

2008—Subsec. (c)(1)(G). Pub. L. 110-181, §2705(a)(1), added subpar. (G).

Subsec. (c)(2)(G). Pub. L. 110-181, §2705(a)(2), added subpar. (G).

Subsec. (f). Pub. L. 110-181, §2705(b), substituted “subparagraph (B) or (G) of paragraph (1) or subparagraph (B) or (G) of paragraph (2)” for “paragraph (1)(B) or (2)(B)” and inserted at end “In addition, the notice required in connection with a transfer under subparagraph (G) of paragraph (1) or subparagraph (G) of paragraph (2) shall include a certification that the amounts to be transferred from the Department of Defense Base Closure Account 2005 were specified in the conference report to accompany the most recent Military Construction Authorization Act.”

2006—Subsec. (c)(1)(B). Pub. L. 109-163, §2806(b), substituted “acquisition, improvement, or construction” for “acquisition or construction”.

Subsec. (e). Pub. L. 109-163, §2806(a), designated existing provisions as par. (1) and added par. (2).

2004—Subsec. (g). Pub. L. 108-375 struck out heading and text of subsec. (g). Text read as follows: “The total value in budget authority of all contracts and investments undertaken using the authorities provided in this subchapter shall not exceed—

“(1) \$850,000,000 for the acquisition or construction of military family housing; and

“(2) \$150,000,000 for the acquisition or construction of military unaccompanied housing.”

2003—Subsec. (c)(1)(F). Pub. L. 108-136, §2805(c)(1), added subpar. (F).

Subsec. (c)(2)(F). Pub. L. 108-136, §2805(c)(2), added subpar. (F).

Subsec. (f). Pub. L. 108-136, §1031(a)(51), inserted before period at end “or, if earlier, the end of the 14-day period beginning on the date on which a copy of the notice and justification is provided in an electronic medium pursuant to section 480 of this title”.

1999—Subsec. (c)(1)(E). Pub. L. 106-65, §2802(b)(1), added subpar. (E).

Subsec. (c)(2)(E). Pub. L. 106-65, §2802(b)(2), added subpar. (E).

1996—Subsec. (d)(1), (2). Pub. L. 104-201 inserted at end “The Secretary may also use for expenses of activities required in connection with the planning, execution, and administration of such contracts funds that are otherwise available to the Department of Defense for such types of expenses.”

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

Pub. L. 116-283, div. B, title XXVIII, §2813(b), Jan. 1, 2021, 134 Stat. 4327, provided that: “The requirements set forth in subparagraph (B) of section 2883(d)(1) of title 10, United States Code, as added by subsection (a), shall apply to appropriate legal documents entered into or renewed on or after the date of the enactment of this Act [Jan. 1, 2021] between the Secretary of a military department and a landlord regarding privatized military housing. In this subsection, the terms ‘landlord’ and ‘privatized military housing’ have the meanings given those terms in section 3001(a) of the Military Construction Authorization Act for Fiscal Year 2020 (division B of Public Law 116-92; 133 Stat. 1916; 10 U.S.C. 2821 note).”

EFFECTIVE DATE OF 2013 AMENDMENT

Amendment by Pub. L. 112-239 effective on the later of Oct. 1, 2013, or the date of the enactment of an Act authorizing funds for military construction for fiscal year 2014 (div. J of Pub. L. 113-76, approved Jan. 17, 2014), see section 2711(d) of Pub. L. 112-239, set out as a note under section 2701 of this title.

§ 2883a. Funds for housing allowances of members of the armed forces assigned to certain military family housing units

(a) **AUTHORITY TO TRANSFER FUNDS TO COVER HOUSING ALLOWANCES.**—During the fiscal year in

which a contract is awarded for the acquisition or construction of military family housing units under this subchapter that are not to be owned by the United States, the Secretary of Defense may transfer the amount determined under subsection (b) with respect to such housing from appropriations available for support of military housing for the armed force concerned for that fiscal year to appropriations available for pay and allowances of military personnel of that same armed force for that same fiscal year.

(b) **AMOUNT TRANSFERRED.**—The total amount authorized to be transferred under subsection (a) in connection with a contract under this subchapter may not exceed an amount equal to any additional amounts payable during the fiscal year in which the contract is awarded to members of the armed forces assigned to the acquired or constructed housing units as basic allowance for housing under section 403 of title 37 that would not otherwise have been payable to such members if not for assignment to such housing units.

