

Pub. L. 112-25, title I, §101, Aug. 2, 2011, 125 Stat. 241. For complete classification of this Act to the Code, see Short Title note set out under section 900 of Title 2 and Tables.

The date of the enactment of this section, referred to in subsec. (e), is the date of enactment of Pub. L. 99-576, which was approved Oct. 28, 1986.

#### AMENDMENTS

1991—Subsec. (a)(2). Pub. L. 102-83, §5(c)(1), substituted “2307” for “907”.

Subsec. (b). Pub. L. 102-83, §4(a)(3), (4), substituted “Department” for “Veterans’ Administration” in introductory provisions.

Subsec. (b)(1). Pub. L. 102-83, §5(c)(1), substituted “1920” for “720” in subpar. (A), “1922” for “722” in subpar. (B), “1923” for “723” in subpar. (C), “1925” for “725” in subpar. (D), “1955” for “755” in subpar. (E), and “1919” for “719” in subpar. (F).

Subsec. (b)(2)(A). Pub. L. 102-83, §5(c)(1), substituted “1718(c)” for “618(c)”.

Pub. L. 102-83, §4(a)(2)(B)(i), substituted “Department of Veterans Affairs” for “Veterans’ Administration”.

Subsec. (b)(2)(B). Pub. L. 102-40 substituted “7804” for “4204”.

Subsec. (c)(1). Pub. L. 102-83, §5(c)(1), substituted “2301, 2302, 2303, 2306, or 2308” for “901, 902, 903, 906, or 908”.

Subsec. (c)(3). Pub. L. 102-83, §4(b)(1), (2)(E), substituted “Secretary” for “Administrator”.

Subsec. (d). Pub. L. 102-83, §4(a)(3), (4), substituted “Department” for “Veterans’ Administration”.

1988—Subsec. (a)(4), (5). Pub. L. 100-322, §411(b), struck out “(but only with respect to fiscal year 1987)” before period at end.

Subsec. (d). Pub. L. 100-322, §411(c), substituted “a report of the Director of the Office of Management and Budget” for “a joint report of the Directors of the Office of Management and Budget and the Congressional Budget Office”.

1987—Subsec. (a)(6). Pub. L. 100-198, §12(a)(1), added par. (6).

Subsec. (c)(2). Pub. L. 100-198, §12(a)(3), substituted “31, 34, 35, or 36” for “34, or 36”.

Subsecs. (e) to (g). Pub. L. 100-198, §12(a)(2), redesignated subsecs. (f) and (g) as (e) and (f), respectively, and struck out former subsec. (e) which read as follows: “If a final order issued by the President pursuant to a law providing for the cancellation of loan guarantee commitments imposes a limitation on the total amount of loans that may be guaranteed under chapter 37 of this title in any fiscal year, the Administrator shall submit to the Committees on Veterans’ Affairs of the Senate and the House of Representatives a monthly report (not later than the 10th day of each month during the remainder of such fiscal year following the issuance of such final order) providing the following information:

“(1) The total amount of the loans for which commitments of guarantees were made under such chapter during the preceding month.

“(2) The total amount of the loans for which commitments were made during the fiscal year through the end of such preceding month.

“(3) The Administrator’s estimates as to the total amounts of the loans for which commitments would, in the absence of any limits on such commitments or guarantees, be made during (A) the month in which the report is required to be submitted, and (B) the succeeding months of the fiscal year.”

#### EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100-198, §12(b), Dec. 21, 1987, 101 Stat. 1325, provided that: “The amendments made by subsection (a) [amending this section] shall take effect on November 19, 1987.”

#### EFFECTIVE DATE

Pub. L. 99-576, title VI, §601(b), Oct. 28, 1986, 100 Stat. 3289, provided that: “Section 113 of title 38, United

States Code (as added by subsection (a)), shall apply with respect to a sequestration order issued, or a sequestration law enacted, for a fiscal year after fiscal year 1986.”

#### RESTORATION OF CERTAIN REVOLVING FUNDS

Pub. L. 100-322, title IV, §411(a), May 20, 1988, 102 Stat. 547, provided that:

“(1) Notwithstanding section 601(b) of the Veterans’ Benefits Improvement and Health-Care Authorization Act of 1986 (Public Law 99-576) [set out as a note above], section 113(b)(2) of title 38, United States Code, shall apply with respect to a sequestration order issued, or a sequestration law enacted, for any fiscal year after fiscal year 1985.

“(2) The Secretary of the Treasury shall take such action as is necessary to implement paragraph (1). Not later than 60 days after the date of the enactment of this Act [May 20, 1988], the Secretary shall submit to the Committees on Veterans’ Affairs of the Senate and House of Representatives a report on the action taken by the Secretary pursuant to that paragraph.”

#### § 114. Multiyear procurement

(a) The Secretary may enter into a multiyear contract for the procurement of supplies or services if the Secretary makes each of the following determinations:

(1) Appropriations are available for obligations that are necessary for total payments that would be required during the fiscal year in which the contract is entered into, plus the estimated amount of any cancellation charge payable under the contract.

(2) The contract is in the best interest of the United States by reason of the effect that use of a multiyear, rather than one-year, contract would have in—

(A) reducing costs;

(B) achieving economies in contract administration or in any other Department activities;

(C) increasing quality of performance by or service from the contractors; or

(D) encouraging effective competition.

(3) During the proposed contract period—

(A) there will be a continuing or recurring need for the supplies or services being procured;

(B) there is not a substantial likelihood of substantial changes in the need for such supplies or services in terms of the total quantity of such supplies or services or of the rate of delivery of such supplies or services; and

(C) the specifications for the supplies or services are expected to be reasonably stable.

