

12, 1980, 94 Stat. 2881; Pub. L. 97-22, §5(c), July 10, 1981, 95 Stat. 128; Pub. L. 98-94, title X, §1007(c)(3), Sept. 24, 1983, 97 Stat. 662; Pub. L. 100-180, div. A, title VII, §714(b), Dec. 4, 1987, 101 Stat. 1112; Pub. L. 103-160, div. A, title V, §509(b), Nov. 30, 1993, 107 Stat. 1647, related to service credit upon original appointment as reserve commissioned officer in Army. See section 12207 of this title.

Section 3354, acts Aug. 10, 1956, ch. 1041, 70A Stat. 194; Sept. 2, 1958, Pub. L. 85-861, §1(80)(C), 72 Stat. 1468, related to appointment of warrant officers and enlisted members of Army National Guard of United States as reserve officers.

A prior section 3355, acts Aug. 10, 1956, ch. 1041, 70A Stat. 194; Sept. 2, 1958, Pub. L. 85-861, §33(a)(22), 72 Stat. 1565, related to appointment of graduates of Reserve Officers' Training Corps as reserve commissioned officers, prior to repeal by Pub. L. 88-647, title III, §301(5), Oct. 13, 1964, 78 Stat. 1071. See section 2106 of this title.

Prior sections 3357 to 3370 were repealed by Pub. L. 103-337, div. A, title XVI, §§1629(a)(1), 1691(b)(1), Oct. 5, 1994, 108 Stat. 2963, 3026, effective Oct. 1, 1996.

Section 3357, acts Aug. 10, 1956, ch. 1041, 70A Stat. 194; Sept. 2, 1958, Pub. L. 85-861, §1(60), (80)(D), 72 Stat. 1462, 1468, related to eligibility for appointment as reserve officer for service in Army Reserve in Army Nurse Corps or Army Medical Specialist Corps.

Section 3359, added Pub. L. 85-861, §1(80)(E), Sept. 2, 1958, 72 Stat. 1469; amended Pub. L. 98-94, title X, §1014(a), Sept. 24, 1983, 97 Stat. 666; Pub. L. 98-525, title V, §521(a), Oct. 19, 1984, 98 Stat. 2522; Pub. L. 99-145, title V, §521(a), Nov. 8, 1985, 99 Stat. 631; Pub. L. 100-180, div. A, title V, §502(a), Dec. 4, 1987, 101 Stat. 1085; Pub. L. 101-189, div. A, title V, §503(a), Nov. 29, 1989, 103 Stat. 1437; Pub. L. 102-484, div. A, title V, §519(a), Oct. 23, 1992, 106 Stat. 2408; Pub. L. 103-160, div. A, title V, §514(a), Nov. 30, 1993, 107 Stat. 1649; Pub. L. 104-106, div. A, title V, §511(a), Feb. 10, 1996, 110 Stat. 298, related to determination of grade upon original appointment as reserve officer of Army. See section 12201 et seq. of this title.

Section 3360, added Pub. L. 85-861, §1(80)(E), Sept. 2, 1958, 72 Stat. 1469; amended Pub. L. 86-559, §1(9), June 30, 1960, 74 Stat. 266; Pub. L. 96-513, title V, §§502(10), 512(4), Dec. 12, 1980, 94 Stat. 2910, 2929; Pub. L. 98-94, title X, §1016(b), Sept. 24, 1983, 97 Stat. 668, related to service required for promotion of Reserve commissioned officers. See section 14001 et seq. of this title.

Section 3362, added Pub. L. 85-861, §1(80)(E), Sept. 2, 1958, 72 Stat. 1470; amended Pub. L. 86-559, §1(10), June 30, 1960, 74 Stat. 266, related to convening of selection boards to consider Reserve commissioned officers for promotion. See section 14101 et seq. of this title.

Section 3363, added Pub. L. 85-861, §1(80)(E), Sept. 2, 1958, 72 Stat. 1470; amended Pub. L. 86-559, §1(11), June 30, 1960, 74 Stat. 266; Pub. L. 95-485, title VIII, §820(e)(1), Oct. 20, 1978, 92 Stat. 1627; Pub. L. 100-456, div. A, title XII, §1234(a)(1), Sept. 29, 1988, 102 Stat. 2059, related to requirements and procedures for promotion of officers in reserve grades. See section 14301 et seq. of this title.

Section 3364, added Pub. L. 85-861, §1(80)(E), Sept. 2, 1958, 72 Stat. 1471; amended Pub. L. 86-559, §1(12), June 30, 1960, 74 Stat. 266; Pub. L. 95-485, title VIII, §820(e)(2)-(4), Oct. 20, 1978, 92 Stat. 1627; Pub. L. 98-525, title V, §512, Oct. 19, 1984, 98 Stat. 2521; Pub. L. 100-456, div. A, title XII, §1234(a)(4), Sept. 29, 1988, 102 Stat. 2059, related to commissioned reserve officers' selection for promotion, order of promotion, zone of consideration lists, and declinations of promotion. See section 14301 et seq. of this title.

