

§ 2805(a), Oct. 28, 2004, 118 Stat. 2122; Pub. L. 109-163, div. B, title XXVIII, § 2806(a), (b), Jan. 6, 2006, 119 Stat. 3507; Pub. L. 110-181, div. B, title XXVII, § 2705, Jan. 28, 2008, 122 Stat. 533.)

AMENDMENTS

2008—Subsec. (c)(1)(G). Pub. L. 110-181, § 2705(a)(1), added subpar. (G).

Subsec. (c)(2)(G). Pub. L. 110-181, § 2705(a)(2), added subpar. (G).

Subsec. (f). Pub. L. 110-181, § 2705(b), substituted “subparagraph (B) or (G) of paragraph (1) or subparagraph (B) or (G) of paragraph (2)” for “paragraph (1)(B) or (2)(B)” and inserted at end “In addition, the notice required in connection with a transfer under subparagraph (G) of paragraph (1) or subparagraph (G) of paragraph (2) shall include a certification that the amounts to be transferred from the Department of Defense Base Closure Account 2005 were specified in the conference report to accompany the most recent Military Construction Authorization Act.”

2006—Subsec. (c)(1)(B). Pub. L. 109-163, § 2806(b), substituted “acquisition, improvement, or construction” for “acquisition or construction”.

Subsec. (e). Pub. L. 109-163, § 2806(a), designated existing provisions as par. (1) and added par. (2).

2004—Subsec. (g). Pub. L. 108-375 struck out heading and text of subsec. (g). Text read as follows: “The total value in budget authority of all contracts and investments undertaken using the authorities provided in this subchapter shall not exceed—

“(1) \$850,000,000 for the acquisition or construction of military family housing; and

“(2) \$150,000,000 for the acquisition or construction of military unaccompanied housing.”

2003—Subsec. (c)(1)(F). Pub. L. 108-136, § 2805(c)(1), added subpar. (F).

Subsec. (c)(2)(F). Pub. L. 108-136, § 2805(c)(2), added subpar. (F).

Subsec. (f). Pub. L. 108-136, § 1031(a)(51), inserted before period at end “or, if earlier, the end of the 14-day period beginning on the date on which a copy of the notice and justification is provided in an electronic medium pursuant to section 480 of this title”.

1999—Subsec. (c)(1)(E). Pub. L. 106-65, § 2802(b)(1), added subpar. (E).

Subsec. (c)(2)(E). Pub. L. 106-65, § 2802(b)(2), added subpar. (E).

1996—Subsec. (d)(1), (2). Pub. L. 104-201 inserted at end “The Secretary may also use for expenses of activities required in connection with the planning, execution, and administration of such contracts funds that are otherwise available to the Department of Defense for such types of expenses.”

§ 2883a. Funds for housing allowances of members of the armed forces assigned to certain military family housing units

(a) **AUTHORITY TO TRANSFER FUNDS TO COVER HOUSING ALLOWANCES.**—During the fiscal year in which a contract is awarded for the acquisition or construction of military family housing units under this subchapter that are not to be owned by the United States, the Secretary of Defense may transfer the amount determined under subsection (b) with respect to such housing from appropriations available for support of military housing for the armed force concerned for that fiscal year to appropriations available for pay and allowances of military personnel of that same armed force for that same fiscal year.

(b) **AMOUNT TRANSFERRED.**—The total amount authorized to be transferred under subsection (a) in connection with a contract under this subchapter may not exceed an amount equal to any additional amounts payable during the fiscal

year in which the contract is awarded to members of the armed forces assigned to the acquired or constructed housing units as basic allowance for housing under section 403 of title 37 that would not otherwise have been payable to such members if not for assignment to such housing units.

(c) **TRANSFERS SUBJECT TO APPROPRIATIONS.**—The transfer of funds under the authority of subsection (a) is limited to such amounts as may be provided in advance in appropriations Acts.

(Added Pub. L. 107-107, div. B, title XXVIII, § 2804(a), Dec. 28, 2001, 115 Stat. 1305.)