(c) **TRANSFERS SUBJECT TO APPROPRIATIONS.**—The transfer of funds under the authority of subsection (a) is limited to such amounts as may be provided in advance in appropriations Acts.

(Added Pub. L. 107-107, div. B, title XXVIII, §2804(a), Dec. 28, 2001, 115 Stat. 1305.)

§ 2884. Reports

(a) **PROJECT REPORTS.**—(1) The Secretary concerned shall transmit to the appropriate committees of Congress a report describing—

(A) each contract or agreement for the acquisition or construction of family housing units or unaccompanied housing units under this subchapter; and

(B) each conveyance or lease proposed under section 2878 of this title.

(2) A report required by paragraph (1) shall include the following:

(A) A description of the contract, agreement, conveyance, or lease, including a summary of the terms of the contract, agreement, conveyance, or lease.

(B) A description of the authorities to be utilized in entering into the contract, agreement, conveyance, or lease and the intended method of participation of the United States in the contract, agreement, conveyance, or lease, including a justification of the intended method of participation.

(C) A statement of the scored cost of the contract, agreement, conveyance, or lease, as determined by the Office of Management and Budget.

(D) A statement of the United States funds required for the contract, agreement, conveyance, or lease and a description of the source of such funds, including a description of the specific construction, acquisition, or improvement projects from which funds were transferred to the Funds established under section 2883 of this title in order to finance the contract, agreement, conveyance, or lease.

(E) An economic assessment of the life cycle costs of the contract, agreement, conveyance, or lease, including an estimate of the amount of United States funds that would be paid over

the life of the contract, agreement, conveyance, or lease from amounts derived from payments of government allowances, including the basic allowance for housing under section 403 of title 37, if the housing affected by the project were fully occupied by military personnel over the life of the contract, agreement, conveyance, or lease.

(3)(A) In the case of a contract or agreement described in paragraph (1) proposed to be entered into with a private party, the report shall specify whether the contract or agreement will or may include a guarantee (including the making of mortgage or rental payments) by the Secretary to the private party in the event of—

(i) the closure or realignment of the installation for which housing will be provided under the contract or agreement;

(ii) a reduction in force of units stationed at such installation; or

(iii) the extended deployment of units stationed at such installation.

(B) If the contract or agreement will or may include such a guarantee, the report shall also—

(i) describe the nature of the guarantee; and

(ii) assess the extent and likelihood, if any, of the liability of the United States with respect to the guarantee.

(4) The report shall be submitted in an electronic medium pursuant to section 480 of this title not later than 21 days before the date on which the Secretary issues the contract solicitation or offers the conveyance or lease.

(b) ANNUAL REPORTS TO ACCOMPANY BUDGET MATERIALS.—The Secretary of Defense shall include each year in the materials that the Secretary submits to Congress in support of the budget submitted by the President pursuant to section 1105 of title 31 the following:

(1) A separate report on the expenditures and receipts during the preceding fiscal year covering each of the Funds established under section 2883 of this title, including a description of the specific construction, acquisition, or improvement projects from which funds were transferred and the privatization projects or contracts to which those funds were transferred. Each report shall also include, for each military department or defense agency, a description of all funds to be transferred to such Funds for the current fiscal year and the next fiscal year.

(2) A report setting forth, by armed force, the following:

(A) An estimate of the amounts of basic allowance for housing under section 403 of title 37 that will be paid, during the current fiscal year and the fiscal year for which the budget is submitted, to members of the armed forces living in housing provided under the authorities in this subchapter.

(B) The number of units of military family housing and military unaccompanied housing upon which the estimate under subparagraph (A) for the current fiscal year and the next fiscal year is based.

(3) A description of the plans for housing privatization activities to be carried out under this subchapter—

(A) during the fiscal year for which the budget is submitted; and

(B) during the period covered by the then-current future-years defense plan under section 221 of this title.

(4) A report identifying each family housing unit acquired or constructed under this subchapter that is used, or intended to be used, as quarters for a general officer or flag officer and for which the total operation, maintenance, and repair costs for the unit exceeded \$50,000. For each housing unit so identified, the report shall also include the total of such operation, maintenance, and repair costs.

(c) ANNUAL REPORT ON PRIVATIZATION PROJECTS.—The Secretary of Defense shall submit to the congressional defense committees a semi-annual report containing an evaluation of the status of oversight and accountability measures under section 2885 of this title for military housing privatization projects. To the extent each Secretary concerned has the right to attain the information described in this subsection, each report shall include, at a minimum, the following:

(1) An assessment of the backlog of maintenance and repair at each military housing privatization project where a significant backlog exists, including an estimation of the cost of eliminating the maintenance and repair backlog.

