong. and Adm. News, p. 1768.

1956 Act. Senate Report No. 2642 and Conference Report No. 2935, see 1956 U.S. Code Cong. and Adm. News, p. 3725.

1968 Act. House Report No. 256 and Conference Report No. 1103, see 1968 U.S. Code Cong. and Adm. News, p. 1727.

1984 Act. Senate Report No. 98-275, Conference Report No. 98-551, and Two Related Reports, see 1983 U.S. Code Cong. and Adm. News, p. 1768.

1986 Act. House Conference Report No. 99-956 and Statement by President, see 1986 U.S. Code Cong. and Adm. News, p. 1072.

Codifications

Provisions of subsecs. (b) and (c)(3) which prescribed the annual compensation of the President, the First Vice President, and other members of the Board of Directors were omitted to conform to the provisions of the Executive schedule. See sections 5314 and 5315 of Title 5, Government Organizations and Employ-

Subsec. (e), prior to amendment by Act Aug. 9, 1954, provided for management of the affairs of the Bank by the former Board of Trustees until Oct. 31, 1945, or until at least two members of the Board of Directors qualified as such, whichever was earlier.

Amendments

1986 Amendment. Subsec. (c)(8)(E). Pub.L. 99-472, § 18, added subpar. (E).

1983 Amendment. Subsec. (c)(1), (2). Pub.L. 98-181, § 614(a)(1), redesignated existing first and second sentences as pars. (1) and (2), respectively.

Subsec. (c)(3). Pub.L. 98-181, § 614(a)(1), redesignated existing third sentence as par. (3). See Codification note under this section to account for omission of that sentence's provisions from text.

Subsec. (c)(4). Pub.L. 98-181, § 614(a)(1), redesignated existing fourth sentence as par. (4).

Subsec. (c)(5). Pub.L. 98-181, § 614(a)(1), (2), designated existing fifth sentence as par. (5), and, in par. (5), as so designated, substituted "The directors, in addition" for "Terms of the directors shall be at the pleasure of the President of the United States, and the directors, in addition".

(a) Establishment

There is hereby created a body corporate to be known as the Pennsylvania Avenue Development Corporation (hereinafter referred to as the "Corporation").

(b) Dissolution

The Corporation shall be dissolved upon completion, as determined by the Board of Directors, of its implementation of the development plan provided for in section 874 of this title. Upon dissolution, assets remaining after all the obligations and indebtedness of the Corporation has been fulfilled and paid or satisfied shall be the assets of the United States.

(c) Board of Directors; composition

The powers and management of the Corporation shall be vested in a Board of Directors consisting of fifteen members, as follows:

- (1) The Secretary of the Interior;
- (2) The Secretary of the Treasury;
- (3) The Secretary of Housing and Urban Development;
- (4) The Secretary of Transportation;
- (5) The Administrator of General Services;
- (6) The Mayor of the District of Columbia;
- (7) The Chairman, Council of the District of Columbia; and
- (8) Eight, at least four of whom shall be residents and who are registered voters of the District of Columbia, appointed by the President from private life, who shall have knowledge and experience in one or more fields of history, architecture, city planning, retailing, real estate, construction, or government.

(d) Alternate directors

Each member of the Board of Directors specified in paragraphs (1) through (7) of subsection (c) of this section may designate another official to serve on the Board in his stead if unable to serve in person.

(e) Term of office

Each member of the Board of Directors appointed under paragraph (8) of subsection (c) of this section shall serve for a term of six years from the expiration of his predecessor's term; except that (1) any Director appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and (2) the terms of office of the Directors first taking office shall begin on October 27, 1972, and shall expire as designated at the time of appointment, two at the end of two years, two at the end of four years, and four at the end of six years. A Director may continue to serve until his successor has qualified.

(f) Chairman

The President shall designate a Chairman and a Vice Chairman from among the members of the Board of Directors, chosen from private life.

Nonvoting membership on board

The Chairman, upon his appointment, shall invite to serve on the Board of Directors as nonvoting members the following:

- (1) The Chairman of the Commission of Fine Arts;
- (2) The Chairman of the National Capital Planning Commission;
- (3) The Secretary of the Smithsonian Institution;
- (4) The Director of the National Gallery of Art;
- (5) The Architect of the Capitol;
- (6) The Archivist of the United States;
- (7) The Chairman of the District of Columbia, Commission on the Arts; and
- (8) The Director of the District of Columbia Department of Housing and Community Development.

