

Jan. 28, 2008, 122 Stat. 227; Pub. L. 112-239, div. A, title X, § 1076(f)(26), Jan. 2, 2013, 126 Stat. 1953.

AMENDMENTS

2024—Subsec. (b)(5). Pub. L. 118-159 substituted “subsection if funds” for “subsection if—(A) funds” and period for semicolon at end and struck out former subpars. (B) and (C) which read as follows:

“(B) the Secretary of Defense submits to the congressional defense committees a certification that there is no alternative for meeting urgent operational requirements other than making the contract; and

“(C) a period of 30 days of continuous session of Congress has expired following the date on which the certification was received by such committees.”

2021—Pub. L. 116-283, § 1825(b), transferred subsecs. (a) and (b) of section 2401 of this title to this section.

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.

§ 3672. Requirement of specific authorization by law for appropriation, and for obligation and expenditure, of funds for certain contracts relating to aircraft, naval vessels, and combat vehicles

(a) LIMITATION.—Funds may not be appropriated for any fiscal year to or for any armed force or obligated or expended for—

(1) the long-term lease or charter of any aircraft, naval vessel, or combat vehicle; or

(2) for the lease or charter of any aircraft, naval vessel, or combat vehicle the terms of which provide for a substantial termination liability on the part of the United States,

unless funds for that purpose have been specifically authorized by law.

(b) MATTER TO BE SUBMITTED TO CONGRESS.—(1) Whenever a request is submitted to Congress for the authorization of the long-term lease or charter of aircraft, naval vessels, or combat vehicles or for the authorization of a lease or charter of aircraft, naval vessels, or combat vehicles which provides for a substantial termination liability on the part of the United States, the Secretary of Defense shall submit with that request an analysis of the cost to the United States (including lost tax revenues) of any such lease or charter arrangement compared with the cost to the United States of direct procurement of the aircraft, naval vessels, or combat vehicles by the United States.

(2) Any such analysis shall be reviewed and evaluated by the Director of the Office of Management and Budget and the Secretary of the Treasury within 30 days after the date on which the request and analysis are submitted to Congress. The Director and Secretary shall conduct such review and evaluation on the basis of the guidelines issued pursuant to section 3676 of this title and shall report to Congress in writing on the results of their review and evaluation at the earliest practicable date, but in no event more than 45 days after the date on which the request and analysis are submitted to the Congress.

(3) Whenever a request is submitted to Congress for the authorization of funds for the De-

partment of Defense for the long-term lease or charter of aircraft, naval vessels, or combat vehicles authorized under this chapter, the Secretary of Defense—

(A) shall indicate in the request what portion of the requested funds is attributable to capital-hire; and

(B) shall reflect such portion in the appropriate procurement account in the request.

(Added and amended Pub. L. 116-283, div. A, title XVIII, § 1825(a), (d), (e), Jan. 1, 2021, 134 Stat. 4206, 4207.)

Editorial Notes

CODIFICATION

The text of par. (1) of subsec. (c) of section 2401 of this title, which was transferred to this section, redesignated as subsec. (a), and amended by Pub. L. 116-283, § 1825(d), was based on Pub. L. 98-94, title XII, § 1202(a)(1), Sept. 24, 1983, 97 Stat. 679; Pub. L. 98-525, title XII, § 1232(a)(1), Oct. 19, 1984, 98 Stat. 2600; Pub. L. 109-163, div. A, title VIII, § 815(a)(2), Jan. 6, 2006, 119 Stat. 3381.

The text of subsec. (e) of section 2401 of this title, which was transferred to this section, redesignated as subsec. (b), and amended by Pub. L. 116-283, § 1825(e), was based on Pub. L. 98-94, title XII, § 1202(a)(1), Sept. 24, 1983, 97 Stat. 679; Pub. L. 109-163, div. A, title VIII, § 815(a)(3), Jan. 6, 2006, 119 Stat. 3381; Pub. L. 116-92, div. A, title XVII, § 1731(a)(48), Dec. 20, 2019, 133 Stat. 1815.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116-283, § 1825(d), after transfer of par. (2) of section 2401(c) of this title to section 3673 of this title, redesignated remainder of subsec. (c) of section 2401 of this title as subsec. (a) of this section, inserted heading, struck out par. (1) designation before “Funds may not”, and redesignated subpars. (A) and (B) of such former par. (1) as pars. (1) and (2), respectively.

Subsec. (b). Pub. L. 116-283, § 1825(e), redesignated subsec. (e) of section 2401 of this title as subsec. (b) of this section, inserted heading, and substituted “section 3676 of this title” for “subsection (g)” in par. (2) and “this chapter” for “this section” in introductory provisions of par. (3).

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.

§ 3673. Limitation on indemnification

Funds appropriated to the Department of Defense may not be used to indemnify any person under the terms of a contract entered into under this chapter—

(1) for any amount paid or due by any person to the United States for any liability arising under the Internal Revenue Code of 1986; or

(2) to pay any attorneys’ fees in connection with such contract.

