

ered as obligations in the same manner as provided for similar orders or contracts placed with commercial manufacturers or private contractors, and the appropriations shall remain available for the payment of the obligations so created as in the case of contracts or orders with commercial manufacturers or private contractors. (June 5, 1920, ch. 240, 41 Stat. 975; July 1, 1922, ch. 259, 42 Stat. 812; June 2, 1937, ch. 293, 50 Stat. 245.)

§ 35. Contracts for materials, etc., exceeding \$10,000; representations and stipulations.

(c) That no person employed by the contractor in the manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of the contract shall be permitted to work in excess of eight hours in any one day or in excess of forty hours in any one week: *Provided*, That the provisions of this subsection shall not apply to any employer who shall have entered into an agreement with his employees pursuant to the provisions of paragraphs 1 or 2 of subsection (b) of section 207 of Title 29. (As amended May 13, 1942, ch. 306, 56 Stat. 277.)

AMENDMENTS

1942—Act May 13, 1942, cited to text, added proviso in subsec. (c).

§ 40. Same; exceptions; modification of contracts; variations; overtime; suspension of representations and stipulations.

STABILIZATION OF WAGES AND SALARIES

Executive order stabilizing wages and salaries as inapplicable to sections 35-45 of this title, see title VI, par. 1, of Ex. Ord. No. 9250 set out in note under section 901 of Appendix to Title 50, War.

§ 49. Defense employment; honorable discharge from land and naval forces as equivalent to birth certificate.

No defense contractor shall deny employment, on account of failure to produce a birth certificate, to any person who submits, in lieu of a birth certificate, an honorable discharge certificate or certificate issued in lieu thereof from the Army, Navy, Marine Corps, or Coast Guard of the United States, unless such honorable discharge certificate shows on its face that such person may have been an alien at the time of its issuance. (June 22, 1942, ch. 432, § 1, 56 Stat. 375.)

CROSS REFERENCES

War and defense contracts generally, see sections 1151 et seq. of Appendix to Title 50, War.

§ 50. Same; "defense contractor" defined.

As used in sections 49 and 50 of this title the term "defense contractor" means an employer engaged in—

(1) the production, maintenance, or storage of arms, armament, ammunition, implements of war, munitions, machinery, tools, clothing, food, fuel, or any articles or supplies, or parts or ingredients of any articles or supplies; or

(2) the construction, reconstruction, repair, or installation of a building, plant, structure, or facility;

under a contract with the United States or under any contract which the President, the Secretary of War, the Secretary of the Navy, or the United States Maritime Commission certifies to such employer to be necessary to the national defense. (June 22, 1942, ch. 432, § 2, 56 Stat. 376.)

CROSS REFERENCES

War and defense contracts generally, see sections 1151 et seq. of Appendix to Title 50, War.

Chapter 2.—TERMINATION OF WAR CONTRACTS  
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### § 101. Declaration of policy.

The Congress declares that the objectives of this chapter are—

- (a) to facilitate maximum war production during the war, and to expedite reconversion from war production to civilian production as war conditions permit;
- (b) to assure to prime contractors and subcontractors, small and large, speedy and equitable final settlement of claims under terminated war contracts, and adequate interim financing until such final settlement;
- (c) to assure uniformity among Government agencies in basic policies and administration with respect to such termination settlements and interim financing;
- (d) to facilitate the efficient use of materials, manpower, and facilities for war and civilian purposes by providing prime contractors and subcontractors with notice of termination of their war contracts as far in advance of the cessation of work thereunder as is feasible and consistent with the national security;
- (e) to assure the expeditious removal from the plants of prime contractors and subcontractors of termination inventory not to be retained or sold by the contractor;
- (f) to use all practicable methods compatible with the foregoing objectives to prevent improper payments and to detect and prosecute fraud. (July 1, 1944, ch. 358, § 1, 58 Stat. 649.)

#### SHORT TITLE

Section 27 of act July 1, 1944, cited to text, provided: "This Act [sections 101-125 of this title] may be cited as the 'Contract Settlement Act of 1944'."

#### SEPARABILITY PROVISIONS

Section 26 of act July 1, 1944, cited to text, provided: "If any provision of this Act [sections 101-125 of this title], or the application of such provision to any person or circumstance, is held invalid, the remainder of this Act [sections 101-125 of this title] or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby."

#### CROSS REFERENCES

Renegotiation of war contracts, see section 1191 of Appendix to Title 50, War.

Repricing of war contracts, see section 1192 of Appendix to Title 50, War.

Surplus Property Act of 1944, see sections 1611-1646 of Appendix to Title 50, War.

War Mobilization and Reconversion Act of 1944, see sections 1651-1678 of Appendix to Title 50, War.

### § 102. Surveillance by Congress; reports to Congress.

(a) To assist the Congress in appraising the administration of this chapter and in developing such amendments or related legislation as may further be necessary to accomplish the objectives of this chapter, the appropriate committees of the Senate and the House of Representatives shall study each report submitted to the Congress under this chapter and shall otherwise maintain continuous surveillance of the operations of the Government agencies under this chapter.

(b) In January, April, July, and October of each year, the Director shall submit to the Senate and House of Representatives a quarterly progress report on the exercise of his duties and authority under this chapter, the status of contract terminations, termination settlements, and interim financing and such other pertinent information on the administration of this chapter as will enable the Congress to evaluate its administration and the need for amendments and related legislation. (July 1, 1944, ch. 358, § 2, 58 Stat. 649.)

#### CROSS REFERENCES

Separability provisions and short title, see note under section 101 of this title.

### § 103. Definitions.

As used in this chapter—

(a) The term "prime contract" means any contract, agreement, or purchase order heretofore or hereafter entered into by a contracting agency and connected with or related to the prosecution of the war; and the term "prime contractor" means any holder of one or more prime contracts.

(b) The term "subcontract" means any contract, agreement, or purchase order heretofore or hereafter entered into to perform any work, or to make or furnish any material to the extent that such work or material is required for the performance of any one or more prime contracts or of any one or more other subcontracts; and the term "subcontractor" means any holder of one or more subcontracts.

(c) The term "war contract" means a prime contract or a subcontract; and the term "war contractor" means any holder of one or more war contracts.

(d) The terms "termination", "terminate", and "terminated" refer to the termination or cancellation, in whole or in part, of work under a prime contract for the convenience or at the option of the

Government (except for default of the prime contractor) or of work under a subcontract for any reason except the default of the subcontractor.

(e) The term "material" includes any article, commodity, machinery, equipment, accessory, part, component, assembly, work in process, maintenance, repair, and operating supplies, and any product of any kind.

(f) The term "Government agency" means any executive department of the Government, or any administrative unit or subdivision thereof, any independent agency or any corporation owned or controlled by the United States in the executive branch of the Government, and includes any contracting agency.

(g) The term "contracting agency" means any Government agency which has been or hereafter may be authorized to make contracts pursuant to section 611 of Appendix to Title 50, and includes the Reconstruction Finance Corporation and any corporation organized pursuant to sections 601-617 of Title 15, the Smaller War Plants Corporation, and the War Production Board.

(h) The term "termination claim" means any claim or demand by a war contractor for fair compensation for the termination of any war contract and any other claim under a terminated war contract, which regulations prescribed under this chapter authorize to be asserted and settled in connection with any termination settlement.

(i) The term "interim financing" includes advance payments, partial payments, loans, discounts, advances, and commitments in connection therewith, and guaranties of loans, discounts, advances, and commitments in connection therewith and any other type of financing made in contemplation of or related to termination of war contracts.

(j) The term "Director" means the Director of Contract Settlement.

(k) The term "person" means any individual, corporation, partnership, firm, association, trust, estate, or other entity.

(l) The term "termination inventory" means any materials (including a proper part of any common materials), properly allocable to the terminated portion of a war contract, except any machinery or equipment subject to a separate contract specifically governing the use or disposition thereof.

(m) The term "final and conclusive", as applied to any settlement, finding, or decision, means that such settlement, finding, or decision shall not be reopened, annulled, modified, set aside, or disregarded by any officer, employee, or agent of the United States or in any suit, action, or proceeding except as provided in this chapter. (July 1, 1944, ch. 358, § 3, 58 Stat. 650.)

