

## CHAPTER 169—MILITARY CONSTRUCTION AND MILITARY FAMILY HOUSING

### SUBCHAPTER SUBCHAPTER

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#### § 2801. Scope of chapter; definitions

(a) The term “military construction” as used in this chapter or any other provision of law includes any construction, development, conversion, or extension of any kind carried out with respect to a military installation, whether to satisfy temporary or permanent requirements.

(b) A military construction project includes all military construction work, or any contribution authorized by this chapter, necessary to produce a complete and usable facility or a complete and usable improvement to an existing facility (or to produce such portion of a complete and usable facility or improvement as is specifically authorized by law).

(c) In this chapter and chapter 173 of this title:

(1) The term “facility” means a building, structure, or other improvement to real property.

(2) The term “military installation” means a base, camp, post, station, yard, center, or other activity under the jurisdiction of the Secretary of a military department or, in the case of an activity in a foreign country, under the operational control of the Secretary of a military department or the Secretary

of Defense, without regard to the duration of operational control.

(3) The term “Secretary concerned” includes the Secretary of Defense with respect to matters concerning the Defense Agencies.

(4) The term “appropriate committees of Congress” means the congressional defense committees and, with respect to any project to be carried out by, or for the use of, an intelligence component of the Department of Defense, the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.

(d) This chapter (other than sections 2830, 2835, and 2836 of this chapter) does not apply to the Coast Guard or to civil works projects of the Army Corps of Engineers.

(Added Pub. L. 97–214, Sec. 2(a), July 12, 1982, 96 Stat. 153; amended Pub. L. 100–26, Sec. 7(k)(2), Apr. 21, 1987, 101 Stat. 284; Pub. L. 100–180, div. A, title VI, Sec. 632(b)(1), title XII, Sec. 1231(15), div. B, subdiv. 3, title I, Sec. 2306(b), Dec. 4, 1987, 101 Stat. 1105, 1160, 1216; Pub. L. 102–484, div. A, title X, Sec. 1052(37), Oct. 23, 1992, 106 Stat. 2501; Pub. L. 102–496, title IV, Sec. 403(b), Oct. 24, 1992, 106 Stat. 3185; Pub. L. 104–106, div. A, title XV, Sec. 1502(a)(10), Feb. 10, 1996, 110 Stat. 503; Pub. L. 106–65, div. A, title X, Sec. 1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 108–136, div. A, title X, Sec. 1043(b)(16), div. B, title XXVIII, Sec. 2801, Nov. 24, 2003, 117 Stat. 1611, 1719; Pub. L. 109–163, div. A, title X, Sec. 1056(c)(9), Jan. 6, 2006, 119 Stat. 3440; Pub. L. 109–364, div. B, title XXVIII, Sec. 2851(b)(4), Oct. 17, 2006, 120 Stat. 2495.)

### § 2802. Military construction projects

(a) The Secretary of Defense and the Secretaries of the military departments may carry out such military construction projects as are authorized by law.

(b) Authority provided by law to carry out a military construction project includes authority for—

- (1) surveys and site preparation;
- (2) acquisition, conversion, rehabilitation, and installation of facilities;
- (3) acquisition and installation of equipment and appurtenances integral to the project;
- (4) acquisition and installation of supporting facilities (including utilities) and appurtenances incident to the project; and
- (5) planning, supervision, administration, and overhead incident to the project.

(Added Pub. L. 97–214, Sec. 2(a), July 12, 1982, 96 Stat. 154.)

### § 2803. Emergency construction

(a) Subject to subsections (b) and (c), the Secretary concerned may carry out a military construction project not otherwise authorized by law if the Secretary determines (1) that the project is vital to the national security or to the protection of health, safety, or the quality of the environment, and (2) that the requirement for the project is so urgent that deferral of the 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.

(b) When a decision is made to carry out a military construction project under this section, the Secretary concerned shall submit a report in writing to the appropriate committees of Congress on that decision. Each such report shall include (1) the justification for the project and the current estimate of the cost of the project, (2) the justification for carrying out the project under this section, and (3) a statement of the source of the funds to be used to carry out the project. The project may then be carried out only after the end of the 21-day period beginning on the date the notification is received by such committees 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.

(c)(1) The maximum amount that the Secretary concerned may obligate in any fiscal year under this section is \$50,000,000.

(2) A project carried out under this section shall be carried out within the total amount of funds appropriated for military construction that have not been obligated.

