

**§ 2667. Leases: non-excess property of military departments and Defense Agencies**

(a) **LEASE AUTHORITY.**—Whenever the Secretary concerned considers it advantageous to the United States, the Secretary concerned may lease to such lessee and upon such terms as the Secretary concerned considers will promote the national defense or to be in the public interest, real or personal property that—

- (1) is under the control of the Secretary concerned;
- (2) is not for the time needed for public use; and
- (3) is not excess property, as defined by section 102 of title 40.

(b) **CONDITIONS ON LEASES.**—A lease under subsection (a)—

(1) may not be for more than five years, unless the Secretary concerned determines that a lease for a longer period will promote the national defense or be in the public interest;

(2) may give the lessee the first right to buy the property if the lease is revoked to allow the United States to sell the property under any other provision of law;

(3) shall permit the Secretary to revoke the lease at any time, unless he determines that the omission of such a provision will promote the national defense or be in the public interest;

(4) shall provide for the payment (in cash or in kind) by the lessee of consideration in an amount that is not less than the fair market value of the lease interest, as determined by the Secretary;

(5) may provide, notwithstanding section 1302 of title 40 or any other provision of law, for the alteration, repair, or improvement, by the lessee, of the property leased as the payment of part or all of the consideration for the lease;

(6) except as otherwise provided in subsection (d), shall require the lessee to provide the covered entities specified in paragraph (1) of that subsection the right to establish and operate a community support facility or provide community support services, or seek equitable compensation for morale, welfare, and recreation programs of the Department of Defense in lieu of the operation of such a facility or the provision of such services, if the Secretary determines that the lessee will provide merchandise or services in direct competition with covered entities through the lease; and

(7) may not provide for a leaseback by the Secretary concerned with an annual payment in excess of \$500,000, or otherwise commit the Secretary concerned or the Department of Defense to annual payments in excess of such amount.

(c) **TYPES OF IN-KIND CONSIDERATION.**—(1) In addition to any in-kind consideration accepted under subsection (b)(5), in-kind consideration accepted with respect to a lease under this section may include the following:

(A) Maintenance, protection, alteration, repair, improvement, or restoration (including environmental restoration) of property or facilities under the control of the Secretary concerned.

(B) Construction of new facilities for the Secretary concerned.

(C) Provision of facilities for use by the Secretary concerned.

(D) Provision or payment of utility services for the Secretary concerned.

(E) Provision of real property maintenance services for the Secretary concerned.

(F) Provision of such other services relating to activities that will occur on the leased property as the Secretary concerned considers appropriate.

(2) In-kind consideration under paragraph (1) may be accepted at any property or facilities under the control of the Secretary concerned that are selected for that purpose by the Secretary concerned.

(3) Sections 2662 and 2802 of this title shall not apply to any new facilities whose construction is accepted as in-kind consideration under this subsection.

(d) **COMMUNITY SUPPORT FACILITIES AND COMMUNITY SUPPORT SERVICES UNDER LEASE; WAIVER.**—(1) In this subsection and subsection (b)(6), the term “covered entity” means each of the following:

(A) The Army and Air Force Exchange Service.

(B) The Navy Exchange Service Command.

(C) The Marine Corps exchanges.

(D) The Defense Commissary Agency.

(E) The revenue-generating nonappropriated fund activities of the Department of Defense conducted for the morale, welfare, and recreation of members of the armed forces.

(2) The Secretary concerned may waive the requirement in subsection (b)(6) with respect to a lease if—

(A) the lease is entered into under subsection (g); or

(B) the Secretary determines that the waiver is in the best interests of the Government.

(3) The Secretary concerned shall provide to the congressional defense committees written notice of each waiver under paragraph (2), including the reasons for the waiver.

(4) The covered entities shall exercise the right provided in subsection (b)(6) with respect to a lease, if at all, not later than 90 days after receiving notice from the Secretary concerned regarding the opportunity to exercise such right with respect to the lease. The Secretary may, at the discretion of the Secretary, extend the period under this paragraph for the exercise of the right with respect to a lease for such additional period as the Secretary considers appropriate.

(5) The Secretary of Defense shall prescribe in regulations uniform procedures and criteria for the evaluation of proposals for enhanced use leases involving the operation of community support facilities or the provision of community support services by either a lessee under this section or a covered entity.

(e) **DEPOSIT AND USE OF PROCEEDS.**—(1)(A) The Secretary concerned shall deposit in a special account in the Treasury established for that Secretary the following:

(i) All money rentals received pursuant to leases entered into by that Secretary under this section.

(ii) All proceeds received pursuant to the granting of easements by that Secretary under section 2668 of this title.

(iii) All proceeds received by that Secretary from authorizing the temporary use of other property under the control of that Secretary.

(B) Subparagraph (A) does not apply to the following proceeds:

(i) Amounts paid for utilities and services furnished lessees by the Secretary concerned pursuant to leases entered into under this section.

(ii) Money rentals referred to in paragraph (3), (4), or (5).

(C) Subject to subparagraphs (D) and (E), the proceeds deposited in the special account established for the Secretary concerned shall be available to the Secretary, in such amounts as provided in appropriation Acts, for the following:

(i) Maintenance, protection, alteration, repair, improvement, or restoration (including environmental restoration) of property or facilities.

(ii) Construction or acquisition of new facilities.

(iii) Lease of facilities.

(iv) Payment of utility services.

(v) Real property maintenance services.

(vi) Administrative expenses incurred by the Secretary concerned under this section and for easements under section 2668 of this title.