(4) The risks relating to the prospective contractor’s ability to perform in accordance with the specifications and other terms of the contract are not excessive.

(5) The use of a multiyear contract will not inhibit small business concerns in competing for the contract.

(6) In the case of the procurement of a pharmaceutical item for which a patent has expired less than four years before the date on which the solicitation of offers is issued, there is no substantial likelihood that increased competition among potential contractors would occur during the term of the contract as

the result of the availability of generic equivalents increasing during the term of the contract.

(b)(1) A multiyear contract authorized by this section shall contain—

(A) a provision that the obligation of the United States under the contract during any fiscal year which is included in the contract period and is subsequent to the fiscal year during which the contract is entered into is contingent on the availability of sufficient appropriations (as determined by the Secretary pursuant to paragraph (2)(A) of this subsection) if, at the time the contract is entered into, appropriations are not available to cover the total estimated payments that will be required during the full term of the contract; and

(B) notwithstanding section 1502(a) of title 31, a provision for the payment of reasonable cancellation charges to compensate the contractor for nonrecurring, unrecovered costs, if any, if the performance is cancelled pursuant to the provision required by subparagraph (A) of this paragraph.

(2)(A) If, during a fiscal year after the fiscal year during which a multiyear contract is entered into under this section, the Secretary determines that, in light of other funding needs involved in the operation of Department programs, the amount of funds appropriated for such subsequent fiscal year is not sufficient for such contract, the Secretary shall cancel such contract pursuant to the provisions required by paragraph (1)(A) of this subsection.

(B) Cancellation charges under a multiyear contract shall be paid from the appropriated funds which were originally available for performance of the contract or the payment of cancellation costs unless such funds are not available in an amount sufficient to pay the entire amount of the cancellation charges payable under the contract. In a case in which such funds are not available in such amount, funds available for the procurement of supplies and services for use for the same purposes as the supplies or services procured through such contract shall be used to the extent necessary to pay such cost.

(c) Nothing in this section shall be construed so as to restrict the Secretary's exercise of the right to terminate for convenience a contract under any other provision of law which authorizes multiyear contracting.

(d) The Secretary shall prescribe regulations for the implementation of this section.

(e) For the purposes of this section:

(1) The term "appropriations" has the meaning given that term in section 1511 of title 31.

(2) The term "multiyear contract" means a contract which by its terms is to remain in effect for a period which extends beyond the end of the fiscal year during which the contract is entered into but not beyond the end of the fourth fiscal year following such fiscal year. Such term does not include a contract for construction or for a lease of real property.

(3) The term "nonrecurring, unrecovered costs" means those costs reasonably incurred by the contractor in performing a multiyear

contract which (as determined under regulations prescribed under subsection (d) of this section) are generally incurred on a one-time basis.

(Added Pub. L. 100-322, title IV, §404(a), May 20, 1988, 102 Stat. 545; amended Pub. L. 101-237, title VI, §601(a), (b)(1), Dec. 18, 1989, 103 Stat. 2094; Pub. L. 102-83, §4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

#### AMENDMENTS

1991—Subsec. (a). Pub. L. 102-83, §4(b)(1), (2)(E), substituted "Secretary" for "Administrator" in two places in introductory provisions.

Subsec. (a)(2)(B). Pub. L. 102-83, §4(a)(3), (4), substituted "Department" for "Veterans' Administration".

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

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

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

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

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

1989—Pub. L. 101-237, §601(b)(1), struck out "for certain medical items" after "Multiyear procurement" in section catchline.

Subsec. (a). Pub. L. 101-237, §601(a)(1), struck out "for use in Veterans' Administration health-care facilities" after "supplies or services".

Subsec. (b)(2)(A). Pub. L. 101-237, §601(a)(2), struck out "health-care" before "programs, the amount".

Subsec. (e)(2) to (4). Pub. L. 101-237, §601(a)(3), redesignated pars. (3) and (4) as (2) and (3), respectively, and struck out former par. (2) which read as follows: "The term 'cancel' or 'cancellation' refers to the termination of a contract by the Administrator as required under paragraph (2)(B)(i) of this subsection."

#### § 115. Acquisition of real property

For the purposes of sections 314, 315, 316, and 2406 of this title and subchapter I of chapter 81 of this title, the Secretary may acquire and use real property—

(1) before title to the property is approved under section 3111 of title 40; and

(2) even though the property will be held in other than a fee simple interest in a case in which the Secretary determines that the interest to be acquired is sufficient for the purposes of the intended use.

(Added Pub. L. 102-86, title IV, §402(a), Aug. 14, 1991, 105 Stat. 422; amended Pub. L. 102-83, §5(c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 103-446, title XII, §1201(d)(1), Nov. 2, 1994, 108 Stat. 4684; Pub. L. 107-217, §3(j)(1), Aug. 21, 2002, 116 Stat. 1300.)

#### AMENDMENTS

2002—Par. (1). Pub. L. 107-217 substituted "section 3111 of title 40" for "section 355 of the Revised Statutes (40 U.S.C. 255)".

1994—Pub. L. 103-446 substituted "sections 314, 315, 316," for "sections 230" in introductory provisions.

1991—Pub. L. 102-83 substituted "2406" for "1006" in introductory provisions.

#### § 116. Reports to Congress: cost information

Whenever the Secretary submits to Congress, or any committee of Congress, a report that is