(Added Pub. L. 97–214, Sec. 2(a), July 12, 1982, 96 Stat. 154; amended Pub. L. 102–190, div. B, title XXVIII, Sec. 2803, 2870(2), Dec. 5, 1991, 105 Stat. 1537, 1562; Pub. L. 102–484, div. A, title X, Sec. 1053(9), Oct. 23, 1992, 106 Stat. 2502; Pub. L. 108–136, div. A, title X, Sec. 1031(a)(34), div. B, title XXVIII, Sec. 2802, Nov. 24, 2003, 117 Stat. 1600, 1719; Pub. L. 109–364, div. B, title XXVIII, Sec. 2801, Oct. 17, 2006, 120 Stat. 2466.)

#### § 2804. Contingency construction

(a) Within the amount appropriated for such purpose, the Secretary of Defense may carry out a military construction project not otherwise authorized by law, or may authorize the Secretary of a military department to carry out such a project, if the Secretary of Defense determines that deferral of the project for inclusion in the next Military Construction Authorization Act would be inconsistent with national security or national interest.

(b) When a decision is made to carry out a military construction project under this section, the Secretary of Defense shall submit a report in writing to the appropriate committees of Congress on that decision. Each such report shall include (1) the justification for the project and the current estimate of the cost of the project, and (2) 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 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.

(Added Pub. L. 97–214, Sec. 2(a), July 12, 1982, 96 Stat. 155; amended Pub. L. 102–190, div. B, title XXVIII, Sec. 2870(3), Dec. 5, 1991, 105 Stat. 1563; Pub. L. 108–136, div. A, title X, Sec. 1031(a)(35), Nov. 24, 2003, 117 Stat. 1600; Pub. L. 109–163, div. B, title XXVIII, Sec. 2801(a), Jan. 6, 2006, 119 Stat. 3504.)

#### § 2805. Unspecified minor construction

(a)(1) Except as provided in paragraph (2), within an amount equal to 125 percent of the amount authorized by law for such purpose, the Secretary concerned may carry out unspecified minor military construction projects not otherwise authorized by law. An unspecified minor military construction project is a military con-

struction project that has an approved cost equal to or less than \$1,500,000. However, if the military construction project is intended solely to correct a deficiency that is life-threatening, health-threatening, or safety-threatening, an unspecified minor military construction project may have an approved cost equal to or less than \$3,000,000.

(2) A Secretary may not use more than \$5,000,000 for exercise-related unspecified minor military construction projects coordinated or directed by the Joint Chiefs of Staff outside the United States during any fiscal year.

(b)(1) An unspecified minor military construction project costing more than \$750,000 may not be carried out under this section unless approved in advance by the Secretary concerned. This paragraph shall apply even though the project is to be carried out using funds made available to enhance the deployment and mobility of military forces and supplies.

(2) When a decision is made to carry out an unspecified minor military construction project to which paragraph (1) is applicable, the Secretary concerned shall notify in writing the appropriate committees of Congress of that decision, of the justification for the project, and of the estimated cost of the project. The project may then be carried out only after the end of the 21-day period beginning on the date the notification is received by the committees or, if earlier, the end of the 14-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.

(c)(1) Except as provided in paragraphs (2) and (3), the Secretary concerned may spend from appropriations available for operation and maintenance amounts necessary to carry out an unspecified minor military construction project costing not more than—

(A) \$1,500,000, in the case of an unspecified minor military construction project intended solely to correct a deficiency that is life-threatening, health-threatening, or safety-threatening; or

(B) \$750,000, in the case of any other unspecified minor military construction project..

(2) The authority provided in paragraph (1) may not be used with respect to any exercise-related unspecified minor military construction project coordinated or directed by the Joint Chiefs of Staff outside the United States.

(3) The limitations specified in paragraph (1) shall not apply to an unspecified minor military construction project if the project is to be carried out using funds made available to enhance the deployment and mobility of military forces and supplies.

(d) Military family housing projects for construction of new housing units may not be carried out under the authority of this section.

