

§ 2851a and amended Pub. L. 116-283, div. B, title XXVIII, § 2811(a), Jan. 1, 2021, 134 Stat. 4323.)

### Editorial Notes

#### AMENDMENTS

2021—Pub. L. 116-283, § 2811(a)(3), renumbered section 2890a of this title as this section.

Pub. L. 116-283, § 2811(a)(2), inserted “Supervision of military housing by” before “Chief” in section catchline.

Subsec. (a)(1). Pub. L. 116-283, § 2811(a)(1)(A), substituted “family housing and military unaccompanied housing under the jurisdiction of the Department of Defense or acquired or constructed under subchapter IV of this chapter (in this section referred to as ‘covered housing units’)” for “housing units”.

Subsec. (b)(1). Pub. L. 116-283, § 2811(a)(1)(B)(ii), inserted “covered” before “housing units” in subpars. (A) and (B).

Pub. L. 116-283, § 2811(a)(1)(B)(i), substituted “covered housing units” for “housing under subchapter IV and this subchapter” in introductory provisions.

### Statutory Notes and Related Subsidiaries

#### NOTIFICATION OF DESIGNATION

Pub. L. 116-92, div. B, title XXX, § 3012(b), Dec. 20, 2019, 133 Stat. 1921, provided that: “Not later than 60 days after the date of the enactment of this Act [Dec. 20, 2019], the Secretary of Defense shall notify the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] of the official of the Department of Defense designated as Chief Housing Officer under section 2890a of title 10, United States Code [now 10 U.S.C. 2851a], as added by subsection (a). Any time the designation of Chief Housing Officer changes, the Secretary of Defense shall update the notification of the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] within 30 days after the new designation.”

### § 2852. Military construction projects: waiver of certain restrictions

(a) The Secretary of Defense and the Secretaries of the military departments may carry out authorized military construction projects and authorized military family housing projects without regard to subsections (a) and (b) of section 3324 of title 31.

(b) Authority to carry out a military construction project or a military family housing project may be exercised on land not owned by the United States—

(1) before title to the land on which the project is to be carried out is approved under section 3111 of title 40; and

(2) even though the land will be held in other than a fee simple interest in a case in which the Secretary of the military department concerned determines that the interest to be acquired in the land is sufficient for the purposes of the project.

(c) In the case of a military construction project or a military family housing project, the contract amount thresholds specified in subchapter III of chapter 31 of title 40 (commonly referred to as the Miller Act) shall be applied by substituting “\$150,000” for “\$100,000” for purposes of determining when a performance bond and payment bond are required under section 3131 of such title and when alternatives to pay-

ment bonds as payment protections for suppliers of labor and materials are required under section 3132 of such title.

(Added Pub. L. 97-214, § 2(a), July 12, 1982, 96 Stat. 164; amended Pub. L. 97-295, § 1(35), Oct. 12, 1982, 96 Stat. 1296; Pub. L. 97-321, title VIII, § 805(a)(1), Oct. 15, 1982, 96 Stat. 1573; Pub. L. 99-145, title XIII, § 1303(a)(19), Nov. 8, 1985, 99 Stat. 739; Pub. L. 107-217, § 3(b)(20), Aug. 21, 2002, 116 Stat. 1297; Pub. L. 112-81, div. B, title XXVIII, § 2803, Dec. 31, 2011, 125 Stat. 1685.)

#### HISTORICAL AND REVISION NOTES

In 10:2852(a), the title 31 citation is substituted on authority of Pub. L. 97-258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted title 31.

### Editorial Notes

#### AMENDMENTS

2011—Subsec. (c). Pub. L. 112-81 added subsec. (c).

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

1985—Subsec. (a). Pub. L. 99-145 substituted “subsections (a) and (b) of section 3324” for “section 3324(a) and (b)”.

1982—Subsec. (a). Pub. L. 97-295 substituted “section 3324(a) and (b) of title 31” for “section 3648 of the Revised Statutes (31 U.S.C. 529)”.

