

“(bb) are amounts that are associated with a specific project, but are unobligated because they are the result of bid savings; and

“(II) were appropriated to such an account before the date on which the Secretary and the entity entered into the formal agreement.

“(D) AVAILABILITY.—Unobligated amounts shall be available pursuant to subparagraphs (B) and (C) only to the extent and in such amounts as provided in advance in appropriations Acts subsequent to the date of the enactment of this subparagraph, subject to subparagraph (E).

“(E) LIMITATION.—Unobligated amounts made available pursuant to subparagraphs (B) and (C) may not exceed 40 percent of the amount appropriated for the facility before the date on which the Secretary and the entity entered into a formal agreement under subsection (c).

“(F) TERMS AND CONDITIONS.—The Secretary shall provide funds pursuant to this paragraph under such terms, conditions, and schedule as the Secretary determines appropriate.

“(2) FROM ENTITY.—An entity described in subsection (a)(2) that is donating a facility constructed by the entity under the pilot program shall be required, pursuant to a formal agreement entered into under subsection (c), to provide other funds in addition to the amounts provided by the Department under paragraph (1) that are needed to complete construction of the facility.

“(f) APPLICATION.—An entity described in subsection (a)(2) that seeks to donate real property and improvements under the pilot program shall submit to the Secretary an application to address needs relating to facilities of the Department, including health care needs, identified in the Construction and Long-Range Capital Plan of the Department, at such time, in such manner, and containing such information as the Secretary may require.

“(g) INFORMATION ON DONATIONS AND RELATED PROJECTS.—

“(1) IN GENERAL.—The Secretary shall include in the budget submitted to Congress by the President pursuant to section 1105(a) of title 31, United States Code, information regarding real property and improvements donated under the pilot program during the year preceding the submittal of the budget and the status of facility projects relating to that property.

“(2) ELEMENTS.—Information submitted under paragraph (1) shall provide a detailed status of donations of real property and improvements conducted under the pilot program and facility projects relating to that property, including the percentage completion of the donations and projects.

“(h) BIENNIAL REPORT OF COMPTROLLER GENERAL OF THE UNITED STATES.—Not less frequently than once every 2 years until the termination date set forth in subsection (i), the Comptroller General of the United States shall submit to Congress a report on the donation agreements entered into under the pilot program.

“(i) TERMINATION.—The authority for the Secretary to accept donations under the pilot program shall terminate on December 16, 2026.

“(j) RULES OF CONSTRUCTION.—

“(1) ENTERING ARRANGEMENTS AND AGREEMENTS.—Nothing in this section shall be construed as a limitation on the authority of the Secretary to enter into other arrangements or agreements that are authorized by law and not inconsistent with this section.

“(2) TREATMENT OF ASSISTANCE.—Nothing provided under this section shall be treated as Federal financial assistance as defined in section 200.40 of title 2, Code of Federal Regulations, as in effect on February 21, 2021.”

[Pub. L. 117–263, div. E, title LI, § 5125(b), Dec. 23, 2022, 136 Stat. 3213, provided that: “Each agreement entered into under section (2)(c) [probably means “section 2(c)”] of such Act [Pub. L. 114–294, set out above] before the date of the enactment of this Act [Dec. 23, 2022]

that was in effect on the date of the enactment of this Act may be amended to incorporate terms authorized by subparagraphs (B) and (C) of section 2(e)(1) of such Act, as added by subsection (a)(2)(D) of this section.”]

DESIGNATION OF CONSTRUCTION AGENT FOR CERTAIN CONSTRUCTION PROJECTS BY DEPARTMENT OF VETERANS AFFAIRS

Pub. L. 114–92, div. A, title X, § 1096, Nov. 25, 2015, 129 Stat. 1020, provided that:

“(a) IN GENERAL.—The Secretary of Veterans Affairs shall seek to enter into an agreement subject to subsections (b), (c), and (e) of section 1535 of title 31, United States Code, with the Army Corps of Engineers or another entity of the Federal Government to serve, on a reimbursable basis, as the construction agent for the construction, alteration, or acquisition of any medical facility of the Department of Veterans Affairs specifically authorized by Congress after the date of the enactment of this Act [Nov. 25, 2015] that involves a total expenditure of more than \$100,000,000, excluding any acquisition by exchange.

“(b) AGREEMENT.—Under the agreement entered into under subsection (a), the construction agent shall provide design, procurement, and construction management services for the construction, alteration, and acquisition of medical facilities of the Department.”

DEVELOPMENT OF MEDICAL-FACILITY MODULAR COMPONENTS

Pub. L. 99–166, title III, § 304, Dec. 3, 1985, 99 Stat. 956, directed Administrator of Veterans' Affairs, not later than one year after Dec. 3, 1985, to develop a modular approach to planning and design of an appropriate Veterans' Administration medical facility for furnishing of hospital care.

§ 8104. Congressional approval of certain medical facility acquisitions

(a)(1) The purpose of this subsection is to enable Congress to ensure the equitable distribution of medical facilities throughout the United States, taking into consideration the comparative urgency of the need for the services to be provided in the case of each particular facility.