(Added Pub. L. 97-214, Sec. 2(a), July 12, 1982, 96 Stat. 155; amended Pub. L. 99-167, title VIII, Sec. 809, Dec. 3, 1985, 99 Stat. 989; Pub. L. 99-661, div. B, title VII, Sec. 2702(a), Nov. 14, 1986, 100 Stat. 4040; Pub. L. 100-180, div. B, subd. 3, title I, Sec. 2310, Dec. 4, 1987, 101 Stat. 1217; Pub. L. 101-510, div. A, title XIII, Sec. 1301(16), Nov. 5, 1990, 104 Stat. 1668; Pub. L. 102-190, div. B, title XXVIII, Sec. 2807, 2870(4), Dec. 5, 1991, 105 Stat. 1540, 1563; Pub. L. 104-106, div. B, title XXVIII, Secs. 2811(a), 2812, Feb. 10, 1996, 110 Stat. 552; Pub. L. 104-201, div. B, title XXVIII, Sec. 2801(a), Sept. 23, 1996, 110 Stat. 2787; Pub. L. 105-85, div. B, title XXVIII, Sec. 2801, Nov. 18, 1997, 111 Stat. 1989; Pub. L. 107-107, div. B, title

XXVIII, Sec. 2801, Dec. 28, 2001, 115 Stat. 1305; Pub. L. 108–136, div. A, title X, Sec. 1031(a)(36), Nov. 24, 2003, 117 Stat. 1600.)

### **§ 2806. Contributions for North Atlantic Treaty Organizations Security Investment**

(a) Within amounts authorized by law for such purpose, the Secretary of Defense may make contributions for the United States share of the cost of multilateral programs for the acquisition and construction of military facilities and installations (including international military headquarters) and for related expenses for the collective defense of the North Atlantic Treaty Area.

(b) Funds may not be obligated or expended in connection with the North Atlantic Treaty Organization Security Investment program in any year unless such funds have been authorized by law for such program.

(c)(1) The Secretary may make contributions in excess of the amount appropriated for contribution under subsection (a) if the amount of the contribution in excess of that amount does not exceed 200 percent of the amount specified by section 2805(a)(2) of this title as the maximum amount for a minor military construction project.

(2) If the Secretary determines that the amount appropriated for contribution under subsection (a) in any fiscal year must be exceeded by more than the amount authorized under paragraph (1), the Secretary may make contributions in excess of such amount, but not in excess of 125 percent of the amount appropriated (A) after submitting a report in writing to the appropriate committees of Congress on such increase, including a statement of the reasons for the increase and a statement of the source of the funds to be used for the increase, and (B) after a period of 21 days has elapsed from the date of receipt of the report.

(Added Pub. L. 97–214, Sec. 2(a), July 12, 1982, 96 Stat. 156; amended Pub. L. 97–321, title VIII, Sec. 805(b)(1), Oct. 15, 1982, 96 Stat. 1573; Pub. L. 99–661, div. B, title V, Sec. 2503(a), Nov. 14, 1986, 100 Stat. 4039; Pub. L. 100–26, Sec. 7(f)(1), Apr. 21, 1987, 101 Stat. 281; Pub. L. 102–190, div. B, title XXVIII, Sec. 2870(5), Dec. 5, 1991, 105 Stat. 1563; Pub. L. 104–201, div. B, title XXVIII, Sec. 2802(a), (c)(1), Sept. 23, 1996, 110 Stat. 2787.)

### **§ 2807. Architectural and engineering services and construction design**

(a) Within amounts appropriated for military construction and military family housing, the Secretary concerned may obtain architectural and engineering services and may carry out construction design in connection with military construction projects, family housing projects, and projects undertaken in connection with the authority provided under section 2854 of this title that are not otherwise authorized by law. Amounts available for such purposes may be used for construction management of projects that are funded by foreign governments directly or through international organizations and for which elements of the armed forces of the United States are the primary user.

(b) In the case of architectural and engineering services and construction design to be undertaken under subsection (a) for which the estimated cost exceeds \$1,000,000, the Secretary concerned shall notify the appropriate committees of Congress of the

scope of the proposed project and the estimated cost of such services before the initial obligation of funds for such services. The Secretary may then obligate funds for such services only after the end of the 21-day period beginning on the date on which the notification is received by the committees or, if earlier, the end of the 14-day period beginning on the date on which a copy of the report is provided in an electronic medium pursuant to section 480 of this title.

(c) If the Secretary concerned determines that the amount authorized for activities under subsection (a) in any fiscal year must be increased the Secretary may proceed with activities at such higher level (1) after submitting a report in writing to the appropriate committees of Congress on such increase, including a statement of the reasons for the increase and a statement of the source of funds to be used for the increase, and (2) after a period of 21 days has elapsed from the date of receipt of the report or, if over sooner, a period of 14 days has elapsed from the date on which a copy of the report is provided in an electronic medium pursuant to section 480 of this title.

