

to the initial term (or any previous renewal or extension), is three years or longer.

(B) Such term includes the extension or renewal of a lease or charter agreement if the term of the extension or renewal thereof is for a period of three years or longer or if the term of the lease or charter agreement being extended or renewed was for a period of three years or longer.

(b) **SUBSTANTIAL TERMINATION LIABILITY.**—For the purposes of this chapter, the United States shall be considered to have a substantial termination liability under a contract—

(1) if there is an agreement by the United States under the contract to pay an amount not less than the amount equal to 25 percent of the value of the vessel, aircraft, or combat vehicle under lease or charter, calculated on the basis of the present value of the termination liability of the United States under such charter or lease (as determined under regulations prescribed by the Secretary of Defense); or

(2) if (as determined under regulations prescribed by the Secretary of Defense) the sum of—

(A) the present value of the amount of the termination liability of the United States under the contract as of the end of the term of the contract (exclusive of any option to extend the contract); and

(B) the present value of the total of the payments to be made by the United States under the contract (excluding any option to extend the contract) attributable to capital-hire,

is more than one-half the price of the vessel, aircraft, or combat vehicle involved.

(Added and amended Pub. L. 116–283, div. A, title XVIII, §1825(a), (f), Jan. 1, 2021, 134 Stat. 4206, 4207.)

REFERENCES IN TEXT

Section 168 of the Internal Revenue Code of 1986, referred to in subsec. (a)(2)(A), is classified to section 168 of Title 26, Internal Revenue Code.

CODIFICATION

The text of subsec. (d) of section 2401 of this title, which was transferred to this section and amended by Pub. L. 116–283, §1825(f), was based on Pub. L. 98–94, title XII, §1202(a)(1), Sept. 24, 1983, 97 Stat. 679; Pub. L. 100–26, §7(h)(1), Apr. 21, 1987, 101 Stat. 282; Pub. L. 109–163, div. A, title VIII, §815(a)(1), Jan. 6, 2006, 119 Stat. 3381.

AMENDMENTS

2021—Pub. L. 116–283, §1825(f)(1), transferred subsec. (d) of section 2401 of this title to this section, struck out subsec. (d) designation at beginning, and redesignated pars. (1) and (2) of such former subsec. (d) as subssecs. (a) and (b), respectively.

Subsec. (a). Pub. L. 116–283, §1825(f)(2)(A), (C), (D), (E), after redesignation of section 2401(d)(1) of this title as subsec. (a) of this section, inserted subsec. heading, redesignated subpar. (A)(i) and (ii) and its concluding provisions as par. (1)(A)(i) and (ii) and (B), respectively, redesignated subpar. (B)(i) and (ii) and its concluding provisions as par. (2)(A)(i) and (ii) and (B), respectively, and inserted par. headings.

Subsec. (a)(1)(A). Pub. L. 116–283, §1825(f)(2)(A), (B), substituted “In this chapter” for “In this section” and

“paragraph (2)” for “subparagraph (B)” in introductory provisions.

Subsec. (b). Pub. L. 116–283, §1825(f)(3), after redesignation of section 2401(d)(2) of this title as subsec. (b) of this section, inserted heading, substituted “this chapter” for “this section” in introductory provisions, and redesignated subpar. (A) as par. (1) and subpar. (B) and its cls. (i) and (ii) as par. (2) and subpars. (A) and (B), respectively.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3675. Capital lease or lease-purchase treated as an acquisition

(a) **IN GENERAL.**—If a lease or charter covered by this chapter is a capital lease or a lease-purchase—

(1) the lease or charter shall be treated as an acquisition and shall be subject to all applicable statutory and regulatory requirements for the acquisition of aircraft, naval vessels, or combat vehicles; and

(2) funds appropriated to the Department of Defense for operation and maintenance may not be obligated or expended for the lease or charter.

(b) **DEFINITIONS.**—In this section, the terms “capital lease” and “lease-purchase” have the meanings given those terms in Appendix B to Office of Management and Budget Circular A–11, as in effect on January 6, 2006.

(Added and amended Pub. L. 116–283, div. A, title XVIII, §1825(a), (g), Jan. 1, 2021, 134 Stat. 4206, 4208.)

CODIFICATION

The text of subsec. (f) of section 2401 of this title, which was transferred to this section and amended by Pub. L. 116–283, §1825(g), was based on Pub. L. 109–163, div. A, title VIII, §815(c)(2), Jan. 6, 2006, 119 Stat. 3382; Pub. L. 111–84, div. A, title X, §1073(a)(24), Oct. 28, 2009, 123 Stat. 2473.

AMENDMENTS

2021—Pub. L. 116–283, §1825(g)(1)(A), transferred subsec. (f) of section 2401 of this title to this section, struck out subsec. (f) designation at beginning, and redesignated pars. (1) and (2) of such former subsec. (f) as subssecs. (a) and (b), respectively.