Subsec. (b). Pub. L. 97-321 substituted “may be exercised on land not owned by the United States” for “on land not owned by the United States may be exercised” in introductory text, redesignated former cl. (1) as par. (1), added par. (2), and struck out former cl. (2) which read as follows: “even though the land is held temporarily”.

### Statutory Notes and Related Subsidiaries

#### EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97-214, set out as a note under section 2801 of this title.

### § 2853. Authorized cost and scope of work variations

(a) COST VARIATIONS AUTHORIZED; LIMITATION.—Except as provided in subsection (c), (d), or (e), the cost authorized for a military construction project or for the construction, improvement, and acquisition of a military family housing project may be increased or decreased by not more than 25 percent of the total authorized cost of the project or 200 percent of the minor construction project ceiling specified in section 2805(a) of this title, whichever is less, if the Secretary concerned determines that such revised cost is required for the sole purpose of meeting unusual variations in cost and that such variations in cost could not have reasonably been anticipated at the time the project was authorized by Congress.

(b) SCOPE OF WORK VARIATIONS AUTHORIZED; LIMITATION.—(1) Except as provided in subsection (c), the scope of work for a military construction project or for the construction, improvement, and acquisition of a military family housing project may be reduced by not more than 25 percent from the amount specified for that project, construction, improvement, or acquisition in the justification data provided to Congress as part of the request for authorization

of the project, construction, improvement, or acquisition. Any reduction in scope of work for a military construction project shall not result in a facility or item of infrastructure that is not complete and useable or does not fully meet the mission requirement contained in the justification data provided to Congress as part of the request for authorization of the project, construction, improvement, or acquisition.

(2) Except as provided in subsection (d), the scope of work for a military construction project or for the construction, improvement, and acquisition of a military family housing project may not be increased above the amount specified for that project, construction, improvement, or acquisition in the justification data provided to Congress as part of the request for authorization of the project, construction, improvement, or acquisition.

(3) In this subsection, the term “scope of work” refers to the function, size, or quantity of a facility or item of complete and useable infrastructure contained in the justification data provided to Congress as part of the request for authorization of the project, construction, improvement, or acquisition.

(c) EXCEPTIONS TO LIMITATION ON COST VARIATIONS AND SCOPE OF WORK REDUCTIONS.—(1)(A) Except as provided in subparagraph (D), the Secretary concerned may waive the percentage or dollar cost limitation applicable to a military construction project or a military family housing project under subsection (a) and approve an increase in the cost authorized for the project in excess of that limitation if the Secretary concerned notifies the appropriate committees of Congress of the cost increase in the manner provided in this paragraph.

(B) The notification required by subparagraph (A) shall—

- (i) identify the amount of the cost increase and the reasons for the increase;
- (ii) certify that the cost increase is sufficient to meet the mission requirement identified in the justification data provided to Congress as part of the request for authorization of the project; and
- (iii) describe the funds proposed to be used to finance the cost increase.

(C) A waiver and approval by the Secretary concerned under subparagraph (A) shall take effect only after the end of the 14-day period beginning on the date on which the notification required by such subparagraph is received by the appropriate committees of Congress in an electronic medium pursuant to section 480 of this title.

(D) The Secretary concerned may not use the authority provided by subparagraph (A)—

- (i) to waive the cost limitation applicable to a military construction project with a total authorized cost greater than \$500,000,000 or a military family housing project with a total authorized cost greater than \$500,000,000; and
- (ii) to approve an increase in the cost authorized for the project that would increase the project cost by more than 50 percent of the total authorized cost of the project.

(E) In addition to the notification required by this paragraph, subsection (f) applies whenever a

military construction project or military family housing project with a total authorized cost greater than \$40,000,000 will have a cost increase of 25 percent or more. Subsection (f) may not be construed to authorize a cost increase in excess of the limitation imposed by subparagraph (D).

(2)(A) The Secretary concerned may waive the percentage or dollar cost limitation applicable to a military construction project or a military family housing project under subsection (a) and approve a decrease in the cost authorized for the project in excess of that limitation if the Secretary concerned notifies the appropriate committees of Congress of the cost decrease not later than 14 days after the date funds are obligated in connection with the project.