(2)(A) No funds may be appropriated for any fiscal year, and the Secretary may not obligate or expend funds (other than for advance planning and design), for any major medical facility project unless funds for that project have been specifically authorized by law.

(B) No funds may be appropriated for any fiscal year, and the Secretary may not obligate or expend funds (other than for advance planning and design), for any major medical facility lease unless the Committee on Veterans' Affairs of the Senate and the Committee on Veterans' Affairs of the House of Representatives each adopt a resolution approving the lease.

(3) For purposes of this subsection:

(A) The term “major medical facility project” means a project for the construction, alteration, or acquisition of a medical facility involving a total expenditure of more than the amount specified in paragraph (4), but such term does not include an acquisition by exchange, nonrecurring maintenance projects of the Department, or the construction, alteration, or acquisition of a shared Federal medical facility for which the Department's estimated share of the project costs does not exceed the amount specified in paragraph (4).

(B) The term “major medical facility lease” —

(i) means a lease for space for use as a new medical facility approved through the General Services Administration under section 3307(a) of title 40 at an average annual rent equal to or greater than the appropriate dollar threshold described in such section, which shall be subject to annual adjustment in accordance with section 3307(h) of such title; and

(ii) does not include a lease for space for use as a shared Federal medical facility for which the Department's estimated share of the lease costs does not exceed such dollar threshold.

(4)(A) The amount specified in this paragraph is \$30,000,000, as adjusted pursuant to this paragraph.

(B)(i) The Secretary may annually adjust the amount specified in this paragraph to reflect a percentage increase, if any, in construction costs during the prior calendar year, as determined by—

(I) the relevant composite construction and lease cost indices pursuant to section 3307(h) of title 40, or any similar successor index developed by the Administrator of the General Services Administration; or

(II) the Producer Price Index for New Health Care Building Construction published by the Bureau of Labor Statistics of the Department of Labor, or any similar successor index developed by the Secretary of Labor.

(ii) If there is no percentage increase in construction costs determined as described in clause (i) for a calendar year, the Secretary may not adjust the amount specified in subparagraph (A) for that year.

(C) If the Secretary adjusts the amount specified in this paragraph, the Secretary shall publish a notice of such adjustment in the Federal Register.

(D) Not later than 30 days before adjusting the amount specified in this paragraph, the Secretary shall notify the Committee on Veterans' Affairs and the Committee on Appropriations of the Senate and the Committee on Veterans' Affairs and the Committee on Appropriations of the House of Representatives.

(E) The Secretary shall determine a logical schedule for adjustments under this paragraph to take effect so that the amounts for and types of construction projects requested by the Department in the budget of the President under section 1105(a) of title 31 are consistent with the threshold for construction projects as so adjusted.

(b)(1) Whenever the President or the Secretary submit¹ to Congress a request for the funding of a major medical facility project (as defined in subsection (a)(3)(A)), the Secretary shall submit to each committee, on the same day, a prospectus of the proposed medical facility. Any such prospectus shall include the following:

(A) A detailed estimate of the total costs of the medical facility to be constructed, altered, or otherwise acquired under this subchapter, including a description of the location of such facility and, in the case of a prospectus pro-

posing the construction of a new or replacement medical facility, a detailed report of the consideration that was given to acquiring an existing facility by lease or purchase and to the sharing of health-care resources with the Department of Defense under section 8111 of this title. Such detailed estimate shall include an identification of each of the following:

(i) Total construction costs.

(ii) Activation costs.

(iii) Special purpose alterations (lump-sum payment) costs.

(iv) Number of personnel.

(v) Total costs of ancillary services, equipment, and all other items.

(B) Demographic data applicable to such facility, including information on projected changes in the population of veterans to be served by the facility over a five-year period, a ten-year period, and a twenty-year period.

(C) Current and projected workload and utilization data regarding the facility, including information on projected changes in workload and utilization over a five-year period, a ten-year period, and a twenty-year period.

(D) Projected operating costs of the facility, including both recurring and non-recurring costs (including and identifying both recurring and non-recurring costs (including activation costs and total costs of ancillary services, equipment and all other items)) over a five-year period, a ten-year period, and a twenty-year period.

(E) The priority score assigned to the project under the Department's prioritization methodology and, if the project is being proposed for funding before a project with a higher score, a specific explanation of the factors other than the priority score that were considered and the basis on which the project is proposed for funding ahead of projects with higher priority scores.

(F) In the case of a prospectus proposing the construction of a new or replacement medical facility, each of the following:

(i) A detailed estimate of the total costs (including total construction costs, activation costs, special purpose alterations (lump-sum payment) costs, number of personnel and total costs of ancillary services, equipment and all other items) for each alternative to construction of the facility that was considered.

(ii) A comparison of total costs to total benefits for each such alternative.

(iii) An explanation of why the preferred alternative is the most effective means to achieve the stated project goals and the most cost-effective alternative.