<sup>1</sup> So in the original. Probably should read "cancellation."

**§ 104. Office of Contract Settlement; director, appointment, compensation, tenure, powers and duties; deputy director; employment of personnel; publication of orders and regulations.**

(a) There is hereby established the Office of Contract Settlement which shall be headed by the Direc-

tor of Contract Settlement. The Director shall be appointed by the President, by and with the advice and consent of the Senate, and shall receive compensation at the rate of \$12,000 per year, and shall serve for a term of two years.

(b) In order to insure uniform and efficient administration of the provisions of this chapter, the Director, subject to such provisions, by general orders or general regulations—

(1) shall prescribe policies, principles, methods, procedures, and standards to govern the exercise of the authority and discretion and the performance of the duties and functions of all Government agencies under this chapter; and

(2) may require or restrict the exercise of any such authority and discretion, or the performance of any such duty or function, to such extent as he deems necessary to carry out the provisions of this chapter.

(c) The exercise of any authority or discretion and the performance of any duty or function, conferred or imposed on any Government agency by this chapter, shall be subject to such orders and regulations prescribed by the Director pursuant to subsection (b) of this section. Each Government agency shall carry out such orders and regulations of the Director expeditiously, and shall issue such regulations with respect to its operations and procedures as may be necessary to carry out the policies, principles, methods, procedures, and standards prescribed by the Director. Any Government agency may issue such further regulations not inconsistent with the general orders or regulations of the Director as it deems necessary or desirable to carry out the provisions of this chapter.

(d) The Director may, within the limits of funds which may be made available, employ and fix the compensation of necessary personnel in accordance with the provisions of the civil-service laws and sections 661-663, 664-673, and 674 of Title 5 and make expenditures for supplies, facilities, and services necessary for the performance of his functions under this chapter. Without regard to the provisions of the civil-service laws and sections 661-663, 664-673, and 674 of Title 5, he may appoint a Deputy Director and may employ certified public accountants, qualified cost accountants, industrial engineers, appraisers, and other experts, and fix their compensation, and contract with certified public accounting firms and qualified firms of engineers in the discharge of the duties imposed upon him and in furtherance of the objectives and policies of this chapter. The Director shall perform the duties imposed upon him through the personnel and facilities of the contracting agencies and other established Government agencies, to the extent that this does not interfere with the function of the Director to insure uniform and efficient administration of the provisions of this chapter.

(e) All orders and regulations prescribed by the Director or any Government agency under this chapter shall be published in the Federal Register. (July 1, 1944, ch. 358, § 4, 58 Stat. 651.)

**DIRECTOR**

On August 1, 1944, President Roosevelt sent to the Senate the nomination of Robert H. Hinckley, of Utah, to be Director of Contract Settlement, for a term of two years, and he was confirmed by the Senate on August 6, 1944.

**CROSS REFERENCES**

Additional duties of Director and delegation of authority by him, see sections 121 and 123 of this title.

**§ 105. Contract Settlement Advisory Board; composition; duties.**

There is hereby created a Contract Settlement Advisory Board, with which the Director shall advise and consult. The Board, shall be composed of the Director, who shall act as its Chairman, and of the Secretary of War, the Secretary of the Navy, the Secretary of the Treasury, the Chairman of the Maritime Commission, the Administrator of the Foreign Economic Administration, the chairman of the board of directors of the Reconstruction Finance Corporation, the Chairman of the War Production Board, the chairman of the board of directors of the Smaller War Plants Corporation, and the Attorney General or any alternate or representative designated by any of them. The Director shall request other Government agencies to participate in the deliberations of the Board whenever matters specially affecting them are under consideration. (July 1, 1944, ch. 358, § 5, 58 Stat. 651.)

**§ 106. Basis for settlement of termination claims—(a) Priority to private contractors.**

It is the policy of the Government, and it shall be the responsibility of the contracting agencies and the Director, to provide war contractors with speedy and fair compensation for the termination of any war contract, in accordance with and subject to the provisions of this chapter, giving priority to contractors whose facilities are privately owned or privately operated. Such fair compensation for the termination of subcontracts shall be based on the same principles as compensation for the termination of prime contracts.

**(b) Establishment of methods and standards.**

Each contracting agency shall establish methods and standards, suitable to the conditions of various war contractors, for determining fair compensation for the termination of war contracts on the basis of actual, standard, average, or estimated costs, or of a percentage of the contract price based on the estimated percentage of completion of work under the terminated contract, or on any other equitable basis, as it deems appropriate. To the extent that such methods and standards require accounting, they shall be adapted, so far as practicable, to the accounting systems used by war contractors, if consistent with recognized commercial accounting practice.

**(c) Conclusiveness of settlement.**

Any contracting agency may settle all or any part of any termination claim under any war contract by agreement with the war contractor, or by determination of the amount due on the claim or part thereof without such agreement, or by any combination of these methods. Where any such settlement is made

by agreement, the settlement shall be final and conclusive, except (1) to the extent otherwise agreed in the settlement; (2) for fraud; (3) upon renegotiation to eliminate excessive profits under section 1191 of Appendix to Title 50, unless exempt or exempted under such section; or (4) by mutual agreement before or after payment. Where any such settlement is made by determination without agreement, it shall likewise be final and conclusive, subject to the same exceptions as if made by agreement, unless the war contractor appeals or brings suit in accordance with section 113 of this title: *Provided*, That no settlement agreement hereunder involving payment to a war contractor of an amount in excess of \$50,000 (or such lesser amount as the Director may from time to time determine) shall become binding upon the Government until the agreement has been reviewed and approved by a settlement review board of three or more members established by the contracting agency in the bureau, division, regional or district office, or other unit of the contracting agency authorized to make such settlement, or in the event of disapproval by the settlement review board, unless approved by the head of such bureau, division, regional or district office, or other unit. Failure of the settlement review board to act upon any settlement within thirty days after its submission to the board shall operate as approval by the board. The sole function of settlement review boards shall be to determine the over-all reasonableness of proposed settlement agreements from the point of view of protecting the interests of the Government. In determining, for purposes of this subsection, whether review of any settlement agreement is required because of the amounts involved, no deduction shall be made on account of credits for property chargeable to the Government or for advance or partial payments, but amounts payable under such settlement agreement for completed articles or work at the contract price and for the discharge of the termination claims of subcontractors shall be deducted.

**(d) Allowable costs.**

Except as hereinafter provided, the methods and standards established under subsection (b) of this section for determining fair compensation for termination claims which are not settled by agreement shall be designed to compensate the war contractor fairly for the termination of the war contract, taking into account—

(1) the direct and indirect manufacturing, selling and distribution, administrative and other costs and expenses incurred by the war contractor which are reasonably necessary for the performance of the war contract and properly allocable to the terminated portion thereof under recognized commercial accounting practices; and

(2) reasonable costs and expenses of settling termination claims of subcontractors related to the terminated portion of the war contract; and

(3) reasonable accounting, legal, clerical, and other costs and expenses incident to termination and settlement of the terminated war contract; and

(4) reasonable costs and expenses of removing, preserving, storing and disposing of termination inventories; and

(5) such allowance for profit on the preparations made and work done for the terminated portion of the war contract as is reasonable under the circumstances; and

(6) interest on the termination claim in accordance with subsection (f) of this section; and

(7) the contract price and all amounts otherwise paid or payable under the contract.

The following shall not be included as elements of cost:

(i) Losses on other contracts, or from sales or exchanges of capital assets, fees and other expenses in connection with reorganization or recapitalization, antitrust or Federal income-tax litigation, or prosecution of Federal income-tax claims or other claims against the Government (except as provided in paragraph (3) above); losses on investments; provisions for contingencies; and premiums on life insurance where the contractor is the beneficiary.

(ii) The expense of conversion of the contractor's facilities to uses other than the performance of the contract.

(iii) Expenses due to the negligence or willful failure of the contractor to discontinue with reasonable promptness the incurring of expenses after the effective date of the termination notice.

