par. (1) designation before “Whenever possible” was executed by striking it out before “Whenever practicable” to reflect the probable intent of Congress. Former pars. (2) to (4) of subsec. (a) redesignated subsecs. (b), (e), and (c), respectively.

Subsec. (b), Pub. L. 116–283, §1834(c)(2)(B), (4), after redesignation of section 2307(b) of this title as subsec. (a) of this section, redesignated par. (2) of subsec. (a) as subsec. (b), inserted heading, and substituted “section (a)” for “paragraph (1)”.

Subsec. (c), Pub. L. 116–283, §1834(c)(2)(D), (5), after redesignation of section 2307(b) of this title as subsec. (a) of this section, redesignated par. (4) of subsec. (a) as subsec. (c), inserted heading, redesignated subpars. (A) and (B) as pars. (1) and (2), respectively, and realigned margins, and, in par. (2), substituted “this chapter” for “this section”.

Subsec. (d), Pub. L. 116–283, §1834(1)(1), (6), redesignated subsec. (c) of section 2307 of this title as subsec. (d) of this section and substituted “section 3801 of this title” for “subsection (a)”.

Subsec. (e), Pub. L. 116–283, §1834(c)(2)(C), (7), after redesignation of section 2307(b) of this title as subsec. (a) of this section, redesignated par. (3) of subsec. (a) as subsec. (e), moved it to the end of the section, and inserted heading.

Statutory Notes and Related Subsidiaries

Effective Date

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

Regulations

Pub. L. 114–328, div. A, title VIII, §831(b), Dec. 23, 2016, 130 Stat. 2283, provided that: “Not later than 120 days after the date of the enactment of this Act [Dec. 23, 2016], the Secretary of Defense shall revise the Department of Defense Federal Acquisition Regulation Supplement to conform with section 2307(b) of title 10, United States Code [see 10 U.S.C. 3802(a)–(c), (e)], as amended by subsection (a).”

§ 3803. Security for advance payments

Advance payments made under section 3001 of this title may be made only if the contractor gives adequate security and after a determination by the head of the agency that to do so would be in the public interest. Such security may be in the form of a lien in favor of the United States on the property contracted for, on the balance in an account in which such payments are deposited, and on such of the property acquired for performance of the contract as the parties may agree. This lien is paramount to any other liens and is effective immediately upon the first advancement of funds without filing, notice, or any other action by the United States.


Editorial Notes

Codification


Amendments

2021—Pub. L. 116–283, §1834(d), transferred subsec. (d) of section 2307 of this title to this section, struck out subsec. (d) designation and heading “Security for Advance Payments” at beginning, and substituted “section 3801 of this title” for “subsection (a)”.

Statutory Notes and Related Subsidiaries

Effective Date

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed im-
implementation and applicability of existing law, see sec-
section 1801(d) of Pub. L. 116–283, set out as an Effective
Date of 2021 Amendment note preceding section 3001 of
this title.

PILOT PROGRAM TO INCENTIVIZE PROGRESS PAYMENTS

Stat. 322, provided that:

“(a) PILOT PROGRAM.—The Under Secretary of De-
fense for Acquisition and Sustainment shall establish and
implement a pilot program to incentivize con-
tractor performance by paying covered contractors a
progress payment rate that is up to 10 percent higher
than the customary progress payment rate on a con-
tract-by-contract basis.

“(b) INCENTIVE CRITERIA.—The Under Secretary shall
develop and establish clear and measurable criteria for
the payment to contractors of higher progress pay-
ments as described in subsection (a), including criteria
for qualifying for such payments and the amount of
such payments.

“(c) APPLICABILITY.—The Under Secretary shall apply
the criteria established under subsection (b) and any
associated incentive on a contract-by-contract basis
when determining whether to pay a contractor a higher
progress payment under the pilot program established
under subsection (a) and the amount of such payment.

“(d) PARTICIPATION VOLUNTARY.—Participation in the
pilot program established under subsection (a) shall be
on a voluntary basis.

“(e) NOTICE AND COMMENT.—The Under Secretary
shall issue the regulations implementing the pilot pro-
gram established under subsection (a) and establishing
the criteria required by subsection (b) after notice and
an opportunity for public comment of not more than 30
days.

“(f) REPORT.—Not later than September 30, 2024, and
annually thereafter, the Under Secretary for Acquisi-
tion and Sustainment shall submit to the Committees
on Armed Services of the Senate and House of Rep-
resentatives a report on the implementation and ac-
tivities of the pilot program established under sub-
section (a), including a comprehensive list of contrac-
tors that received increased progress payments under
the pilot program and the contracts with respect to
which such increased progress payments were made.