(d) For architectural and engineering services and construction design related to military construction and family housing projects, the Secretaries of the military departments may incur obligations for contracts or portions of contracts using military construction and family housing appropriations from different fiscal years to the extent that those appropriations are available for obligation.

(Added Pub. L. 97-214, Sec. 2(a), July 12, 1982, 96 Stat. 156; amended Pub. L. 98-115, title VIII, Sec. 804, Oct. 11, 1983, 97 Stat. 785; Pub. L. 99-661, div. B, title VII, Sec. 2702(b), 2712(a), Nov. 14, 1986, 100 Stat. 4040, 4041; Pub. L. 102-190, div. B, title XXVIII, Sec. 2870(6), Dec. 5, 1991, 105 Stat. 1563; Pub. L. 105-261, div. B, title XXVIII, Sec. 2801, Oct. 21, 1998, 112 Stat. 2202; Pub. L. 108-136, div. A, title X, Sec. 1031(a)(37), Nov. 24, 2003, 117 Stat. 1601.)

**§ 2808. Construction authority in the event of a declaration of war or national emergency**

(a) In the event of a declaration of war or the declaration by the President of a national emergency in accordance with the National Emergencies Act (50 U.S.C. 1601 et seq.) that requires use of the armed forces, the Secretary of Defense, without regard to any other provision of law, may undertake military construction projects, and may authorize the Secretaries of the military departments to undertake military construction projects, not otherwise authorized by law that are necessary to support such use of the armed forces. Such projects may be undertaken only within the total amount of funds that have been appropriated for military construction, including funds appropriated for family housing, that have not been obligated.

(b) When a decision is made to undertake military construction projects authorized by this section, the Secretary of Defense shall notify the appropriate committees of Congress of the decision and of the estimated cost of the construction projects, including the cost of any real estate action pertaining to those construction projects.

(c) The authority described in subsection (a) shall terminate with respect to any war or national emergency at the end of the war or national emergency.

(Added Pub. L. 97-214, Sec. 2(a), July 12, 1982, 96 Stat. 157.)

**§ 2809. Long-term facilities contracts for certain activities and services**

(a) SUBMISSION AND AUTHORIZATION OF PROPOSED PROJECTS.—The Secretary concerned may enter into a contract for the procurement of services in connection with the construction, management, and operation of a facility on or near a military installation for the provision of an activity or service described in subsection (b) if—

(1) the Secretary concerned has identified the proposed project for that facility in the budget material submitted to Congress by the Secretary of Defense in connection with the budget submitted pursuant to section 1105 of title 31 for the fiscal year in which the contract is proposed to be awarded;

(2) the Secretary concerned has determined that the services to be provided at that facility can be more economically provided through the use of a long-term contract than through the use of conventional means; and

(3) the project has been authorized by law.

(b) AUTHORIZED PURPOSES OF CONTRACT.—The activities and services referred to in subsection (a) are as follows:

(1) Child care services.

(2) Utilities, including potable and waste water treatment services.

(3) Depot supply activities.

(4) Troop housing.

(5) Transient quarters.

(6) Hospital or medical facilities.

(7) Other logistic and administrative services, other than depot maintenance.

(c) CONDITIONS ON OBLIGATION OF FUNDS.—A contract entered into for a project pursuant to subsection (a) shall include the following provisions:

(1) A statement that the obligation of the United States to make payments under the contract in any fiscal year is subject to appropriations being provided specifically for that fiscal year and specifically for that project.

(2) A commitment to obligate the necessary amount for each fiscal year covered by the contract when and to the extent that funds are appropriated for that project for that fiscal year.

(3) A statement that such a commitment given under the authority of this section does not constitute an obligation of the United States.

(d) COMPETITIVE PROCEDURES.—Each contract entered into under this section shall be awarded through the use of competitive procedures as provided in chapter 137 of this title. In accordance with such procedures, the Secretary concerned shall solicit bids or proposals for a contract for each project that has been authorized by law.

(e) TERM OF CONTRACT.—A contract under this section may be for any period not in excess of 32 years, excluding the period for construction.

(f) NOTICE AND WAIT REQUIREMENTS.—A contract may not be entered into under this section until—

(1) the Secretary concerned submits to the appropriate committees of Congress, in writing, a justification of the need for the facility for which the contract is to be awarded and an economic analysis (based upon accepted life cycle costing procedures) which demonstrates that the proposed contract is cost effective when compared with alternative means of furnishing the same facility; and

(2) a period of 21 days has expired following the date on which the justification and the economic analysis are received by the committees or, if over sooner, a period of 14 days has expired following the date on which a copy of the justification and economic analysis are provided in an electronic medium pursuant to section 480 of this title.