(B) The notification required by subparagraph (A) shall be provided in an electronic medium pursuant to section 480 of this title.

(3)(A) The Secretary concerned may waive the limitation on a reduction in the scope of work applicable to a military construction project or a military family housing project under subsection (b)(1) and approve a scope of work reduction for the project in excess of that limitation if the Secretary concerned notifies the appropriate committees of Congress of the reduction in the manner provided in this paragraph.

(B) The notification required by subparagraph (A) shall—

- (i) describe the reduction in the scope of work and the reasons for the decrease; and
- (ii) certify that the mission requirement identified in the justification data provided to Congress can still be met with the reduced scope.

(C) A waiver and approval by the Secretary concerned under subparagraph (A) shall take effect only after the end of the 14-day period beginning on the date on which the notification required by such subparagraph is received by the appropriate committees of Congress in an electronic medium pursuant to section 480 of this title.

(d) EXCEPTIONS TO LIMITATION ON SCOPE OF WORK INCREASES.—(1) Except as provided in paragraph (4), the Secretary concerned may waive the limitation on an increase in the scope of work applicable to a military construction project or a military family housing project under subsection (b)(1) and approve an increase in the scope of work for the project in excess of that limitation if the Secretary concerned notifies the appropriate committees of Congress of the reduction in the manner provided in this subsection.

(2) The notification required by paragraph (1) shall describe the increase in the scope of work and the reasons for the increase.

(3) A waiver and approval by the Secretary concerned under paragraph (1) shall take effect only after the end of the 14-day period beginning on the date on which the notification required by such paragraph is received by the appropriate committees of Congress in an electronic medium pursuant to section 480 of this title.

(4) The Secretary concerned may not use the authority provided by paragraph (1) to waive the limitation on an increase in the scope of work applicable to a military construction project or a military family housing project and approve

an increase in the scope of work for the project that would increase the scope of work by more than 10 percent of the amount specified for the project in the justification data provided to Congress as part of the request for authorization of the project.

(e) **ADDITIONAL COST VARIATION EXCEPTIONS.**—The limitation on cost variations in subsection (a) does not apply to the following:

(1) The settlement of a contractor claim under a contract.

(2) The costs associated with the required remediation of an environmental hazard in connection with a military construction project or military family housing project, such as asbestos removal, radon abatement, lead-based paint removal or abatement, or any other legally required environmental hazard remediation, if the required remediation could not have reasonably been anticipated at the time the project was approved originally by Congress.

(f) **ADDITIONAL REPORTING REQUIREMENT FOR CERTAIN COST INCREASES.**—(1) In addition to the notification sent under paragraph (1) of subsection (c) of a cost increase with respect to a project, the Secretary concerned shall provide an additional report notifying the congressional defense committees of any military construction project or military family housing project with a total authorized cost greater than \$40,000,000 that has a cost increase of 25 percent or more.

(2) The report under paragraph (1) shall include the following—

(A) A description of the specific reasons for the cost increase and the specific organizations and individuals responsible.

(B) A description of any ongoing or completed proceedings or investigation into a government employee, prime contractor, subcontractor, or non-governmental organization that may be responsible for the cost increase, and the status of such proceeding or investigation.

(C) If any proceeding or investigation identified in subparagraph (B) resulted in final judicial or administrative action, the following:

(i) In the case of a judicial or administrative action taken against a government employee, the report shall identify the individual's organization, position within the organization, and the action taken against the individual, but shall exclude personally identifiable information about the individual.

(ii) In the case of a judicial or administrative action taken against a prime contractor, subcontractor, or non-governmental organization, the report shall identify the prime contractor, subcontractor, or non-governmental organization and the action taken against the prime contractor, subcontractor, or non-governmental organization.

(D) A summary of any changes the Secretary concerned believes may be required to the organizational structure, project management and oversight practices, policy, or authorities of a government organization involved in military construction projects as a result of problems identified and lessons learned from the project.

