

the United States is liable, the budget authority<sup>648</sup> for which is not provided in advance by appropriation Acts;<sup>649</sup>

§ 401(c)(2)(C)

(C)<sup>650</sup> to make payments (including loans and grants), the budget authority<sup>651</sup> for which is not provided for in advance by appropriations Acts,<sup>652</sup>

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<sup>648</sup> Section 3(2) defines "budget authority." *See supra* pp. 11-13.

<sup>649</sup> For a discussion of whether something is "provided in advance by appropriation Acts," see generally *infra* note 652.

Section 3(5) defines "appropriation Act" by reference to 1 U.S.C. § 105. *See supra* p. 16. For the text of 1 U.S.C. § 105 (1988), see *supra* note 36.

<sup>650</sup> Section 3(9) refers to this subparagraph to define the term "entitlement authority." *See supra* p. 18. Note that section 250(c)(18) of Gramm-Rudman-Hollings defines certain mandatory appropriated accounts as entitlements for purposes of Gramm-Rudman-Hollings. *See infra* p. 447.

<sup>651</sup> Section 3(2) defines "budget authority." *See supra* pp. 11-13.

<sup>652</sup> In determining whether "budget authority . . . is . . . provided for in advance by appropriations Acts," the Parliamentarian's office will examine the likely real world consequences of legislation on a case-by-case basis, and will not rely exclusively on the form of language in the legislation.

In one case, the Presiding Officer advised that even if an amendment creates benefits for qualifying individuals, it will not create entitlement authority within the meaning of section 401(c)(2)(C) if it also provides that "no payments shall be made except subject to appropriations." 130 CONG. REC. S7070-71, S7108, S7110 (1984) (parliamentary inquiry of Sen. Cohen); Senate Precedent PRL19840613-002 (June 13, 1984) (LEGIS, Rules database). This is so even if the language creating the benefits says "an individual shall be entitled." *Id.*

The Parliamentarian's office has advised that the following language would ensure that a program would be subject to appropriations, and therefore not an entitlement under section 401(c)(2)(C):

In any fiscal year the administrator of this program shall limit the value of any benefits conferred by this program to an amount not in excess of the appropriation for such fiscal year and if the requirements of this program exceed the limitations set herein the benefits shall be reduced to the extent necessary to comply with the provisions of this subsection.

(continued...)