(iv) Costs incurred in respect to facilities, materials, or services purchased or work done in excess of the reasonable quantitative requirements of the entire contract.

The failure specifically to mention in this subsection any item of cost is not intended to imply that it should be allowed or disallowed. The Director may interpret the provisions of this subsection (d) and may provide for the inclusion or exclusion of other costs in accordance with recognized commercial accounting practice.

Where the small size of claims or the nature of production or performance or other factors make it impracticable to apply the principles stated in this subsection (d) to any class of settlements which are subject to this subsection (d), the contracting agencies may establish alternative methods and standards for determining fair compensation for that class of termination claims. The aggregate amount of compensation allowed in accordance with this subsection (excluding amounts allowed under paragraphs (3) and (4) above) shall not exceed the total contract price reduced by the amount of payments otherwise made or to be made under the contract.

**(e) Settlement by agreement.**

In order to carry out the objectives of this chapter, termination claims shall be settled by agreement to the maximum extent feasible and the methods and standards established under subsection (b) of this section shall be designed to facilitate such settlements. To the extent that he deems it practicable to do so without impeding expeditious settlements, the Director shall require the contracting agencies to take into account the factors enumerated in subsection (d) above in establishing methods

and standards for determining fair compensation in the settlement of termination claims by agreement.

**(f) Interest.**

Each contracting agency shall allow and pay interest on the amount due and unpaid from time to time on any termination claim under a prime contract at the rate of 2½ per centum per annum for the period beginning thirty days after the date fixed for termination and ending with the date of final payment, except that (1) if the prime contractor unreasonably delays the settlement of his claim, interest shall not accrue for the period of such delay, (2) if interest for the period after termination on any advance payment or loan, made or guaranteed by the Government, has been waived for the benefit of the contractor, the amount of the interest so waived allocable to the terminated contract or the terminated part of the contract shall be deducted from the interest otherwise payable hereunder, and (3) if after delivery of findings by a contracting agency, the contractor appeals or sues as provided in section 113 of this title, interest shall not accrue after the thirtieth day following the delivery of the findings on any amount allowed by such findings, unless such amount is increased upon such appeal or suit. In approving, ratifying, authorizing, or making termination settlements with subcontractors, each contracting agency shall allow interest on the termination claim of the subcontractor on the same basis and subject to the same conditions as are applicable to a prime contractor.

**(g) Amendment of contracts.**

Where any war contract does not provide for or provides against such fair compensation for its termination, the contracting agency, either before or after its termination, shall amend such war contract by agreement with the war contractor, or shall authorize, approve, or ratify an amendment of such war contract by the parties thereto, to provide for such fair compensation. (July 1, 1944, ch. 358, § 6, 58 Stat. 652.)

**EFFECTIVE DATE**

Retroactive effect of this section, see section 124 (a) of this title.

**§ 107. Settlement of subcontractors' claims—(a) Conclusiveness of settlement.**

Where, in connection with the settlement of any termination claim by a contracting agency, any war contractor makes settlements of the termination claims of his subcontractors, the contracting agency shall limit or omit its review of such settlements with subcontractors to the maximum extent compatible with the public interest. Any contracting agency (1) may approve, ratify, or authorize such settlements with subcontractors upon such evidence, terms, and conditions as it deems proper; (2) shall vary the scope and intensity of its review of such settlements according to the reliability of the war contractor, the size, number, and complexity of such claims, and other relevant factors; and (3) shall authorize war contractors to make such settlements with subcontractors without review by the contracting agency, whenever the reliability of the

war contractor, the amount or nature of the claims, or other reasons appear to the contracting agency to justify such action. Any such settlement of a subcontract approved, ratified, or authorized by a contracting agency shall be final and conclusive as to the amount due to the same extent as a settlement under subsection (c) of section 106 of this title, and no war contractor shall be liable to the United States on account of any amounts paid thereon except for his own fraud.

**(b) Supervision of payments to war contractors.**

Whenever any contracting agency is satisfied of the inability of a war contractor to meet his obligations it shall exercise supervision or control over payments to the war contractor on account of termination claims of subcontractors of such war contractor to such extent and in such manner as it deems necessary or desirable for the purpose of assuring the receipt of the benefit of such payments by the subcontractors.

**(c) Group settlements.**

The Director shall prescribe policies and methods for the settlement as a group, or otherwise, by any contracting agency of some or all of the termination claims of a war contractor under war contracts with one or more (1) bureaus or divisions within a contracting agency, (2) contracting agencies, or (3) prime contractors and subcontractors, to the extent he deems such action necessary or desirable for expeditious and equitable settlement of such claims. After consulting with the contracting agencies concerned, the Director may provide for assigning any war contractor to a contracting agency for such settlement, and such agency shall have authority to settle, on behalf of any other contracting agency, some or all of the termination claims of such war contractor.

**(d) Direct settlement by contracting agency.**

Any contracting agency may settle directly termination claims of subcontractors to the extent that it deems such action necessary or desirable for the expeditious and equitable settlement of such claims. In making such termination settlements any contracting agency may discharge the claim of the subcontractor by payment or may purchase such claim, and may agree to assume, or indemnify the subcontractor against, any claims by any person in connection with such claim or the termination settlement. Any contracting agency undertaking to settle the termination claim of any subcontractor shall deliver to the subcontractor and the war contractor liable to him written notice stating its acceptance of responsibility for settling his claim and the conditions applicable thereto, which may include the release, or assignment to the contracting agency, of his claim against the war contractor liable to him; upon consent thereto by the subcontractor, the Government shall become liable for the settlement of his claims upon the conditions specified in the notice.

**(e) Amount of settlement.**

Any contracting agency may make settlements with subcontractors in accordance with any of the

provisions of this chapter without regard to any limitation on the amount payable by the Government to the prime contractor.

**(f) Equitable payments.**

If any contracting agency determines that in the circumstances of a particular case equity and good conscience require fair compensation for the termination of a war contract to be paid to a subcontractor who has been deprived of and cannot otherwise reasonably secure such fair compensation, the contracting agency concerned may pay such compensation to him although such compensation already has been included and paid as part of a settlement with another war contractor. (July 1, 1944, ch. 358, § 7, 58 Stat. 654.)

**§ 108. Interim financing—(a) Prime contractors.**

It is the policy of the Government, and it shall be the responsibility of the contracting agencies and the Director, in accordance with and subject to the provisions of this chapter, to provide war contractors having any termination claim or claims, pending their settlement, with adequate interim financing, within thirty days after proper application therefor.

**(b) Method of financing; amounts payable.**

Each contracting agency shall, to the greatest extent it deems practicable, make available interim financing through loans and discounts, and commitments and guaranties in connection therewith, in contemplation of or related to termination of war contracts. Where interim financing is made by advance payments or partial payments, it shall, insofar as practicable, consist of the following:

(1) An amount equal to 100 per centum of the amount payable, at the contract price, on account of acceptable items completed prior to the termination date under the terms of the contract, or completed thereafter with the approval of the contracting agency; plus

(2) An amount equal to 90 per centum of the cost of raw materials, purchased parts, supplies, direct labor, and manufacturing overhead allocable to the terminated portion of the war contract; plus

(3) A reasonable percentage of other allowable costs, including administrative overhead, allocable to the terminated portion of the war contract not included in the foregoing; plus

(4) Such additional amounts, if any, as the contracting agency deems necessary to provide the war contractor with adequate interim financing.

(5) In lieu of the costs referred to in clauses (2) and (3) of this subsection, where a detailed ascertainment of such costs is not suitable to the conditions of any war contractor and is apt to cause delay in the obtaining of interim financing by him, that portion of such interim financing shall be equal to an amount not greater than 90 per centum of the estimated costs which are allocable to the terminated part or parts of the war contract or group of war contracts, and are ascertained in accordance with such methods and standards as the Director shall prescribe.

(6) There shall be deducted from the amount of such interim financing any unliquidated balances of

advance and partial payments theretofore made to such war contractor, which are allocable to the terminated war contract or the terminated part of the war contract.