(2) Whenever the President or the Secretary submit¹ to Congress a request for the funding of a major medical facility lease (as defined in subsection (a)(3)(B)), the Secretary shall submit to each committee, on the same day, a prospectus of the proposed medical facility. Any such prospectus shall include the following:

(A) A description of the facility to be leased.

(B) An estimate of the cost to the Federal Government of the facility to be leased.

(C) An estimate of the energy performance of the proposed lease space, to include a de-

¹ So in original. Probably should be "submits".

scription of anticipated utilization of renewable energy, energy efficient and climate resilient elements, and related matters.

(D) Current and projected workload and utilization data regarding the facility to be leased, including information on projected changes in workload and utilization over a five-year period, a ten-year period, and a twenty-year period.

(E) A detailed analysis of how the lease is expected to comply with Office of Management and Budget Circular A-11 and section 1341 of title 31 (commonly referred to as the "Anti-Deficiency Act"). Any such analysis shall include—

(i) an analysis of the classification of the lease as a "lease purchase", a "capital lease", or an "operating lease" as those terms are defined in Office of Management and Budget Circular A-11;

(ii) an analysis of the obligation of budgetary resources associated with the lease; and

(iii) an analysis of the methodology used in determining the asset cost, fair market value, and cancellation costs of the lease.

(c)(1) Not less than 30 days before obligating funds for a major medical facility project approved by a law described in subsection (a)(2) of this section in an amount that would cause the total amount obligated for that project to exceed the amount specified in the law for that project (or would add to total obligations exceeding such specified amount) by more than 10 percent, the Secretary shall provide the committees with notice of the Secretary's intention to do so and the reasons for the specified amount being exceeded.

(2) The Secretary shall—

(A) enter into a contract or agreement with an appropriate non-department Federal entity with the ability to conduct forensic audits on medical facility projects for the conduct of an external forensic audit of the expenditures relating to any major medical facility or super construction project for which the total expenditures exceed the amount requested in the initial budget request for the project submitted to Congress under section 1105 of title 31 by more than 25 percent; and

(B) enter into a contract or agreement with an appropriate non-department Federal entity with the ability to conduct forensic audits on medical facility projects for the conduct of an external audit of the medical center construction project in Aurora, Colorado.

(d)(1) Except as provided in paragraph (2), in any case in which the Secretary proposes that funds be used for a purpose other than the purpose for which such funds were appropriated, the Secretary shall promptly notify each committee, in writing, of the particulars involved and the reasons why such funds were not used for the purpose for which appropriated.

(2)(A) In any fiscal year, unobligated amounts in the Construction, Major Projects account that are a direct result of bid savings from a major construction project may only be obligated for major construction projects authorized for that fiscal year or a previous fiscal year.

(B) Whenever the Secretary obligates amounts for a major construction project under subparagraph (A), the Secretary shall submit to the Committee on Veterans' Affairs and the Committee on Appropriations of the Senate and the Committee on Veterans' Affairs and the Committee on Appropriations of the House of Representatives notice of the following:

(i) The major construction project that is the source of the bid savings.

(ii) If the major construction project that is the source of the bid savings is not complete—

(I) the amount already obligated by the Department or available in the project reserve for such project;

(II) the percentage of such project that has been completed; and

(III) the amount available to the Department to complete such project.

(iii) The other major construction project for which the bid savings amounts are being obligated.

(iv) The bid savings amounts being obligated for such other major construction project.

(C) The Secretary may not obligate an amount under subparagraph (A) to expand the purpose of a major construction project except pursuant to a provision of law enacted after the date on which the Secretary submits to the committees described in subparagraph (B) notice of the following:

(i) The major construction project that is the source of the bid savings.

(ii) The major construction project for which the Secretary intends to expand the purpose.

(iii) A description of such expansion of purpose.

(iv) The amounts the Secretary intends to obligate to expand the purpose.

(e) The Secretary may accept gifts or donations for any of the purposes of this subchapter.

(f) The Secretary may not obligate funds in an amount in excess of \$500,000 from the Advance Planning Fund of the Department toward design or development of a major medical facility project (as defined in subsection (a)(3)(A)) until—

(1) the Secretary submits to the committees a report on the proposed obligation; and

(2) a period of 30 days has passed after the date on which the report is received by the committees.

(g) The limitation in subsection (f) does not apply to a project for which funds have been authorized by law in accordance with subsection (a)(2).

(h)(1) Not less than 30 days before entering into a major medical facility lease, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives—

(A) notice of the Secretary's intention to enter into the lease;

(B) a detailed summary of the proposed lease;

(C) a description and analysis of any differences between the prospectus submitted pursuant to subsection (b) and the proposed lease; and

(D) a scoring analysis demonstrating that the proposed lease fully complies with Office of Management and Budget Circular A-11.

(2) Each committee described in paragraph (1) shall ensure that any information submitted to the committee under such paragraph is treated by the committee with the same level of confidentiality as is required by law of the Secretary and subject to the same statutory penalties for unauthorized disclosure or use as the Secretary.

