

the United States is liable, the budget authority⁶⁴⁸ for which is not provided in advance by appropriation Acts;⁶⁴⁹

§ 401(c)(2)(C)

(C)⁶⁵⁰ to make payments (including loans and grants), the budget authority⁶⁵¹ for which is not provided for in advance by appropriations Acts,⁶⁵²

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

⁶⁴⁹ 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.

⁶⁵⁰ 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.

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

⁶⁵² 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...)

to any person or government if, under the provisions of the law containing such authority, the United States is obligated to make such payments to persons or governments who meet the requirements established by such law;

§ 401(e)(2)(D)

(D) to forgo the collection by the United States of proprietary offsetting receipts, the budget authority⁶⁵³ for which is not provided in advance by appropriation Acts⁶⁵⁴ to offset such forgone receipts;

⁶⁵³(...continued)

Senate Precedent PRL19840613-002 (June 13, 1984) (LEGIS, Rules database). For an example of an application of language similar to this, see, e.g., National and Community Service Act of 1989, § 250(a), S. 1430, 101st Cong. 2d Sess., 136 CONG. REC. S1672, S1684 (daily ed. Feb. 27, 1990) (§ 432A(c) of the material proposed to be inserted).

To avoid a point of order caused by the creation of new entitlement authority, however, it is not necessarily sufficient to include language that the payments must come out of an appropriated account; the language must make the payments themselves subject to appropriations. See 130 CONG. REC. S7107, S7109-10 (daily ed. June 13, 1984) (parliamentary inquiry and statement of Sen. Domenici, ruling of the Vice President). Some thus refer to "appropriated entitlements" that fall within the meaning of section 401(c)(2)(C). (See, e.g., *infra* note 1245 (listing "APPROPRIATED ENTITLEMENTS AND MANDATORIES".)) Even though the Government pays such appropriated entitlements out of appropriated funds, annual appropriations do not truly control them. That the entitlement is paid from appropriated funds cannot, without more, remove the entitlement from the definition of section 401(c)(2)(C), for, as the Constitution requires, "No Money shall be drawn from the Treasury, but in consequence of Appropriations made by Law." U.S. CONST. art. I, § 9, cl. 7. Thus, all entitlements provide for appropriations, either implicitly or explicitly.

Section 3(5) defines "appropriation Act" by reference to 1 U.S.C. § 105. See *supra* p. 16. The text of 1 U.S.C. § 105 (1988) (see *supra* note 36) deals with regular appropriations bills. Section 401(c)(2)(C) thus refers to authority that regular appropriations acts do not control.

⁶⁵³ Section 3(2) defines "budget authority." See *supra* pp. 11-13.

⁶⁵⁴ For a discussion of whether something is "provided in advance by appropriation Acts," see generally *supra* 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.