(D) At least 50 percent of the proceeds deposited in the special account established for the Secretary concerned shall be available for activities described in subparagraph (C) only at the military installation or Defense Agency location where the proceeds were derived.

(E) If the proceeds deposited in the special account established for the Secretary concerned are derived from activities associated with a military museum described in section 489(a)<sup>1</sup> of this title, the proceeds shall be available for activities described in subparagraph (C) only at that museum.

(2) Payments for utilities and services furnished lessees pursuant to leases entered into under this section shall be credited to the appropriation account or working capital fund from which the cost of furnishing the utilities and services was paid.

(3) Money rentals received by the United States directly from a lease under this section for agricultural or grazing purposes of lands under the control of the Secretary concerned (other than lands acquired by the United States for flood control or navigation purposes or any related purpose, including the development of hydroelectric power) may be retained and spent by the Secretary concerned in such amounts as the Secretary considers necessary to cover the administrative expenses of leasing for such purposes and to cover the financing of multiple-land use management programs at any installation under the jurisdiction of the Secretary.

(4) Money rentals received by the United States from a lease under subsection (g) at a military installation approved for closure or re-

alignment under a base closure law before January 1, 2005, shall be deposited into the account established under section 2906(a)<sup>1</sup> of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note).

(5) Money rentals received by the United States from a lease under subsection (g) at a military installation approved for closure or realignment under a base closure law on or after January 1, 2005, shall be deposited into the account established under section 2906A(a)<sup>1</sup> of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note).

(f) TREATMENT OF LESSEE INTEREST IN PROPERTY.—The interest of a lessee of property leased under this section may be taxed by State or local governments. A lease under this section shall provide that, if and to the extent that the leased property is later made taxable by State or local governments under an Act of Congress, the lease shall be renegotiated.

(g) SPECIAL RULES FOR BASE CLOSURE AND REALIGNMENT PROPERTY.—(1) Notwithstanding subtitle I of title 40 and division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41 (to the extent those provisions are inconsistent with this subsection) or subsection (a)(2) of this section, pending the final disposition of real property and personal property located at a military installation to be closed or realigned under a base closure law, the Secretary concerned may lease the property to any individual or entity under this subsection if the Secretary determines that such a lease would facilitate State or local economic adjustment efforts.

(2) Notwithstanding subsection (b)(4), the Secretary concerned may accept consideration in an amount that is less than the fair market value of the lease interest if the Secretary concerned determines that—

(A) a public interest will be served as a result of the lease; and

(B) the fair market value of the lease is (i) unobtainable, or (ii) not compatible with such public benefit.

(3) Before entering into any lease under this subsection, the Secretary shall consult with the Administrator of the Environmental Protection Agency in order to determine whether the environmental condition of the property proposed for leasing is such that the lease of the property is advisable. The Secretary and the Administrator shall enter into a memorandum of understanding setting forth procedures for carrying out the determinations under this paragraph.

(4)(A) Notwithstanding the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the scope of any environmental impact analysis necessary to support an interim lease of property under this subsection shall be limited to the environmental consequences of activities authorized under the proposed lease and the cumulative impacts of other past, present, and reasonably foreseeable future actions during the period of the proposed lease.

(B) Interim leases entered into under this subsection shall be deemed not to prejudice the final disposal decision with respect to the prop-

<sup>1</sup> See References in Text note below.

erty, even if final disposal of the property is delayed until completion of the term of the interim lease. An interim lease under this subsection shall not be entered into without prior consultation with the redevelopment authority concerned.

(C) Subparagraphs (A) and (B) shall not apply to an interim lease under this subsection if authorized activities under the lease would—

(i) significantly affect the quality of the human environment; or

(ii) irreversibly alter the environment in a way that would preclude any reasonable disposal alternative of the property concerned.

(h) COMPETITIVE PROCEDURES FOR SELECTION OF CERTAIN LESSEES; EXCEPTION.—(1) If a proposed lease under subsection (a) involves only personal property, the lease term exceeds one year, or the fair market value of the lease interest exceeds \$100,000, as determined by the Secretary concerned, the Secretary shall use competitive procedures to select the lessee.

(2) Paragraph (1) does not apply if the Secretary concerned determines that—

(A) a public interest will be served as a result of the lease; and

(B) the use of competitive procedures for the selection of certain lessees is unobtainable or not compatible with the public benefit served under subparagraph (A).

(3) Paragraph (1) does not apply to a renewal or extension of a lease by the Secretary of the Navy with a selected institution for operation of a ship within the University National Oceanographic Laboratory System if, under the lease, each of the following applies:

(A) Use of the ship is restricted to federally supported research programs and to non-Federal uses under specific conditions with approval by the Secretary of the Navy.

(B) Because of the anticipated value to the Navy of the oceanographic research and training that will result from the ship's operation, no monetary lease payments are required from the lessee under the initial lease or under any renewal or extension.

(C) The lessee is required to maintain the ship in a good state of repair, readiness, and efficient operating condition, conform to all applicable regulatory requirements, and assume full responsibility for the safety of the ship, its crew, and scientific personnel aboard.

(4)(A) Paragraph (1) does not apply to a renewal, extension, or succeeding lease by the Secretary concerned with a financial institution selected in accordance with the Department of Defense Financial Management Regulation providing for the selection of financial institutions to operate on military installations if each of the following applies:

(i) The on-base financial institution was selected before the date of the enactment of this paragraph or competitive procedures are used for the selection of any new financial institutions.

(ii) A current and binding operating agreement is in place between the installation commander and the selected on-base financial institution.

(B) The renewal, extension, or succeeding lease shall terminate upon the termination of

the operating agreement described in subparagraph (A)(ii) associated with that lease.