(3) Not more than 30 days after entering into a major medical facility lease, the Secretary shall submit to each committee described in paragraph (1) a report on any material differences between the lease that was entered into and the proposed lease described under such paragraph, including how the lease that was entered into changes the previously submitted scoring analysis described in subparagraph (D) of such paragraph.

(i)(1) Notwithstanding subsection (a)(2)(B), the Secretary may carry out interim leasing actions as the Secretary considers necessary for the following leases:

(A) Major medical facility leases (as defined in subsection (a)(3)(B)) approved pursuant to this section and for which a prospectus for a replacement lease has been submitted to Congress pursuant to subsection (b)(2).

(B) Replacement leases that do not require approval under this section and for which a prospectus has been submitted to Congress pursuant to subsection (b)(2).

(2) In this subsection, the term “interim leasing actions” has the meaning given that term by the Administrator of the General Services Administration.

(j) The Secretary may obligate and expend funds to exercise a purchase option included in any major medical facility lease (as defined in subsection (a)(3)(B)).

(Added Pub. L. 96-22, title III, §301(a), June 13, 1979, 93 Stat. 56, §5004; amended Pub. L. 99-166, title III, §§301, 303, Dec. 3, 1985, 99 Stat. 954, 955; Pub. L. 99-576, title II, §221(b), Oct. 28, 1986, 100 Stat. 3259; Pub. L. 100-322, title IV, §422, May 20, 1988, 102 Stat. 553; renumbered §8104 and amended Pub. L. 102-40, title IV, §402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-83, §4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 102-405, title III, §301(a), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 103-79, §3(a), Aug. 13, 1993, 107 Stat. 771; Pub. L. 104-262, title II, §§205(a), 206(a), (c), Oct. 9, 1996, 110 Stat. 3189, 3190; Pub. L. 105-368, title VII, §704, Nov. 11, 1998, 112 Stat. 3350; Pub. L. 108-170, title II, §201, Dec. 6, 2003, 117 Stat. 2047; Pub. L. 108-422, title IV, §416, Nov. 30, 2004, 118 Stat. 2393; Pub. L. 109-461, title VIII, §812, Dec. 22, 2006, 120 Stat. 3447; Pub. L. 110-387, title VII, §705, Oct. 10, 2008, 122 Stat. 4138; Pub. L. 111-275, title IX, §905, Oct. 13, 2010, 124 Stat. 2895; Pub. L. 112-37, §§6, 7, Oct. 5, 2011, 125 Stat. 394, 396; Pub. L. 113-146, title VI, §602(c), Aug. 7, 2014, 128 Stat. 1794; Pub. L. 114-315, title VIII, §801(b), (c), Dec. 16, 2016, 130 Stat. 1590; Pub. L. 115-182, title V, §503(b), June 6, 2018, 132 Stat. 1476; Pub. L. 116-61, §6(9), Sept. 30, 2019, 133 Stat. 1117; Pub. L. 117-168, title VII, §703(a)-(e), Aug. 10, 2022, 136 Stat. 1797, 1798; Pub. L. 117-263, div. E, title LI,

§5124(b), Dec. 23, 2022, 136 Stat. 3211; Pub. L. 118-31, div. E, title L, §5001, Dec. 22, 2023, 137 Stat. 930.)

Editorial Notes

AMENDMENTS

2023—Subsec. (a)(3)(A). Pub. L. 118-31, §5001(1), substituted “the amount specified in paragraph (4)” for “\$20,000,000” in two places.

Subsec. (a)(4). Pub. L. 118-31, §5001(2), added par. (4). 2022—Subsec. (a)(2). Pub. L. 117-168, §703(a), designated existing provisions as subpar. (A), struck out “or any major medical facility lease” after “major medical facility project” and “or lease” after “for that project”, and added subpar. (B).

Subsec. (a)(3)(B). Pub. L. 117-168, §703(b), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “The term ‘major medical facility lease’ means a lease for space for use as a new medical facility at an average annual rent of more than \$1,000,000.”

Subsec. (b). Pub. L. 117-263, §5124(b), amended Pub. L. 117-168, §703(c)(5). See below.

Pub. L. 117-168, §703(c)(5), (8), as amended by Pub. L. 117-263, §5124(b), designated existing provisions as par. (1), substituted “to Congress” for “to the Congress” and struck out “or a major medical facility lease (as defined in subsection (a)(3)(B))” after “subsection (a)(3)(A))” in introductory provisions, and added par. (2). Former pars. (1) and (2) redesignated subpars. (A) and (B), respectively, of par. (1).

Subsec. (b)(1)(A). Pub. L. 117-168, §703(c)(2), (4), (6), redesignated subsec. (b)(1) and its subpars. (A) to (E) as subsec. (b)(1)(A) and cls. (i) to (v), respectively, and struck out “leased,” after “altered,” in introductory provisions.

Subsec. (b)(1)(B) to (D). Pub. L. 117-168, §703(c)(4), redesignated subsec. (b)(2) to (4) as subsec. (b)(1)(B) to (D), respectively.

Subsec. (b)(1)(E). Pub. L. 117-168, §703(c)(4), (7), redesignated subsec. (b)(5) as subsec. (b)(1)(E) and struck out “or lease” after “project” wherever appearing and “or leases” after “projects”.