“(g) DEFINITIONS.—In this section:

“(1) COVERED CONTRACTOR.—The term ‘covered con-
tractor’ means a contractor of the Department of De-
fense that is eligible for progress payments under sec-
tion 3804 of title 10, United States Code.

“(2) CUSTOMARY PROGRESS PAYMENT RATE.—The
term ‘customary progress payment rate’ refers to the
rate of progress payments provided for under section
3804 of title 10, United States Code, and payable in ac-
cordance with the applicable provisions of the Fed-
eral Acquisition Regulation and the Defense Federal
Acquisition Regulation Supplement.

“(3) UNDER SECRETARY.—The term ‘Under Secre-
tary’ means the Under Secretary for Acquisition and
Sustainment.

“(h) SUNSET.—

“(1) IN GENERAL.—Except as provided by paragraph
(2), the authority to carry out the pilot program es-
tablished under subsection (a) shall terminate on
January 1, 2029.

“(2) EXISTING CONTRACTS.—Notwithstanding para-
graph (1), a contractor that the Under Secretary de-
termines under the pilot program established under
subsection (a) shall be paid a higher progress pay-
ment under such pilot program with respect to a con-
tract in effect as of the date described in paragraph
(1) shall receive such higher progress payments until
the earlier of—

“(A) the termination or expiration of the con-
tract; or

“(B) the date on which the contractor becomes in-
eligible for progress payments under such pilot program.”

WAIVERS OF CERTAIN CONDITIONS FOR PROGRESS PAY-
MENTS UNDER CERTAIN CONTRACTS DURING THE
COVID–19 NATIONAL EMERGENCY

Stat. 3793, provided that:

“(a) WAIVER OF PROGRESS PAYMENTS REQUIRE-
MENTS.—The Secretary of Defense may waive the re-
quirements of section 2307(e)(2) of title 10, United
States Code [now 10 U.S.C. 3804(b)], with respect to
progress payments for any undefinitized contractual
action (as defined in section 2326 of title 10, United
States Code [see 10 U.S.C. 3377(b)(1)]), in this section re-
ferred to as ‘UCA’) if the Secretary determines that the
waiver is necessary due to the national emergency for
the Coronavirus Disease 2019 (COVID–19) and—

“(1) a contractor performing the contract for which
a UCA is entered into has not already received in-
creased progress payments from the Secretary of De-
fense on contractual actions other than UCAs; or

“(2) a contractor performing the contract for which
a UCA is entered into, and that has received in-
creased progress payments from the Secretary of De-
fense on contractual actions other than UCAs, can
demonstrate that the contractor has promptly pro-
vided the amount of the increase to any subcon-
tractors (at any tier), small business concerns (as de-
scribed under section 3 of the Small Business Act (15 U.S.C.
632)), or suppliers of the contractor.

“(b) DEFINITION.—With respect to a UCA that not
been definitized for a period of 180 days beginning on
the date on which such UCA was entered into, the Sec-
retary of Defense may only use the waiver author-
ity described in subsection (a) if the Secretary (or a de-
signee at a level not below the head of a contracting ac-
tivity) provides a certification to the congressional de-
fense committees [Committees on Armed Services and
Appropriations of the Senate and the House of Rep-
resentatives] that such UCA will be definitized within
60 days after the date on which the waiver is issued.

“(c) SUBMISSION.—For each use of the waiver author-
ity under subsection (a), the Secretary of Defense shall
submit to the congressional defense committees an es-
timate of the amounts to be provided to subcontractors
(at any tier), small business concerns, and suppliers, in-
cluding an identification of the specific entities receiv-
ing an amount from an increased progress payment de-
scribed under such subsection (a).

§ 3805. Payments for commercial products and
commercial services

(a) TERMS AND CONDITIONS FOR PAYMENTS.—
Payments under section 3801 of this title for
commercial products and commercial services
may be made under such terms and conditions
as the head of the agency determines are appro-
priate or customary in the commercial market-
place and are in the best interests of the United
States.

(b) SECURITY FOR PAYMENTS.—The head of the
agency shall obtain adequate security for such
payments. If the security is in the form of a lien
in favor of the United States, such lien is para-
mount to all other liens and is effective imme-
diately upon the first payment, without filing,
notice, or other action by the United States.

(c) LIMITATION ON ADVANCE PAYMENTS.—Ad-

dance payments made under section 3801 of this
title for commercial products and commercial
services may include payments, in a total
amount of not more than 15 percent of the con-
tract price, in advance of any performance of
work under the contract.