(h) Compensation

Members of the Board of Directors who are officers or employees of the Federal or District of Columbia government shall receive no additional compensation by virtue of their membership on the Board. Other members of the Board, when engaged in the activities of the Corporation, shall be entitled to receive compensation at the daily equivalent of the rate for GS-18 of the General Schedule, and travel expenses, including per diem in lieu of subsistence, as authorized by law (5 U.S.C. 5703(b)-(d) and 5707) for persons in the Government service employed intermittently.

(i) Meetings; quorum

The Board of Directors shall meet at the call of the Chairman, who shall require it to meet not less often than once each three months. A majority of the voting members of the Board of Directors (or their designated alternates) shall constitute a quorum.

(j) Advisory Board

There shall be established a nonvoting Advisory Board of seven members appointed by the Chairman from among tenants and owners of real property within the development area. The Advisory Board shall meet at least twice annually with the Board of Directors, and shall otherwise offer such advice and assistance as may be of benefit to the Board of Directors during preparation of the development plan.

(Pub.L. 92-578, § 3, Oct. 27, 1972, 86 Stat. 1267; Pub.L. 95-629, Title I, § 101(1)(a) to (c), Nov. 10, 1978, 92 Stat. 3635; Pub.L. 98-141, § 8(c)(1), Oct. 31, 1983, 97 Stat. 910.)

Historical Note

References in Text. The General Schedule, referred to in subsec. (h), is set out under section 5332 of Title 5, Government Organization and Employees.

Section 5703 of Title 5, referred to in subsec. (h), was amended generally by Pub.L. 94-22, § 4, May 19, 1975, 89 Stat. 85, and as so amended does not contain subsecs. (b) to (d).

1983 Amendment. Subsec. (c)(7). Pub.L. 98-141 added the number designation "(7)" preceding "The Chairman, Council of the District of Columbia", thereby correcting an error that had been created in 1978 as the result of faulty directory language in section 101(1)(b)

of Pub.L. 95-629 which, in the process of substituting "The Chairman, Council of the District of Columbia" for "The Chairman, District of Columbia Council" had deleted the number designation of that item.

1978 Amendment. Subsec. (c)(6). Pub.L. 95-629, § 101(1)(a), substituted "The Mayor of the District of Columbia" for "The Commissioner of the District of Columbia".

Subsec. (c)(7). Pub.L. 95-629, § 101(1)(b), substituted "The Chairman, Council of the District of Columbia" for "The Chairman, District of Columbia Council".

Subsec. (g)(8). Pub.L. 95-629, § 101(1)(c), substituted "The Director of the District of Columbia Department of Housing and Community Development" for "The Chairman of the District of Columbia Redevelopment Land Agency".

Archivist of the United States. References to Archivist of the United States deemed to refer to Archivist appointed under section 2103 of Title 44, Public Printing and Documents, with respect to functions transferred by Pub.L. 98-497 or an amendment made by Pub.L. 98-497 and exercised after Apr. 1, 1985, see sections 106 and 108 of Pub.L. 98-497, set out as notes under section 2102 of Title 44.

Termination of Advisory Boards. Advisory boards in existence on Jan. 5, 1973, to termi-

nate not later than the expiration of the two-year period following Jan. 5, 1973, unless, in the case of a board established by the President or an officer of the Federal Government, such board is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a board established by the Congress, its duration is otherwise provided by law, see sections 3(2) and 14 of Pub.L. 92-463, Oct. 6, 1972, 86 Stat. 770, set out in Appendix 2 to Title 5, Government Organization and Employees.

Legislative History. For legislative history and purpose of Pub.L. 92-578, see 1972 U.S. Code Cong. and Adm. News, p. 4721. See, also, Pub.L. 98-141, 1983 U.S. Code Cong. and Adm. News, p. 1308.

Cross References

Wholly owned government corporation defined to include Pennsylvania Avenue Development Corporation, see section 9101 of Title 31, Money and Finance.