(3) If any proceeding or investigation described in paragraph (2)(C) is still ongoing at the time the Secretary concerned submits the report under paragraph (1), the Secretary shall provide a supplemental report to the congressional defense committees not later than 30 days after such proceeding or investigation has been completed. If such proceeding or investigation resulted in final judicial or administrative action against a government employee, prime contractor, subcontractor, or non-governmental organization, the Secretary shall include in the supplemental report the information required by paragraph (2)(C).

(4) Each report under this subsection shall be cosigned by the senior engineer authorized to supervise military construction projects and military family housing projects under section 2851(a).

(5) The Secretary shall send the report required under paragraph (1) with respect to a project not later than 180 days after the Secretary sends to the appropriate committees of Congress the notification under paragraph (1) of subsection (c) of a cost increase with respect to the project.

(g) **RELATION TO OTHER LAW.**—Notwithstanding the authority under subsections (a) through (f), the Secretary concerned shall ensure compliance of contracts for military construction projects and for the construction, improvement, and acquisition of military family housing projects with section 1341 of title 31 (commonly referred to as the “Anti-Deficiency Act”).

(Added Pub. L. 97-214, §2(a), July 12, 1982, 96 Stat. 164; amended Pub. L. 98-407, title VIII, §807, Aug. 28, 1984, 98 Stat. 1521; Pub. L. 100-26, §7(f)(2), Apr. 21, 1987, 101 Stat. 281; Pub. L. 100-180, div. B, subdiv. 3, title I, §§2312, 2313, Dec. 4, 1987, 101 Stat. 1217, 1218; Pub. L. 101-189, div. B, title XXVIII, §2808, Nov. 29, 1989, 103 Stat. 1648; Pub. L. 104-106, div. B, title XXVIII, §2817, Feb. 10, 1996, 110 Stat. 553; Pub. L. 107-107, div. B, title XXVIII, §2802, Dec. 28, 2001, 115 Stat. 1305; Pub. L. 108-375, div. B, title XXVIII, §2803, Oct. 28, 2004, 118 Stat. 2121; Pub. L. 109-163, div. B, title XXVIII, §2804(a)-(c)(1), Jan. 6, 2006, 119 Stat. 3506; Pub. L. 109-364, div. B, title XXVIII, §2806, Oct. 17, 2006, 120 Stat. 2468; Pub. L. 111-84, div. B, title XXVIII, §2803, Oct. 28, 2009, 123 Stat. 2661; Pub. L. 112-81, div. B, title XXVIII, §2802(c)(2), Dec. 31, 2011, 125 Stat. 1685; Pub. L. 112-239, div. B, title XXVIII, §2801, Jan. 2, 2013, 126 Stat. 2146; Pub. L. 113-291, div. A, title X, §1071(f)(24), Dec. 19, 2014, 128 Stat. 3511; Pub. L. 114-328, div. B, title XXVIII, §2803, Dec. 23, 2016, 130 Stat. 2712; Pub. L. 115-91, div. B, title XXVIII, §§2801(c)(1), 2821, Dec. 12, 2017, 131 Stat. 1843, 1853; Pub. L. 116-283, div. B, title XXVIII, §2803(a), (b), Jan. 1, 2021, 134 Stat. 4319, 4320; Pub. L. 117-81, div. B, title XXVIII, §2802, Dec. 27, 2021, 135 Stat. 2184.)

#### Editorial Notes

##### AMENDMENTS

2021—Subsec. (a). Pub. L. 117-81, §2802(b), (c)(1), inserted heading and substituted “the total authorized cost of the project” for “the amount appropriated for such project” in text.

Subsec. (b). Pub. L. 117-81, §2802(c)(2), inserted heading.

Subsec. (c). Pub. L. 117-81, § 2802(a), amended subsec. (c) generally. Prior to amendment, subsec. (c) related to situations where limitation on cost variations or the limitation on scope reduction did not apply.

Subsec. (c)(1). Pub. L. 116-283, § 2803(b), inserted “(subject to subsection (f))” after “cost increase” in introductory provisions.

