

§ 13213 **SEC. 13213. CONFORMING CHANGE TO
TITLE 31.**

§ 13213(a) **(a) LIMITATIONS ON EXPENDING AND OBLIGATING.**¹⁸²⁵
— Section 1341(a)(1) of title 31, United States Code, is amended—

§ 13213(a)(1) **(1) in subparagraph (A), by striking the final word
“or”;**

¹⁸²⁴(...continued)

other purposes, Pub. L. No. 101-45, 103 Stat. 97, 108 (1989) (Advance Deficiency Payments); Stuart B. McKinney Homeless Assistance Amendments Act of 1988, Pub. L. No. 100-628, § 1004(b), 102 Stat. 3224, 3264 (1988) (Prohibition of Reduction of Section 8 Contract Rents); Rural Development—Agriculture Appropriations Act, 1989, Pub. L. No. 100-460, 102 Stat. 2229, 2253 (1988) (Conservation Reserve Program); Department of Housing and Urban Development—Independent Agencies Appropriations Act, 1989, Pub. L. No. 100-404, 102 Stat. 1014, 1026 (1988) (NASA Research and Development); Omnibus Budget Reconciliation Act of 1987, Pub. L. 100-203, § 4031(c), 101 Stat. 1330, 1330-76 (1987) (Payment Cycle Standards for medicare); Joint Resolution making continuing appropriations for the fiscal year 1988, and for other purposes, Pub. L. No. 100-202, 101 Stat. 1329, 1329-202 (1987) (NASA Research and Development). For a case where the law cited “changes in program requirements,” see Omnibus Budget Reconciliation Act of 1987, Pub. L. 100-203, § 7004(a), 101 Stat. 1330, 1330-280 (1987) (Cash Sales of Properties Acquired Through Foreclosures). In something less than full compliance with this provision, one stipulation simply specified that “amendments made by this title shall be considered an exemption under section (b).” See Omnibus Budget Reconciliation Act of 1987, Pub. L. 100-203, § 6004, 101 Stat. 1330, 1330-278 (1987) (Civil Service and Postal Service Programs).

Senator Sanford’s bill S. 101, 101st Cong., 1st Sess., 135 CONG. REC. S170, S425-29 (daily ed. Jan. 25, 1989), proposed repealing the exception but leaving the prohibition intact. The Senate-passed version of the Budget Enforcement Act followed this tact. See H.R. 5835, 101st Cong., 2d Cong., 136 CONG. REC. S15,868, S15,998 (daily ed. Oct. 18, 1990) (as amended by the Senate). The conferees opted for the simpler path of simply repealing section 202. This result leaves the decision to count or not to count a shift between years to those whom the law elsewhere designates as scorekeepers.

¹⁸²⁵ The statement of managers accompanying the conference report on the Budget Enforcement Act briefly explains the changes made by this subsection: “The conference report also makes conforming changes to title 31 of the United States Code to make clear that funds sequestered are not available for expenditure” H.R. CONF. REP. No. 101-964, 101st Cong., 2d Sess. 1170 (1990), *reprinted in* 1990 U.S.C.C.A.N. 2017, 2875.

§ 13213(a)(2) (2) in subparagraph (B), by striking the final period and inserting a semicolon; and

§ 13213(a)(3) (3) by adding at the end the following new subparagraphs:

“(C) make or authorize an expenditure or obligation of funds required to be sequestered under section 252¹⁸²⁶ of the Balanced Budget and Emergency Deficit Control Act of 1985; or

“(D) involve either government in a contract or obligation for the payment of money required to be sequestered under section 252¹⁸²⁷ of the Balanced Budget and Emergency Deficit Control Act of 1985.”

§ 13213(b) (b) **LIMITATION ON VOLUNTARY SERVICES.** — Section 1342 of title 31, United States Code, is amended by inserting at the end the following: “As used in this section, the term ‘emergencies involving the safety of human life or the protection of property’ does not include ongoing, regular functions of government the suspension of which would not imminently threaten the safety of human life or the protection of property.”¹⁸²⁸

¹⁸²⁶ This reference, which stayed as it was in the Senate-passed version of the bill, should have been changed to “254” when the conference agreement changed the section covering reports and orders to section 254.

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¹⁸²⁸ The statement of managers accompanying the conference report on the Budget Enforcement Act explains the changes made by this subsection:

The conference report also makes conforming changes to title 31 of the United States Code to make clear . . . that ongoing, regular operations of the Government cannot be sustained in the absence of appropriations, except

(continued...)

§ 13214 **SEC. 13214. THE BYRD RULE ON EXTRANE-
OUS MATTER IN RECONCILIATION.**

§ 13214(a) **(a) THE BYRD RULE ON EXTRANE-
OUS MATTER IN RECON-
CILIATION. — Section 20001 of the Consolidated Omnibus
Budget Reconciliation Act of 1985 is amended —**

§ 13214(a)(1) **(1) in subsection (a) —**

§ 13214(a)(1)(A) **(A) by inserting after "(a)" the following: "IN**

¹²²⁹(...continued)

in limited circumstances. These changes guard against what the conferees believe might be an overly broad interpretation of an opinion of the Attorney General issued on January 16, 1981, regarding the authority for the continuance of Government functions during the temporary lapse of appropriations, and affirm that the constitutional power of the purse resides with Congress.

H.R. CONF. REP. No. 101-964, 101st Cong., 2d Sess. 1170 (1990), *reprinted in* 1990 U.S.C.C.A.N. 2017, 2875.

The managers referred to the opinion of Attorney General Benjamin R. Civiletti of January 16, 1981, regarding the authority of the Government to continue certain functions during a temporary lapse in appropriations. The opinion interpreted section 1342 of title 31, which stated (in relevant part):

§ 1342. Limitation on voluntary services

An officer or employee of the United States Government or of the District of Columbia government may not accept voluntary services for either government or employ personal services exceeding that authorized by law *except for emergencies involving the safety of human life or the protection of property.*

31 U.S.C. § 1342 (1988) (emphasis added) (subsequently amended).

The opinion spun the highlighted language out to cover more than it would appear to cover on its face. To qualify for the exception (according to the opinion) "there must be some reasonable and articulable connection between the function to be performed and the safety of human life or the protection of property." In sum, the President would have been able to rely on this opinion to continue many public safety functions without seeking appropriations from Congress. The change limits the President more closely to the language of section 1342.