Code of Federal Regulations

Pennsylvania Avenue Development Corporation, see 36 CFR Chap. IX.

Library References

District of Columbia ☞23.
United States ☞57.

C.J.S. District of Columbia § 9.
C.J.S. United States § 74.

§ 873. Board of Directors

(a) Executive Director and other officers and employees

The Board of Directors shall have the power to appoint and fix the compensation and duties of the Executive Director and such other officers and employees of the Corporation as may be necessary for the efficient administration of the Corporation; the Executive Director and two other officers of the Corporation may be appointed and compensated without regard to the provisions of Title 5 governing appointments in the competitive service and chapter 51 and subchapter III of chapter 53 of Title 5.

(b) Procurement of services of experts

The Board of Directors is authorized to procure the temporary (not in excess of one year) or intermittent services of city planners, architects, engineers, appraisers, and other experts or consultants or organizations thereof in accordance with section 3109 of Title 5, but at rates for individuals not in excess of the rate in effect for grade GS-18 of the General Schedule.

(c) Administrative services

Administrative services shall be provided by the General Services Administration on a reimbursable basis.

(Pub.L. 92-578 § 4 Oct. 27, 1972; 86 Stat. 1229; Pub.L. 93-427 § 1 (Oct. 1, 1974); 88

Historical Note

References in Text. The provisions of title 5 governing appointments in the competitive service, referred to in subsec. (a), are classified to section 3301 et seq. of Title 5, Government Organization and Employees.

The General Schedule, referred to in subsec. (b), is set out under section 5332 of Title 5.

1978 Amendment. Subsec. (a). Pub.L. 95-629 substituted "subchapter III of chapter 53" for "subchapter 53".

1974 Amendment. Subsec. (b). Pub.L. 93-427 added subsec. (b). Former subsec. (b) was redesignated subsec. (c).

Subsec. (c). Pub.L. 93-427 redesignated former subsec. (b) as subsec. (c).

Legislative History. For legislative history and purpose of Pub.L. 92-578, see 1972 U.S. Code Cong. and Adm. News, p. 4721. See, also, Pub.L. 93-427, 1974 U.S. Code Cong. and Adm. News, p. 5414.

Code of Federal Regulations

Pennsylvania Avenue Development Corporation, see 36 CFR Chap. IX.

Library References

District of Columbia ☞23.
United States ☞57.

C.J.S. District of Columbia § 9.
C.J.S. United States § 74.

§ 874. Development plan

(a) Contents

The development plan for the development area shall include, but not be limited to: (1) the types of uses, both public and private, to be permitted; (2) criteria for the design and appearance of buildings, facilities, open spaces, and other improvements; (3) an estimate of the current values of all properties to be acquired; (4) an estimate of the relocation costs which would be incurred in carrying out the provisions of section 877 of this title; (5) an estimate of the cost of land preparation for all properties to be acquired; (6) an estimate of the reuse values of the properties to be acquired; (7) a program for the staging of a proposed development, including a detailed description of the portion of the program to be scheduled for completion by 1976; (8) a determination of the marketability of such development; (9) an estimate of the development costs, both public and private; (10) a thorough study of the economic impact of such development, including the impact on the local tax base, the metropolitan area as a whole, and the existing business activities within the development area; and (11) the procedures (including both interim and long-term arrangements) to be used in carrying out and insuring continuing conformance to the development plan.

(b) Cooperation in preparation

The development plan provided for in subsection (a) of this section shall be prepared with the cooperation of the Department of the Interior, the General Services Administration, and the District of Columbia government with the maximum feasible use of their staffs and other resources on a reimbursable basis by the Corporation.

(c) Submittal to Secretary of the Interior and Mayor of District of Columbia; public hearings

After the development plan has been completed and approved by the Board of Directors of the Corporation, it shall be submitted to the Secretary of the Interior and the Mayor of the District of Columbia. The Secretary of the Interior, within ninety days, shall notify the Corporation of his approval or disapproval.

Sec.