(i) DEFINITIONS.—In this section:

(1) The term “administrative expenses” means only those expenses related to assessing, negotiating, executing, and managing lease and easement transactions. The term does not include any Government personnel costs.

(2) The term “community support facility” includes an ancillary supporting facility (as that term is defined in section 2871(1) of this title).

(3) The term “community support services” includes revenue-generating food, recreational, lodging support services, and resale operations and other retail facilities and services intended to support a community.

(4) The term “military installation” has the meaning given such term in section 2687 of this title.

(5) The term “Secretary concerned” means—

(A) the Secretary of a military department, with respect to matters concerning that military department; and

(B) the Secretary of Defense, with respect to matters concerning the Defense Agencies.

(j) EXCLUSION OF CERTAIN LANDS.—This section does not apply to oil, mineral, or phosphate lands.

(Aug. 10, 1956, ch. 1041, 70A Stat. 150; Pub. L. 94-107, title VI, §607(7), Oct. 7, 1975, 89 Stat. 566; Pub. L. 94-412, title V, §501(b), Sept. 14, 1976, 90 Stat. 1258; Pub. L. 96-513, title V, §511(92), Dec. 12, 1980, 94 Stat. 2928; Pub. L. 97-295, §1(34), Oct. 12, 1982, 96 Stat. 1296; Pub. L. 97-321, title VIII, §803, Oct. 15, 1982, 96 Stat. 1572; Pub. L. 101-510, div. B, title XXVIII, §2806, Nov. 5, 1990, 104 Stat. 1787; Pub. L. 102-190, div. B, title XXVIII, §2862, Dec. 5, 1991, 105 Stat. 1559; Pub. L. 102-484, div. B, title XXVIII, §2851, Oct. 23, 1992, 106 Stat. 2625; Pub. L. 103-160, div. B, title XXIX, §2906, Nov. 30, 1993, 107 Stat. 1920; Pub. L. 104-106, div. A, title XV, §1502(a)(1), div. B, title XXVIII, §§2831(a), 2832, 2833, Feb. 10, 1996, 110 Stat. 502, 558, 559; Pub. L. 105-85, div. A, title III, §361(b)(2), title X, §1061(a)-(c)(1), Nov. 18, 1997, 111 Stat. 1701, 1891; Pub. L. 105-261, div. B, title XXVIII, §2821, Oct. 17, 1998, 112 Stat. 2208; Pub. L. 106-65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 106-398, §1 [div. B, title XXVIII, §2812(a)-(e)], Oct. 30, 2000, 114 Stat. 1654, 1654A-416 to 1654A-418; Pub. L. 107-107, div. A, title X, §1013, Dec. 28, 2001, 115 Stat. 1212; Pub. L. 107-217, §3(b)(12), Aug. 21, 2002, 116 Stat. 1296; Pub. L. 107-314, div. A, title X, §1041(a)(18), Dec. 2, 2002, 116 Stat. 2645; Pub. L. 108-136, div. A, title X, §1043(b)(15), (c)(3), Nov. 24, 2003, 117 Stat. 1611, 1612; Pub. L. 108-178, §4(b)(4), Dec. 15, 2003, 117 Stat. 2641; Pub. L. 109-364, div. A, title VI, §662, div. B, title XXVIII, §2831, Oct. 17, 2006, 120 Stat. 2263, 2480; Pub. L. 110-181, div. A, title X, §1063(c)(13), div. B, title XXVIII, §2823, Jan. 28, 2008, 122 Stat. 323, 544; Pub. L. 110-417, div. B, title XXVIII, §§2812(a)-(d), (f)(1), 2831, Oct. 14, 2008, 122 Stat. 4725, 4726, 4728, 4732; Pub. L. 111-84, div. A, title X, §1073(a)(26), Oct. 28, 2009, 123 Stat. 2474; Pub. L. 111-350, §5(b)(44), Jan. 4, 2011, 124 Stat. 3846; Pub. L. 111-383, div. A, title X, §1075(b)(41), div. B, title XXVIII,

§§ 2811(g)–2813(a), Jan. 7, 2011, 124 Stat. 4371, 4463; Pub. L. 112–239, div. B, title XXVII, § 2712(c)(2), Jan. 2, 2013, 126 Stat. 2145; Pub. L. 113–66, div. B, title XXVIII, § 2812, Dec. 26, 2013, 127 Stat. 1014; Pub. L. 113–291, div. B, title XXVIII, § 2811, Dec. 19, 2014, 128 Stat. 3700.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
2667(a) .....	5:626s–3 (1st sentence). 10:1270 (1st sentence). 34:522a (1st sentence).	Aug. 5, 1947, ch. 493, §§ 1, 6, 61 Stat. 774, 775; Sept. 28, 1951, ch. 434, § 605 (as applicable to Act of Aug. 5, 1947, ch. 493, § 1), 65 Stat. 366.
2667(b) .....	5:626s–3 (2d through 6th sentences). 10:1270 (2d through 6th sentences). 34:522a (2d through 6th sentences).	
2667(c) .....	5:626s–3 (last sentence). 10:1270 (last sentence). 34:522a (last sentence).	
2667(d) .....	5:626s–3 (less 1st 6 sentences). 10:1270 (less 1st 6 sentences). 34:522a (less 1st 6 sentences).	
2667(e) .....	5:626s–6. 10:1270d. 34:522e.	

In subsection (a), the words “considers \* \* \* United States” are substituted for the words “shall deem \* \* \* Government”. The words “and conditions” are omitted as surplusage. The words “he considers” are substituted for the words “in his judgment”.