(2) If the debt associated with a privatization project exceeds net operating income or the occupancy rates for the housing units are below 75 percent for more than one year, the plan developed to mitigate the financial risk of the project.

(3) An assessment of any significant project variances between the actual and pro forma deposits in the recapitalization account, to specifically include any unique variances associated with litigation costs.

(4) The details of any significant withdrawals from a recapitalization account, including the purpose and rationale of the withdrawal and, if the withdrawal occurs before the normal recapitalization period, the impact of the early withdrawal on the financial health of the project.

(5) An assessment of the extent to which the information required to comply with paragraphs (1) through (4) has been requested by the Secretaries, but has not been made available.

(6) An assessment of cost assessed to members of the armed forces for utilities compared to utility rates in the local area.

(7) An assessment of the condition of housing units based on the average age of those units and the estimated time until recapitalization.

(8) An assessment of tenant complaints.

(9) An assessment of maintenance response times and completion of maintenance requests.

(10) An assessment of the dispute resolution process under section 2894(c) of this title, which shall include a list of dispute resolution cases by installation and the final outcome of each case.

(11) An assessment of overall customer service for tenants.

(12) A description of the results of any no-notice housing inspections conducted.

(13) The results of any resident surveys conducted.

(14) With regard to issues of lead-based paint in housing units, a summary of data relating to the presence of lead-based paint in such housing units, including the following by military department:

(A) The total number of housing units containing lead-based paint.

(B) A description of the reasons for the failure to inspect any housing unit that contains lead-based paint.

(C) A description of all abatement or mitigation efforts completed or underway in housing units containing lead-based paint.

(D) A certification as to whether military housing under the jurisdiction of the Secretary concerned complies with requirements relating to lead-based paint, lead-based paint activities, and lead-based paint hazards, as described in section 408 of the Toxic Substances Control Act (15 U.S.C. 2688).

(d) ANNUAL BRIEFINGS.—Not later than February 1 of each year, each Secretary concerned shall provide to the Committees on Armed Services of the Senate and House of Representatives a briefing on military housing privatization projects under the jurisdiction of the Secretary. Such briefing shall include, for the 12-month period preceding the date of the briefing, each of the following:

(1) The information described in paragraphs (1) through (14) of subsection (c) with respect to all military housing privatization projects under the jurisdiction of the Secretary.

(2) A review of any such project that is expected to require the restructuring of a loan, including any public or private loan.

(3) For any such project expected to require restructuring, a timeline for when such restructuring is expected to occur.

(4) Such other information as the Secretary determines appropriate.

(Added Pub. L. 104-106, div. B, title XXVIII, § 2801(a)(1), Feb. 10, 1996, 110 Stat. 550; amended Pub. L. 108-136, div. B, title XXVIII, § 2807, Nov. 24, 2003, 117 Stat. 1722; Pub. L. 108-375, div. B, title XXVIII, § 2806, Oct. 28, 2004, 118 Stat. 2122; Pub. L. 109-163, div. B, title XXVIII, § 2806(c), Jan. 6, 2006, 119 Stat. 3507; Pub. L. 110-417, div. B, title XXVIII, § 2805(b), (f), Oct. 14, 2008, 122 Stat. 4723, 4724; Pub. L. 111-383, div. A, title X, § 1075(h)(6), div. B, title XXVIII, § 2803(g), Jan. 7, 2011, 124 Stat. 4377, 4459; Pub. L. 112-239, div. B, title XXVIII, § 2803(b), Jan. 2, 2013, 126 Stat. 2148; Pub. L. 113-66, div. B, title XXVIII, § 2806, Dec. 26, 2013, 127 Stat. 1008; Pub. L. 113-291, div. A, title X, § 1071(f)(26), Dec. 19, 2014, 128 Stat. 3511; Pub. L. 115-91, div. B, title XXVIII, § 2801(d)(3), Dec. 12, 2017, 131 Stat. 1844; Pub. L. 116-92, div. B, title XXX, § 3016(d), Dec. 20, 2019, 133 Stat. 1929; Pub. L. 116-283, div. B, title XXVIII, §§ 2803(c), 2811(h), Jan. 1, 2021, 134 Stat. 4320, 4326; Pub. L. 117-263, div. B, title XXVIII, § 2823, Dec. 23, 2022, 136 Stat. 3001.)