Section 3365, added Pub. L. 85-861, §1(80)(E), Sept. 2, 1958, 72 Stat. 1472, related to promotion of second lieutenants of Army Reserve. See section 14301 et seq. of this title.

Section 3366, added Pub. L. 85-861, §1(80)(E), Sept. 2, 1958, 72 Stat. 1472; amended Pub. L. 86-559, §1(13), June 30, 1960, 74 Stat. 267; Pub. L. 90-130, §1(11)(A), Nov. 8, 1967, 81 Stat. 375, related to promotion of first lieutenants, captains, and majors of Army Reserve or Army National Guard of United States. See section 14301 et seq. of this title.

Section 3367, added Pub. L. 85-861, §1(80)(E), Sept. 2, 1958, 72 Stat. 1473; amended Pub. L. 86-559, §1(14), June 30, 1960, 74 Stat. 268; Pub. L. 90-130, §1(11)(B), Nov. 8, 1967, 81 Stat. 375, related to promotion of first lieutenants, captains, and majors of Army Reserve to fill vacancies. See section 14301 et seq. of this title.

Section 3368, added Pub. L. 85-861, §1(80)(E), Sept. 2, 1958, 72 Stat. 1474, related to second consideration for promotion of first lieutenants, captains, and majors of Army Reserve. See section 14301 et seq. of this title.

Section 3369, added Pub. L. 85-861, §1(80)(E), Sept. 2, 1958, 72 Stat. 1474, related to first promotion of reserve officers not assigned to unit after transfer from unit or from Army National Guard of United States.

Section 3370, added Pub. L. 85-861, §1(80)(E), Sept. 2, 1958, 72 Stat. 1474; amended Pub. L. 86-559, §1(15), June 30, 1960, 74 Stat. 269; Nov. 8, 1967, Pub. L. 90-130, §1(11)(C), (D), 81 Stat. 375; Pub. L. 100-456, div. A, title XII, §1234(a)(5), Sept. 29, 1988, 102 Stat. 2059, related to promotion of officers to grade of colonel to fill vacancies. See section 14301 et seq. of this title.

#### AMENDMENTS

2021—Pub. L. 116-283, §1818(b), as amended by Pub. L. 117-81, §1701(b)(7), renumbered section 2316 of this title as this section.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 117-81 applicable as if included in the enactment of title XVIII of Pub. L. 116-283 as enacted, see section 1701(a)(2) of Pub. L. 117-81, set out in a note preceding section 3001 of this title and note below.

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.

#### [§ 3345. Omitted]

#### Editorial Notes

##### CODIFICATION

Pub. L. 116-283, div. A, title XVIII, §1818(c), Jan. 1, 2021, 134 Stat. 4188, initially transferred section 2302e of this title to this section, to become effective Jan. 1, 2022. Pub. L. 117-81, div. A, title XVII, §1701(v)(1)(A), Dec. 27, 2021, 135 Stat. 2154, repealed section 1818(c) of Pub. L. 116-283, effective as if included therein, which eliminated that transfer, thereby omitting this section before it took effect. Another amendment by Pub. L. 117-81 resulted in the transfer of section 2302e to section 4004 of this title.

#### CHAPTER 244—UNDEFINITIZED CONTRACTUAL ACTIONS

Sec. 3371.	Undefinitized contractual actions: required description of anticipated effect on military department requirements if use of undefinitized contractual action results in delay.
3372.	Undefinitized contractual actions: requirements and limitations relating to definitization of contractual terms, specifications, and price.
3373.	Undefinitized contractual actions: limitation on inclusion of non-urgent requirements and on modification of scope.
3374.	Undefinitized contractual actions: allowable profit.
3375.	Undefinitized contractual actions: time limit.
3376.	[Reserved].
3377.	Inapplicability to Coast Guard and National Aeronautics and Space Administration; definitions.

Sec.

**Statutory Notes and Related Subsidiaries****IMPLEMENTATION AND ENFORCEMENT OF REQUIREMENTS APPLICABLE TO UNDEFINITIZED CONTRACTUAL ACTIONS**

Pub. L. 110-181, div. A, title VIII, §809, Jan. 28, 2008, 122 Stat. 216, provided that:

“(a) **GUIDANCE AND INSTRUCTIONS.**—Not later than 180 days after the date of the enactment of this Act [Jan. 28, 2008], the Secretary of Defense shall issue guidance, with detailed implementation instructions, for the Department of Defense to ensure the implementation and enforcement of requirements applicable to undefinitized contractual actions.