In subsection (a)(3), the words “excess property, as defined by section 472 of title 40” are substituted for the words “surplus to the needs of the Department within the meaning of the Surplus Property Act of 1944 [Act of October 3, 1944 (58 Stat. 765)]”, in 5:626s–3, 10:1270, and 34:522a, since the words “excess property” are so defined by the Federal Property and Administrative Services Act of 1949.

In subsection (b)(2), the words “may give” are substituted for the first 12 words of the third sentence of 5:626s–3, 10:1270, and 34:522a. The words “if the lease is revoked to allow the United States to sell the property” are substituted for the words “in the event of the revocation of the lease in order to permit sale thereof by the Government”. The words “under any other provision of law” are inserted for clarity. The words “the first right to buy” are substituted for the words “a right of first refusal”. The words “but this section shall not be construed as authorizing the sale of any property unless the sale thereof is otherwise authorized by law” are omitted as surplusage, since the revised section deals only with leases of property.

In subsection (b)(3), the words “must permit” are substituted for the words “Each such lease shall contain a provision permitting”. The words “from the lease” are omitted as surplusage.

In subsection (b)(5), the words “any such lease” and “of such property” are omitted as surplusage.

In subsection (c), the words “This section does” are substituted for the words “The authority herein granted shall”.

In subsection (e), the words “of property” are inserted for clarity. The words “leased under” are substituted for the words “made or created pursuant to”. The words “may be taxed by State or local governments” are substituted for the words “shall be made subject to State or local taxation”. The last sentence is substituted for the last sentence of 5:626s–6, 10:1270d, and 34:522e.

REFERENCES IN TEXT

Section 489 of this title, referred to in subsec. (e)(1)(E), was repealed by Pub. L. 113–291, div. A, title III, § 331(a), Dec. 19, 2014, 128 Stat. 3344.

Sections 2906 and 2906A of the Defense Base Closure and Realignment Act of 1990, referred to in subsec.

(e)(4), (5), which established, respectively, the Department of Defense Base Closure Account 1990 and the Department of Defense Base Closure Account 2005, were repealed by Pub. L. 112–239, div. B, title XXVII, § 2711(a), Jan. 2, 2013, 126 Stat. 2140. A new section 2906, establishing the Department of Defense Base Closure Account, was enacted by section 2711(a) of Pub. L. 112–239.

The National Environmental Policy Act of 1969, referred to in subsec. (g)(4)(A), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, which is classified generally to chapter 55 (§ 4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

The date of the enactment of this paragraph, referred to in subsec. (h)(4)(A)(i), is the date of enactment of Pub. L. 113–291, which was approved Dec. 19, 2014.

AMENDMENTS

2014—Subsec. (h)(4). Pub. L. 113–291 added par. (4).

2013—Subsec. (e)(1)(C)(vi). Pub. L. 113–66, § 2812(a), added cl. (vi).

Subsec. (i)(1), (2). Pub. L. 113–66, § 2812(b), added par. (1) and redesignated former par. (1) as (2). Former par. (2) redesignated (3).

Subsec. (i)(3). Pub. L. 113–66, § 2812(b), redesignated par. (2) as (3). Former par. (3) redesignated (4).

Pub. L. 112–239 substituted “section 2687” for “section 2687(e)(1)”.

Subsec. (i)(4), (5). Pub. L. 113–66, § 2812(b), redesignated pars. (3) and (4) as (4) and (5), respectively.

2011—Subsec. (b)(7). Pub. L. 111–383, § 2813(a), inserted before period at end “, or otherwise commit the Secretary concerned or the Department of Defense to annual payments in excess of such amount”.

Subsec. (c)(4). Pub. L. 111–383, § 2811(g)(1), struck out par. (4), which set forth reporting requirements for issuance of contract solicitations or other lease offerings with annual payments exceeding \$750,000.

Subsec. (d)(6). Pub. L. 111–383, § 2811(g)(2), struck out par. (6), which read as follows: “The Secretary concerned shall provide written notification to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives regarding all leases under this section that include the operation of a community support facility or the provision of community support services, regardless of whether the facility will be operated by a covered entity or the lessee or the services will be provided by a covered entity or the lessee.”

Subsec. (e)(1)(A)(ii). Pub. L. 111–383, § 1075(b)(41)(A), substituted “section 2668” for “sections 2668 and 2669”.

Subsec. (e)(1)(E). Pub. L. 111–383, §§ 2811(g)(3), 2812, added subpar. (E) and struck out former subpar. (E), which read as follows: “The Secretary concerned may not expend under subparagraph (C) an amount in excess of \$500,000 at a single military installation or Defense Agency location until 30 days after the date on which a report on the facts of the proposed expenditure is submitted to the congressional defense committees.”

Subsec. (e)(5). Pub. L. 111–383, § 1075(b)(41)(B), substituted “subsection (g)” for “subsection (f)”.

Subsec. (g)(1). Pub. L. 111–350, which directed substitution of “Notwithstanding subtitle I of title 40 and division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41 (to the extent those provisions are inconsistent with this subsection) or subsection (a)(2) of this section” for “Notwithstanding subsection (a)(3) or subtitle I of title 40 and title III of the Federal Property and Administrative Services Act of 1949 (to the extent subtitle I and title III are inconsistent with this subsection)” in subsec. (f)(1), was executed by making the substitution for “Notwithstanding subsection (a)(2) or subtitle I of title 40 and title III of the Federal Property and Administrative Services Act of 1949 (to the extent subtitle I and title III are inconsistent with this subsection)” in subsec. (g)(1), to reflect the probable intent of Congress and the amendment by Pub. L. 109–364, § 662(b)(1), (d)(6). See 2006 Amendment note below.