1832. Withdrawals by negotiable or transferable instruments for transfers to third parties.
- Authority of depository institution; applicability.
 - "Depository institution" defined.
 - Fine.
1833. Annual report to Congress.
- In general.
 - Agencies required to submit reports.
- 1833a. Civil penalties.
- In general.
 - Maximum amount of penalty.
 - Violations to which penalty is applicable.
 - Attorney General to bring action.
 - Burden of proof.
 - Administrative subpoenas.
- 1833b. Comparability in compensation schedules.
- 1833c. Comptroller General Audit and access to records.
- Audit of agencies or other persons performing functions under banking laws.
 - Audit of persons providing certain goods or services.
 - Provisions applicable to audits under this section.
- 1833d. Capital and accounting standards.
- 1833e. Equal opportunity.
- In general.
 - Affirmative program for equal employment opportunity.
 - Solicitation of contracts.
 - Report to Congress.

CROSS REFERENCES

Applicability of—

Requirements and penalties to examiners of Farm Credit Administration, see 12 USCA § 2254.

Rules governing advertisement of interest rates, see 12 USCA § 1425.

Appropriate regulatory agency defined, see 15 USCA § 78c.

Approval for insurance as prerequisite for membership, see 12 USCA § 120.

Bank for purposes of Bank Holding Company Act, see 12 USCA § 1841.

Enforcement of regulations regarding—

Participation by foreign banks, see 12 USCA § 3108.

Securities issued by banks, see 15 USCA § 78f.

Filing of periodic and other reports regarding securities, see 15 USCA § 78b.

Regulating investment in State housing corporations, see 12 USCA § 1470.

Reports to Comptroller of the Currency, see 12 USCA § 161.

WESTLAW ELECTRONIC RESEARCH

WESTLAW supplements United States Code Annotated and is useful for additional research. Enter a citation in Insta-Cite for display of any parallel citations and case history. Enter a constitution, statute or rule citation in a case law database for cases of interest.

Example query for Insta-Cite: IC 726 F.2d 1292

Example query for statute: "12 U.S." "12 U.S.C." * * * "Title 12" /8
 Use the WESTLAW Electronic Research Guide following the Explanation.

§ 101. Creation of Corporation; duties

There is created a Federal Deposit Insurance Corporation (hereinafter referred to as the "Corporation") which shall insure, as hereinafter provided, the deposits of all banks and savings associations which are entitled to the benefits of insurance under this chapter, and which shall have the powers hereinafter granted.

Sept. 21, 1950, c. 967, § 2[1], 64 Stat. 873; Aug. 9, 1989, Pub.L. 101-73, Title 1, § 102, 103 Stat. 188.)

HISTORICAL AND STATUTORY NOTES

Citation Notes and Legislative Reports

101st Cong. House Report No. 2564, and Conference Report No. 3049, see 101st Cong. Service, p. 3765.

101st Cong. House Report No. 101-54 and House Conference Report No. 101-20, see 1989 U.S. Code Cong. and Ad. News, p. 86.

Citations

The Federal Deposit Insurance Corporation was originally created as a part of the Federal Reserve Act by Act June 16, 1913, c. 48, 38 Stat. 168 which added to the Federal Reserve Act, Act Dec. 28, 1913, c. 6, 38 Stat. 103, and was amended by § 264 of this title. Act Dec. 28, 1913, c. 6, § 12B, as added June 16, 1913, c. 48, 38 Stat. 168 has been amended by Acts June 16, 1934, c. 546, § 102, 49 Stat. 969, 970; June 28, 1935, c. 325, 49 Stat. 435; Aug. 23, 1935, c. 301, 49 Stat. 684; Apr. 21, 1936, c. 1237, May 25, 1938, c. 442; June 16, 1938, c. 489, § 107, June 20, 1939, c. 214, § 2, 57 Stat. 822; Apr. 13, 1943, c. 62, § 1, 57 Stat. 5, 1947, c. 492, §§ 2, 4, 61 Stat. 771; June 25, 1948, c. 645, § 21, 62 Stat. 62, off. Sept. 1, 1948; Oct. 15, 1948, c. 679, § 4, 63 Stat. 880; Aug. 17, 1949, c. 779, §§ 5 to 7, 64 Stat. 457.

Section 12B of the Federal Reserve Act was withdrawn from the Federal Reserve Act and made a separate Act by

§ 1 of Act Sept. 21, 1950, and set out as this chapter.

