

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 authority<sup>653</sup> for which is not provided in advance by appropriation Acts<sup>654</sup> to offset such forgone receipts;

<sup>653</sup>(...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.

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

<sup>654</sup> 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.