Subsec. (h)(3) to (5). Pub. L. 111-383, §2811(g)(4), redesignated par. (4) as (3) and struck out former pars. (3) and (5) which related to written notice to Congress describing competitive procedures for, or public benefit served by, certain proposed leases and certification requirements for energy production leases exceeding 20 years, respectively.

2009—Subsec. (g)(1). Pub. L. 111-84 substituted “law, the Secretary concerned may” for “law, the Secretary of the military department concerned may”.

2008—Pub. L. 110-417, §2812(f)(1), amended section catchline generally. Prior to amendment, catchline read as follows: “Leases: non-excess property of military departments”.

Subsec. (a). Pub. L. 110-417, §2812(a)(1), amended subsec. (a) generally. Prior to amendment, text read as follows: “Whenever the Secretary of a military department considers it advantageous to the United States, he may lease to such lessee and upon such terms as he considers will promote the national defense or be in the public interest, real or personal property that is—

“(1) under the control of that department; and

“(2) not excess property, as defined by section 102 of title 40.”

Subsec. (b)(7). Pub. L. 110-417, §2812(b), added par. (7).  
Subsec. (c)(1)(D) to (F). Pub. L. 110-181, §2823(a), added subpars. (D) and (E), redesignated former subpar. (E) as (F), and struck out former subpar. (D) which read as follows: “Facilities operation support for the Secretary concerned.”

Subsec. (c)(4). Pub. L. 110-417, §2812(c), amended par. (4) generally. Prior to amendment, par. (4) read as follows: “In the case of a lease for which all or part of the consideration proposed to be accepted by the Secretary concerned under this subsection is in-kind consideration with a value in excess of \$500,000, the Secretary concerned may not enter into the lease until 30 days after the date on which a report on the facts of the lease is submitted to the congressional defense committees.”

Subsec. (d)(2). Pub. L. 110-417, §2812(d)(1)(A), substituted “Secretary concerned” for “Secretary of a military department” in introductory provisions.

Subsec. (d)(3), (4), (6). Pub. L. 110-417, §2812(d)(1)(B), struck out “of the military department” after “Secretary” in pars. (3) and (6) and after “from the Secretary” in par. (4).

Subsec. (e). Pub. L. 110-181, §1063(c)(13), amended Pub. L. 109-364, §2831. See 2006 Amendment note below.

Subsec. (e)(1)(A). Pub. L. 110-417, §2812(d)(2)(A), in introductory provisions, substituted “Secretary concerned” for “Secretary of a military department” and “that Secretary” for “such military department” and, in cl. (iii), substituted “of that Secretary” for “of that military department”.

Subsec. (e)(1)(B)(i). Pub. L. 110-417, §2812(d)(2)(B), substituted “Secretary concerned” for “Secretary of a military department”.

Subsec. (e)(1)(B)(ii). Pub. L. 110-181, §2823(d)(1), substituted “paragraph (3), (4), or (5)” for “paragraph (4), (5), or (6)”.

Subsec. (e)(1)(C). Pub. L. 110-417, §2812(d)(2)(C), in introductory provisions, substituted “established for the Secretary concerned shall be available to the Secretary” for “of a military department pursuant to subparagraph (A) shall be available to the Secretary of that military department”.

Subsec. (e)(1)(C)(ii) to (v). Pub. L. 110-181, §2823(b), realigned margins of cls. (ii) and (iii), added cls. (iv) and (v), and struck out former cl. (iv) which read as follows: “Facilities operation support.”

Subsec. (e)(1)(D). Pub. L. 110-417, §2812(d)(2)(D), substituted “established for the Secretary concerned” for “of a military department under subparagraph (A)” and inserted “or Defense Agency location” after “military installation”.

Subsec. (e)(1)(E). Pub. L. 110-417, §2812(d)(2)(E), substituted “military installation or Defense Agency location” for “installation”.

Subsec. (e)(3). Pub. L. 110-417, §2812(d)(2)(F), substituted “control of the Secretary concerned” for “control of the Secretary of a military department”.

Pub. L. 110-181, §2823(d)(2), redesignated par. (4) as (3).

Subsec. (e)(4) to (6). Pub. L. 110-181, §2823(d)(2), redesignated pars. (5) and (6) as (4) and (5), respectively.

Subsec. (g)(1). Pub. L. 110-417, §2812(d)(3), which directed amendment of par. (1) by substituting “Secretary concerned” for “Secretary of a military department”, could not be executed because the phrase “Secretary of a military department” did not appear in text.

Subsec. (h)(1). Pub. L. 110-181, §2823(c)(1), substituted “exceeds one year, or the fair market value of the lease” for “exceeds one year, and the fair market value of the lease”.

Subsec. (h)(2) to (4). Pub. L. 110-181, §2823(c)(2), (3), added pars. (2) and (3), redesignated former par. (3) as (4), and struck out former par. (2) which read as follows: “Not later than 45 days before entering into a lease described in paragraph (1), the Secretary concerned shall submit to Congress written notice describing the terms of the proposed lease and the competitive procedures used to select the lessee.”

Subsec. (h)(5). Pub. L. 110-417, §2831, added par. (5).

Subsec. (i)(4). Pub. L. 110-417, §2812(a)(2), added par. (4).

2006—Subsec. (a). Pub. L. 109-364, §662(d)(1), inserted heading.

Subsec. (b). Pub. L. 109-364, §662(d)(2), inserted heading.