(Added Pub. L. 99-167, title VIII, Sec. 811(a), Dec. 3, 1985, 99 Stat. 990; amended Pub. L. 99-661, div. A, title XIII, Sec. 1343(a)(20), div. B, title VII, Sec. 2711, Nov. 14, 1986, 100 Stat. 3994, 4041; Pub. L. 100-180, div. B, subdiv. 3, title I, Sec. 2302(a), (b), Dec. 4, 1987, 101 Stat. 1215; Pub. L. 100-456, div. B, title XXVIII, Sec. 2801, Sept. 29, 1988, 102 Stat. 2115; Pub. L. 101-189, div. B, title XXVIII, Sec. 2803, Nov. 29, 1989, 103 Stat. 1647; Pub. L. 102-190, div. B, title XXVIII, Sec. 2805(a)(1), Dec. 5, 1991, 105 Stat. 1537; Pub. L. 108-136, div. A, title X, Sec. 1031(a)(38), Nov. 24, 2003, 117 Stat. 1601.)

**[§ 2810. Repealed. Pub. L. 107-314, div. A, title III, Sec. 313(b), Dec. 2, 2002, 116 Stat. 2507]**

**§ 2811. Repair of facilities**

(a) REPAIRS USING OPERATIONS AND MAINTENANCE FUNDS.—Using funds available to the Secretary concerned for operation and maintenance, the Secretary concerned may carry out repair projects for an entire single-purpose facility or one or more functional areas of a multipurpose facility.

(b) APPROVAL REQUIRED FOR MAJOR REPAIRS.—A repair project costing more than \$7,500,000 may not be carried out under this section unless approved in advance by the Secretary concerned. In determining the total cost of a repair project, the Secretary shall include all phases of a multi-year repair project to a single facility. In considering a repair project for approval, the Secretary shall ensure that the project is consistent with force structure plans, that repair of the facility is more cost effective than replacement, and that the project is an appropriate use of operation and maintenance funds.

(c) PROHIBITION ON NEW CONSTRUCTION OR ADDITIONS.—Construction of new facilities or additions to existing facilities may not be carried out under the authority of this section.

(d) CONGRESSIONAL NOTIFICATION.—When a decision is made to carry out a repair project under this section with an estimated cost in excess of \$7,500,000, the Secretary concerned shall submit to the appropriate committees of Congress a report containing—

(1) the justification for the repair project and the current estimate of the cost of the project, including, in the case of a multi-year repair project to a single facility, the total cost of all phases of the project; and

(2) the justification for carrying out the project under this section.

(e) REPAIR PROJECT DEFINED.—In this section, the term “repair project” means a project to restore a real property facility, system, or component to such a condition that it may effectively be used for its designated functional purpose.

(Added Pub. L. 99–661, div. A, title III, Sec. 315(a), Nov. 14, 1986, 100 Stat. 3854, Sec. 2810; renumbered Sec. 2811, Pub. L. 100–26, Sec. 7(e)(3), Apr. 21, 1987, 101 Stat. 281; amended Pub. L. 103–337, div. B, title XXVIII, Sec. 2801(a), Oct. 5, 1994, 108 Stat. 3050; Pub. L. 105–85, div. B, title XXVIII, Sec. 2802, Nov. 18, 1997, 111 Stat. 1990; Pub. L. 108–375, div. B, title XXVIII, Sec. 2801, Oct. 28, 2004, 118 Stat. 2119.)

### § 2812. Lease-purchase of facilities

(a)(1) The Secretary concerned may enter into an agreement with a private contractor for the lease of a facility of the kind specified in paragraph (2) if the facility is provided at the expense of the contractor on a military installation under the jurisdiction of the Department of Defense.

(2) The facilities that may be leased pursuant to paragraph (1) are as follows:

- (A) Administrative office facilities.
- (B) Troop housing facilities.
- (C) Energy production facilities.
- (D) Utilities, including potable and waste water treatment facilities.
- (E) Hospital and medical facilities.
- (F) Transient quarters.
- (G) Depot or storage facilities.
- (H) Child care centers.
- (I) Classroom and laboratories.

(b) Leases entered into under subsection (a)—

- (1) may not exceed a term of 32 years;
- (2) shall provide that, at the end of the term of the lease, title to the leased facility shall vest in the United States; and
- (3) shall include such other terms and conditions as the Secretary concerned determines are necessary or desirable to protect the interests of the United States.