Editorial Notes

AMENDMENTS

2022—Subsec. (d). Pub. L. 117-263 added subsec. (d).

2021—Subsec. (a)(1). Pub. L. 116-283, § 2803(c)(1)(A), substituted “The Secretary concerned” for “The Secretary of Defense” in introductory provisions.

Subsec. (a)(1)(A). Pub. L. 116-283, § 2803(c)(1)(B), inserted “or agreement” after “each contract” and struck out “that the Secretary proposes to solicit” after “unaccompanied housing units”.

Subsec. (a)(2). Pub. L. 116-283, § 2803(c)(2), substituted “A report required by paragraph (1)” for “For each proposed contract, conveyance, or lease described in paragraph (1), the report required by such paragraph” in introductory provisions and inserted “agreement,” after “contract,” wherever appearing.

Subsec. (a)(3). Pub. L. 116-283, § 2803(c)(3), inserted “or agreement” after “contract” wherever appearing.

Subsec. (c)(10). Pub. L. 116-283, § 2811(h), amended par. (10) generally. Prior to amendment, par. (10) read as follows: “An assessment of the dispute resolution process, which shall include a specific analysis of each denied tenant request to withhold rent payments and each instance in which the dispute resolution process resulted in a favorable outcome for the landlord.”

2019—Subsec. (c)(7) to (14). Pub. L. 116-92 added pars. (7) to (14).

2017—Subsec. (a)(4). Pub. L. 115-91 added par. (4) and struck out former par. (4) which read as follows: “The report shall be submitted not later than 30 days before the date on which the Secretary issues the contract solicitation or offers the conveyance or lease or, if earlier, a period of 20 days has elapsed from the date on which a copy of the report is provided in an electronic medium pursuant to section 480 of this title.”

2014—Subsec. (c). Pub. L. 113-291 substituted “an evaluation” for “on evaluation” in introductory provisions.

2013—Subsecs. (b), (c). Pub. L. 112-239 added subsecs. (b) and (c) and struck out former subsec. (b) which required the Secretary of Defense to provide annual reports to Congress.

Subsec. (c)(3). Pub. L. 113-66 inserted “, to specifically include any unique variances associated with litigation costs” before period at end.

2011—Subsec. (a)(4). Pub. L. 111-383, § 2803(g), inserted before period at end “or, if earlier, a period of 20 days has elapsed from the date on which a copy of the report is provided in an electronic medium pursuant to section 480 of this title”.

Subsec. (b)(1). Pub. L. 111-383, § 1075(h)(6), made technical correction to directory language of Pub. L. 109-163, § 2806(c)(2)(A). See 2006 Amendment note below.

2008—Subsec. (b)(7). Pub. L. 110-417, § 2805(b), added par. (7).

Subsec. (b)(8). Pub. L. 110-417, § 2805(f), added par. (8).

2006—Subsec. (a)(2)(D). Pub. L. 109-163, § 2806(c)(1), inserted before period “, including a description of the specific construction, acquisition, or improvement projects from which funds were transferred to the Funds established under section 2883 of this title in order to finance the contract, conveyance, or lease”.

Subsec. (b)(1). Pub. L. 109-163, § 2806(c)(2)(B), (C), substituted “covering each of the Funds” for “covering the Funds” and inserted before period at end “, including a description of the specific construction, acquisition, or improvement projects from which funds were transferred and the privatization projects or contracts to which those funds were transferred. Each report shall also include, for each military department or defense agency, a description of all funds to be transferred to such Funds for the current fiscal year and the next fiscal year”.

Pub. L. 109-163, § 2806(c)(2)(A), as amended by Pub. L. 111-383, § 1075(h)(6), substituted “A separate report” for “A report”.

2004—Subsec. (a)(2). Pub. L. 108-375, § 2806(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “The report shall describe the proposed contract, conveyance, or lease and the intended method of

participation of the United States in the contract, conveyance, or lease and provide a justification of such method of participation.”

Subsec. (b)(5), (6). Pub. L. 108-375, § 2806(b), added par. (5) and redesignated former par. (5) as (6).

2003—Subsec. (a)(2) to (4). Pub. L. 108-136, § 2807(a), designated second sentence of par. (2) as par. (4) and added par. (3).

Subsec. (b)(2). Pub. L. 108-136, § 2807(b)(1), inserted before period at end “”, and such recommendations as the Secretary considers necessary for improving the extent and effectiveness of the use of such authorities in the future”.