Subsec. (b)(6). Pub. L. 117-168, §703(c)(3), (4), redesignated subsec. (b)(6) and its subpars. (A) to (C) as subsec. (b)(1)(F) and cls. (i) to (iii), respectively.

Subsec. (b)(7). Pub. L. 117-168, §703(c)(1), struck out par. (7) which required detailed analyses of proposed funding for major medical facility leases.

Subsec. (i). Pub. L. 117-168, §703(d), added subsec. (i).

Subsec. (j). Pub. L. 117-168, §703(e), added subsec. (j).

2019—Subsec. (a)(3). Pub. L. 116-61 added par. (3) and struck out former par. (3) which read as follows: “For purposes of this subsection, the term ‘major medical facility project’ means a project for the construction, alteration, or acquisition of a medical facility involving a total expenditure of more than \$20,000,000, but such term does not include an acquisition by exchange, non-recurring maintenance projects of the Department, or the construction, alteration, or acquisition of a shared Federal medical facility for which the Department’s estimated share of the project costs does not exceed \$20,000,000.”

2018—Subsec. (a)(3). Pub. L. 115-182, which directed the general amendment of par. (3) of section 8104(a), without specifying the Code title to be amended, was executed by amending par. (3) of subsec. (a) of this section, to reflect the probable intent of Congress. Prior to amendment, par. (3) read as follows: “For the purpose of this subsection:

“(A) The term ‘major medical facility project’ means a project for the construction, alteration, or acquisition of a medical facility involving a total expenditure of more than \$10,000,000, but such term does not include an acquisition by exchange.

“(B) The term ‘major medical facility lease’ means a lease for space for use as a new medical facility at an average annual rental of more than \$1,000,000.”

2016—Subsec. (c). Pub. L. 114-315, §801(b), designated existing provisions as par. (1) and added par. (2).

Subsec. (d)(2)(B)(ii) to (iv). Pub. L. 114-315, §801(c), added cl. (ii), redesignated former cls. (ii) and (iii) as (iii) and (iv), respectively, and in cls. (iii) and (iv) substituted “bid savings amounts” for “amounts”.

2014—Subsec. (b)(7). Pub. L. 113-146, §602(c)(1), added par. (7).

Subsec. (h). Pub. L. 113-146, §602(c)(2), added subsec. (h).

2011—Subsec. (b)(1). Pub. L. 112-37, §6(1)(A), substituted “detailed estimate of the total costs” for “detailed description” and “a detailed report of the consideration” for “a description of the consideration” and inserted at end “Such detailed estimate shall include an identification of each of the following:” and subpars. (A) to (E).

Subsec. (b)(2). Pub. L. 112-37, §6(1)(B), (C), struck out par. (2), redesignated par. (4) as (2), and substituted “a five-year period, a ten-year period, and a twenty-year period” for “a five-year period and a ten-year period”. Prior to amendment, par. (2) read as follows: “An estimate of the cost to the United States of the construction, alteration, lease, or other acquisition of such facility (including site costs, if applicable).”

Subsec. (b)(3). Pub. L. 112-37, §6(1)(B), (D), struck out par. (3), redesignated par. (5) as (3), and inserted before period at end “, including information on projected changes in workload and utilization over a five-year period, a ten-year period, and a twenty-year period”. Prior to amendment, par. (3) read as follows: “An estimate of the cost to the United States of the equipment required for the operation of such facility.”

Subsec. (b)(4). Pub. L. 112-37, §6(1)(B), (E), redesignated par. (6) as (4), substituted “Projected” for “Current and projected”, and inserted before period at end “(including and identifying both recurring and non-recurring costs (including activation costs and total costs of ancillary services, equipment and all other items)) over a five-year period, a ten-year period, and a twenty-year period”. Former par. (4) redesignated (2).

Subsec. (b)(5). Pub. L. 112-37, §6(1)(B), redesignated par. (7) as (5). Former par. (5) redesignated (3).

Subsec. (b)(6). Pub. L. 112-37, §6(1)(B), (F), redesignated par. (8) as (6), substituted “each of the following:” for “a description of each alternative to construction of the facility that was considered.”, and added subpars. (A) to (C). Former par. (6) redesignated (4).

Subsec. (b)(7),(8). Pub. L. 112-37, §6(1)(B), redesignated pars. (7) and (8) as (5) and (6), respectively.

Subsec. (d). Pub. L. 112-37, §6(2)(A), substituted “major construction project” for “major medical facility project” wherever appearing.

Subsec. (d)(2)(A). Pub. L. 112-37, §6(2)(B)(i), substituted “major construction projects” for “major medical facility projects”.

Subsec. (d)(2)(B). Pub. L. 112-37, §6(2)(B)(ii), substituted “major construction project” for “major medical facility” in introductory provisions.

Subsec. (d)(2)(C). Pub. L. 112-37, §7, added subpar. (C).
2010—Subsec. (d). Pub. L. 111-275 designated existing provisions as par. (1), substituted “Except as provided in paragraph (2), in any case” for “In any case”, and added par. (2).