(c)(1) The Secretary concerned may not enter into a lease under this section until—

(A) the Secretary submits to the appropriate committees of Congress a justification of the need for the facility for which the proposed lease is being entered into and an economic analysis (based upon accepted life-cycle costing procedures) that demonstrates the cost effectiveness of the proposed lease compared with a military construction project for the same facility; and

(B) a period of 21 days has expired following the date on which the justification and economic analysis are received by the committees or, if over sooner, a period of 14 days has expired following the date on which a copy of the justification and economic analysis are provided in an electronic medium pursuant to section 480 of this title.

(2) Each Secretary concerned may, under this section, enter into—

- (A) not more than three leases in fiscal year 1990; and

(B) not more than five leases in each of the fiscal years 1991 and 1992.

(d) Each lease entered into under this section shall include a provision that the obligation of the United States to make payments under the lease in any fiscal year is subject to the availability of appropriations for that purpose.

(Added Pub. L. 101–189, div. B, title XXVIII, Sec. 2809(a), Nov. 29, 1989, 103 Stat. 1649; amended Pub. L. 101–510, div. B, title XXVIII, Sec. 2864, Nov. 5, 1990, 104 Stat. 1806; Pub. L. 108–136, div. A, title X, Sec. 1031(a)(39), Nov. 24, 2003, 117 Stat. 1601.)

**§ 2813. Acquisition of existing facilities in lieu of authorized construction**

(a) ACQUISITION AUTHORITY.—Using funds appropriated for a military construction project authorized by law for a military installation, the Secretary of the military department concerned may acquire an existing facility (including the real property on which the facility is located) at or near the military installation instead of carrying out the authorized military construction project if the Secretary determines that—

(1) the acquisition of the facility satisfies the requirements of the military department concerned for the authorized military construction project; and

(2) it is in the best interests of the United States to acquire the facility instead of carrying out the authorized military construction project.

(b) MODIFICATION OR CONVERSION OF ACQUIRED FACILITY.—(1) As part of the acquisition of an existing facility under subsection (a), the Secretary of the military department concerned may carry out such modifications, repairs, or conversions of the facility as the Secretary considers to be necessary so that the facility satisfies the requirements for which the military construction project was authorized.

(2) The costs of anticipated modifications, repairs, or conversions under paragraph (1) are required to remain within the authorized amount of the military construction project. The Secretary concerned shall consider such costs in determining whether the acquisition of an existing facility is—

(A) more cost effective than carrying out the authorized military construction project; and

(B) in the best interests of the United States.

(c) NOTICE AND WAIT REQUIREMENTS.—A contract may not be entered into for the acquisition of a facility under subsection (a) until the Secretary concerned transmits to the appropriate committees of Congress a written notification of the determination to acquire an existing facility instead of carrying out the authorized military construction project. The notification shall include the reasons for acquiring the facility. After the notification is transmitted, the Secretary may then enter into the contract only after the end of the 21-day period beginning on the date on which the notification is received by the committees or, if earlier, the end of the 14-day period beginning on the date on which a copy of the report is provided in an electronic medium pursuant to section 480 of this title.

(Added Pub. L. 103–160, div. B, title XXVIII, Sec. 2805(a)(1), Nov. 30, 1993, 107 Stat. 1886; Pub. L. 104–106, div. A, title XV, Sec. 1502(a)(25), Feb. 10, 1996, 110 Stat. 506; Pub. L. 108–136, div. A, title X, Sec. 1031(a)(40), Nov. 24, 2003, 117 Stat. 1601; Pub. L. 109–163, div. B, title XXVIII, Sec. 2801(b), Jan. 6, 2006, 119 Stat. 3504.)

**§ 2814. Special authority for development of Ford Island, Hawaii**

(a) IN GENERAL.—(1) Subject to paragraph (2), the Secretary of the Navy may exercise any authority or combination of authorities in this section for the purpose of developing or facilitating the development of Ford Island, Hawaii, to the extent that the Secretary determines the development is compatible with the mission of the Navy.

(2) The Secretary of the Navy may not exercise any authority under this section until—

(A) the Secretary submits to the appropriate committees of Congress a master plan for the development of Ford Island, Hawaii; and

(B) a period of 30 calendar days has elapsed following the date on which the notification is received by those committees.