Amendments

1989 Amendment. Pub.L. 101-73 added "and savings associations" following "banks".

Separability of Provisions

Section 1221 of Pub.L. 101-73 provided that: "If any provision of this Act [for complete classification of Pub.L. 101-73 to the Code see Short Title of 1989 Amendment note below and Tables] or the application thereof to any person or circumstance is held invalid, the remainder of the Act and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby."

If any provision of Pub.L. 100-86 or the application thereof to any person or circumstance is held invalid, the remainder of Pub.L. 100-86 and the application of the provision to other persons not similarly situated or to other circumstances not to be affected thereby, see Pub.L. 100-86, Title XII, § 1205, Aug. 10, 1987, 101 Stat. 663, set out as a note under section 226 of this title.

Prior Provisions

Section is derived from subsec. (a) of former § 264 of this title. See Codification note above.

Congress had power to create a corporation as an agency of the government to fulfill governmental purposes and to endow such corporation with powers of private corporation. *U.S. v. Doherty*, D.C.Neb.1937, 18 F.Supp. 793.

2. Purpose

Policies behind creation of Corporation are promoting stability of, and confidence in, nation's banking system. *Gunter v. Hutcheson*, C.A.Ga.1982, 674 F.2d 862, certiorari denied 103 S.Ct. 60, 459 U.S. 826, 74 L.Ed.2d 63, rehearing denied 103 S.Ct. 477, 459 U.S. 1059, 74 L.Ed.2d 624.

This chapter set up system of insurance, primary function of which was stabilizing or promoting the stability of banks. *First State Bank of Hudson County v. U.S.*, C.A.N.J.1979, 599 F.2d 558, certiorari denied 100 S.Ct. 662, 444 U.S. 1013, 62 L.Ed.2d 642.

The purpose of this section was to stabilize or to promote the stability of banks and to aid the federal government in its evergrowing financial transactions. *Doherty v. U.S.*, C.A.Neb.1938, 94 F.2d 495, certiorari denied 58 S.Ct. 763, 303 U.S. 658, 82 L.Ed. 1117.

This chapter was intended to prevent runs on banks by depositors, to preserve solvency of insured banks, and thus to keep open the channels of trade and commercial exchange. *Weir v. U.S.*, C.A.Ind.1937, 92 F.2d 634, certiorari denied 58 S.Ct. 368, 369, 302 U.S. 761, 82 L.Ed. 590, rehearing denied 58 S.Ct. 479, 480, 302 U.S. 781, 82 L.Ed. 603.

Congressional purpose in creating the Corporation was to promote soundness of banking and to aid the government in discharge of its fiscal transactions. *Freeling v. Federal Deposit Ins. Corp.*, D.C.Okla.1962, 221 F.Supp. 955, affirmed 326 F.2d 971. See, also, *Federal Deposit Ins. Corp. v. First Mortg. Investors*, D.C.Wis.1980, 485 F.Supp. 445.

The chief function of the Federal Deposit Insurance Corporation is to insure deposits of all banks entitled to insurance under the law, to extent of \$5,000 for each depositor, and second function of the corporation is to act as receiver for insured banks which fail. *Ghent v. Cliffside Park Title Guarantee & Trust Co.*, 1938, 199 A. 416, 16 N.J.Misc. 308.

3. Law governing

Federal law controls in cases involving the rights of the Corporation. *Federal Deposit Ins. Corp. v. Meo*, C.A.Cal.1974, 505 F.2d 790.

Where bank acquired in ordinary good-faith transaction a promissory note of corporation personally guaranteed by individual defendants and both note and the guarantee provided that note and guarantee would be governed by and construed in accordance with laws of state of New York, Federal Deposit Insurance Corporation was to be bound by terms of the instrument, and no federal statute or overriding policy conferred on Federal Deposit Insurance Corporation as liquidator or receiver greater powers than bank itself had before insolvency, and state law, including McKinney's N.Y. RPAPL § 1371, was applicable. *Federal Deposit Ins. Corp. v. Forte*, 1981, 440 N.Y.S.2d 500, 109 Misc.2d 546, affirmed 463 N.Y.S.2d 844, 94 A.D.2d 59.