Subsec. (b)(6). Pub. L. 109-364, §662(a), added par. (6).  
Subsec. (c). Pub. L. 109-364, §662(d)(3), inserted heading.

Subsec. (d). Pub. L. 109-364, §662(b), added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 109-364, §2831, as amended by Pub. L. 110-181, §1063(c)(13), substituted “paragraph (4), (5), or (6)” for “paragraph (4) or (5)” in par. (1)(B)(ii), inserted “at a military installation approved for closure or realignment under a base closure law before January 1, 2005,” after “lease under subsection (f)” in par. (5), and added par. (6) at the end.

Pub. L. 109-364, §662(d)(4), inserted heading and substituted “(g)” for “(f)” in par. (5).

Pub. L. 109-364, §662(b)(1), redesignated subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 109-364, §662(b)(1), (d)(5), redesignated subsec. (e) as (f) and inserted heading. Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 109-364, §662(b)(1), (d)(6), redesignated subsec. (f) as (g), inserted heading, and substituted “(a)(2)” for “(a)(3)” in par. (1). Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 109-364, §662(b)(1), (d)(7), redesignated subsec. (g) as (h) and inserted heading. Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 109-364, §662(b)(1), (c), redesignated subsec. (h) as (i), inserted heading, and amended text of subsec. (i) generally. Prior to amendment, subsec. (i) read as follows: “In this section, the term ‘military installation’ has the meaning given such term in section 2687(e)(1) of this title.” Former subsec. (i) redesignated (j).

Subsec. (j). Pub. L. 109-364, §662(b)(1), (d)(8), redesignated subsec. (i) as (j) and inserted heading.

2003—Subsec. (b)(5). Pub. L. 108-178 struck out comma after “of title 40”.

Subsec. (h). Pub. L. 108-136 redesignated introductory provisions and par. (3) as entire subsec., substituted “section,” for “section:” and “this term” for “The term”, struck out par. (1) which defined “congressional defense committees” to mean the Committees on Armed Services and Appropriations of the Senate and House of Representatives, and struck out par. (2) which defined “base closure law” to mean section 2687 of this title, the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Pub. L. 101-510), and title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Pub. L. 100-526).

2002—Subsec. (a)(2). Pub. L. 107-217, §3(b)(12)(A), substituted “section 102 of title 40” for “section 3 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 472)”.

Subsec. (b)(5). Pub. L. 107-217, §3(b)(12)(B), substituted “section 1302 of title 40” for “section 321 of the Act of June 30, 1932 (40 U.S.C. 303b)”.

Subsec. (d)(3). Pub. L. 107-314 struck out par. (3) which read as follows: “Not later than March 15 each year, the Secretary of Defense shall submit to the congressional defense committees a report which shall include—

“(A) an accounting of the receipt and use of all money rentals that were deposited and expended under this subsection during the fiscal year preceding the fiscal year in which the report is made; and

“(B) a detailed explanation of each lease entered into, and of each amendment made to existing leases, during such preceding fiscal year.”

Subsec. (f)(1). Pub. L. 107-217, §3(b)(12)(C), inserted “subtitle I of title 40 and title III of” before “the Federal Property and Administrative Services Act of 1949” and substituted “subtitle I and title III are” for “such Act is”.

2001—Subsec. (g)(3). Pub. L. 107-107 added par. (3).

2000—Subsec. (a). Pub. L. 106-398, §1 [div. B, title XXVIII, §2812(a)], inserted “and” at end of par. (1), redesignated par. (3) as (2), and struck out former par. (2) which read as follows: “not for the time needed for public use; and”.

Subsec. (b)(5). Pub. L. 106-398, §1 [div. B, title XXVIII, §2812(b)(1)], substituted “alteration, repair, or improvement,” for “improvement, maintenance, protection, repair, or restoration,” and struck out “, or of the entire unit or installation where a substantial part of it is leased,” after “of the property leased”.

Subsec. (c). Pub. L. 106-398, §1 [div. B, title XXVIII, §2812(b)(3)], added subsec. (c). Former subsec. (c) redesignated (i).

Subsec. (d)(1). Pub. L. 106-398, §1 [div. B, title XXVIII, §2812(c)], amended par. (1) generally. Prior to amendment, par. (1) read as follows:

“(1)(A) All money rentals received pursuant to leases entered into by the Secretary of a military department under this section shall be deposited in a special account in the Treasury established for such military department, except—

“(i) amounts paid for utilities and services furnished lessees by the Secretary; and

“(ii) money rentals referred to in paragraph (4) or (5).

“(B) Sums deposited in a military department’s special account pursuant to subparagraph (A) shall be available to such military department, as provided in appropriation Acts, as follows:

“(i) 50 percent of such amount shall be available for facility maintenance and repair or environmental restoration at the military installation where the leased property is located.

“(ii) 50 percent of such amount shall be available for facility maintenance and repair and for environmental restoration by the military department concerned.”

Subsec. (d)(3). Pub. L. 106-398, §1 [div. B, title XXVIII, §2812(d)(1)], substituted “Not later than March 15 each year, the Secretary of Defense shall submit to the congressional defense committees a report which” for “As part of the request for authorizations of appropriations submitted to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives for each fiscal year, the Secretary of Defense” in introductory provisions.

Subsec. (d)(3)(A). Pub. L. 106-398, §1 [div. B, title XXVIII, §2812(d)(2)], substituted “report” for “request”.