(b) CONVEYANCE AUTHORITY.—(1) The Secretary of the Navy may convey to any public or private person or entity all right, title, and interest of the United States in and to any real property (including any improvements thereon) or personal property under the jurisdiction of the Secretary in the State of Hawaii that the Secretary determines—

(A) is excess to the needs of the Navy and all of the other armed forces; and

(B) will promote the purpose of this section.

(2) A conveyance under this subsection may include such terms and conditions as the Secretary considers appropriate to protect the interests of the United States.

(c) LEASE AUTHORITY.—(1) The Secretary of the Navy may lease to any public or private person or entity any real property or personal property under the jurisdiction of the Secretary in the State of Hawaii that the Secretary determines—

(A) is not needed for current operations of the Navy and all of the other armed forces; and

(B) will promote the purpose of this section.

(2) A lease under this subsection shall be subject to section 2667(b)(1) of this title and may include such other terms as the Secretary considers appropriate to protect the interests of the United States.

(3) A lease of real property under this subsection may provide that, upon termination of the lease term, the lessee shall have the right of first refusal to acquire the real property covered by the lease if the property is then conveyed under subsection (b).

(4)(A) The Secretary may provide property support services to or for real property leased under this subsection.

(B) To the extent provided in appropriations Acts, any payment made to the Secretary for services provided under this paragraph shall be credited to the appropriation, account, or fund from which the cost of providing the services was paid.

(d) ACQUISITION OF LEASEHOLD INTEREST BY SECRETARY.—(1) The Secretary of the Navy may acquire a leasehold interest in any facility constructed under subsection (f) as consideration for a transaction authorized by this section upon such terms as the Secretary considers appropriate to promote the purpose of this section.

(2) The term of a lease under paragraph (1) may not exceed 10 years, unless the Secretary of Defense approves a term in excess of 10 years for purposes of this section.

(3) A lease under this subsection may provide that, upon termination of the lease term, the United States shall have the right of first refusal to acquire the facility covered by the lease.

(e) REQUIREMENT FOR COMPETITION.—The Secretary of the Navy shall use competitive procedures for purposes of selecting the recipient of real or personal property under subsection (b) and the lessee of real or personal property under subsection (c).

(f) CONSIDERATION.—(1) As consideration for the conveyance of real or personal property under subsection (b), or for the lease of real or personal property under subsection (c), the Secretary of the Navy shall accept cash, real property, personal property, or services, or any combination thereof, in an aggregate amount equal to not less than the fair market value of the real or personal property conveyed or leased.

(2) Subject to subsection (i), the services accepted by the Secretary under paragraph (1) may include the following:

(A) The construction or improvement of facilities at Ford Island.

(B) The restoration or rehabilitation of real property at Ford Island.

(C) The provision of property support services for property or facilities at Ford Island.

(g) NOTICE AND WAIT REQUIREMENTS.—The Secretary of the Navy may not carry out a transaction authorized by this section until—

(1) the Secretary submits to the appropriate committees of Congress a notification of the transaction, including—

(A) a detailed description of the transaction; and

(B) a justification for the transaction specifying the manner in which the transaction will meet the purposes of this section; and

(2) a period of 30 calendar days has elapsed following the date on which the notification is received by those committees.

(h) FORD ISLAND IMPROVEMENT ACCOUNT.—(1) There is established on the books of the Treasury an account to be known as the “Ford Island Improvement Account”.

(2) There shall be deposited into the account the following amounts:

(A) Amounts authorized and appropriated to the account.

(B) Except as provided in subsection (c)(4)(B), the amount of any cash payment received by the Secretary for a transaction under this section.

(i) USE OF ACCOUNT.—(1) Subject to paragraph (2), to the extent provided in advance in appropriations Acts, funds in the Ford Island Improvement Account may be used as follows:

(A) To carry out or facilitate the carrying out of a transaction authorized by this section.

(B) To carry out improvements of property or facilities at Ford Island.

(C) To obtain property support services for property or facilities at Ford Island.

(2) To extent that the authorities provided under subchapter IV of this chapter are available to the Secretary of the Navy, the Secretary may not use the authorities in this section to acquire, construct, or improve family housing units, military unaccompanied housing units, or ancillary supporting facilities related to military housing.

(3)(A) The Secretary may transfer funds from the Ford Island Improvement Account to the following funds:

(i) The Department of Defense Family Housing Improvement Fund established by section 2883(a)(1) of this title.

(ii) The Department of Defense Military Unaccompanied Housing Improvement Fund established by section 2883(a)(2) of this title.