**(c) Evidence to support financing.**

The Director shall prescribe (1) the types of estimates, certificates, or other evidence to be required to support such interim financing; (2) the terms and conditions upon which such interim financing shall be made including the use of standard forms for agreements with respect to such interim financing to the extent practicable; (3) the classes of cases in which such interim financing shall be refused; and (4) such methods of supervision and control over such interim financing as he deems necessary or desirable to assure adequate and speedy interim financing to subcontractors of the war contractor.

**(d) Penalty for overstatement of claims.**

In case of an overstatement by any war contractor of the amount due on his termination claim or claims in connection with any interim financing under this chapter, such contractor shall pay to the United States, as a penalty, an amount equal to 6 per centum of the amount of the overstatement, but the Director may suspend or modify any such penalty if in his opinion the imposition thereof would be inequitable. Any penalty may be deducted from any amounts due the war contractor upon such termination claim or claims, or otherwise, or may be collected from the war contractor by suit. The obligation to pay any penalty imposed and to repay any interim financing made or assumed by the United States under this chapter shall constitute a debt due to the United States within the meaning of section 191 of Title 31.

**(e) Advance payments as part of termination settlement.**

Any contracting agency may allow any advance payments, previously made or authorized by it in connection with the performance of a war contract, to be used for payments and expenses related to the termination settlement of such contract, upon such terms and conditions as it deems necessary or appropriate to protect the interest of the Government.

**(f) Liquidation of loans, etc., prior to final settlement.**

No interim financing shall be made by any contracting agency under this chapter unless the terms of such financing provide for the liquidation by the war contractor of all loans, discounts, advance payments, or partial payments thereunder not later than the time of final payment of the amount due on the settlement of the termination claim or claims of the war contractor involved or such time thereafter as the contracting agency deems necessary for the liquidation of such interim financing in an orderly manner.

**(g) Settlement of claims; validation of prior financing.**

Any contracting agency may settle, upon such terms and conditions as it deems proper, any claim or obligation due by or to the Government arising from or related to any interim financing made, acquired, or authorized by it. Any interim financing made, acquired, or authorized by any contracting

agency before the effective date of this chapter shall be valid to the extent it would be authorized under the provisions of this chapter if made after its effective date. (July 1, 1944, ch. 358, § 8, 58 Stat. 655.)

**§ 109. Advance or partial payments to subcontractors; excessive payments, interest, liability of war contractor.**

(a) Any contracting agency may make advance or partial payments to any war contractor on account of any termination claim or claims, and may authorize, approve, or ratify any such advance or partial payments by any war contractor to his subcontractors, upon such conditions as it deems necessary to insure compliance with the provisions of subsection (b) of this section. Each contracting agency shall make final payments from time to time on partial settlements or on settlements fixing a minimum amount due before complete settlement, or as tentative payments before any settlement of the claim or claims.

(b) Where any such advance or partial payment is made to any war contractor by any contracting agency or by another war contractor under this section, except a final payment on a partial settlement, any amount in excess of the amount finally determined to be due on the termination claim shall be treated as a loan from the Government to the war contractor receiving it, and shall be payable upon demand together with a penalty computed at the rate of 6 per centum per annum, for the period from the date such excess advance or partial payment is received to the date on which such excess is repaid or extinguished. Where the advance or partial payment was made by a war contractor and authorized, approved, or ratified by any contracting agency, the war contractor making it shall not be liable for any such excess payment in the absence of fraud on his part and shall receive payment or credit from the Government for the amount of such excess payment. (July 1, 1944, ch. 358, § 9, 58 Stat. 657.)

**§ 110. Guarantee of loans, advances, etc., for financing termination of contracts.**

(a) Any contracting agency is authorized—

(1) to enter into contracts with any Federal Reserve bank, or other public or private financing institution, guaranteeing such financing institution against loss of principal or interest on loans, discounts, or advances or on commitments in connection therewith, which such financing institution may make to any war contractor or to any person who is or has been engaged in performing any operation deemed by such contracting agency to be connected with or related to war production, for the purpose of financing such war contractor or other person in connection with or in contemplation of the termination of one or more such war contracts or operations; and

(2) to make, enter into contracts to make, or to participate with any Government agency, any Federal Reserve bank or public or private financing institution in making loans, discounts, or advances, or

commitments in connection therewith, for the purpose of financing any such war contractor or other person in connection with or in contemplation of the termination of such war contracts or operations.

(b) Any such loan, discount, advance, guaranty, or commitment in connection therewith may be secured by assignment of, or covenants to assign, some or all of the rights of such war contractor or other person in connection with the termination of such war contracts or operations, or in such other manner as the contracting agency may prescribe.

(c) Subject to such regulations as the Board of Governors of the Federal Reserve System may prescribe with the approval of the Director, any Federal Reserve bank is authorized to act, on behalf of the contracting agencies, as fiscal agent of the United States in carrying out the purposes of this chapter.

(d) This section shall not limit or affect any authority of any contracting agency, under any other statute, to make loans, discounts, or advances, or commitments in connection therewith or guaranties thereof. (July 1, 1944, ch. 358, § 10, 58 Stat. 657.)

**EFFECTIVE DATE**

Retroactive effect of this section, see section 124 (a) of this title.

**§ 111. Advance notice of termination.**

(a) In order to facilitate the efficient use of materials, manpower, and facilities for war and civilian purposes, each contracting agency—

(1) shall provide its prime contractors with notice of termination of their prime contracts as far in advance of the cessation of work thereunder as is feasible and consistent with the national security without permitting unneeded production or performance;

(2) shall establish procedures whereby prime contractors shall provide affected subcontractors with immediate notice of termination; and

(3) shall permit the continuation of some or all of the work under a terminated prime contract whenever the agency deems that such continuation will benefit the Government or is necessary to avoid substantial injury to the plant or property.

(b) Whenever a contracting agency hereafter directs a prime contractor to cease or suspend all or a substantial part of the work under a prime contract, without terminating the contract, then, unless the contract provides otherwise, (1) the contracting agency shall compensate the contractor for reasonable costs and expenses resulting from such cessation or suspension, and (2) if the cessation or suspension extends for thirty days or more, the contractor may elect to treat it as a termination by delivering written notice of his election so to do to the contracting agency, at any time before the contracting agency directs the prime contractor to resume work under the contract.

(c) The Director shall have no authority under this chapter to regulate or control the classes of contracts to be terminated by the contracting agencies. (July 1, 1944, ch. 358, § 11, 58 Stat. 658.)

**§ 112. Removal and storage of materials—(a) Termination inventory.**

It is the policy of the Government, upon the termination of any war contract, to assure the expeditious removal from the plant of the war contractor of the termination inventory not to be retained or sold by the war contractor.

**(b) Statement on material of inventory.**

Any war contractor may submit to the contracting agency concerned or to any other Government agency designated by the Director, one or more statements showing the materials which such war contractor claims to be termination inventory under one or more war contracts and desires to have removed by the Government. Such statements shall be prepared in such form and detail, shall be submitted in such manner, through the prime contractor or otherwise, and shall be supported by such certificates or other data, as may be prescribed under this chapter.

**(c) Removal and storage by government agency.**

Within sixty days after the submission of any such statement by a war contractor, or such shorter period as may be prescribed under this chapter, or within such longer period as the war contractor may agree, the Government agency concerned (1) shall arrange, upon such terms and conditions as may be agreed, for the storage by the war contractor on his own premises or elsewhere of all such claimed termination inventory which the war contractor does not retain or dispose of, except any part which may be determined not to be allocable to the terminated war contract or contracts, or (2) shall remove from the plant or plants of the war contractor all of such claimed termination inventory not retained, disposed of, or stored by the war contractor or determined not to be allocable to the terminated war contract or contracts.