Subsec. (f)(4), (5). Pub. L. 106-398, §1 [div. B, title XXVIII, §2812(b)(4)], redesignated par. (5) as (4) and struck out former par. (4) which read as follows: “The Secretary concerned may accept under subsection (b)(5) services of a lessee for an entire installation to be closed or realigned under a base closure law, or for any part of such installation, without regard to the requirement in subsection (b)(5) that a substantial part of the installation be leased.”

Subsec. (h). Pub. L. 106-398, §1 [div. B, title XXVIII, §2812(e)], amended subsec. (h) generally. Prior to amendment, subsec. (h) read as follows: “In this section, the term ‘base closure law’ means each of the following:

“(1) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note).

“(2) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526; 10 U.S.C. 2687 note).

“(3) Section 2687 of this title.”

Subsec. (i). Pub. L. 106-398, §1 [div. B, title XXVIII, §2812(b)(2)], redesignated subsec. (c) as (i).

1999—Subsec. (d)(3). Pub. L. 106-65 substituted “and the Committee on Armed Services” for “and the Committee on National Security” in introductory provisions.

1998—Subsec. (f)(1). Pub. L. 105-261 inserted “or the Federal Property and Administrative Services Act of 1949 (to the extent such Act is inconsistent with this subsection)”.

1997—Pub. L. 105-85, §1061(c)(1), inserted “of military departments” after “property” in section catchline.

Subsec. (b)(4). Pub. L. 105-85, §1061(a), struck out “, in the case of the lease of real property,” after “shall provide”.

Subsec. (d)(2). Pub. L. 105-85, §361(b)(2), inserted “or working capital fund” before “from which”.

Subsecs. (g), (h). Pub. L. 105-85, §1061(b), added subsec. (g) and redesignated former subsec. (g) as (h).

1996—Subsec. (d)(1)(A)(ii). Pub. L. 104-106, §2831(a)(1), inserted “or (5)” after “paragraph (4)”.

Subsec. (d)(3). Pub. L. 104-106, §1502(a)(1), substituted “Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives” for “Committees on Armed Services of the Senate and House of Representatives”.

Subsec. (d)(5). Pub. L. 104-106, §2831(a)(2), added par. (5).

Subsec. (f)(4). Pub. L. 104-106, §2832, added par. (4).

Subsec. (f)(5). Pub. L. 104-106, §2833, added par. (5).

1993—Subsec. (f). Pub. L. 103-160, §2906(a), amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows: “Notwithstanding clause (3) of subsection (a), real property and associated personal property, which have been determined excess as the result of a defense installation realignment or closure, may be leased to State or local governments pending final disposition of such property if—

“(1) the Secretary concerned determines that such action would facilitate State or local economic adjustment efforts, and

“(2) the Administrator of General Services concurs in the action.”

Subsec. (g). Pub. L. 103-160, §2906(b), added subsec. (g).

1992—Subsec. (b)(4). Pub. L. 102-484 inserted “, in the case of the lease of real property,” after “shall provide”.

1991—Subsec. (b)(3). Pub. L. 102-190, §2862(a)(1), substituted “shall permit” for “must permit” and struck out “and” at end.

Subsec. (b)(4). Pub. L. 102-190, §2862(a)(2), (3), added par. (4) and redesignated former par. (4) as (5).

Subsec. (b)(5). Pub. L. 102-190, §2862(a)(2), (4), redesignated par. (4) as (5) and inserted “improvement,” before “maintenance” and “the payment of” before “part or all”.

Subsec. (d)(3). Pub. L. 102-190, §2862(b), redesignated subpar. (B) as par. (3), substituted “As part of the request for authorizations of appropriations submitted to the Committees on Armed Services of the Senate and House of Representatives for each fiscal year” for “As part of the request for authorizations of appropriations to such Committees for each fiscal year after fiscal year 1992”, redesignated cls. (i) and (ii) as subpars. (A) and (B), respectively, and struck out former subpar. (A) which read as follows: “As part of the request for authorizations of appropriations for fiscal year 1992 to the Committees on Armed Services of the Senate and of

the House of Representatives, the Secretary of Defense shall include an explanation of each lease from which money rentals will be received and deposited under this subsection during fiscal year 1991, together with an estimate of the amount to be received from each such lease and an explanation of the anticipated expenditures of such receipts.”

1990—Subsec. (d). Pub. L. 101-510 added pars. (1) to (3), redesignated former par. (2) as (4), and struck out former par. (1) which read as follows: “Except as provided in paragraph (2), money rentals received by the United States directly from a lease under this section shall be covered into the Treasury as miscellaneous receipts. Payments for utilities or services furnished to the lessee under such a lease by the department concerned may be covered into the Treasury to the credit of the appropriation from which the cost of furnishing them was paid.”

1982—Subsec. (b)(4). Pub. L. 97-295 substituted “of” for “entitled ‘An Act making appropriations for the Legislative Branch of the Government for the fiscal year ending June 30, 1933, and for other purposes’, approved” after “section 321 of the Act”.

Subsec. (d). Pub. L. 97-321 designated existing provisions as par. (1), substituted “Except as provided in paragraph (2), money” for “Money”, and added par. (2).

1980—Subsec. (a)(3). Pub. L. 96-513, §511(92)(A), substituted “section 3 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 472)” for “section 472 of title 40”.

Subsec. (b)(4). Pub. L. 96-513, §511(92)(B), substituted “section 321 of the Act entitled ‘An act making appropriations for the Legislative Branch of the Government for the fiscal year ending June 30, 1933, and for other purposes’, approved June 30, 1932 (40 U.S.C. 303b),” for “section 303b of title 40”.

Subsec. (e). Pub. L. 96-513, §511(92)(C), substituted “Act” for “act”.

