

Date of 2021 Amendment note preceding section 3001 of this title.

#### REGULATIONS

Pub. L. 114-328, div. A, title VIII, §831(b), Dec. 23, 2016, 130 Stat. 2283, provided that: “Not later than 120 days after the date of the enactment of this Act [Dec. 23, 2016], the Secretary of Defense shall revise the Department of Defense Federal Acquisition Regulation Supplement to conform with section 2307(b) of title 10, United States Code [see 10 U.S.C. 3802(a)–(c), (e)], as amended by subsection (a).”

### § 3803. Security for advance payments

Advance payments made under section 3801 of this title may be made only if the contractor gives adequate security and after a determination by the head of the agency that to do so would be in the public interest. Such security may be in the form of a lien in favor of the United States on the property contracted for, on the balance in an account in which such payments are deposited, and on such of the property acquired for performance of the contract as the parties may agree. This lien is paramount to any other liens and is effective immediately upon the first advancement of funds without filing, notice, or any other action by the United States.

(Added and amended Pub. L. 116-283, div. A, title XVIII, §1834(a), (d), Jan. 1, 2021, 134 Stat. 4234, 4236.)

#### Editorial Notes

##### CODIFICATION

The text of subsec. (d) of section 2307 of this title, which was transferred to this section and amended by Pub. L. 116-283, §1834(d), was based on act Aug. 10, 1956, ch. 1041, 70A Stat. 131; Pub. L. 85-800, §9, Aug. 28, 1958, 72 Stat. 967; Pub. L. 103-355, title II, §2001(a)(4), (7), (d), Oct. 13, 1994, 108 Stat. 3301, 3302.

##### AMENDMENTS

2021—Pub. L. 116-283, §1834(d), transferred subsec. (d) of section 2307 of this title to this section, struck out subsec. (d) designation and heading “Security for Advance Payments” at beginning, and substituted “section 3801 of this title” for “subsection (a)”.

#### 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.

### § 3804. Conditions for progress payments

(a) **PAYMENT COMMENSURATE WITH WORK.**—The Secretary of Defense shall ensure that any payment for work in progress (including materials, labor, and other items) under a defense contract that provides for such payments is commensurate with the work accomplished that meets standards established under the contract. The contractor shall provide such information and evidence as the Secretary of Defense determines necessary to permit the Secretary to carry out the preceding sentence.

(b) **LIMITATION.**—The Secretary shall ensure that progress payments referred to in subsection

(a) are not made for more than 80 percent of the work accomplished under a defense contract so long as the Secretary has not made the contractual terms, specifications, and price definite.

(c) **APPLICABILITY.**—This section applies to any contract in an amount greater than \$25,000.

(Added and amended Pub. L. 116-283, div. A, title XVIII, §1834(a), (e), Jan. 1, 2021, 134 Stat. 4234, 4236.)

#### Editorial Notes

##### CODIFICATION

The text of subsec. (e) of section 2307 of this title, which was transferred to this section and amended by Pub. L. 116-283, §1834(e), was based on Pub. L. 100-370, §1(f)(1)(A), July 19, 1988, 102 Stat. 846; Pub. L. 101-510, div. A, title XIII, §1322(a)(4)(B), Nov. 5, 1990, 104 Stat. 1671; Pub. L. 102-25, title VII, §701(d)(4), Apr. 6, 1991, 105 Stat. 114; Pub. L. 103-355, title II, §2001(a)(5), (7), (e), Oct. 13, 1994, 108 Stat. 3301, 3302.

##### AMENDMENTS

2021—Pub. L. 116-283, §1834(e)(1), transferred subsec. (e) of section 2307 of this title to this section and struck out subsec. (e) designation and heading “Conditions for Progress Payments” at beginning.

Subsec. (a). Pub. L. 116-283, §1834(e)(1)(B), (2), after transfer of section 2307(e) of this title to this section, redesignated par. (1) as subsec. (a) and inserted heading.

Subsec. (b). Pub. L. 116-283, §1834(e)(1)(B), (3), after transfer of section 2307(e) of this title to this section, redesignated par. (2) as subsec. (b), inserted heading, and substituted “subsection (a)” for “paragraph (1)”.

Subsec. (c). Pub. L. 116-283, §1834(e)(1)(B), (4), after transfer of section 2307(e) of this title to this section, redesignated par. (3) as subsec. (c), inserted heading, and substituted “This section” for “This subsection”.

#### 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.

#### WAIVERS OF CERTAIN CONDITIONS FOR PROGRESS PAYMENTS UNDER CERTAIN CONTRACTS DURING THE COVID-19 NATIONAL EMERGENCY

Pub. L. 116-283, div. A, title VIII, §891, Jan. 1, 2021, 134 Stat. 3793, provided that:

“(a) **WAIVER OF PROGRESS PAYMENTS REQUIREMENTS.**—The Secretary of Defense may waive the requirements of section 2307(e)(2) of title 10, United States Code [now 10 U.S.C. 3804(b)], with respect to progress payments for any undefinitized contractual action (as defined in section 2326 of title 10, United States Code [see 10 U.S.C. 3377(b)(1)]); in this section referred to as ‘UCA’) if the Secretary determines that the waiver is necessary due to the national emergency for the Coronavirus Disease 2019 (COVID-19) and—

“(1) a contractor performing the contract for which a UCA is entered into has not already received increased progress payments from the Secretary of Defense on contractual actions other than UCAs; or

“(2) a contractor performing the contract for which a UCA is entered into, and that has received increased progress payments from the Secretary of Defense on contractual actions other than UCAs, can demonstrate that the contractor has promptly provided the amount of the increase to any subcontractors (at any tier), small business concerns (as defined under section 3 of the Small Business Act (15 U.S.C. 632)), or suppliers of the contractor.