2008—Subsec. (a)(3)(B). Pub. L. 110-387 substituted “\$1,000,000” for “\$600,000”.

2006—Subsec. (a)(3)(A). Pub. L. 109-461 substituted “\$10,000,000” for “\$7,000,000”.

2004—Subsec. (g). Pub. L. 108-422 added subsec. (g).

2003—Subsec. (a)(3)(A). Pub. L. 108-170 substituted “\$7,000,000” for “\$4,000,000”.

1998—Subsec. (a)(3)(B). Pub. L. 105-368 substituted “\$600,000” for “\$300,000”.

1996—Subsec. (a)(3)(A). Pub. L. 104-262, §206(a), substituted “\$4,000,000” for “\$3,000,000”.

Subsec. (b). Pub. L. 104-262, §205(a)(1), inserted introductory provisions and struck out former introductory provisions which read as follows: “In the event that the President or the Secretary proposes to the Congress the

funding of any construction, alteration, lease, or other acquisition to which subsection (a) of this section is applicable, the Secretary shall submit to each committee, on the same day, a prospectus of the proposed medical facility. Such prospectus shall include—”.

Subsec. (b)(1) to (3). Pub. L. 104-262, §205(a)(2)–(4), substituted “A detailed” for “a detailed” and “title.” for “title;” in par. (1), “An estimate” for “an estimate” and “applicable.” for “applicable); and” in par. (2), and “An estimate” for “an estimate” in par. (3).

Subsec. (b)(4) to (8). Pub. L. 104-262, §205(a)(5), added pars. (4) to (8).

Subsec. (f). Pub. L. 104-262, §206(c), added subsec. (f).
1993—Subsec. (a)(3)(A). Pub. L. 103-79 substituted “\$3,000,000” for “\$2,000,000”.

1992—Subsec. (a)(2). Pub. L. 102-405, §301(a)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “It shall not be in order in the Senate or in the House of Representatives to consider a bill, resolution, or amendment which would make an appropriation for any fiscal year which may be expended for a major medical facility project or a major medical facility lease unless—

“(A) such bill, resolution, or amendment specifies the amount to be appropriated for that project or lease,

“(B) the project or lease has been approved in a resolution adopted by the Committee on Veterans' Affairs of that House, and

“(C) the amount to be appropriated for that project or lease is no more than the amount specified in that resolution for that project or lease for that fiscal year.”

Subsec. (a)(3)(B). Pub. L. 102-405, §301(a)(2), inserted “new” after “as a” and substituted “\$300,000” for “\$500,000”.

Subsec. (c). Pub. L. 102-405, §301(a)(3), substituted “law” for “resolution” in two places.

1991—Pub. L. 102-40, §402(b)(1), renumbered section 5004 of this title as this section.

Subsec. (b). Pub. L. 102-83 substituted “Secretary” for “Administrator” in two places in introductory provisions.

Subsec. (b)(1). Pub. L. 102-40, §402(d)(1), substituted “8111” for “5011”.

Subsec. (c). Pub. L. 102-83 substituted “Secretary” for “Administrator” and “Secretary’s” for “Administrator’s”.

Subsecs. (d), (e). Pub. L. 102-83 substituted “Secretary” for “Administrator” wherever appearing.

1988—Subsec. (a)(2). Pub. L. 100-322, §422(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “After the adoption by the committees during a fiscal year of resolutions with identical texts approving major medical facility projects, it shall not be in order in the House of Representatives or in the Senate to consider a bill, resolution, or amendment making an appropriation for that fiscal year or for the next fiscal year which may be expended for a major medical facility project—

“(A) if the project for which the appropriation is proposed to be made is not approved in those resolutions; or

“(B) in the event that the project is approved in the resolutions, if either—

“(i) the bill, resolution, or amendment making the appropriation does not specify—

“(I) the medical facility project for which the appropriation is proposed to be made; and

“(II) the amount proposed to be appropriated for the project; or

“(ii) the amount proposed to be appropriated for the project (when added to any amount previously appropriated for the project) exceeds the amount approved for the project.”

Subsec. (a)(3), (4). Pub. L. 100-322, §422(b), added par. (3) and struck out former pars. (3) and (4) which read as follows:

“(3) No appropriation may be made for the lease of any space for use as a medical facility at an average

annual rental of more than \$500,000 unless each committee has first adopted a resolution approving such lease and setting forth the estimated cost thereof.

“(4) For the purpose of this subsection, the term ‘major medical facility project’ means a project for the construction, alteration, or acquisition of a medical facility involving a total expenditure of more than \$2,000,000. Such term does not include an acquisition by exchange.”

Subsec. (c). Pub. L. 100-322, § 422(c), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “The estimated cost of any construction, alteration, lease, or other acquisition that is approved under this section, as set forth in the pertinent resolutions described in subsection (a) of this section, may be increased by the Administrator in the contract for such construction, alteration, lease, or other acquisition by an amount equal to the percentage increase, if any, as determined by the Administrator, in construction, alteration, lease, or other acquisition costs, as the case may be, from the date of such approval to the date of contract, but in no event may the amount of such increase exceed 10 per centum of such estimated cost.”