4. Nature of Federal Deposit Insurance Corporation

Federal Deposit Insurance Corporation is a governmental institution. *U.S. v. Doherty*, D.C.Neb.1937, 18 F.Supp. 793. See, also, *Federal Deposit Ins. Corp. v. Mangiaracina*, 1938, 198 A. 777, 16 N.J.Misc. 203.

5. State banks as federal instrumentalities

Congress can employ state corporations, including state banks with their consent, as instrumentalities of the United States. *U.S. v. Doherty*, D.C.Neb. 1937, 18 F.Supp. 793.

6. Power of banks to guarantee deposits

Banks have no general power to guarantee each other's deposits directly or through an organization, with or without limitation, since such power is matter of legislative, not banking policy. *O'Connor v. Bankers Trust Co.*, 1936, 289 N.Y.S. 252, 159 Misc. 920, affirmed 1 N.Y.S.2d 641, 253 A.D. 714, affirmed 16 N.E.2d 302, 278 N.Y. 649.

7. Creditting insurance premiums between agencies

The Federal Savings and Loan Corporation and this Corporation are two wholly separate government insurance agencies, and plaintiff which converted from savings and loan association to

mutual savings bank was not entitled to have the "unearned" portion of 12-month premium paid to Federal Savings and Loan Corporation primary reserve credited to its account with this

Corporation. *North New York Sav. Bank v. Federal Sav. and Loan Ins. Corp.*, 1975, 515 F.2d 1355, 169 U.S.App. D.C. 384.

§ 1812. Management

(a) Board of Directors

(1) In general

The management of the Corporation shall be vested in a Board of Directors consisting of 5 members—

(A) 1 of whom shall be the Comptroller of the Currency;

(B) 1 of whom shall be the Director of the Office of Thrift Supervision; and

(C) 3 of whom shall be appointed by the President, by and with the advice and consent of the Senate, from among individuals who are citizens of the United States.

(2) Political affiliation

After February 28, 1993, not more than 3 of the members of the Board of Directors may be members of the same political party.

(b) Chairperson and Vice Chairperson

(1) Chairperson

1 of the appointed members shall be designated by the President, by and with the advice and consent of the Senate, to serve as Chairperson of the Board of Directors for a term of 5 years.

(2) Vice Chairperson

1 of the appointed members shall be designated by the President, by and with the advice and consent of the Senate, to serve as Vice Chairperson of the Board of Directors.

(3) Acting Chairperson

In the event of a vacancy in the position of Chairperson of the Board of Directors or during the absence or disability of the Chairperson, the Vice Chairperson shall act as Chairperson.

(c) Terms

(1) Appointed members

Each appointed member shall be appointed for a term of 6 years.

(2) **Interim appointments**

Any member appointed to fill a vacancy occurring before the expiration of the term for which such member's predecessor was appointed shall be appointed only for the remainder of such term.

(3) **Continuation of service**

The Chairperson, Vice Chairperson, and each appointed member may continue to serve after the expiration of the term of office to which such member was appointed until a successor has been appointed and qualified.

(d) **Vacancy**

(1) **In general**

Any vacancy on the Board of Directors shall be filled in the manner in which the original appointment was made.

(2) **Acting officials may serve**

In the event of a vacancy in the office of the Comptroller of the Currency or the office of Director of the Office of Thrift Supervision and pending the appointment of a successor, or during the absence or disability of the Comptroller or such Director, the acting Comptroller of the Currency or the acting Director of the Office of Thrift Supervision, as the case may be, shall be a member of the Board of Directors in the place of the Comptroller or Director.

(e) **Ineligibility for other offices**

(1) **PostsERVICE restriction**

(A) **In general**

No member of the Board of Directors may hold any office, position, or employment in any insured depository institution or any depository institution holding company during—

(i) the time such member is in office; and

(ii) the 2-year period beginning on the date such member ceases to serve on the Board of Directors.

(B) **Exception for members who serve full term**

The limitation contained in subparagraph (A)(ii) shall not apply to any member who has ceased to serve on the Board of Directors after serving the full term for which such member was appointed.

(2) **Restriction during service**

No member of the Board of Directors may—

(A) be an officer or director of any insured depository institution, depository institution holding company, Federal Reserve bank, or Federal home loan bank; or

(B) hold stock in any insured depository institution or depository institution holding company.

