

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
4310(a)	41:256(k)(6).	June 30, 1949, ch. 288, title III, §306(k), as added Pub. L. 100-700, §8(a)(1), Nov. 19, 1988, 102 Stat. 4634; Pub. L. 103-355, title II, §2151, Oct. 13, 1994, 108 Stat. 3313.
4310(b)	41:256(k)(1).	
4310(c)	41:256(k)(2).	
4310(d)	41:256(k)(3).	
4310(e)	41:256(k)(4).	
4310(f)	41:256(k)(5).	

Editorial Notes

AMENDMENTS

2016—Pub. L. 114-261, §1(b)(2)(A)(i), (ii), inserted “, subcontractor, or personal services contractor” after “contractor” and “, subcontract, or personal services contract” after “contract” wherever appearing.

Subsec. (b)(1). Pub. L. 114-261, §1(b)(2)(A)(iii), inserted “or to any other activity described in section 4712(a)(1) of this title” after “statute or regulation”.

2013—Subsec. (b). Pub. L. 112-239, §828(d)(1), substituted “commenced by the Federal Government, by a State, or by a contractor or grantee employee submitting a complaint under section 4712 of this title” for “commenced by the Federal Government or a State”.

Subsec. (c)(3). Pub. L. 112-239, §828(d)(2), substituted “the imposition of a monetary penalty or an order to take corrective action under section 4712 of this title” for “the imposition of a monetary penalty”.

CHAPTER 45—CONTRACT FINANCING

Sec.	
4501.	Authority of executive agency.
4502.	Payment.
4503.	Security for advance payments.
4504.	Conditions for progress payments.
4505.	Payments for commercial products and commercial services.
4506.	Action in case of fraud.

Editorial Notes

AMENDMENTS

2018—Pub. L. 115-232, div. A, title VIII, §836(b)(18)(B)(ii), Aug. 13, 2018, 132 Stat. 1864, substituted “Payments for commercial products and commercial services” for “Payments for commercial items” in item 4505.

§ 4501. Authority of executive agency

An executive agency may—

(1) make advance, partial, progress or other payments under contracts for property or services made by the agency; and

(2) insert in solicitations for procurement of property or services a provision limiting to small business concerns advance or progress payments.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3790.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
4501	41:255(a).	June 30, 1949, ch. 288, title III, §305(a), 63 Stat. 396; July 12, 1952, ch. 703, §1(m), 66 Stat. 594; Pub. L. 85-800, §4, Aug. 28, 1958, 72 Stat. 966; Pub. L. 103-355, title II, §2051(a)(2), (c), Oct. 13, 1994, 108 Stat. 3304.

Statutory Notes and Related Subsidiaries

RELATIONSHIP TO PROMPT PAYMENT REQUIREMENTS

Pub. L. 103-355, title II, §2051(f), Oct. 13, 1994, 108 Stat. 3306, provided that: “The amendments made by this section [see Tables for classification] are not intended to impair or modify procedures required by the provisions of chapter 39 of title 31, United States Code, and the regulations issued pursuant to such provisions of law (as such procedures are in effect on the date of the enactment of this Act [Oct. 13, 1994]), except that the Government may accept payment terms offered by a contractor offering a commercial item.”

§ 4502. Payment

(a) BASIS FOR PAYMENT.—When practicable, payments under section 4501 of this title shall be made on any of the following bases:

(1) Performance measured by objective, quantifiable methods such as delivery of acceptable items, work measurement, or statistical process controls.

(2) Accomplishment of events defined in the program management plan.

(3) Other quantifiable measures of results.

(b) PAYMENT AMOUNT.—Payments made under section 4501 of this title may not exceed the unpaid contract price.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3791.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
4502(a)	41:255(b).	June 30, 1949, ch. 288, title III, §305(b), as added Pub. L. 103-355, title II, §2051(b), Oct. 13, 1994, 108 Stat. 3304.
4502(b)	41:255(c).	June 30, 1949, ch. 288, title III, §305(c), 63 Stat. 396; July 12, 1952, ch. 703, §1(m), 66 Stat. 594; Pub. L. 85-800, §4, Aug. 28, 1958, 72 Stat. 966; Pub. L. 103-355, title II, §2051(a)(3), (5), Oct. 13, 1994, 108 Stat. 3304.

§ 4503. Security for advance payments

Advance payments under section 4501 of this title may be made only on adequate security and a determination by the agency head that to do so would be in the public interest. The security may be in the form of a lien in favor of the Federal Government on the property contracted for, on the balance in an account in which the payments are deposited, and on such of the property acquired for performance of the contract as the parties may agree. This lien shall be paramount to all other liens and is effective immediately upon the first advancement of funds without filing, notice, or any other action by the Federal Government.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3791.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
4503	41:255(d).	June 30, 1949, ch. 288, title III, §305(d), 63 Stat. 396; July 12, 1952, ch. 703, §1(m), 66 Stat. 594; Pub. L. 85-800, §4, Aug. 28, 1958, 72 Stat. 966; Pub. L. 103-355, title II, §2051(a)(4), (5), (d), Oct. 13, 1994, 108 Stat. 3304.