Subsec. (d). Pub. L. 117-81, § 2802(a), amended subsec. (d) generally. Prior to amendment, subsec. (d) related to situations where the limitation on an increase in the scope of work did not apply.

Subsec. (e). Pub. L. 117-81, § 2802(c)(3), inserted heading.

Subsec. (f). Pub. L. 117-81, § 2802(c)(4), inserted heading.

Subsec. (f)(1), (3). Pub. L. 116-283, § 2803(a)(1), struck out “and the Comptroller General of the United States” after “congressional defense committees”.

Subsec. (f)(6). Pub. L. 116-283, § 2803(a)(2), struck out par. (6) which read as follows: “The Comptroller General of the United States shall review each report submitted under this subsection and validate or correct as necessary the information provided.”

Subsec. (g). Pub. L. 117-81, § 2802(c)(5), inserted heading.

2017—Subsec. (c)(1)(A). Pub. L. 115-91, § 2801(c)(1)(A), struck out “in writing” after “committees of Congress”.

Subsec. (c)(1)(B). Pub. L. 115-91, § 2801(c)(1)(B), substituted “14-day period” for “period of 21 days” and struck out “or, if over sooner, a period of 14 days has elapsed after the date on which a copy of the notification is provided” after “received by the committees”.

Subsec. (c)(2). Pub. L. 115-91, § 2801(c)(1)(A), (C), inserted “, using an electronic medium pursuant to section 480 of this title,” after “notifies” and struck out “in writing” after “committees of Congress”.

Subsec. (f). Pub. L. 115-91, § 2821(2), added subsec. (f). Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 115-91, § 2821(1), (3), redesignated subsec. (f) as (g) and substituted “subsections (a) through (f)” for “subsections (a) through (e)”.

2016—Subsec. (a). Pub. L. 114-328, § 2803(c), inserted “of this title” after “section 2805(a)”.

Pub. L. 114-328, § 2803(b)(1), substituted “subsection (c), (d), or (e)” for “subsection (c) or (d)”.

Subsec. (b)(2). Pub. L. 114-328, § 2803(a)(1), substituted “Except as provided in subsection (d), the scope of work” for “The scope of work”.

Subsec. (d). Pub. L. 114-328, § 2803(a)(3), added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 114-328, § 2803(a)(2), redesignated subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 114-328, § 2803(a)(2), (b)(2), redesignated subsec. (e) as (f) and substituted “through (e)” for “through (d)”.

2014—Subsec. (c)(1)(A). Pub. L. 113-291 substituted “can still be” for “can be still be”.

2013—Subsec. (a). Pub. L. 112-239, § 2801(1), substituted “was authorized” for “was approved originally”.

Subsec. (b)(1). Pub. L. 112-239, § 2801(2)(A), inserted at end “Any reduction in scope of work for a military construction project shall not result in a facility or item of infrastructure that is not complete and useable or does not fully meet the mission requirement contained in the justification data provided to Congress as part of the request for authorization of the project, construction, improvement, or acquisition.”

Subsec. (b)(3). Pub. L. 112-239, § 2801(2)(B), added par. (3).

Subsec. (c)(1)(A). Pub. L. 112-239, § 2801(3), substituted “, the reasons therefor, a certification that the mission requirement identified in the justification data provided to Congress can be still be met with the reduced scope, and a description” for “and the reasons therefor, including a description”.

Subsec. (e). Pub. L. 112-239, § 2801(4), added subsec. (e).

2011—Subsec. (a). Pub. L. 112-81 substituted “section 2805(a)” for “section 2805(a)(1)”.

2009—Subsec. (b). Pub. L. 111-84, § 2803(1), designated existing provisions as par. (1), substituted “may be re-

duced by not more than 25 percent from the amount specified for that project, construction, improvement, or acquisition in the justification data provided to Congress as part of the request for authorization of the project, construction, improvement, or acquisition.” for “may be reduced by not more than 25 percent from the amount approved for that project, construction, improvement, or acquisition by Congress.”, and added par. (2).