(3) **Certification**

Upon taking office, each member of the Board of Directors shall certify under oath that such member has complied with this subsection and such certification shall be filed with the secretary of the Board of Directors.

(Sept. 21, 1950, c. 967, § 2[2], 64 Stat. 873; Sept. 8, 1959, Pub. L. 86-230, § 19, 73 Stat. 460; Nov. 30, 1983, Pub.L. 98-181, Title VII, § 702(a), 97 Stat. 1267; Aug. 9, 1989, Pub.L. 101-73, Title II, §§ 201(a)(1), 203(a), 103 Stat. 187, 188.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1950 Act. House Report No. 2564, and Conference Report No. 3049, see 1950 U.S.Code Cong.Service, p. 3765.

1959 Act. Senate Report No. 730, see 1959 U.S.Code Cong. and Adm.News, p. 2232.

1983 Act. Senate Report No. 98-275, House Conference Report No. 98-551, and Two Related Reports, see 1983 U.S. Code Cong. and Adm.News, p. 1768.

1989 Act. House Report No. 101-54 and House Conference Report No. 101-209, see 1989 U.S.Code Cong. and Adm.News, p. 86.

Amendments

1989 Amendment. Pub.L. 101-73, § 201(a)(1), directed that "insured depository institution" be substituted for "insured bank" wherever appearing.

Pub.L. 101-73, § 203(a), divided existing provisions into subsecs. (a) to (e), and in such subsecs. made other changes relating to the make-up and operation of the Board.

1983 Amendment. Pub.L. 98-181 added provision that each such appointive member may continue to serve after the expiration of his term until a successor has been appointed and qualified.

1959 Amendment. Pub.L. 86-230 provided for membership of the Acting Comptroller of the Currency on the Board of Directors during the absence or disability of the Comptroller instead of

only during his absence from Washington.

Separability of Provisions

If any provision of Pub.L. 101-73 or the application thereof to any person or circumstance is held invalid, the remainder of Pub.L. 101-73 and the application of the provision to other persons not similarly situated or to other circumstances not to be affected thereby, see section 1221 of Pub.L. 101-73, set out as a note under section 1811 of this title.

Prior Provisions

Section is derived from subsec. (b) of former § 264 of this title. See Codification note set out under § 1811 of this title.

Compensation of Board of Directors

Compensation of Chairman and members of Board, see §§ 5314 and 5315 of Title 5, Government Organization and Employees.

Transition Provision

Section 203(b) of Pub.L. 101-73 provided that:

"(1) **Chairperson.**—Notwithstanding any provision of section 2 of the Federal Deposit Insurance Act [this section], the Chairman of the Board of Directors of the Federal Deposit Insurance Corporation on the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 [Aug. 9, 1989] may continue to serve as the

A-34

PART VIII. INSTRUCTIONS FOR SPECIAL TYPES OF TRANSACTIONS

Transfers Between Appropriation and Fund Accounts

81.1 General principles and application of instructions.

The term "transfer" is used to designate the shifting of funds from one appropriation or fund account to another account. For the purpose of budget execution, transfers must be distinguished from the term "reprogramming". Reprogramming is the shifting of funds within the same appropriation or fund account. The instructions in this section apply only to transfers.

Transfers are made to carry out the purposes of either the transferring account or the receiving account. Transfers in return for goods and services benefit the transferring account; transfers in the nature of adjustments of amounts appropriated benefit the receiving account. Exhibit 81 summarizes the general treatment of transfers.

Section 81.2 discusses transfers for the purposes of the transferring account. Section 81.3 discusses the treatment of transfers for the purposes of the receiving account. Section 81.4 applies to temporary transfers authorized by 31 U.S.C. 1534.

81.2 Transfers for the purposes of the transferring account.

These transactions primarily reflect transfers in return for goods and services received by the transferring account.

Transfers to carry out the purposes of the transferring account will be made by either (a) recording an obligation and outlay in the transferring account and crediting the receiving account (expenditure transfer) or (b) establishing an allocation account (nonexpenditure transfer). Each method is described as follows:

(a) **Expenditure transfers.** This may apply to the following items:

(1) Orders for goods, services, or equipment placed with other agencies, where the payment is made after delivery takes place or where advance payment is made for services to be provided by the performing agency.