Subsecs. (d) to (f). Pub. L. 100-322, § 422(d), redesignated subsecs. (e) and (f) as (d) and (e), respectively, and struck out former subsec. (d) which read as follows: “In the case of any medical facility approved for construction, alteration, lease, or other acquisition by each committee under subsection (a) of this section for which funds have not been appropriated within one year after the date of such approval, either such committee may by resolution rescind its approval at any time thereafter before such funds are appropriated.”

1986—Subsec. (b)(1). Pub. L. 99-576 inserted “and to the sharing of health-care resources with the Department of Defense under section 5011 of this title” at end.

1985—Subsec. (a). Pub. L. 99-166, § 301, amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “In order to ensure the equitable distribution of medical facilities throughout the United States, taking into consideration the comparative urgency of the need for the services to be provided in the case of each particular facility—

“(1) no appropriation may be made for the construction, alteration, or acquisition (not including exchanges) of any medical facility which involves a total expenditure of more than \$2,000,000 unless each committee has first adopted a resolution approving such construction, alteration, or acquisition and setting forth the estimated cost thereof; and

“(2) no appropriation may be made for the lease of any space for use as a medical facility at an average annual rental of more than \$500,000 unless each committee has first adopted a resolution approving such lease and setting forth the estimated cost thereof.”

Subsec. (b)(1). Pub. L. 99-166, § 303, inserted “and, in the case of a prospectus proposing the construction of a new or replacement medical facility, a description of the consideration that was given to acquiring an existing facility by lease or purchase” after “such facility”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2022 AMENDMENT

Amendment by Pub. L. 117-263 effective as if included in the enactment of the Honoring our PACT Act of 2022 (Public Law 117-168), see section 524(d) of Pub. L. 117-263, set out as a note under section 1120 of this title.

Pub. L. 117-168, title VII, § 703(f), Aug. 10, 2022, 136 Stat. 1799, provided that: “The amendments made by this section [amending this section] shall apply with respect to any lease that has not been specifically authorized by law on or before the date of the enactment of this Act [Aug. 10, 2022].”

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-262, title II, § 205(b), Oct. 9, 1996, 110 Stat. 3190, provided that: “The amendments made by subsection (a) [amending this section] shall apply with re-

spect to any prospectus submitted by the Secretary of Veterans Affairs after the date of the enactment of this Act [Oct. 9, 1996].”

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 104-262, title II, § 206(b)(2), Oct. 9, 1996, 110 Stat. 3190, provided that: “The amendments made by subsection (a) of such section [meaning section 301(a) of Pub. L. 102-405, amending this section] shall apply with respect to any major medical facility project or any major medical facility lease of the Department of Veterans Affairs, regardless of when funds are first appropriated for that project or lease, except that in the case of a project for which funds were first appropriated before October 9, 1992, such amendments shall not apply with respect to amounts appropriated for that project for a fiscal year before fiscal year 1998.”

Pub. L. 102-405, title III, § 301(b), Oct. 9, 1992, 106 Stat. 1984, provided that the amendments made by section 301(a) of Pub. L. 102-405, amending this section, were not applicable with respect to any project for which funds were appropriated before Oct. 9, 1992, prior to repeal by Pub. L. 104-262, title II, § 206(b)(1), Oct. 9, 1996, 110 Stat. 3190.

EFFECTIVE DATE

Section effective Oct. 1, 1979, but not applicable with respect to the acquisition, construction, or alteration of any medical facilities if the acquisition, construction, or alteration (not including exchange) was approved by the President before Oct. 1, 1979, see section 302 of Pub. L. 96-22, set out as a note under section 8101 of this title.

BUDGETARY TREATMENT OF DEPARTMENT OF VETERANS AFFAIRS MAJOR MEDICAL FACILITIES LEASES

Pub. L. 113-146, title VI, § 602, Aug. 7, 2014, 128 Stat. 1794, provided that:

“(a) FINDINGS.—Congress finds the following:

“(1) Title 31, United States Code, requires the Department of Veterans Affairs to record the full cost of its contractual obligation against funds available at the time a contract is executed.

“(2) Office of Management and Budget Circular A-11 provides guidance to agencies in meeting the statutory requirements under title 31, United States Code, with respect to leases.

“(3) For operating leases, Office of Management and Budget Circular A-11 requires the Department of Veterans Affairs to record up-front budget authority in an ‘amount equal to total payments under the full term of the lease or [an] amount sufficient to cover first year lease payments plus cancellation costs’.

“(b) REQUIREMENT FOR OBLIGATION OF FULL COST.—

“(1) IN GENERAL.—Subject to the availability of appropriations provided in advance, in exercising the authority of the Secretary of Veterans Affairs to enter into leases provided in this Act, the Secretary shall record, pursuant to section 1501 of title 31, United States Code, as the full cost of the contractual obligation at the time a contract is executed either—

“(A) an amount equal to total payments under the full term of the lease; or

“(B) if the lease specifies payments to be made in the event the lease is terminated before its full term, an amount sufficient to cover the first year lease payments plus the specified cancellation costs.

