

shall not engage in activities with regard to particular audits that could compromise the independence of the defense audit agency or undermine compliance with applicable audit standards.

(d) DEFENSE AUDIT AGENCY DEFINED.—In this section, the term “defense audit agency” means the Defense Contract Audit Agency and the Defense Contract Management Agency.

(Added Pub. L. 112–239, div. A, title XVI, § 1612(a), Jan. 2, 2013, 126 Stat. 2064, § 204; renumbered § 3848 and amended Pub. L. 116–283, div. A, title XVIII, § 1835(c), (d)(4), Jan. 1, 2021, 134 Stat. 4240.)

PRIOR PROVISIONS

A prior section 3848, added Pub. L. 85–861, § 1(94), Sept. 2, 1958, 72 Stat. 1485; amended Pub. L. 86–559, § 1(26), June 30, 1960, 74 Stat. 272; Pub. L. 90–130, § 1(12)(B), Nov. 8, 1967, 81 Stat. 376; Pub. L. 90–486, § 9(1), Aug. 13, 1968, 82 Stat. 760; Pub. L. 95–485, title VIII, § 820(h), Oct. 20, 1978, 92 Stat. 1627; Pub. L. 96–513, title V, § 512(8), Dec. 12, 1980, 94 Stat. 2929; Pub. L. 99–145, title V, § 522(a)(1), title XIII, § 1303(a)(20)(B), Nov. 8, 1985, 99 Stat. 631, 739; Pub. L. 100–456, div. A, title XII, § 1234(a)(1), Sept. 29, 1988, 102 Stat. 2059, related to transfer or discharge of reserve first lieutenants, captains, majors, and lieutenant colonels with 28 years of service, prior to repeal by Pub. L. 103–337, div. A, title XVI, §§ 1629(a)(3), 1691(b)(1), Oct. 5, 1994, 108 Stat. 2963, 3026, effective Oct. 1, 1996. See section 14501 et seq. of this title.

A prior section 3849, added Pub. L. 85–861, § 1(94), Sept. 2, 1958, 72 Stat. 1485, related to separation or transfer to retired reserve of officers in the reserve grade of lieutenant colonel assigned to the Women’s Army Corps upon completion of 28 years of service, prior to repeal by Pub. L. 86–559, § 1(27), June 30, 1960, 74 Stat. 272.

Prior sections 3850 to 3855 were repealed by Pub. L. 103–337, div. A, title XVI, §§ 1629(a)(3), 1691(b)(1), Oct. 5, 1994, 108 Stat. 2963, 3026, effective Oct. 1, 1996.

Section 3850, added Pub. L. 85–861, § 1(94), Sept. 2, 1958, 72 Stat. 1485; amended Pub. L. 104–106, div. A, title XV, § 1501(c)(25), Feb. 10, 1996, 110 Stat. 499, related to transfer or discharge of excessive reserve commissioned officers in active status with thirty or more years of service. See sections 14514 and 14704 of this title.

Section 3851, added Pub. L. 85–861, § 1(94), Sept. 2, 1958, 72 Stat. 1486; amended Pub. L. 86–559, § 1(28), June 30, 1960, 74 Stat. 272; Pub. L. 90–486, § 9(1), Aug. 13, 1968, 82 Stat. 760; Pub. L. 96–513, title V, § 512(8), Dec. 12, 1980, 94 Stat. 2929; Pub. L. 98–525, title V, § 513, Oct. 19, 1984, 98 Stat. 2522; Pub. L. 99–145, title V, § 522(a)(2), title XIII, § 1303(a)(20)(B), Nov. 8, 1985, 99 Stat. 631, 739; Pub. L. 99–661, div. A, title XIII, § 1342(g), Nov. 14, 1986, 100 Stat. 3992; Pub. L. 100–456, div. A, title XII, § 1234(a)(1), Sept. 29, 1988, 102 Stat. 2059, related to transfer or discharge of reserve colonels and brigadier generals with 30 years of service or five years in grade. See section 14508(a), (e) of this title.

Section 3852, added Pub. L. 85–861, § 1(94), Sept. 2, 1958, 72 Stat. 1486; amended Pub. L. 86–559, § 1(29), June 30, 1960, 74 Stat. 272; Pub. L. 99–145, title V, § 523, title XIII, § 1303(a)(20)(B), Nov. 8, 1985, 99 Stat. 632, 739; Pub. L. 100–456, div. A, title XII, § 1234(a)(1), Sept. 29, 1988, 102 Stat. 2059, related to transfer or discharge of reserve major generals with 35 years of service or five years in grade. See section 14508(b), (f) of this title.