Subsec. (c). Pub. L. 111-84, § 2803(2), substituted “subsection (b)(1)” for “subsection (b)” in introductory provisions.

2006—Pub. L. 109-163, § 2804(c)(1), substituted “Authorized cost and scope of work variations” for “Authorized cost variations” in section catchline.

Subsec. (a). Pub. L. 109-163, § 2804(a)(1), substituted “may be increased or decreased by not more than 25 percent” for “may be increased by not more than 25 percent” and “if the Secretary concerned determines that such revised cost is required” for “if the Secretary concerned determines that such an increase in cost is required”.

Subsec. (c). Pub. L. 109-364 substituted “if the variation in cost or reduction in the scope of work is approved by the Secretary concerned and—” for “if—” in introductory provisions, added pars. (1) and (2), and struck out former pars. (1) to (3) which read as follows:

“(1) the variation in cost or reduction in scope is approved by the Secretary concerned;

“(2) the Secretary concerned notifies the appropriate committees of Congress in writing of the variation or reduction and the reasons therefor, including a description of the funds proposed to be used to finance any increased costs; and

“(3) a period of 21 days has elapsed after the date on which the notification is received by the committees or, if over sooner, a period of 14 days has elapsed after the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title.”

Pub. L. 109-163, § 2804(a)(2), (b), substituted “limitation on cost variations” for “limitation on cost increase” in introductory provisions, “the variation” for “the increase” in pars. (1) and (2), and inserted “, including a description of the funds proposed to be used to finance any increased costs” after “the reasons therefor” in par. (2).

Subsec. (d). Pub. L. 109-163, § 2804(a)(3), substituted “limitation on cost variations” for “limitation on cost increases” in introductory provisions.

2004—Subsec. (c)(3). Pub. L. 108-375 inserted before period at end “or, if over sooner, a period of 14 days has elapsed after the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title”.

2001—Subsec. (d). Pub. L. 107-107 amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: “The limitation on cost increases in subsection (a) does not apply to the settlement of a contractor claim under a contract.”

1996—Subsec. (d). Pub. L. 104-106 amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: “The limitation on cost increases in subsection (a) does not apply to a within-scope modification to a contract or to the settlement of a contractor claim under a contract if the increase in cost is approved by the Secretary concerned, and the Secretary concerned promptly submits written notification of the facts relating to the proposed increase in cost to the appropriate committees of Congress.”

1989—Pub. L. 101-189 amended section generally, substituting subssecs. (a) to (d) for former subssecs. (a) to (f).

1987—Subsec. (a)(1). Pub. L. 100-180, § 2312, substituted “Except as provided in paragraph (2), the total cost authorized for military construction projects at an installation (including each project the cost of which is included in such total authorized cost and is less than the minor project ceiling) may be increased by not more than 25 percent of the total amount appropriated for such projects” for “Except as provided in paragraph (2),

the cost authorized for a military construction project (other than a project for which the approved amount is less than the minor project ceiling (as defined in subsection (f))) may be increased by not more than 25 percent of the amount appropriated for the project”.

Pub. L. 100-26, §7(f)(2)(A), substituted “the minor project ceiling (as defined in subsection (f))” for “the amount specified by law as the maximum amount for a minor military construction project”.

Pub. L. 100-26, §7(f)(2)(B), substituted “the minor project ceiling” for “the amount specified by law as the maximum amount for a minor military construction project”.

Subsec. (a)(2). Pub. L. 100-26, §7(f)(2)(B), substituted “the minor project ceiling” for “the amount specified by law as the maximum amount for a minor military construction project” in two places.

Subsec. (b). Pub. L. 100-26, §7(f)(2)(B), (C), substituted “the minor project ceiling” for “the amount specified by law as the maximum amount for a minor military construction project” and “the amount of such ceiling” for “such maximum amount” in two places.

Subsec. (c). Pub. L. 100-180, §2313, substituted “construction, improvement,” for “construction”.

Subsec. (e). Pub. L. 100-26, §7(f)(2)(B), substituted “the minor project ceiling” for “the amount specified by law as the maximum amount for a minor military construction project”.

