

ed for or on behalf of the Department of Defense on or after May 1, 2007.”

REIMBURSEMENT OF INDIRECT COSTS OF INSTITUTIONS OF HIGHER EDUCATION UNDER DEPARTMENT OF DEFENSE CONTRACTS

Pub. L. 103–160, div. A, title VIII, §841, Nov. 30, 1993, 107 Stat. 1719, as amended by Pub. L. 105–244, title I, §102(a)(2)(C), Oct. 7, 1998, 112 Stat. 1617, provided that:

“(a) PROHIBITION.—The Secretary of Defense may not by regulation place a limitation on the amount that the Department of Defense may reimburse an institution of higher education for allowable indirect costs incurred by the institution for work performed for the Department of Defense under a Department of Defense contract unless that same limitation is applied uniformly to all other organizations performing similar work for the Department of Defense under Department of Defense contracts.

“(b) WAIVER.—The Secretary of Defense may waive the application of the prohibition in subsection (a) in the case of a particular institution of higher education if the governing body of the institution requests the waiver in order to simplify the overall management by that institution of cost reimbursements by the Department of Defense for contracts awarded by the Department to the institution.

“(c) DEFINITIONS.—In this section:

“(1) The term ‘allowable indirect costs’ means costs that are generally considered allowable as indirect costs under regulations that establish the cost reimbursement principles applicable to an institution of higher education for purposes of Department of Defense contracts.

“(2) The term ‘institution of higher education’ has the meaning given such term in section 101 of the Higher Education Act of 1965 [20 U.S.C. 1001].”

§ 3761. Restructuring costs

(a) LIMITATION ON PAYMENT OF RESTRUCTURING COSTS.—The Secretary of Defense may not pay, under subchapter I, a defense contractor for restructuring costs associated with a business combination of the contractor that occurs after November 18, 1997, unless the Secretary determines in writing either—

(1) that the amount of projected savings for the Department of Defense associated with the restructuring will be at least twice the amount of the costs allowed; or

(2) that the amount of projected savings for the Department of Defense associated with the restructuring will exceed the amount of the costs allowed and that the business combination will result in the preservation of a critical capability that otherwise might be lost to the Department.

(b) LIMITATION ON DELEGATION.—The Secretary may not delegate the authority to make a determination under subsection (a), with respect to a business combination, to an official of the Department of Defense—

(1) below the level of an Assistant Secretary of Defense for cases in which the amount of restructuring costs is expected to exceed \$25,000,000 over a 5-year period; or

(2) below the level of the Director of the Defense Contract Management Agency for all other cases.

(c) DEFINITION.—In this section, the term “business combination” includes a merger or acquisition.

(Added Pub. L. 105–85, div. A, title VIII, §804(a)(1), Nov. 18, 1997, 111 Stat. 1832, §2325;

amended Pub. L. 106–65, div. A, title X, §1066(a)(19), Oct. 5, 1999, 113 Stat. 771; Pub. L. 108–375, div. A, title VIII, §819, Oct. 28, 2004, 118 Stat. 2016; Pub. L. 112–239, div. A, title X, §1076(g)(2), Jan. 2, 2013, 126 Stat. 1955; renumbered §3761 and amended Pub. L. 116–283, div. A, title XVIII, §1832(j)(2), (3), Jan. 1, 2021, 134 Stat. 4225.)

Editorial Notes

AMENDMENTS

2021—Pub. L. 116–283, §1832(j)(2), renumbered section 2325 of this title as this section.

Subsec. (a). Pub. L. 116–283, §1832(j)(3)(B), (E), in introductory provisions, struck out par. (1) designation before “The Secretary” and substituted “subchapter I” for “section 2324 of this title” and redesignated subpars. (A) and (B) as pars. (1) and (2), respectively. Former par. (2) of subsec. (a) redesignated subsec. (b).

Subsec. (b). Pub. L. 116–283, §1832(j)(3)(C)–(E), redesignated par. (2) of subsec. (a) as subsec. (b), inserted heading, substituted “subsection (a)” for “paragraph (1)” in introductory provisions, and redesignated subpars. (A) and (B) as pars. (1) and (2), respectively. Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 116–283, §1832(j)(3)(A), redesignated subsec. (b) as (c).

2013—Subsec. (b). Pub. L. 112–239 redesignated subsec. (c) as (b) and struck out former subsec. (b) which required reports relating to business combinations occurring on or after August 15, 1994.

2004—Subsec. (a)(2). Pub. L. 108–375 substituted “paragraph (1), with respect to a business combination, to an official of the Department of Defense—” for “paragraph (1) to an official of the Department of Defense below the level of an Assistant Secretary of Defense.” and added subpars. (A) and (B).

1999—Subsec. (a)(1). Pub. L. 106–65 inserted “that occurs after November 18, 1997,” after “of the contractor” in introductory provisions.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

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 a note preceding section 3001 of this title.

EFFECTIVE DATE

Pub. L. 105–85, div. A, title VIII, §804(c), Nov. 18, 1997, 111 Stat. 1834, provided that: “Section 2325(a) of title 10, United States Code [now 10 U.S.C. 3761(a)], as added by subsection (a), shall apply with respect to business combinations that occur after the date of the enactment of this Act [Nov. 18, 1997].”

§ 3762. Independent research and development costs: allowable costs

(a) REGULATIONS.—The Secretary of Defense shall prescribe regulations governing the payment by the Department of Defense of expenses incurred by contractors for independent research and development costs. Such regulations shall provide that expenses incurred for independent research and development shall be reported independently from other allowable indirect costs.

(b) COSTS TREATED AS FAIR AND REASONABLE, AND ALLOWABLE, EXPENSES.—The regulations prescribed under subsection (a) shall provide that independent research and development costs shall be considered a fair and reasonable,