§ 4504. Conditions for progress payments

(a) **PAYMENT COMMENSURATE WITH WORK.**—The executive agency shall ensure that a payment for work in progress (including materials, labor, and other items) under a contract of an executive agency that provides for those payments is commensurate with the work accomplished that meets standards established under the contract. The contractor shall provide information and evidence the executive agency determines is necessary to permit the executive agency to carry out this subsection.

(b) **LIMITATION.**—The executive agency shall ensure that progress payments referred to in subsection (a) are not made for more than 80 percent of the work accomplished under the contract as long as the executive agency has not made the contractual terms, specifications, and price definite.

(c) **APPLICATION.**—This section applies to a contract in an amount greater than \$25,000.

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3791.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
4504	41:255(e).	June 30, 1949, ch. 288, title III, § 305(e), as added Pub. L. 103-355, title II, § 2051(e), Oct. 13, 1994, 108 Stat. 3304, as amended Pub. L. 104-106, title XLIII, § 4321(a)(4), Feb. 10, 1996, 110 Stat. 671.

§ 4505. Payments for commercial products and commercial services

(a) **TERMS AND CONDITIONS FOR PAYMENTS.**—Payments under section 4501 of this title for commercial products or commercial services may be made under terms and conditions that the head of the executive agency determines are appropriate or customary in the commercial marketplace and are in the best interests of the Federal Government.

(b) **SECURITY FOR PAYMENTS.**—The head of the executive agency shall obtain adequate security for the payments. If the security is in the form of a lien in favor of the Federal Government, the lien is paramount to all other liens and is effective immediately on the first payment, without filing, notice, or other action by the Federal Government.

(c) **LIMITATION ON ADVANCE PAYMENTS.**—Advance payments made under section 4501 of this title for commercial products or commercial services may include payments, in a total amount not more than 15 percent of the contract price, in advance of any performance of work under the contract.

(d) **NONAPPLICATION OF CERTAIN CONDITIONS.**—The conditions of sections 4503 and 4504 of this title need not be applied if they would be inconsistent, as determined by the head of the executive agency, with commercial terms and conditions pursuant to this section.

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3791; Pub. L. 115-232, div. A, title VIII, § 836(b)(18)(A), (B)(i), Aug. 13, 2018, 132 Stat. 1864.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
4505	41:255(f).	June 30, 1949, ch. 288, title III, § 305(f), as added Pub. L. 103-355, title II, § 2051(e), Oct. 13, 1994, 108 Stat. 3304, as amended Pub. L. 104-106, title XLIII, § 4321(a)(4), Feb. 10, 1996, 110 Stat. 671.

Editorial Notes

AMENDMENTS

2018—Pub. L. 115-232, § 836(b)(18)(B)(i), substituted “Payments for commercial products and commercial services” for “Payments for commercial items” in section catchline.

Subsecs. (a), (c). Pub. L. 115-232, § 836(b)(18)(A), substituted “commercial products or commercial services” for “commercial items”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115-232 effective Jan. 1, 2020, subject to a savings provision, see section 836(h) of Pub. L. 115-232, set out as an Effective Date of 2018 Amendment; Savings Provision note under section 453b of Title 6, Domestic Security.

§ 4506. Action in case of fraud

(a) **DEFINITION.**—In this section, the term “remedy coordination official”, with respect to an executive agency, means the individual or entity in that executive agency who coordinates within that executive agency the administration of criminal, civil, administrative, and contractual remedies resulting from investigations of fraud or corruption related to procurement activities.

(b) **RECOMMENDATION TO REDUCE OR SUSPEND PAYMENTS.**—In any case in which the remedy coordination official of an executive agency finds that there is substantial evidence that the request of a contractor for advance, partial, or progress payment under a contract awarded by that executive agency is based on fraud, the remedy coordination official shall recommend that the executive agency reduce or suspend further payments to that contractor.

(c) **REDUCTION OR SUSPENSION OF PAYMENTS.**—The head of an executive agency receiving a recommendation under subsection (b) in the case of a contractor’s request for payment under a contract shall determine whether there is substantial evidence that the request is based on fraud. On making an affirmative determination, the head of the executive agency may reduce or suspend further payments to the contractor under the contract.

(d) **EXTENT OF REDUCTION OR SUSPENSION.**—The extent of any reduction or suspension of payments by an executive agency under subsection (c) on the basis of fraud shall be reasonably commensurate with the anticipated loss to the Federal Government resulting from the fraud.

(e) **WRITTEN JUSTIFICATION.**—A written justification for each decision of the head of an executive agency whether to reduce or suspend payments under subsection (c), and for each recommendation received by the executive agency