“(b) DEFINITIZATION.—With respect to a UCA that not been definitized for a period of 180 days beginning on the date on which such UCA was entered into, the Secretary of Defense may only use the waiver authority described in subsection (a) if the Secretary (or a designee at a level not below the head of a contracting activity) provides a certification to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] that such UCA will be definitized within 60 days after the date on which the waiver is issued.

“(c) SUBMISSION.—For each use of the waiver authority under subsection (a), the Secretary of Defense shall submit to the congressional defense committees an estimate of the amounts to be provided to subcontractors (at any tier), small business concerns, and suppliers, including an identification of the specific entities receiving an amount from an increased progress payment described under such subsection (a).”

### § 3805. Payments for commercial products and commercial services

(a) TERMS AND CONDITIONS FOR PAYMENTS.—Payments under section 3801 of this title for commercial products and commercial services may be made under such terms and conditions as the head of the agency determines are appropriate or customary in the commercial marketplace and are in the best interests of the United States.

(b) SECURITY FOR PAYMENTS.—The head of the agency shall obtain adequate security for such payments. If the security is in the form of a lien in favor of the United States, such lien is paramount to all other liens and is effective immediately upon the first payment, without filing, notice, or other action by the United States.

(c) LIMITATION ON ADVANCE PAYMENTS.—Advance payments made under section 3801 of this title for commercial products and commercial services may include payments, in a total amount of not more than 15 percent of the contract price, in advance of any performance of work under the contract.

(d) NONAPPLICATION OF CERTAIN CONDITIONS.—The conditions of sections 3803 and 3804 of this title need not be applied if they would be inconsistent, as determined by the head of the agency, with commercial terms and conditions pursuant to this section.

(Added and amended Pub. L. 116-283, div. A, title XVIII, §1834(a), (f), Jan. 1, 2021, 134 Stat. 4234, 4236.)

#### Editorial Notes

##### CODIFICATION

The text of subsec. (f) of section 2307 of this title, which was transferred to this section and amended by Pub. L. 116-283, §1834(f), was based on Pub. L. 103-355, title II, §2001(f), Oct. 13, 1994, 108 Stat. 3302; Pub. L. 115-232, div. A, title VIII, §836(c)(6), Aug. 13, 2018, 132 Stat. 1866.

##### AMENDMENTS

2021—Pub. L. 116-283, §1834(f)(1)(A), transferred subsec. (f) of section 2307 of this title to this section and struck out subsec. (f) designation and heading “Conditions for Payments for Commercial Products and Commercial Services” at beginning.

Subsec. (a). Pub. L. 116-283, §1834(f)(1)(B), (4), after transfer of section 2307(f) of this title to this section, redesignated par. (1) as subsec. (a), inserted heading, and substituted “section 3801 of this title” for “subsection (a)”.

Subsec. (b). Pub. L. 116-283, §1834(f)(4), inserted heading.

Pub. L. 116-283, §1834(f)(2), which directed the designation of “the second sentence of subsection (a) as subsection (b)”, was executed by designating the second and third sentences of subsec. (a) as (b), to reflect the probable intent of Congress.

Subsec. (c). Pub. L. 116-283, §1834(f)(1)(B), (5), after transfer of section 2307(f) of this title to this section, redesignated par. (2) as subsec. (c), inserted heading, and substituted “section 3801 of this title” for “subsection (a)”.

Subsec. (d). Pub. L. 116-283, §1834(f)(1)(B), (6), after transfer of section 2307(f) of this title to this section, redesignated par. (3) as subsec. (d), inserted heading, and substituted “sections 3803 and 3804 of this title” for “subsections (d) and (e)” and “this section” for “paragraphs (1) and (2)”.

#### 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.

### § 3806. Action in case of fraud

(a) REMEDY COORDINATION OFFICIAL DEFINED.—In this section, the term “remedy coordination official”, with respect to an agency, means the person or entity in that agency who coordinates within that agency the administration of criminal, civil, administrative, and contractual remedies resulting from investigations of fraud or corruption related to procurement activities.

(b) RECOMMENDATION TO REDUCE OR SUSPEND PAYMENTS.—In any case in which the remedy coordination official of an agency finds that there is substantial evidence that the request of a contractor for advance, partial, or progress payment under a contract awarded by that agency is based on fraud, the remedy coordination official shall recommend that the head of the agency reduce or suspend further payments to such contractor.

(c) REDUCTION OR SUSPENSION OF PAYMENTS.—The head of an agency receiving a recommendation under subsection (b) in the case of a contractor’s request for payment under a contract shall determine whether there is substantial evidence that the request is based on fraud. Upon making such a determination, the agency head may reduce or suspend further payments to the contractor under such contract.

(d) EXTENT OF REDUCTION OR SUSPENSION.—The extent of any reduction or suspension of payments by the head of an agency under subsection (c) on the basis of fraud shall be reasonably commensurate with the anticipated loss to the United States resulting from the fraud.

(e) WRITTEN JUSTIFICATION.—A written justification for each decision of the head of an agency whether to reduce or suspend payments under subsection (c) and for each recommendation received by such agency head in connection with such decision shall be prepared and be retained in the files of such agency.

(f) NOTICE.—The head of an agency shall prescribe procedures to ensure that, before such agency head decides to reduce or suspend pay-