

## 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

provisions as par. (1)(A)(i) and (ii) and (B), respectively, redesignated subpar. (B)(i) and (ii) and its concluding provisions as par. (2)(A)(i) and (ii) and (B), respectively, and inserted par. headings.

Subsec. (a)(1)(A). Pub. L. 116-283, §1825(f)(2)(A), (B), substituted “In this chapter” for “In this section” and “paragraph (2)” for “subparagraph (B)” in introductory provisions.

Subsec. (b). Pub. L. 116-283, §1825(f)(3), after redesignation of section 2401(d)(2) of this title as subsec. (b) of this section, inserted heading, substituted “this chapter” for “this section” in introductory provisions, and redesignated subpar. (A) as par. (1) and subpar. (B) and its cls. (i) and (ii) as par. (2) and subpars. (A) and (B), 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.

#### § 3675. Capital lease or lease-purchase treated as an acquisition

(a) IN GENERAL.—If a lease or charter covered by this chapter is a capital lease or a lease-purchase—

(1) the lease or charter shall be treated as an acquisition and shall be subject to all applicable statutory and regulatory requirements for the acquisition of aircraft, naval vessels, or combat vehicles; and

(2) funds appropriated to the Department of Defense for operation and maintenance may not be obligated or expended for the lease or charter.

(b) DEFINITIONS.—In this section, the terms “capital lease” and “lease-purchase” have the meanings given those terms in Appendix B to Office of Management and Budget Circular A-11, as in effect on January 6, 2006.

(Added and amended Pub. L. 116-283, div. A, title XVIII, §1825(a), (g), Jan. 1, 2021, 134 Stat. 4206, 4208.)

#### Editorial Notes

##### CODIFICATION

The text of subsec. (f) of section 2401 of this title, which was transferred to this section and amended by Pub. L. 116-283, §1825(g), was based on Pub. L. 109-163, div. A, title VIII, §815(c)(2), Jan. 6, 2006, 119 Stat. 3382; Pub. L. 111-84, div. A, title X, §1073(a)(24), Oct. 28, 2009, 123 Stat. 2473.

##### AMENDMENTS

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

Subsec. (a). Pub. L. 116-283, §1825(g)(2), after redesignation of section 2401(f)(1) of this title as subsec. (a) of this section, inserted heading, substituted “this chapter” for “this section” in introductory provisions, and redesignated subpars. (A) and (B) as pars. (1) and (2), respectively.

Subsec. (b). Pub. L. 116-283, §1825(g)(3), after redesignation of section 2401(d)(2) of this title as subsec. (b) of this section, inserted heading and substituted “In this section” for “In this subsection”.

#### 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.

#### § 3676. Guidelines

The Director of the Office of Management and Budget and the Secretary of the Treasury shall jointly issue guidelines for determining under what circumstances the Department of Defense may use lease or charter arrangements for aircraft, naval vessels, and combat vehicles rather than directly procuring such aircraft, vessels, and combat vehicles.

(Added and amended Pub. L. 116-283, div. A, title XVIII, §1825(a), (h), Jan. 1, 2021, 134 Stat. 4206, 4208.)

#### Editorial Notes

##### CODIFICATION

The text of subsec. (g) of section 2401 of this title, which was transferred to this section and amended by Pub. L. 116-283, §1825(h), 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)(2), Oct. 19, 1984, 98 Stat. 2600; Pub. L. 109-163, div. A, title VIII, §815(c)(1), Jan. 6, 2006, 119 Stat. 3382.

##### AMENDMENTS

2021—Pub. L. 116-283, §1825(h), transferred subsec. (g) of section 2401 of this title to this section and struck out subsec. (g) designation at beginning.

#### 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.

#### § 3677. Contracts for lease or use of vessels for a term of greater than two years but less than five years: prior notice to congressional committees

The Secretary of a military department may make a contract for the lease of a vessel or for the provision of a service through use by a contractor of a vessel, the term of which is for a period of greater than two years, but less than five years, only if—

(1) the Secretary has notified the congressional defense committees of the proposed contract and included in such notification—

(A) a detailed description of the terms of the proposed contract and a justification for entering into the proposed contract rather than obtaining the capability provided for by the lease, charter, or services involved through purchase of the vessel;

(B) a determination that entering into the proposed contract as a means of obtaining the vessel is the most cost-effective means of obtaining such vessel; and