Subsec. (a). Pub. L. 116–283, §1825(g)(2), after redesignation of section 2401(f)(1) of this title as subsec. (a) of this section, inserted heading, substituted “this chapter” for “this section” in introductory provisions, and redesignated subpars. (A) and (B) as pars. (1) and (2), respectively.

Subsec. (b). Pub. L. 116–283, §1825(g)(3), after redesignation of section 2401(d)(2) of this title as subsec. (b) of this section, inserted heading and substituted “In this section” for “In this subsection”.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3676. Guidelines

The Director of the Office of Management and Budget and the Secretary of the Treasury shall

jointly issue guidelines for determining under what circumstances the Department of Defense may use lease or charter arrangements for aircraft, naval vessels, and combat vehicles rather than directly procuring such aircraft, vessels, and combat vehicles.

(Added and amended Pub. L. 116–283, div. A, title XVIII, §1825(a), (h), Jan. 1, 2021, 134 Stat. 4206, 4208.)

CODIFICATION

The text of subsec. (g) of section 2401 of this title, which was transferred to this section and amended by Pub. L. 116–283, §1825(h), was based on Pub. L. 98–94, title XII, §1202(a)(1), Sept. 24, 1983, 97 Stat. 679; Pub. L. 98–525, title XII, §1232(a)(2), Oct. 19, 1984, 98 Stat. 2600; Pub. L. 109–163, div. A, title VIII, §815(c)(1), Jan. 6, 2006, 119 Stat. 3382.

AMENDMENTS

2021—Pub. L. 116–283, §1825(h), transferred subsec. (g) of section 2401 of this title to this section and struck out subsec. (g) designation at beginning.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3677. Contracts for lease or use of vessels for a term of greater than two years but less than five years: prior notice to congressional committees

The Secretary of a military department may make a contract for the lease of a vessel or for the provision of a service through use by a contractor of a vessel, the term of which is for a period of greater than two years, but less than five years, only if—

(1) the Secretary has notified the congressional defense committees of the proposed contract and included in such notification—

(A) a detailed description of the terms of the proposed contract and a justification for entering into the proposed contract rather than obtaining the capability provided for by the lease, charter, or services involved through purchase of the vessel;

(B) a determination that entering into the proposed contract as a means of obtaining the vessel is the most cost-effective means of obtaining such vessel; and

(C) a plan for meeting the requirement provided by the proposed contract upon completion of the term of the lease contract; and

(2) a period of 60 days has expired following the date on which notice was received by such committees.

(Added and amended Pub. L. 116–283, div. A, title XVIII, §1825(a), (i), Jan. 1, 2021, 134 Stat. 4206, 4208.)

CODIFICATION

The text of subsec. (h) of section 2401 of this title, which was transferred to this section and amended by Pub. L. 116–283, §1825(i), was based on Pub. L. 110–181, div. A, title X, §1011, Jan. 28, 2008, 122 Stat. 303; Pub. L. 112–239, div. A, title VIII, §821, title X, §1076(f)(26), Jan. 2, 2013, 126 Stat. 1830, 1953.

AMENDMENTS

2021—Pub. L. 116–283, §1825(i), transferred subsec. (h) of section 2401 of this title to this section and struck out subsec. (h) designation at beginning.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3678. Contracts with terms of 18 months or more: limitation

The Secretary of Defense or the Secretary of a military department may not enter into any contract with a term of 18 months or more, or extend or renew any contract for a term of 18 months or more, for any vessel, aircraft, or vehicle, through a lease, charter, or similar agreement, unless the Secretary has considered all costs of such contract (including estimated termination liability) and has determined in writing that the contract is in the best interest of the Government.

(Added and amended Pub. L. 116–283, div. A, title XVIII, §1825(a), (j), Jan. 1, 2021, 134 Stat. 4206, 4208.)

CODIFICATION

The text of subsec. (b) of section 2401a of this title, which was transferred to this section and amended by Pub. L. 116–283, §1825(j), was based on Pub. L. 103–355, title III, §3065(a)(1), Oct. 13, 1994, 108 Stat. 3337; Pub. L. 104–106, div. A, title VIII, §807(a)(1)(A), Feb. 10, 1996, 110 Stat. 391.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 101–165, title IX, §9081, Nov. 21, 1989, 103 Stat. 1147, which was set out as a note under section 2401 of this title, prior to repeal by Pub. L. 103–355, §3065(b).

AMENDMENTS

2021—Pub. L. 116–283, §1825(j), transferred subsec. (b) of section 2401a of this title to this section and struck out subsec. (b) designation and heading “Limitation on Contracts With Terms of 18 Months or More” at beginning.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

CHAPTER 258—OTHER TYPES OF CONTRACTS USED FOR PROCUREMENTS FOR PARTICULAR PURPOSES

Sec.

3681. Leasing of commercial vehicles and equipment.

§ 3681. Leasing of commercial vehicles and equipment

The Secretary of Defense may use leasing in the acquisition of commercial vehicles and equipment whenever the Secretary determines that such leasing is practicable and efficient.