“(b) **ELEMENTS.**—The guidance and instructions issued pursuant to subsection (a) shall address, at a minimum—

“(1) the circumstances in which it is, and is not, appropriate for Department of Defense officials to use undefinitized contractual actions;

“(2) approval requirements (including thresholds) for the use of undefinitized contractual actions;

“(3) procedures for ensuring that timelines for the definitization of undefinitized contractual actions are met;

“(4) procedures for ensuring compliance with regulatory limitations on the obligation of funds pursuant to undefinitized contractual actions;

“(5) procedures for ensuring compliance with regulatory limitations on profit or fee with respect to costs incurred before the definitization of an undefinitized contractual action; and

“(6) reporting requirements for undefinitized contractual actions that fail to meet required timelines for definitization or fail to comply with regulatory limitations on the obligation of funds or on profit or fee.

“(c) **REPORTS.**—

“(1) **REPORT ON GUIDANCE AND INSTRUCTIONS.**—Not later than 210 days after the date of the enactment of this Act [Jan. 28, 2008], the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report setting forth the guidance and instructions issued pursuant to subsection (a).

“(2) **GAO REPORT.**—Not later than two years after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the congressional defense committees a report on the extent to which the guidance and instructions issued pursuant to subsection (a) have resulted in improvements to—

“(A) the level of insight that senior Department of Defense officials have into the use of undefinitized contractual actions;

“(B) the appropriate use of undefinitized contractual actions;

“(C) the timely definitization of undefinitized contractual actions; and

“(D) the negotiation of appropriate profits and fees for undefinitized contractual actions.”

**§ 3371. Undefinitized contractual actions: required description of anticipated effect on military department requirements if use of undefinitized contractual action results in delay**

The head of an agency may not enter into an undefinitized contractual action unless the request to the head of the agency for authorization of the contractual action includes a description of the anticipated effect on requirements of the military department concerned if a delay is incurred for purposes of determining contractual terms, specifications, and price before performance is begun under the contractual action.

(Added and amended Pub. L. 116-283, div. A, title XVIII, § 1819(a), (b), Jan. 1, 2021, 134 Stat. 4189.)

**Editorial Notes****CODIFICATION**

The text of subsec. (a) of section 2326 of this title, which was transferred to this section and amended by Pub. L. 116-283, § 1819(b), was based on Pub. L. 99-500, § 101(c) [title X, § 908(d)(1)(A)], Oct. 18, 1986, 100 Stat. 1783-82, 1783-140, and Pub. L. 99-591, § 101(c) [title X, § 908(d)(1)(A)], Oct. 30, 1986, 100 Stat. 3341-82, 3341-140; Pub. L. 99-661, div. A, title IX, formerly title IV, § 908(d)(1)(A), Nov. 14, 1986, 100 Stat. 3920, renumbered title IX, Pub. L. 100-26, § 3(5), Apr. 21, 1987, 101 Stat. 273. Pub. L. 99-500, Pub. L. 99-591, and Pub. L. 99-661 added identical subsections.

**PRIOR PROVISIONS**

A prior section 3371, added Pub. L. 85-861, § 1(80)(E), Sept. 2, 1958, 72 Stat. 1475, related to promotion of brigadier generals and colonels not assigned to units, prior to repeal by Pub. L. 103-337, div. A, title XVI, §§ 1629(a)(1), 1691(b)(1), Oct. 5, 1994, 108 Stat. 2963, 3026, effective Oct. 1, 1996. See section 14301 et seq. of this title.

**AMENDMENTS**

2021—Pub. L. 116-283, § 1819(b), transferred subsec. (a) of section 2326 of this title to this section and struck out subsec. (a) designation and heading “In General” at beginning.

**Statutory Notes and Related Subsidiaries****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.

**§ 3372. Undefinitized contractual actions: requirements and limitations relating to definitization of contractual terms, specifications, and price**

(a) **CONTRACTUAL ACTION TO PROVIDE TIME FOR DEFINITIZATION OF CONTRACTUAL TERMS, SPECIFICATIONS, AND PRICE; LIMITATIONS ON OBLIGATION OF FUNDS.**—

(1) **TERMS FOR TIME FOR DEFINITIZATION TO BE INCLUDED IN CONTRACTUAL ACTION.**—A contracting officer of the Department of Defense may not enter into an undefinitized contractual action unless the contractual action provides for agreement upon contractual terms, specifications, and price by the earlier of—

(A) the end of the 180-day period beginning on the date on which the contractor submits a qualifying proposal to definitize the contractual terms, specifications, and price; or

(B) the date on which the amount of funds obligated under the contractual action is equal to more than 50 percent of the negotiated overall ceiling price for the contractual action.

(2) **LIMITATION ON OBLIGATION OF FUNDS BEFORE DEFINITIZATION.**—

(A) **50 PERCENT LIMITATION.**—Except as provided in subparagraph (B), the contracting officer for an undefinitized contractual action may not obligate with respect to such