“(2) SELF-INSURING AUTHORITY.—The requirements of paragraph (1) may be satisfied through the use of the self-insuring authority identified in title 40, United States Code, consistent with Office of Management and Budget Circular A-11.

“(c) TRANSPARENCY.—[AMENDED SUBSECS. (B)(7) AND (H) OF THIS SECTION.]

“(d) RULE OF CONSTRUCTION.—Nothing in this section, or the amendments made by this section, shall be construed to in any way relieve the Department of Vet-

erans Affairs from any statutory or regulatory obligations or requirements existing prior to the enactment of this section and such amendments."

§ 8105. Structural requirements

(a) Each medical facility (including each nursing home facility for which the Secretary contracts under section 1720 of this title and each State home facility constructed or altered under subchapter III of this chapter) shall be of fire, earthquake, and other natural disaster resistant construction in accordance with standards which the Secretary shall prescribe on a State or regional basis after surveying appropriate State and local laws, ordinances, and building codes and climatic and seismic conditions pertinent to each such facility. When an existing structure is acquired for use as a medical facility, it shall be altered to comply with such standards.

(b)(1) In order to carry out this section, the Secretary shall appoint an advisory committee to be known as the "Advisory Committee on Structural Safety of Department Facilities", on which shall serve at least one architect and one structural engineer who are experts in structural resistance to fire, earthquake, and other natural disasters and who are not employees of the Federal Government.

(2) Such advisory committee shall advise the Secretary on all matters of structural safety in the construction and altering of medical facilities in accordance with the requirements of this section and shall review and make recommendations to the Secretary on the regulations prescribed under this section.

(3) The Associate Deputy Secretary, the Under Secretary for Health or the designee of the Under Secretary for Health, and the Department official charged with the responsibility for construction shall be ex officio members of such advisory committee.

(Added Pub. L. 96-22, title III, §301(a), June 13, 1979, 93 Stat. 57, §5005; amended Pub. L. 96-128, title V, §501(e), Nov. 28, 1979, 93 Stat. 987; renumbered §8105, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, §§4(a)(3), (4), (b)(1), (2)(E), 5(c)(1), Aug. 6, 1991, 105 Stat. 404-406; Pub. L. 102-405, title III, §302(c)(1), Oct. 9, 1992, 106 Stat. 1984.)

Editorial Notes

AMENDMENTS

1992—Subsec. (b)(3). Pub. L. 102-405 substituted "Under Secretary for Health" for "Chief Medical Director" in two places.

1991—Pub. L. 102-40 renumbered section 5005 of this title as this section.

Subsec. (a). Pub. L. 102-83, §5(c)(1), substituted "1720" for "620".

Pub. L. 102-83, §4(b)(1), (2)(E), substituted "Secretary" for "Administrator" in two places.

Subsec. (b). Pub. L. 102-83, §4(b)(1), (2)(E), substituted "Secretary" for "Administrator" wherever appearing.

Pub. L. 102-83, §4(a)(3), (4), substituted "Department" for "Veterans' Administration" wherever appearing.

1979—Subsec. (a). Pub. L. 96-128 substituted "subchapter III of this chapter" for "section 5031 of this title".

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-128 effective Nov. 28, 1979, see section 601(b) of Pub. L. 96-128, set out as a note under section 1114 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1979, but not applicable with respect to the acquisition, construction, or alteration of any medical facilities if the acquisition, construction, or alteration (not including exchange) was approved by the President before Oct. 1, 1979, see section 302 of Pub. L. 96-22, set out as a note under section 8101 of this title.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided for by law. See section 1013 of Title 5, Government Organization and Employees.

§ 8106. Construction contracts

(a) The Secretary may carry out any construction or alteration authorized under this subchapter by contract if the Secretary considers it to be advantageous to the United States to do so.

(b)(1) The Secretary may obtain, by contract or otherwise, the services of individuals who are architects or engineers and of architectural and engineering corporations and firms, to the extent that the Secretary may require such services for any medical facility authorized to be constructed or altered under this subchapter.

(2) No corporation, firm, or individual may be employed under the authority of paragraph (1) of this subsection on a permanent basis.

(c) Notwithstanding any other provision of this section, the Secretary shall be responsible for all construction authorized under this subchapter, including the interpretation of construction contracts, the approval of materials and workmanship supplied pursuant to a construction contract, approval of changes in the construction contract, certification of vouchers for payments due the contractor, and final settlement of the contract.

(Added Pub. L. 96-22, title III, §301(a), June 13, 1979, 93 Stat. 58, §5006; renumbered §8106, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 102-83, §4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

Editorial Notes

AMENDMENTS

1991—Pub. L. 102-40 renumbered section 5006 of this title as this section.

Pub. L. 102-83 substituted "Secretary" for "Administrator" wherever appearing.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective Oct. 1, 1979, but not applicable with respect to the acquisition, construction, or alteration