§ 2884. Reports

(a) **PROJECT REPORTS.**—(1) The Secretary of Defense shall transmit to the appropriate committees of Congress a report describing—

(A) each contract for the acquisition or construction of family housing units or unaccompanied housing units that the Secretary proposes to solicit under this subchapter; and

(B) each conveyance or lease proposed under section 2878 of this title.

(2) For each proposed contract, conveyance, or lease described in paragraph (1), the report required by such paragraph shall include the following:

(A) A description of the contract, conveyance, or lease, including a summary of the terms of the contract, conveyance, or lease.

(B) A description of the authorities to be utilized in entering into the contract, conveyance, or lease and the intended method of participation of the United States in the contract, conveyance, or lease, including a justification of the intended method of participation.

(C) A statement of the scored cost of the contract, conveyance, or lease, as determined by the Office of Management and Budget.

(D) A statement of the United States funds required for the contract, conveyance, or lease and a description of the source of such funds, including a description of the specific construction, acquisition, or improvement projects from which funds were transferred to the Funds established under section 2883 of this title in order to finance the contract, conveyance, or lease.

(E) An economic assessment of the life cycle costs of the contract, conveyance, or lease, including an estimate of the amount of United States funds that would be paid over the life of the contract, conveyance, or lease from amounts derived from payments of government allowances, including the basic allowance for housing under section 403 of title 37, if the housing affected by the project were fully occupied by military personnel over the life of the contract, conveyance, or lease.

(3)(A) In the case of a contract described in paragraph (1) proposed to be entered into with a private party, the report shall specify whether the contract will or may include a guarantee (including the making of mortgage or rental payments) by the Secretary to the private party in the event of—

(i) the closure or realignment of the installation for which housing will be provided under the contract;

- (ii) a reduction in force of units stationed at such installation; or
- (iii) the extended deployment of units stationed at such installation.

(B) If the contract will or may include such a guarantee, the report shall also—

- (i) describe the nature of the guarantee; and
- (ii) assess the extent and likelihood, if any, of the liability of the United States with respect to the guarantee.

(4) The report shall be submitted not later than 30 days before the date on which the Secretary issues the contract solicitation or offers the conveyance or lease or, if earlier, a period of 20 days has elapsed from the date on which a copy of the report is provided in an electronic medium pursuant to section 480 of this title.

(b) ANNUAL REPORTS.—The Secretary of Defense shall include each year in the materials that the Secretary submits to Congress in support of the budget submitted by the President pursuant to section 1105 of title 31 the following:

(1) A separate report on the expenditures and receipts during the preceding fiscal year covering each of the Funds established under section 2883 of this title, including a description of the specific construction, acquisition, or improvement projects from which funds were transferred and the privatization projects or contracts to which those funds were transferred. Each report shall also include, for each military department or defense agency, a description of all funds to be transferred to such Funds for the current fiscal year and the next fiscal year.

(2) A methodology for evaluating the extent and effectiveness of the use of the authorities under this subchapter during such preceding fiscal year, and such recommendations as the Secretary considers necessary for improving the extent and effectiveness of the use of such authorities in the future.

(3) A review of activities of the Secretary under this subchapter during such preceding fiscal year, shown for military family housing, military unaccompanied housing, dual military family housing and military unaccompanied housing, and ancillary supporting facilities.

(4) If a contract for the acquisition or construction of military family housing, military unaccompanied housing, or dual military family housing and military unaccompanied housing entered into during the preceding fiscal year did not include the acquisition or construction of the types of ancillary supporting facilities specifically referred to in section 2871(1) of this title, an explanation of the reasons why such ancillary supporting facilities were not included.

(5) A report setting forth, by armed force—

(A) an estimate of the amounts of basic allowance for housing under section 403 of title 37 that will be paid, during the current fiscal year and the fiscal year for which the budget is submitted, to members of the armed forces living in housing provided under the authorities in this subchapter; and

(B) the number of units of military family housing and military unaccompanied hous-

ing upon which the estimate under subparagraph (A) for the current fiscal year and the next fiscal year is based.