Subsec. (f). Pub. L. 100-26, §7(f)(2)(D), added subsec. (f).

1984—Subsec. (e). Pub. L. 98-407 inserted “is more than the amount specified by law as the maximum amount for a minor military construction project and”.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97-214, set out as a note under section 2801 of this title.

#### § 2854. Restoration or replacement of damaged or destroyed facilities

(a) Subject to subsection (b), the Secretary concerned may repair, restore, or replace a facility under his jurisdiction, including a family housing facility, that has been damaged or destroyed.

(b) When a decision is made to carry out construction under subsection (a) and the cost of the repair, restoration, or replacement is greater than the maximum amount for a minor construction project, the Secretary concerned shall notify the appropriate committees of Congress of that decision, of the justification for the project, of the current estimate of the cost of the project, of the source of funds for the project, and of the justification for carrying out the project under this section. The project may then be carried out only after the end of the 14-day period beginning on the date the notification is received by such committees in an electronic medium pursuant to section 480 of this title.

(c)(1) In using the authority described in subsection (a) to carry out a military construction project to replace a facility, including a family housing facility, that has been damaged or destroyed, the Secretary concerned may use appropriations available for operation and maintenance if—

(A) the damage or destruction to the facility was the result of a natural disaster or a terrorism incident; and

(B) the Secretary submits a notification to the appropriate committees of Congress of the

decision to carry out the replacement project, and includes in the notification—

(i) the current estimate of the cost of the replacement project;

(ii) the source of funds for the replacement project;

(iii) in the case of damage to a facility rather than destruction, a certification that the replacement project is more cost-effective than repair or restoration; and

(iv) a certification that deferral of the replacement project for inclusion in the next Military Construction Authorization Act would be inconsistent with national security or the protection of health, safety, or environmental quality, as the case may be.

(2) A replacement project under this subsection may be carried out only after the end of the 7-day period beginning on the date on which a copy of the notification described in paragraph (1) is provided in an electronic medium pursuant to section 480 of this title.

(3) The maximum aggregate amount that the Secretary concerned may obligate from appropriations available for operation and maintenance in any fiscal year for replacement projects under the authority of this subsection is \$100,000,000.

(Added Pub. L. 97-214, §2(a), July 12, 1982, 96 Stat. 165; amended Pub. L. 102-190, div. B, title XXVIII, §2870(7), Dec. 5, 1991, 105 Stat. 1563; Pub. L. 108-136, div. A, title X, §1031(a)(45), Nov. 24, 2003, 117 Stat. 1602; Pub. L. 115-91, div. B, title XXVIII, §§2801(c)(2), 2805, Dec. 12, 2017, 131 Stat. 1843, 1846; Pub. L. 116-92, div. B, title XXVIII, §2803, Dec. 20, 2019, 133 Stat. 1882.)

#### Editorial Notes

##### AMENDMENTS

2019—Subsec. (c)(3). Pub. L. 116-92 substituted “\$100,000,000” for “\$50,000,000”.

2017—Subsec. (b). Pub. L. 115-91, §2805(b), substituted “under subsection (a)” for “under this section”.

Pub. L. 115-91, §2801(c)(2), struck out “in writing” after “shall notify” and “or, if earlier, the end of the seven-day period beginning on the date on which a copy of the notification is provided” after “received by such committees” and substituted “14-day period” for “21-day period”.

Subsec. (c). Pub. L. 115-91, §2805(a), added subsec. (c). 2003—Subsec. (b). Pub. L. 108-136 inserted before period at end “or, if earlier, the end of the seven-day period beginning on the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title”.

1991—Subsec. (b). Pub. L. 102-190 struck out “(1)” after “carried out only” and “, or (2) after each such committee has approved the project, if the committees approve the project before the end of that period” before period at end.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97-214, set out as a note under section 2801 of this title.

#### § 2854a. Conveyance of damaged or deteriorated military family housing; use of proceeds

(a) AUTHORITY TO CONVEY.—(1) The Secretary concerned may convey any family housing facil-