(2) Payments between accounts to carry out the purposes of the transferring account, even though there are no specific orders involved (for example, where the law specifies that a particular amount will be paid from one appropriation or fund account to another in order to carry out the general purposes of the first appropriation or fund account);

(3) Payments to accounts in a different main fund group (for example, a payment from a general or special fund in the Federal fund group to a trust fund or vice versa).

In these cases, the transactions will be treated in the transferring account in the same manner as transactions with the public, i.e., an obligation will be reported in the transferring account when an order is placed. Then, when an appropriation or fund account accepts an order from another account, it will record the amount as an unfilled customer's order until the amount is earned, at which time it is recorded as an earned reimbursement. An outlay will be reported by the transferring account when payment is made. The change in unfilled customers' orders from the beginning of the fiscal year is recorded on line 38 of the S.F. 132 and S.F. 133.

(b) **Allocation accounts.**

(1) Description and establishment. The authority to obligate and spend

A-34

rule is that the agency responsible for administering the parent account will submit S.F. 132s and monthly S.F. 133s covering both the parent account and all allocations from it, unless specifically requested to do otherwise by OMB.

-- Treasury, on the other hand, requires agencies receiving allocations to submit quarterly allocation data (e.g., obligations data for the S.F. 225) directly to Treasury--not through the parent agency.

81.3 Transfers for the purposes of the receiving account.

Transfers without benefit to the transferring account, decrease the funds available for obligation or expenditure under one account symbol and increase the amount available under the other. They are generally treated as nonexpenditure transactions. (The exceptions are transfers for the purposes of the receiving accounts where the accounts are in two different main fund groups, see section 81.2.) The transactions included in this category are:

(a) Reorganization transfers. These are transfers resulting from reorganizations in which activities and the related funds are transferred to different departments, agencies, bureaus, or accounts.

(b) Changes in appropriation pattern. These are transfers that result from consolidations or mergers of appropriations and funds.

(c) Redistribution of appropriations or balances. These include the administrative exercise of general statutory authority, for example, authority provided to the head of an agency to transfer funds for a specific purpose such as fighting forest fires, to finance additional funding requirements such as pay, or within a fixed percentage or sum specified by law.

In these cases, the amounts so withdrawn and credited will be reflected on the S.F. 132 and S.F. 133 on line 1D, if the transfer is made in the same year as the funds are made available. If the transfer involves unobligated balances, then the amounts will be reflected on line 2B of the S.F. 132 or S.F. 133. See Parts IV and V for further instructions on reporting such amounts on the S.F. 132 and S.F. 133.

In addition, a similar adjustment of budgetary resources occurs when a financing transaction takes place in which a feeder account provides capital for a public enterprise fund. Since for purposes of the reports required under this Circular the feeder and receiving accounts are combined, the adjustments are not reported on the S.F. 132 and S.F. 133.

81.4 Temporary charges and credits between accounts.

Section 1534 of Title 31 of the United States Code authorizes, under certain circumstances, temporary transfers (i.e., charges to be made against an appropriation temporarily) with an accounting adjustment to the appropriation finally to be charged with the outlay. All charges during the fiscal year must be adjusted as of the close of the fiscal year. The adjustment will be accounted for in the same manner as a refund by the appropriation originally charged. Obligations incurred by the appropriation finally to be charged with the outlay must be identical with credits in the account originally charged.

Project Orders and Similar Arrangements

82.1 Project orders and other arrangements permitting lump sum obligations.

In certain special cases, an appropriation may be legally obligated in a lump sum, under project orders and similar arrangements, in advance of the time when individual obligations are incurred (within the same appropriation and within the lump sum) for such items as salaries, travel, and supplies. For the purpose of reporting under this Circular, orders placed under the project order law (41 U.S.C. 23) or similar laws are divided into two classes:

6235
2pm NEOB

Board memo

Money memo

Mtg - Participants as Employees,
taxab. lity etc -
Chuck T, Dick

Mtg - FOV
Fran
Braden etc.

make sure draft includes

- strategic planning duties of board
- board confirmation
- Volunteer status of st comm.
- allow state comm. to delegate to state agency?
- major transition for state agency
- indexing of proposal