(Added and amended Pub. L. 116-283, div. A, title XVIII, § 1825(a), (c), Jan. 1, 2021, 134 Stat. 4206.)

Editorial Notes

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in par. (1), is classified generally to Title 26, Internal Revenue Code.

CODIFICATION

The text of par. (2) of subsec. (c) of section 2401 of this title, which was transferred to this section and amended by Pub. L. 116-283, §1825(c), was based on Pub. L. 98-525, title XII, §1232(a)(1)(C), Oct. 19, 1984, 98 Stat. 2600; Pub. L. 103-35, title II, §201(c)(6), May 31, 1993, 107 Stat. 98; Pub. L. 104-106, div. A, title XV, §1503(a)(21), Feb. 10, 1996, 110 Stat. 512.

AMENDMENTS

2021—Pub. L. 116-283, §1825(c), transferred par. (2) of section 2401(c) of this title to this section, struck out par. (2) designation at beginning, substituted “this chapter” for “this section” in introductory provisions, and redesignated subpars. (A) and (B) of such former par. (2) as pars. (1) and (2), respectively.

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.

§ 3674. Long-term lease or charter defined; substantial termination liability

(a) LONG-TERM LEASE OR CHARTER.—

(1) GENERAL RULE.—

(A) In this chapter, the term “long-term lease or charter” (except as provided in paragraph (2)) means a lease, charter, service contract, or conditional sale agreement—

(i) the term of which is for a period of five years or longer or more than one-half the useful life of the vessel, aircraft, or combat vehicle; or

(ii) the initial term of which is for a period of less than five years but which contains an option to renew or extend the agreement for a period which, when added to the initial term (or any previous renewal or extension), is five years or longer.

(B) Such term includes the extension or renewal of a lease or charter agreement if the term of the extension or renewal thereof is for a period of five years or longer or if the term of the lease or charter agreement being extended or renewed was for a period of five years or longer.

(2) SPECIAL RULE.—

(A) In the case of an agreement under which the lessor first places the property in service under the agreement or the property has been in service for less than one year and there is allowable to the lessor or charterer an investment tax credit or depreciation for the property leased, chartered, or otherwise provided under the agreement under section 168 of the Internal Revenue Code of 1986 (unless the lessor or charterer has elected depreciation on a straightline method for such property), the term “long-term lease or charter” means a lease, charter, service contract, or conditional sale agreement—

(i) the term of which is for a period of three years or longer; or

(ii) the initial term of which is for a period of less than three years but which

contains an option to renew or extend the agreement for a period which, when added to the initial term (or any previous renewal or extension), is three years or longer.

(B) Such term includes the extension or renewal of a lease or charter agreement if the term of the extension or renewal thereof is for a period of three years or longer or if the term of the lease or charter agreement being extended or renewed was for a period of three years or longer.

(b) SUBSTANTIAL TERMINATION LIABILITY.—For the purposes of this chapter, the United States shall be considered to have a substantial termination liability under a contract—

(1) if there is an agreement by the United States under the contract to pay an amount not less than the amount equal to 25 percent of the value of the vessel, aircraft, or combat vehicle under lease or charter, calculated on the basis of the present value of the termination liability of the United States under such charter or lease (as determined under regulations prescribed by the Secretary of Defense); or

(2) if (as determined under regulations prescribed by the Secretary of Defense) the sum of—

(A) the present value of the amount of the termination liability of the United States under the contract as of the end of the term of the contract (exclusive of any option to extend the contract); and

(B) the present value of the total of the payments to be made by the United States under the contract (excluding any option to extend the contract) attributable to capital-hire,

is more than one-half the price of the vessel, aircraft, or combat vehicle involved.

(Added and amended Pub. L. 116-283, div. A, title XVIII, §1825(a), (f), Jan. 1, 2021, 134 Stat. 4206, 4207.)

Editorial Notes

REFERENCES IN TEXT

Section 168 of the Internal Revenue Code of 1986, referred to in subsec. (a)(2)(A), is classified to section 168 of Title 26, Internal Revenue Code.

CODIFICATION

The text of subsec. (d) of section 2401 of this title, which was transferred to this section and amended by Pub. L. 116-283, §1825(f), was based on Pub. L. 98-94, title XII, §1202(a)(1), Sept. 24, 1983, 97 Stat. 679; Pub. L. 100-26, §7(h)(1), Apr. 21, 1987, 101 Stat. 282; Pub. L. 109-163, div. A, title VIII, §815(a)(1), Jan. 6, 2006, 119 Stat. 3381.

AMENDMENTS

2021—Pub. L. 116-283, §1825(f)(1), transferred subsec. (d) of section 2401 of this title to this section, struck out subsec. (d) designation at beginning, and redesignated pars. (1) and (2) of such former subsec. (d) as subsecs. (a) and (b), respectively.

Subsec. (a). Pub. L. 116-283, §1825(f)(2)(A), (C), (D), (E), after redesignation of section 2401(d)(1) of this title as subsec. (a) of this section, inserted subsec. heading, redesignated subpar. (A)(i) and (ii) and its concluding