(6) A description of the Secretary's plans for housing privatization activities under this subchapter: (A) during the fiscal year for which the budget is submitted; and (B) during the period covered by the then-current future-years defense plan under section 221 of this title.

(7) A report on best practices for the execution of housing privatization initiatives, including—

(A) effective means to track and verify proper performance, schedule, and cash flow;

(B) means of overseeing the actions of bondholders to properly monitor construction progress and construction draws;

(C) effective structuring of transactions to ensure the United States Government has adequate abilities to oversee project owner performance;

(D) ensuring that notices to proceed on new work are not issued until proper bonding is in place; and

(E) such other topics that are identified as pertinent by the Department of Defense.

(8) A report identifying each family housing unit acquired or constructed under this subchapter that is used, or intended to be used, as quarters for a general officer or flag officer and for which the total operation, maintenance, and repair costs for the unit exceeded \$50,000. For each housing unit so identified, the report shall also include the total of such operation, maintenance, and repair costs.

(Added Pub. L. 104-106, div. B, title XXVIII, §2801(a)(1), Feb. 10, 1996, 110 Stat. 550; amended Pub. L. 108-136, div. B, title XXVIII, §2807, Nov. 24, 2003, 117 Stat. 1722; Pub. L. 108-375, div. B, title XXVIII, §2806, Oct. 28, 2004, 118 Stat. 2122; Pub. L. 109-163, div. B, title XXVIII, §2806(c), Jan. 6, 2006, 119 Stat. 3507; Pub. L. 110-417, div. B, title XXVIII, §2805(b), (f), Oct. 14, 2008, 122 Stat. 4723, 4724; Pub. L. 111-383, div. A, title X, §1075(h)(6), div. B, title XXVIII, §2803(g), Jan. 7, 2011, 124 Stat. 4377, 4459.)

AMENDMENTS

2011—Subsec. (a)(4). Pub. L. 111-383, §2803(g), inserted before period at end “or, if earlier, a period of 20 days has elapsed from the date on which a copy of the report is provided in an electronic medium pursuant to section 480 of this title”.

Subsec. (b)(1). Pub. L. 111-383, §1075(h)(6), made technical correction to directory language of Pub. L. 109-163, §2806(c)(2)(A). See 2006 Amendment note below.
2008—Subsec. (b)(7). Pub. L. 110-417, §2805(b), added par. (7).

Subsec. (b)(8). Pub. L. 110-417, §2805(f), added par. (8).

2006—Subsec. (a)(2)(D). Pub. L. 109-163, §2806(c)(1), inserted before period “, including a description of the specific construction, acquisition, or improvement projects from which funds were transferred to the Funds established under section 2883 of this title in order to finance the contract, conveyance, or lease”.

Subsec. (b)(1). Pub. L. 109-163, §2806(c)(2)(B), (C), substituted “covering each of the Funds” for “covering the Funds” and inserted before period at end “, including a description of the specific construction, acquisition, or improvement projects from which funds were transferred and the privatization projects or contracts to

which those funds were transferred. Each report shall also include, for each military department or defense agency, a description of all funds to be transferred to such Funds for the current fiscal year and the next fiscal year”.

Pub. L. 109-163, § 2806(c)(2)(A), as amended by Pub. L. 111-383, § 1075(h)(6), substituted “A separate report” for “A report”.

2004—Subsec. (a)(2). Pub. L. 108-375, § 2806(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “The report shall describe the proposed contract, conveyance, or lease and the intended method of participation of the United States in the contract, conveyance, or lease and provide a justification of such method of participation.”

Subsec. (b)(5), (6). Pub. L. 108-375, § 2806(b), added par. (5) and redesignated former par. (5) as (6).

2003—Subsec. (a)(2) to (4). Pub. L. 108-136, § 2807(a), designated second sentence of par. (2) as par. (4) and added par. (3).

Subsec. (b)(2). Pub. L. 108-136, § 2807(b)(1), inserted before period at end “, and such recommendations as the Secretary considers necessary for improving the extent and effectiveness of the use of such authorities in the future”.