**(d) Removal and storage by war contractor.**

Upon the failure of the Government so to arrange for storage by the war contractor or to remove any termination inventory within the period specified under subsection (c) of this section, the war contractor, subject to regulations prescribed under this chapter, may remove some or all of such termination inventory from his plant or plants and may store it on his own premises or elsewhere for the account and at the risk and expense of the Government, using reasonable care for its transportation and preservation. If any war contractor intends so to remove any claimed termination inventory, he shall deliver to the Government agency concerned written notice of the date fixed for removal and a statement showing the quantities and condition of the materials so to be removed, certified on behalf of the war contractor to have been prepared in accordance with a concurrent physical inventory of such materials. Such notice and statement shall be delivered at least twenty days in advance of the date fixed for removal and may be delivered before or after the expiration of the period specified under subsection (c) of this section. If the Government agency fails to check such materials, at or before the time of their removal by the war contractor, a certificate of the

war contractor specifying the materials shown on such statement which were so removed, and filed with the Government agency concerned within thirty days after the date fixed for removal, shall constitute prima facie evidence against the United States as to the quantities and condition of the materials so removed, and the fact of their removal.

**(e) Acquisition by government agency of inventory material; liability.**

Notwithstanding any other provisions of law, but subject to subsection (h) of this section, the contracting agency concerned or the Director, or any Government agency designated by him, on behalf of the United States, may, by the exercise of any contract rights or otherwise, acquire and take possession of any termination inventory of any war contractor, and any materials removed by the Government or stored for its account under subsections (c) and (d) of this section, whether or not such materials are finally determined not to constitute termination inventory. With respect to any such materials, the Government shall be liable to any war contractor concerned only for their return to such war contractor or for their disposal value at the time of their removal or for the proceeds realized by the Government from their disposal, at the election of the Government agency concerned, unless the Government agency and the war contractor agree or have agreed on a different basis. Any amount so paid or payable to a war contractor for materials allocable to a terminated war contract shall be credited against the termination claim under such contract but shall not otherwise affect the amount due on the claim, unless the Government agency concerned and the war contractor agree or have agreed otherwise. Any materials to which the Director takes title under this section shall be delivered for disposal to any appropriate Government agency authorized to make such disposal.

**(f) Postponement or delay of termination settlement.**

No contracting agency shall postpone or delay any termination settlement beyond the period specified in subsection (c) of this section for the purpose of awaiting disposal by the war contractor or the Government of any termination inventory reported in accordance with subsection (b) of this section.

**(g) Government-owned machinery.**

Whenever any war contractor no longer requires, for the performance of any war contract, any Government-owned machinery, tools, or equipment installed in his plant for the performance of one or more war contracts, the Government agency concerned, upon written demand by the war contractor, and within sixty days after such demand or such other period as may be prescribed under this chapter, and upon such conditions as may be so prescribed, shall remove or provide for the removal of such machinery, tools, or equipment from such plant, unless the Government agency concerned and the war contractor, by facilities contract or otherwise, have made or make other provisions for the retention, storage, maintenance, or disposition of such machinery, tools or equipment. The Government agency concerned

may waive or release on behalf of the United States any obligation of the war contractor with respect to such machinery, tools, or equipment upon such terms and conditions as the agency deems appropriate. Upon the failure of the Government so to remove or provide for removal of any such machinery, tools, or equipment, the war contractor, subject to regulations prescribed under this chapter, may remove all or part of such machinery, tools, or equipment from his plant and may store it on his own premises or elsewhere, for the account and at the risk and expense of the Government, using reasonable care for its transportation and preservation.

**(b) Limitation on government acquisition of inventories.**

Nothing in this chapter shall limit or affect the authority of the War Department, Navy Department, or Maritime Commission, respectively, to take over any termination inventories and to retain them for their use for any purpose or to dispose of such termination inventories for the purpose of war production, or to authorize any war contractor to retain or dispose of such termination inventories for the purpose of war production.

**(i) Removal and storage by war contractor at own risk.**

Nothing in this section shall be construed to prevent the removal and storage of any termination inventory by any war contractor, at his own risk, at any time after termination of any war contract to which it is allocable. (July 1, 1944, ch. 358, § 12, 58 Stat. 658.)

**EFFECTIVE DATE**

Retroactive effect of pars. (b)-(e), see section 124 (a) of this title.

**§ 113. Appeals—(a) failure to settle claims by agreement; preparation of findings; notice to war contractor.**

Whenever the contracting agency responsible for settling any termination claim has not settled the claim by agreement or has so settled only a part of the claim, (1) the contracting agency at any time may determine the amount due on such claim or such unsettled part, and prepare written findings indicating the basis of the determination, and deliver a copy of such findings to the war contractor, or (2) if the termination claim has been submitted in the manner and substantially the form prescribed under this chapter, the contracting agency, upon written demand by the war contractor for such findings, shall determine the amount due on the claim or unsettled part and prepare and deliver such findings to the war contractor within ninety days after the receipt by the agency of such demand. In preparing such findings, the contracting agency may require the war contractor to furnish such information and to submit to such audits as may be reasonably necessary for that purpose. Within thirty days after the delivery of any such findings, the contracting agency shall pay to the war contractor at least 90 per centum of the amount thereby determined to be due, after deducting the amount of any outstanding interim financing applicable thereto.

**(b) Rights of war contractor.**

Whenever any war contractor is aggrieved by the findings of a contracting agency on his claim or part thereof or by its failure to make such findings in accordance with subsection (a) of this section, he may, at his election—

(1) appeal to the Appeal Board in accordance with subsection (d) of this section; or

(2) bring suit against the United States for such claim or such part thereof, in the Court of Claims or in a United States district court, in accordance with subsection (20) of section 41 of Title 28, except that, if the contracting agency is the Reconstruction Finance Corporation, or any corporation organized pursuant to sections 601–617 of Title 15, or any corporation owned or controlled by the United States, the suit shall be brought against such corporation in any court of competent jurisdiction in accordance with existing law.

**(c) Procedure.**

Any proceeding under subsection (b) of this section shall be governed by the following conditions:

(1) When any contracting agency provides a procedure within the agency for protest against such findings or for other appeal therefrom by the war contractor, the war contractor, before proceeding under subsection (b) of this section, (i) in his discretion may resort to such procedure within the time specified in his contract or, if no time is specified, within thirty days after the delivery to him of the findings; and (ii) shall resort to such procedure for protest or other appeal to the extent required by the Director, but failure of the contracting agency to act on any such required protest or appeal within thirty days shall operate as a refusal by the agency to modify its findings. Any revision of the findings by the contracting agency, upon protest or appeal within the agency, shall be treated as the findings of the agency for the purpose of appeal or suit under subsection (b) of this section. Notwithstanding any contrary provision in any war contract, no war contractor shall be required to protest or appeal from such findings within the contracting agency except in accordance with this paragraph.

(2) A war contractor may initiate proceedings in accordance with subsection (b) of this section (i) within ninety days after delivery to him of the findings by the contracting agency, or (ii) in case of protests or appeal within the agency, within ninety days after the determination of such protest or appeal, or (iii) in case of failure to deliver such findings, within one year after his demand therefor. If he does not initiate such proceedings within the time specified, he shall be precluded thereafter from initiating any proceedings in accordance with subsection (b) of this section, and the findings of the contracting agency shall be final and conclusive, or if no findings were made, he shall be deemed to have waived such termination claim.

(3) Notwithstanding any contrary provision in any war contract, the Appeal Board or court shall not be bound by the findings of the contracting

agency, but shall treat such findings as prima facie correct, and the burden shall be on the war contractor to establish that the amount due on his claim or part thereof exceeds the amount allowed by the findings of the contracting agency. Whenever the Appeal Board or court finds that the war contractor failed to negotiate in good faith with the contracting agency for the settlement of his claim or part thereof before appeal or suit thereon, or failed to furnish to the agency any information reasonably requested by it regarding his termination claim or part thereof, or failed to prosecute diligently any protest or appeal required to be taken under subsection (c) (1) (ii) of this section, the Appeal Board or court (i) may refuse to receive in evidence any information not submitted to the contracting agency; (ii) may deny interest on the claim or part thereof for such period as it deems proper; or (iii) may remand the case to the contracting agency for further proceedings upon such terms as the Appeal Board or court may prescribe. Unless the case is remanded, the Appeal Board or court shall enter the appropriate award or judgment on the basis of the law and facts, and may increase or decrease the amount allowed by the findings of the contracting agency.