Subsec. (f). Pub. L. 96-513, §511(92)(D), substituted “the Secretary” for “The Secretary”, and substituted “the Administrator of General Services” for “The Administrator of the General Services Administration”.

1976—Subsec. (b)(4), (5). Pub. L. 94-412 struck out par. (4) which required leases of nonexcess property of a military department include a provision making the lease revocable during a national emergency declared by the President, and redesignated par. (5) as (4).

1975—Subsec. (f). Pub. L. 94-107 added subsec. (f).

#### EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-181, div. A, title X, §1063(c), Jan. 28, 2008, 122 Stat. 322, provided that the amendment made by section 1063(c)(13) is effective as of Oct. 17, 2006, and as if included in the John Warner National Defense Authorization Act for Fiscal Year 2007, Pub. L. 109-364, as enacted.

#### EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108-178 effective Aug. 21, 2002, see section 5 of Pub. L. 108-178, set out as a note under section 5334 of Title 5, Government Organization and Employees.

#### EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96-513, set out as a note under section 101 of this title.

#### SAVINGS PROVISION

Amendment by Pub. L. 94-412 not to affect any action taken or proceeding pending at the time of amendment, see section 501(h) of Pub. L. 94-412, set out as a note under section 1601 of Title 50, War and National Defense.

#### TRANSFERS FROM SPECIAL ACCOUNTS

Pub. L. 108-287, title VIII, §8034, Aug. 5, 2004, 118 Stat. 978, provided that: “Amounts deposited during the current fiscal year and hereafter to the special account es-

tablished under 40 U.S.C. 572(b)(5)(A) and to the special account established under 10 U.S.C. 2667(d)(1) [now 2667(e)(1)] are appropriated and shall be available until transferred by the Secretary of Defense to current applicable appropriations or funds of the Department of Defense under the terms and conditions specified by 40 U.S.C. 572(b)(5)(B) and 10 U.S.C. 2667(d)(1)(B) [now 2667(e)(1)(B)], to be merged with and to be available for the same time period and the same purposes as the appropriation to which transferred.”

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 108-87, title VIII, §8035, Sept. 30, 2003, 117 Stat. 1080.

Pub. L. 107-248, title VIII, §8035, Oct. 23, 2002, 116 Stat. 1544.

Pub. L. 107-117, div. A, title VIII, §8038, Jan. 10, 2002, 115 Stat. 2255.

Pub. L. 106-259, title VIII, §8038, Aug. 9, 2000, 114 Stat. 682.

Pub. L. 106-79, title VIII, §8040, Oct. 25, 1999, 113 Stat. 1239.

Pub. L. 105-262, title VIII, §8040, Oct. 17, 1998, 112 Stat. 2306.

Pub. L. 105-56, title VIII, §8044, Oct. 8, 1997, 111 Stat. 1230.

Pub. L. 104-61, title VIII, §8056, Dec. 1, 1995, 109 Stat. 663.

Pub. L. 103-335, title VIII, §8063, Sept. 30, 1994, 108 Stat. 2634.

Pub. L. 103-139, title VIII, §8074, Nov. 11, 1993, 107 Stat. 1457.

Pub. L. 102-396, title IX, §9107, Oct. 6, 1992, 106 Stat. 1927.

#### LEASING OF DEFENSE PROPERTY; NOTIFICATION OF CONGRESS; WAIVER; REPORT TO CONGRESS; DEFINITION

Pub. L. 96-533, title I, §109(a)-(e), Dec. 16, 1980, 94 Stat. 3137, provided that before the Secretary of a military department exercised his authority under section 2667 of title 10, United States Code, in order to lease defense property to a foreign government for a period of more than six months, the President had to transmit to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate, a written notification of the particulars of the proposed lease, prior to repeal by Pub. L. 97-113, title I, §109(d)(1), Dec. 29, 1981, 95 Stat. 1526. See section 2795 et seq. of Title 22, Foreign Relations and Intercourse.

#### [§ 2667a. Repealed. Pub. L. 110-417, div. B, title XXVIII, § 2812(e)(1), Oct. 14, 2008, 122 Stat. 4727]

Section, added Pub. L. 105-85, div. A, title X, §1062(a), Nov. 18, 1997, 111 Stat. 1891; amended Pub. L. 107-217, §3(b)(13), Aug. 21, 2002, 116 Stat. 1296; Pub. L. 108-136, div. A, title X, §1031(a)(28), Nov. 24, 2003, 117 Stat. 1599, related to leases of non-excess property of Defense agencies.

#### PRIOR PROVISIONS

A prior section 2667a, added Pub. L. 98-115, title VIII, §807(a)(1), Oct. 11, 1983, 97 Stat. 786, provided for sale and replacement of nonexcess real property, prior to repeal by Pub. L. 98-115, title VIII, §807(c), Oct. 11, 1983, 97 Stat. 789, as amended by Pub. L. 99-167, title VIII, §806(a), Dec. 3, 1985, 99 Stat. 988, effective Oct. 1, 1986.

#### SAVINGS PROVISION

Pub. L. 110-417, div. B, title XXVIII, §2812(e)(2), (3), Oct. 14, 2008, 122 Stat. 4727, provided that:

“(2) EFFECT ON EXISTING CONTRACTS.—The repeal of section 2667a of title 10, United States Code, shall not affect the validity or terms of any lease with respect to property of a Defense Agency entered into by the Secretary of Defense under such section before the date of the enactment of this Act [Oct. 14, 2008].

“(3) TREATMENT OF MONEY RENTS.—Amounts in any special account established for a Defense Agency pursu-