Subsec. (b)(3) to (5). Pub. L. 108-136, § 2807(b)(2), added pars. (3) to (5) and struck out former par. (3) which read as follows: “A description of the objectives of the Department of Defense for providing military family housing and military unaccompanied housing for members of the armed forces.”

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 111-383, div. A, title X, § 1075(h), Jan. 7, 2011, 124 Stat. 4377, provided that amendment by section 1075(h)(6) is effective as of Jan. 6, 2006, and as if included in Pub. L. 109-163 as enacted.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective Dec. 31, 2021, of provisions in subsecs. (b) and (c) of this section requiring submittal of reports to Congress, see section 1061 of Pub. L. 114-328, set out as a note under section 111 of this title.

FINAL REPORT

Pub. L. 104-106, div. B, title XXVIII, § 2801(b), Feb. 10, 1996, 110 Stat. 551, provided that, not later than Mar. 1, 2000, the Secretary of Defense was to submit to the congressional defense committees a report on the use by the Secretary of Defense and the Secretaries of the military departments of the authorities provided by subchapter IV of chapter 169 of this title.

§ 2885. Oversight and accountability for privatization projects

(a) OVERSIGHT AND ACCOUNTABILITY MEASURES.—Each Secretary concerned shall prescribe regulations to effectively oversee and manage military housing privatization projects carried out under this subchapter during the course of the construction or renovation of the housing units. The regulations shall include the following requirements for each privatization project:

(1) The installation asset manager shall conduct monthly site visits and provide quarterly reports on the progress of the construction or renovation of the housing units. The reports shall be submitted quarterly to the assistant secretary for installations and environment of the respective military department.

(2) The installation asset manager, and, as applicable, the resident construction manager, privatization asset manager, bondholder representative, project owner, developer, general contractor, and construction consultant for the project shall conduct meetings to ensure that the construction or renovation of the units meets performance and schedule requirements and that appropriate operating and ground lease agreements are in place and adhered to.

(3) In the case of a project for new construction, if the project is 90 days or more behind

schedule or otherwise appears to be substantially failing to adhere to the obligations or milestones under the contract, the assistant secretary for installations and environment of the respective military department shall submit a notice of deficiency to the Assistant Secretary of Defense for Energy, Installations, and Environment, the Secretary concerned, the managing member, and the trustee for the project.

(4)(A) Not later than 15 days after the submittal of a notice of deficiency under paragraph (3), the Secretary concerned or designated representative shall submit to the project owner, developer, or general contractor responsible for the project a summary of deficiencies related to the project.

(B) If the project owner, developer, or general contractor responsible for the privatization project is unable, within 60 days after receiving a notice of deficiency under subparagraph (A), to make progress on the issues outlined in such notice, the Secretary concerned shall notify, in an electronic medium pursuant to section 480 of this title, the congressional defense committees of the status of the project and include a recommended course of action to correct the problems.

(b) REQUIRED QUALIFICATIONS.—The Secretary concerned or designated representative shall ensure that the project owner, developer, or general contractor that is selected for each military housing privatization initiative project has construction experience commensurate with that required to complete the project.

(c) BONDING LEVELS.—The Secretary concerned shall ensure that the project owner, developer, or general contractor responsible for a military housing privatization initiative project has sufficient payment and performance bonds or suitable instruments in place for each phase of a construction or renovation portion of the project to ensure successful completion of the work in amounts as agreed to in the project's legal documents, but in no case less than 50 percent of the total value of the active phases of the project, prior to the commencement of work for that phase.

(d) REPORTING OF EFFORTS TO SELECT SUCCESSOR IN EVENT OF DEFAULT.—In the event a military housing privatization initiative project enters into default, the assistant secretary for installations and environment of the respective military department shall submit, in an electronic medium pursuant to section 480 of this title, a report to the congressional defense committees every 90 days detailing the status of negotiations to award the project to a new project owner, developer, or general contractor.

(e) EFFECT OF NOTICES OF DEFICIENCY ON CONTRACTORS AND AFFILIATED ENTITIES.—(1) The Secretary concerned shall keep a record of all plans of action or notices of deficiency issued to a project owner, developer, or general contractor under subsection (a)(4), including the identity of each parent, subsidiary, affiliate, or other controlling entity of such owner, developer, or contractor.

(2) Each military department shall consult all records maintained under paragraph (1) when reviewing the past performance of owners, devel-