(4) Any such proceedings shall not affect the authority of the contracting agency concerned to make a settlement of the termination claim, or any part thereof, by agreement with the war contractor at any time before such proceedings are concluded.

**(d) Appeal board.**

(1) The Director shall appoint an Appeal Board, composed of such number of members as he deems necessary from time to time to hear appeals under this section. The members of the Appeal Board shall be qualified and experienced attorneys, engineers, accountants, or persons possessing sufficient business experience or professional skill. He shall, without regard to the provisions of the civil-service laws and sections 661–663, 664–673 and 674 of Title 5, appoint and fix the compensation and term of office of the members of the Appeal Board: *Provided*, That no member shall receive compensation at a rate in excess of \$10,000 per annum nor be appointed for a term longer than two years.

(2) Panels of one or more members may act for the Appeal Board and shall sit from time to time in localities throughout the country, reasonably convenient for war contractors having proceedings before them. A panel of one member of the Appeal Board may hear any appeal whenever (i) the amount in controversy in the appeal is \$25,000 or less; or (ii) the amount in controversy exceeds \$25,000, but the war contractor taking the appeal fails to demand a panel of three members at the time of filing his appeal. If the war contractor is aggrieved by the decision of the Appeal Board or panel (other than an order remanding the case to the contracting agency under subsection (c) (3) (iii) of this section), then within ninety days after such decision he may bring suit on the claim or unsettled part thereof in accord-

ance with subsection (b) (2) of this section. Such suit shall proceed as if no appeal had been taken under subsection (b) of this section. All costs of such suit shall be borne by the war contractor unless the court awards such contractor an amount in excess of that allowed by the Appeal Board or panel. Upon failure of the war contractor so to sue within such period, the decision of the Appeal Board or panel shall be final and conclusive.

(3) The Director or, if authorized by him, the Appeal Board shall prescribe the practice and procedure to govern proceedings for the Appeal Board. The Appeal Board or any panel thereof shall have power to administer oaths to witnesses and to compel by subpoena the attendance of witnesses, and the production of books, papers, documents, and other records. All provisions of law (including penalties and provisions relating to self-incrimination) applicable with respect to subpoenas issued under sections 41-46 and 47-58 of Title 5 shall be applicable with respect to subpoenas issued by the Appeal Board insofar as such period, the decision of the Appeal Board or sions of this chapter.

**(e) Arbitration.**

The contracting agency responsible for settling any claim and the war contractor asserting the claim, by agreement, may submit all or any part of the termination claim to arbitration, without regard to the amount in dispute. Such arbitration proceedings shall be governed by the provisions of sections 1-15 of Title 9 to the same extent as if authorized by an effective agreement in writing between the Government and the war contractor. Any such arbitration award shall be final and conclusive upon the United States to the same extent as a settlement under subsection (c) of section 106 of this title, but shall not be subject to approval by any settlement review board.

**(f) Conclusiveness of decisions.**

Whenever any dispute exists between any war contractor and a subcontractor regarding any termination claim, either of them, by agreement with the other, may submit the dispute—

(1) to the Appeal Board in accordance with subsection (d) of this section;

(2) to a contracting agency for mediation or arbitration whenever authorized by the agency or required by the Director.

Any award or decision in such proceedings shall be final and conclusive as to the parties so submitting any such dispute and shall not be questioned by the United States in settling any related claim, in the absence of fraud or collusion. (July 1, 1944, ch. 358, § 13, 58 Stat. 660.)

**EFFECTIVE DATE**

Retroactive effect of this section, see section 124 (a) of this title.

**§ 114. Court of claims—(a) Appointment of auditors and commissioners.**

For the purpose of expediting the adjudication of termination claims, the Court of Claims is authorized

to appoint not more than ten auditors and not more than twenty commissioners in addition to those provided for by sections 269 and 270 of Title 28, and the provisions of such sections shall apply to such additional commissioners in all respects as if they had been appointed thereunder without limitation as to nature of duties which they may be called upon to perform.

**(b) Procedure.**

The Court of Claims, on motion of either of the parties, or on its own motion, may summon any and all persons with legal capacity to be sued to appear as a party or parties in any suit or proceeding of any nature whatsoever pending in said court to assert and defend their interests, if any, in such suits or proceedings, within such period of time prior to judgment as the Court of Claims shall prescribe. If the name and address of any such person is known or can be ascertained by reasonable diligence, and if he resides within the jurisdiction of the United States, he shall be summoned to appear by personal service; but if any such person resides outside of the jurisdiction of the United States, or is unknown, or if for any other good and sufficient reason appearing to the court personal service cannot be had, he may be summoned by publication, under such rules as the court may adopt, together with a copy of the summons mailed by registered mail to such person's last known address. The Court of Claims may, upon motion of the Attorney General, in any suit or proceeding where there may be any number of persons having possible interests therein, notify such persons to appear to assert and defend such interests. Upon failure so to appear, any and all claims or interests in claims of any such person against the United States, in respect of the subject matter of such suit or proceeding, shall forever be barred and the court shall have jurisdiction to enter judgment pro confesso upon any claim or contingent claim asserted on behalf of the United States against any person who, having been duly served with summons, fails to respond thereto, to the same extent and with like effect as if such person had appeared and had admitted the truth of all allegations made on behalf of the United States. Upon appearance by any person pursuant to any such summons or notice, the case as to such person shall, for all purposes, be treated as if an independent proceeding had been instituted by such person pursuant to section 250 of Title 28, and as if such independent proceeding had then been consolidated, for purposes of trial and determination, with the case in respect of which the summons or notice was issued, except that the United States shall not be heard upon any counterclaims, claims for damages or other demands whatsoever against such person, other than claims and contingent claims for the recovery of money hereafter paid by the United States in respect of the transaction or matter which constitutes the subject matter of such case, unless and until such person shall assert therein a claim, or an interest in a claim, against the United States, and the Court of Claims shall have

jurisdiction to adjudicate, as between any and all adverse claimants, their respective several interests in any matter in suit and to award several judgments in accordance therewith.

**(c) Jurisdiction.**

The jurisdiction of the Court of Claims shall not be affected by this chapter except to the extent necessary to give effect to this chapter, and no person shall recover judgment on any claim, or on any interest in any claim, in said court which such person would not have had a right to assert in said court if this section had not been enacted. (July 1, 1944, ch. 358, § 14, 58 Stat. 663.)

**§ 115. Personal financial liability of contracting officers.**

(a) Whenever any payment is made from Government funds to any war contractor or other person as an advance, partial or final payment on any termination claim, or pursuant to any loan, guaranty, or agreement for the purchase of any loan, or any commitment in connection therewith, entered into by the Government, no officer or other Government agent authorizing or approving such payment or settlement, or certifying the voucher for such payment, or making the payment in accordance with a duly certified voucher, shall be personally liable for such payment, in the absence of fraud on his part. In settling the accounts of any disbursing officer the General Accounting Office shall allow any such disbursements made by him notwithstanding any other provisions of law.

(b) For the purpose of making termination settlements or interim financing any Government agency is authorized to rely upon such certificates of war contractors as it deems proper and to permit war contractors and other persons to rely upon such certificates without financial liability in the absence of fraud on their part. (July 1, 1944, ch. 358, § 15, 58 Stat. 664.)

**§ 116. Functions of General Accounting Office; certification of fraudulent settlements to Department of Justice; reports to Congress.**

(a) Any other provision of law notwithstanding, the function of the General Accounting Office with respect to any termination settlement made, authorized, ratified, or approved by a contracting agency shall be confined to determining, after final settlement, (1) whether the settlement payments to the war contractor were made in accordance with the settlement, and (2) whether the records transmitted to it, or other information, warrant a reasonable belief that the settlement was induced by fraud. For this purpose the General Accounting Office shall have the authority to examine any records maintained by any contracting agency or by any war contractor relating to any termination settlement.