Subsec. (b)(3) to (5). Pub. L. 108-136, § 2807(b)(2), added pars. (3) to (5) and struck out former par. (3) which read as follows: “A description of the objectives of the Department of Defense for providing military family housing and military unaccompanied housing for members of the armed forces.”

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 111-383, div. A, title X, § 1075(h), Jan. 7, 2011, 124 Stat. 4377, provided that amendment by section 1075(h)(6) is effective as of Jan. 6, 2006, and as if included in Pub. L. 109-163 as enacted.

FINAL REPORT

Pub. L. 104-106, div. B, title XXVIII, § 2801(b), Feb. 10, 1996, 110 Stat. 551, provided that, not later than Mar. 1, 2000, the Secretary of Defense was to submit to the congressional defense committees a report on the use by the Secretary of Defense and the Secretaries of the military departments of the authorities provided by subchapter IV of chapter 169 of this title.

§ 2885. Oversight and accountability for privatization projects

(a) OVERSIGHT AND ACCOUNTABILITY MEASURES.—Each Secretary concerned shall prescribe regulations to effectively oversee and manage military housing privatization projects carried out under this subchapter. The regulations shall include the following requirements for each privatization project:

(1) The installation asset manager shall conduct monthly site visits and provide quarterly reports on the progress of the construction or renovation of the housing units. The reports shall be submitted quarterly to the assistant secretary for installations and environment of the respective military department.

(2) The installation asset manager, and, as applicable, the resident construction manager, privatization asset manager, bondholder representative, project owner, developer, general contractor, and construction consultant for the project shall conduct meetings to ensure that the construction or renovation of the units meets performance and schedule requirements and that appropriate operating and ground lease agreements are in place and adhered to.

(3) If a project is 90 days or more behind schedule or otherwise appears to be substan-

tially failing to adhere to the obligations or milestones under the contract, the assistant secretary for installations and environment of the respective military department shall submit a notice of deficiency to the Deputy Under Secretary of Defense (Installations and Environment), the Secretary concerned, the managing member, and the trustee for the project.

(4)(A) Not later than 15 days after the submittal of a notice of deficiency under paragraph (3), the Secretary concerned or designated representative shall submit to the project owner, developer, or general contractor responsible for the project a summary of deficiencies related to the project.

(B) If the project owner, developer, or general contractor responsible for the privatization project is unable, within 60 days after receiving a notice of deficiency under subparagraph (A), to make progress on the issues outlined in such notice, the Secretary concerned shall notify the congressional defense committees of the status of the project, and shall provide a recommended course of action to correct the problems.

(b) REQUIRED QUALIFICATIONS.—The Secretary concerned or designated representative shall ensure that the project owner, developer, or general contractor that is selected for each military housing privatization initiative project has construction experience commensurate with that required to complete the project.

(c) BONDING LEVELS.—The Secretary concerned shall ensure that the project owner, developer, or general contractor responsible for a military housing privatization initiative project has sufficient payment and performance bonds or suitable instruments in place for each phase of a construction or renovation portion of the project to ensure successful completion of the work in amounts as agreed to in the project's legal documents, but in no case less than 50 percent of the total value of the active phases of the project, prior to the commencement of work for that phase.

(d) REPORTING OF EFFORTS TO SELECT SUCCESSOR IN EVENT OF DEFAULT.—In the event a military housing privatization initiative project enters into default, the assistant secretary for installations and environment of the respective military department shall submit a report to the congressional defense committees every 90 days detailing the status of negotiations to award the project to a new project owner, developer, or general contractor.

(e) EFFECT OF NOTICES OF DEFICIENCY ON CONTRACTORS AND AFFILIATED ENTITIES.—(1) The Secretary concerned shall keep a record of all plans of action or notices of deficiency issued to a project owner, developer, or general contractor under subsection (a)(4), including the identity of each parent, subsidiary, affiliate, or other controlling entity of such owner, developer, or contractor.

(2) Each military department shall consult all records maintained under paragraph (1) when reviewing the past performance of owners, developers, and contractors in the bidding process for a contract or other agreement for a military housing privatization initiative project.