Section 3853, added Pub. L. 85–861, § 1(94), Sept. 2, 1958, 72 Stat. 1486; amended Pub. L. 86–559, § 1(30), June 30, 1960, 74 Stat. 273; Pub. L. 86–651, title I, § 115, Sept. 7, 1962, 76 Stat. 513; Pub. L. 96–513, title V, § 512(9), Dec. 12, 1980, 94 Stat. 2929; Pub. L. 98–94, title X, § 1016(a), Sept. 24, 1983, 97 Stat. 668; Pub. L. 103–337, div. A, title XVI, § 1635(a), Oct. 5, 1994, 108 Stat. 2968, related to computation of years of service. See section 14706 of this title.

Section 3854, added Pub. L. 85–861, § 1(94), Sept. 2, 1958, 72 Stat. 1486, authorized Secretary of the Army to prescribe regulations to carry out this chapter.

Section 3855, added Pub. L. 86–559, § 1(31), June 30, 1960, 74 Stat. 273; amended Pub. L. 96–107, title IV, § 403(a), Nov. 9, 1979, 93 Stat. 808; Pub. L. 96–513, title II, § 215(a), Dec. 12, 1980, 94 Stat. 2885; Pub. L. 100–180, div. A, title VII, § 717(a), (d)(1)(A), Dec. 4, 1987, 101 Stat. 1113, 1114; Pub. L. 101–189, div. A, title VII, §§ 710(a), 711(a), Nov. 29, 1989, 103 Stat. 1476, 1477, related to retention in active status of certain reserve officers. See section 14703(a)(1), (b) of this title.

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 204 of this title as this section and substituted “Defense audit agencies: Small Business Ombudsmen” for “Small Business Ombudsman for defense audit agencies” in section catchline.

EFFECTIVE DATE OF 2021 AMENDMENT

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 a note preceding section 3001 of this title.

CHAPTER 281—CLAIMS AND DISPUTES

Sec.

3861. Research and development contracts: indemnification provisions.
3862. Requests for equitable adjustment or other relief: certification.
3863. Retention of amounts collected from contractor during the pendency of contract dispute.

PRIOR PROVISIONS

A prior chapter 281 “CLAIMS AND DISPUTES”, as added by Pub. L. 115–232, div. A, title VIII, § 801(a), Aug. 13, 2018, 132 Stat. 1828, and consisting of reserved section 3861, was repealed by Pub. L. 116–283, div. A, title XVIII, § 1836(a), Jan. 1, 2021, 134 Stat. 4241.

§ 3861. Research and development contracts: indemnification provisions

(a) With the approval of the Secretary of the military department concerned, any contract of a military department for research or development, or both, may provide that the United States will indemnify the contractor against either or both of the following, but only to the extent that they arise out of the direct performance of the contract and to the extent not compensated by insurance or otherwise:

(1) Claims (including reasonable expenses of litigation or settlement) by third persons, including employees of the contractor, for death, bodily injury, or loss of or damage to property, from a risk that the contract defines as unusually hazardous.

(2) Loss of or damage to property of the contractor from a risk that the contract defines as unusually hazardous.

(b) A contract, made under subsection (a), that provides for indemnification must also provide for—

(1) notice to the United States of any claim or suit against the contractor for the death, bodily injury, or loss of or damage to property; and

(2) control of or assistance in the defense by the United States, at its election, of that suit or claim.

(c) No payment may be made under subsection (a) unless the Secretary of the department con-

cerned, or an officer or official of his department designated by him, certifies that the amount is just and reasonable.

(d) Upon approval by the Secretary concerned, payments under subsection (a) may be made from—

- (1) funds obligated for the performance of the contract concerned;
- (2) funds available for research or development, or both, and not otherwise obligated; or
- (3) funds appropriated for those payments.

(Aug. 10, 1956, ch. 1041, 70A Stat. 134, §2354; renumbered §3861 and amended Pub. L. 116-283, div. A, title XVIII, §1836(b), (c), Jan. 1, 2021, 134 Stat. 4241.)

AMENDMENTS

2021—Pub. L. 116-283 renumbered section 2354 of this title as this section and substituted “Research and development contracts: indemnification provisions” for “Contracts: indemnification provisions” in section catchline.