(b) Whenever the Comptroller General is convinced that any settlement was induced by fraud, he shall so certify, together with all the facts relating thereto, to the Department of Justice, to the Director, and to the contracting agency concerned. Upon

receipt of such certificate (1) the Department of Justice shall make an investigation to determine whether such settlement was induced by fraud, and (2) until the Department of Justice notifies the contracting agency that in its opinion the facts do not support the belief that the settlement was induced by fraud, the contracting agency, by set-off or otherwise, may withhold, from amounts owing to the war contractor by the United States under such settlement or otherwise, the amount of the settlement, or the portion thereof, which, in the opinion of the Comptroller General as stated in his certificate, was affected by the fraud. In any such case the Department of Justice shall take such action as it deems appropriate to recover payments made to such war contractor. The General Accounting Office shall not suspend credit to any disbursing officer on any disbursements made by him under such settlement in the absence of fraud on his part.

(c) The Comptroller General may investigate the settlements completed by each contracting agency for the purpose of reporting to the Congress from time to time on—

(1) whether the settlement methods and procedures employed by such agency are of a kind and type designed to result in expeditious and fair settlements in accordance with and subject to the provisions of this chapter and the orders and regulations of the Director;

(2) whether such methods and procedures are followed by such agency with care and efficiency; and

(3) whether such methods and procedures adequately protect the interest of the Government.

If in any such report the Comptroller General shall find that the settlement methods and procedures fail to meet the foregoing standards, he shall make suggestions and recommendations to such agency for the improvement of such methods and procedures and to the Congress for any additional legislation needed to carry out the policies of this chapter. At least thirty days before filing any such report with the Congress, the Comptroller General shall deliver a copy thereof to the agency concerned and the Director, and shall forward to the Congress together with such report any comments of such agency with respect thereto.

(d) The jurisdiction of the Comptroller General of the United States shall not be affected by this chapter except to the extent necessary to give effect to the specific provisions thereof. (July 1, 1944, ch. 358, § 16, 58 Stat. 664.)

**§ 117. Defective, informal, and quasi contracts.**

(a) Where any person has arranged to furnish or furnished to a contracting agency or to a war contractor any materials, services, or facilities related to the prosecution of the war, without a formal contract, relying in good faith upon the apparent authority of an officer or agent of a contracting agency, written or oral instructions, or any other request to proceed from a contracting agency, the contracting agency shall pay such person fair compensation therefor.

(b) Whenever any formal or technical defect or omission in any prime contract, or in any grant of authority to an officer or agent of a contracting agency who ordered any materials, services, and facilities might invalidate the contract or commitment, the contracting agency (1) shall not take advantage of such defect or omission; (2) shall amend, confirm, or ratify such contract or commitment without consideration in order to cure such defect or omission; and (3) shall make a fair settlement of any obligation thereby created or incurred by such agency, whether expressed or implied, in fact or in law, or in the nature of an implied or quasi contract.

(c) Where a contracting agency fails to settle by agreement any claim asserted under this section, the dispute shall be subject to the provisions of section 113 of this title.

(d) The Director shall require each contracting agency to formalize all such obligations and commitments within such period as the Director deems appropriate. (July 1, 1944, ch. 358, § 17, 58 Stat. 665.)

**§ 118. Administration—(a) Records, forms, reports.**

The Director shall establish policies for such supervision and review within the contracting agencies of termination settlements and interim financing as he deems necessary and appropriate to prevent and detect fraud and to assure uniformity in administration and to provide for expeditious settlements. For this purpose he shall prescribe (1) such records to be prepared by the contracting agencies and by war contractors as he deems necessary in connection with such settlements and interim financing; and (2) the records in connection therewith to be transmitted to the General Accounting Office. He shall seek to reduce the amount of record keeping, reporting, and accounting in connection with the settlement of termination claims and interim financing to the minimum compatible with the reasonable protection of the public interest. Each contracting agency shall prescribe forms for use by war contractors in connection with termination settlements and interim financing to the extent it deems necessary and feasible.

**(b) Preparation of information and reports.**

The Director shall require the Government agencies performing functions under this chapter to prepare such information and reports regarding terminations of war contracts, settlements of termination claims, and interim financing, as he deems necessary to assist him in appraising their operations or to assist him or other Government agencies in performing their functions under this chapter, and may prescribe the terms and conditions upon which such information and reports shall be made available to other Government agencies. The Director may require any Government agency to furnish such information under its control as he deems necessary for the performance of his functions under this chapter, but any such agency, in its discretion, may furnish any such information deemed by it to

affect the national security only to the Director himself.

**(c) Advance notice on cut-backs.**

The Director, by regulation, shall provide for making available to any interested Government agency such advance notice and other information on cut-backs in war production resulting from terminations or failures to renew or extend war contracts, as he deems necessary and appropriate.

**(d) Investigations.**

The Director shall make such investigations as he deems necessary or desirable in connection with termination settlements and interim financing. For this purpose he may utilize the facilities of any existing agencies and if he determines that the facilities of existing agencies are inadequate, he may establish a unit in the Office of Contract Settlement to supplement and facilitate the work of existing agencies. He shall report to the Department of Justice any information received by him indicating any fraudulent practices, for appropriate action.

**(e) Certification of fraudulent settlements to Department of Justice.**

Whenever any contracting agency or the Director believes that any settlement was induced by fraud, the agency or Director shall report the facts to the Department of Justice. Thereupon, (1) the Department of Justice shall make an investigation to determine whether such settlement was induced by fraud, and (2) until the Department of Justice notifies the contracting agency that in its opinion the facts do not support the belief that the settlement was induced by fraud, the contracting agency, by set-off or otherwise, may withhold, from amounts owing to the war contractor by the United States under such settlement or otherwise, the amount of the settlement, or the portion thereof, which, in its opinion, was affected by the fraud. In any such case the Department of Justice shall take such action as it deems appropriate to recover payments made to such war contractor. (July 1, 1944, ch. 358, § 18, 58 Stat. 666.)

**§ 119. Preservation of records; frauds; jurisdiction; prosecution of claims by Government agents; penalties.**

It shall be unlawful for any person willfully to secrete, mutilate, obliterate, or destroy, or cause to be secreted, mutilated, obliterated, or destroyed—

(i) any records of a war contractor relating to the negotiation, award, performance, payment, interim financing, cancelation or other termination, or settlement of a war contract of \$25,000 or more; or

(ii) any records of a war contractor and any purchaser relating to any disposition of termination inventory in which the consideration received by any war contractor or any Government agency is \$5,000 or more.

until (1) five years after such disposition of termination inventory by such war contractor or Government agency, or (2) five years after the final settle-

ment of such war contract, or (3) five years after the termination of hostilities in the present war as proclaimed by the President or by a concurrent resolution of the two Houses of Congress, whichever applicable period is longer.

As used in this subsection, the term "records" includes, but is not limited to, books, ledgers, checks and check stubs, pay-roll data, vouchers, memoranda, correspondence, inspection reports and certificates. Any corporation violating any provision of this subsection shall be fined not more than \$50,000 and any natural person violating any provision of this subsection shall be fined not more than \$10,000, or imprisoned for not more than five years, or both: *Provided, however,* That the Director, by regulation, may authorize the destruction of such records upon such terms and conditions as he deems appropriate, which may include the making and retaining of photographs or microphotographs. Photographs or microphotographs of any records made in compliance with such regulations of the Director shall have the same force and effect as the originals thereof would have and shall be treated as originals for the purpose of admissibility in evidence.

Every person who makes or causes to be made, or presents or causes to be presented to any officer, agent, or employee of any Government agency any claim, bill, receipt, voucher, statement, account, certificate, affidavit, or deposition, knowing the same to be false, fraudulent, or fictitious or knowing the same to contain or to be based on any false, fraudulent, or fictitious statement or entry or who shall cover up or conceal any material fact, or who shall use or engage in any other fraudulent trick, scheme, or device, for the purpose of securing or obtaining, or aiding to secure or obtain, for any person any benefit, payment, compensation, allowance, loan, advance, or emolument from the United States or any Government agency in connection with the termination, cancelation, settlement, payment, negotiation, renegotiation, performance, procurement, or award of a contract with the United States or with any other person, and every person who enters into an agreement, combination, or conspiracy so to do, (1) shall pay to the United States an amount equal to 25 per centum of any amount thereby sought to be wrongfully secured or obtained but not actually received, and (2) shall forfeit and refund any such benefit, payment, compensation, allowance, loan, advance, and emolument received as a result thereof and (3) shall in addition pay to the United States the sum of \$2,000 for each such act, and double the amount of any damage which the United States may have sustained by reason thereof, together with the costs of suit.