EFFECTIVE DATE OF 2021 AMENDMENT

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 a note preceding section 3001 of this title.

§ 3862. Requests for equitable adjustment or other relief: certification

(a) CERTIFICATION REQUIREMENT.—A request for equitable adjustment to contract terms or request for relief under Public Law 85-804 (50 U.S.C. 1431 et seq.) that exceeds the simplified acquisition threshold may not be paid unless a person authorized to certify the request on behalf of the contractor certifies, at the time the request is submitted, that—

- (1) the request is made in good faith, and
- (2) the supporting data are accurate and complete to the best of that person’s knowledge and belief.

(b) RESTRICTION ON LEGISLATIVE PAYMENT OF CLAIMS.—In the case of a contract of an agency named in section 2303(a)¹ of this title, no provision of a law enacted after September 30, 1994, that directs the payment of a particular claim under such contract, a particular request for equitable adjustment to any term of such contract, or a particular request for relief under Public Law 85-804 (50 U.S.C. 1431 et seq.) regarding such contract may be implemented unless such provision of law—

- (1) specifically refers to this subsection; and
- (2) specifically states that this subsection does not apply with respect to the payment directed by that provision of law.

(c) DEFINITION.—In this section, the term “simplified acquisition threshold” has the meaning given that term in section 134 of title 41.

(Added Pub. L. 103-355, title II, §2301(a), Oct. 13, 1994, 108 Stat. 3320, §2410; amended Pub. L. 111-350, §5(b)(27), Jan. 4, 2011, 124 Stat. 3845; renumbered §3862 and amended Pub. L. 116-283, div. A, title XVIII, §§1836(b), 1883(b)(2), Jan. 1, 2021, 134 Stat. 4241, 4294.)

¹ See References in Text note below.

REFERENCES IN TEXT

Public Law 85-804, referred to in subsecs. (a) and (b), is Pub. L. 85-804, Aug. 28, 1958, 72 Stat. 972, which is classified generally to chapter 29 (§1431 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Tables.

Section 2303(a) of this title, referred to in subsec. (b), was transferred to sections 3063 and 3064(a) of this title by Pub. L. 116-283, div. A, title XVIII, §1807(c)(2), (3), Jan. 1, 2021, 134 Stat. 4157. Section 3063 of this title sets out a list of covered agencies.

AMENDMENTS

2021—Pub. L. 116-283, §1836(b), renumbered section 2410 of this title as this section.

Subsec. (b). Pub. L. 116-283, §1883(b)(2), which directed that each reference in the text of title 10 to a section that was redesignated by title XVIII of Pub. L. 116-283, as such section was in effect before the redesignation, be amended by striking such reference and inserting a reference to the appropriate redesignated section, was not executed with respect to “section 2303(a)”, which was redesignated as multiple sections.

EFFECTIVE DATE OF 2021 AMENDMENT

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 a note preceding section 3001 of this title.

§ 3863. Retention of amounts collected from contractor during the pendency of contract dispute

(a) RETENTION OF FUNDS.—Notwithstanding sections 1552(a) and 3302(b) of title 31, any amount, including interest, collected from a contractor as a result of a claim made by a military department or Defense Agency under chapter 71 of title 41, shall remain available in accordance with this section to pay—

- (1) any settlement of the claim by the parties;
- (2) any judgment rendered in the contractor’s favor on an appeal of the decision on that claim to the Armed Services Board of Contract Appeals under section 7104(a) of title 41; or
- (3) any judgment rendered in the contractor’s favor in an action on that claim in a court of the United States.

(b) PERIOD OF AVAILABILITY.—(1) The period of availability of an amount under subsection (a), in connection with a claim—

- (A) expires 180 days after the expiration of the period for bringing an action on that claim in the United States Court of Federal Claims under section 7104(b) of title 41 if, within that 180-day period—
 - (i) no appeal on the claim is commenced at the Armed Services Board of Contract Appeals under section 7104(a) of such title; and
 - (ii) no action on the claim is commenced in a court of the United States; or

(B) if not expiring under subparagraph (A), expires—

- (i) in the case of a settlement of the claim, 180 days after the date of the settlement; or
- (ii) in the case of a judgment rendered on the claim in an appeal to the Armed Services Board of Contract Appeals under section 7104(a) of title 41 or an action in a court of