The several district courts of the United States, the District of Columbia, the several district courts of the Territories of the United States, within whose jurisdictional limits the person, or persons, doing or committing such act, or any one of them, resides or shall be found, shall, wheresoever such act may

have been done or committed, have full power and jurisdiction to hear, try, and determine such suit, and such person or persons as are not inhabitants of or found within the district in which suit is brought may be brought in by order of the court to be served personally or by publication or in such other reasonable manner as the court may direct.

The provisions of section 80 of Title 18 shall apply to any statement, representation, bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition made or used or caused to be made or used for any purpose under this chapter or under any regulations pursuant to this chapter.

It shall be unlawful for any person employed in any Government agency, including commissioned officers assigned to duty in such agency, during the period such person is engaged in such employment or service, to prosecute, or to act as counsel, attorney, or agent for prosecuting, any claim against the United States, or for any such person within two years after the time when such employment or service has ceased, to prosecute, or to act as counsel, attorney, or agent for prosecuting, any claim against the United States involving any subject matter directly connected with which such person was so employed or performed duty. Any person violating any provision of this subsection shall be fined not more than \$10,000 or imprisoned for not more than one year, or both. (July 1, 1944, ch. 358, § 19 (a), (c-e), 58 Stat. 667.)

**§ 120. Powers and duties of contracting agencies—**  
**(a) Limitation.**

Each contracting agency shall have authority, notwithstanding any provisions of law other than contained in this chapter, (1) to make any contract necessary and appropriate to carry out the provisions of this chapter; (2) to amend by agreement any existing contract, either before or after notice of its termination, on such terms and to such extent as it deems necessary and appropriate to carry out the provisions of this chapter; and (3) in settling any termination claim, to agree to assume, or indemnify the war contractor against, any claims by any person in connection with such termination claims or settlement. This subsection shall not limit or affect in any way any authority of any contracting agency under sections 601-622 of Appendix to Title 50, or under any other statute.

**(b) Evidence required; conclusiveness of determinations.**

Any contracting agency may prescribe the amount and kind of evidence required to identify any person as a war contractor, or any contract, agreement, or purchase order as a war contract for any of the purposes of this chapter. Any determination so made that any person is a war contractor, or that any contract, agreement, or purchase order is a war contract, shall be final and conclusive for any of the purposes of this chapter.

**(c) Appropriations.**

There are hereby authorized to be appropriated such sums as may be necessary for administering the provisions of this chapter.

**(d) Validation of prior settlements.**

All policies and procedures relating to termination of war contracts, termination settlements, and interim financing, prescribed by the Director of War Mobilization or any contracting agency, in effect upon the effective date of this chapter, and not inconsistent with this chapter, shall remain in full force and effect unless and until superseded by the Director in accordance with this chapter, or by regulations of the contracting agency not inconsistent with this chapter or the policies prescribed by the Director.

**(e) Impairment of contract.**

Nothing in this chapter shall be deemed to impair or modify any war contract or any term or provision of any war contract or any assignment of any claim under a war contract, without the consent of the parties thereto, if the war contract, or the term, provision, or assignment thereof, is otherwise valid.

**(f) Aid to war contractors.**

Any contracting agency may authorize or direct its officers and employees, as a part of their official duties, to advise, aid, and assist war contractors in preparing and presenting termination claims, in obtaining interim financing, and in related matters, to such extent as it deems desirable. Such advice, aid, or assistance shall not constitute a violation of section 198 of Title 18 or of any other law, provided the officer or employee does not receive therefor benefit or compensation of any kind, directly or indirectly, from any war contractor.

**(g) Duties of Smaller War Plants Corporation.**

The Smaller War Plants Corporation is hereby directed—

(1) to disseminate information among small business concerns with respect to interim financing, termination settlements, removal and storage of termination inventories pursuant to the provisions of this Act and the regulations of the Director; and

(2) to assist small business concerns in connection with the securing of interim financing and the preparation of applications for such interim financing, the effecting of termination settlements, and the removal and storage of termination inventories, and to make interim loans and guaranties, in order to assure that small business concerns receive fair and equitable treatment from prime contractors and intermediate subcontractors in connection with the termination of war contracts. (July 1, 1944, ch. 358, § 20, 58 Stat. 668.)

**§ 121. Director; additional duties.**

In addition to his other functions under this chapter, the Director shall—

(a) promote the training of personnel for termination settlement and interim financing by contracting agencies, war contractors, and financing institutions;

(b) collaborate with the Smaller War Plants Corporation in protecting the interests of smaller war contractors in obtaining fair and expeditious termination settlements and interim financing;

(c) promote decentralization of the administration of termination settlements and interim financing by fostering delegation of authority within contracting agencies and to war contractors, to the extent he deems necessary and feasible; and

(d) consult with war contractors through advisory committees or such other methods as he deems appropriate. (July 1, 1944, ch. 358, § 21, 58 Stat. 669.)

**§ 122. Use of appropriated funds.**

Any contracting agency is authorized—

(a) to use for interim financing, the payment of claims, and for any other purposes authorized in this chapter any funds which have heretofore been appropriated or allocated or which may hereafter be appropriated or allocated to it, or which are or may become available to it, for such purposes or for the purposes of war production or war procurement;

(b) to use any such funds appropriated, allocated, or available to it for expenditures for or in behalf of any other contracting agency for the purposes authorized in this chapter; and

(c) to determine by agreement, joint estimate, or any other method authorized by the Director, the part of any expenditure made pursuant to subsection (b) hereof to be paid by each contracting agency concerned and to make transfers of funds between such contracting agencies accordingly. Transfers of funds between appropriations carried upon the books of the Treasury shall be made by the Secretary of the Treasury in accordance with joint requests of the contracting agencies involved. (July 1, 1944, ch. 358, § 22, 58 Stat. 670.)

**§ 123. Delegation of authority by Director.**

(a) The Director may delegate any authority and discretion conferred upon him by this chapter to any Deputy Director, and may delegate such authority and discretion, upon such terms and conditions as he may prescribe, to the head of any Government agency to the extent necessary to the handling and solution of problems peculiar to that agency.

(b) The head of any Government agency may delegate any authority and discretion conferred upon him or his agency by or pursuant to this chapter to any officer, agent, or employee of such agency or to any other Government agency, and may authorize successive redelegations of such authority and discretion.

(c) Any two or more Government agencies may exercise jointly any authority and discretion conferred upon each of them individually by or pursuant to this chapter.

(d) Nothing in this chapter shall prevent the Director from exercising any authority conferred upon him by any other statute. (July 1, 1944, ch. 358, § 23, 58 Stat. 670.)

**§ 124. Effective date; applicability to lend-lease contracts.**

(a) This chapter shall become effective twenty days after the date of its enactment. With the exception of the provisions of paragraphs (b), (c), (d), and (e)

of section 112 of this title, and of sections 106-110, and 113 of this title, this chapter shall be applicable in the case of any terminated war contract which has been finally settled at or before the effective date of this chapter.

(b) Nothing in this chapter shall limit or affect any authority conferred by sections 411-419 of Title 22, or Acts supplemental thereto. (July 1, 1944, ch. 358, § 24, 58 Stat. 670.)

**§ 125. Exemption of certain contracts outside continental United States or in Alaska.**

Subject to policies prescribed by the Director, any contracting agency may exempt from some or all of

the provisions of this chapter (a) any war contract made or to be performed outside the continental limits of the United States or in Alaska, or (b) any termination inventory situated outside of the continental limits of the United States or in Alaska, or (c) any modification of a war contract pursuant to its terms for the purpose of changing plans or specifications applicable to the work without substantially reducing its extent. (July 1, 1944, ch. 358, § 25, 58 Stat. 670.)

**CROSS REFERENCES**

Separability provisions and short title, see note under section 101 of this title.