(B) Amounts transferred under subparagraph (A) to a fund referred to in that subparagraph shall be available in accordance with the provisions of section 2883 of this title for activities authorized under subchapter IV of this chapter at Ford Island.

(j) INAPPLICABILITY OF CERTAIN PROPERTY MANAGEMENT LAWS.—Except as otherwise provided in this section, transactions under this section shall not be subject to the following:

(1) Sections 2667 and 2696 of this title.

(2) Section 501 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11411).

(3) Subchapter II of chapter 5 and sections 541–555 of title 40.

(k) SCORING.—Nothing in this section shall be construed to waive the applicability to any lease entered into under this section of the budget scorekeeping guidelines used to measure compliance with the Balanced Budget and Emergency Deficit Control Act of 1985.

(l) PROPERTY SUPPORT SERVICE DEFINED.—In this section, the term “property support service” means the following:

(1) Any utility service or other service listed in section 2686(a) of this title.

(2) Any other service determined by the Secretary to be a service that supports the operation and maintenance of real property, personal property, or facilities.

(Added Pub. L. 106–65, div. B, title XXVIII, Sec. 2802(a)(1), Oct. 5, 1999, 113 Stat. 845; amended Pub. L. 106–398, Sec. 1 [[div. A], title X, Sec. 1087(a)(16)], Oct. 30, 2000, 114 Stat. 1654, 1654A–291; Pub. L. 107–107, div. A, title X, Sec. 1048(d)(1), Dec. 28, 2001, 115 Stat. 1227; Pub. L. 107–217, Sec. 3(b)(18), Aug. 21, 2002, 116 Stat. 1296.)

### **§ 2815. Joint use military construction projects: annual evaluation**

(a) JOINT USE MILITARY CONSTRUCTION PROJECT DEFINED.—In this section, the term “joint use military construction project”

means a military construction project for a facility intended to be used by—

(1) both the active and a reserve component of a single armed force; or

(2) two or more components (whether active or reserve components) of the armed forces.

(b) ANNUAL EVALUATION.—In the case of the budget submitted under section 1105 of title 31 for any fiscal year, the Secretary of Defense shall include in the budget justification materials submitted to Congress in support of the budget a certification by each Secretary concerned that, in evaluating military construction projects for inclusion in the budget for that fiscal year, the Secretary concerned evaluated the feasibility of carrying out the projects as joint use military construction projects.

(Added Pub. L. 106–398, Sec. 1 [div. B, title XXVIII, Sec. 2801(b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A-412; amended Pub. L. 107–314, div. A, title X, Sec. 1062(a)(14), Dec. 2, 2002, 116 Stat. 2650.)

#### SUBCHAPTER II—MILITARY FAMILY HOUSING

- Sec.  
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#### **§ 2821. Requirement for authorization of appropriations for construction and acquisition of military family housing**

(a) Except as provided in subsection (b), funds may not be appropriated for the construction, acquisition, leasing, addition, extension, expansion, alteration, relocation, or operation and maintenance of family housing under the jurisdiction of the Department of Defense unless the appropriation of such funds has been authorized by law.

(b) In addition to the funds authorized to be appropriated by law in any fiscal year for the purposes described in subsection (a), there are authorized to be appropriated such additional sums as may be necessary for increases in salary, pay, retirement, and other employee benefits authorized by law for civilian employees of the Department of Defense whose compensation is provided for by funds appropriated for the purposes described in such subsection.

(c) Amounts authorized by law for construction of military family housing units include amounts for (1) site preparation (including demolition), (2) installation of utilities, (3) ancillary supporting facilities, (4) shades, screens, ranges, refrigerators, and all other equipment and fixtures installed in such units, and (5) construction supervision, inspection, and overhead.

(d) Amounts authorized by law for construction and acquisition of military family housing and facilities include amounts for—

- (1) minor construction;
- (2) improvements to existing military family housing units and facilities;
- (3) relocation of military family housing units under section 2827 of this title; and
- (4) architectural and engineering services and construction design.

(Added Pub. L. 97–214, Sec. 2(a), July 12, 1982, 96 Stat. 157; amended Pub. L. 99–145, title XIII, Sec. 1303(a)(18), Nov. 8, 1985, 99 Stat. 739; Pub. L. 99–167, title VIII, Sec. 804(a), Dec. 3, 1985, 99 Stat. 987.)

**§ 2822. Requirement for authorization of number of family housing units**

(a) Except as otherwise provided in subsection (b) or as otherwise authorized by law, the Secretary concerned may not construct or acquire military family housing units unless the number of units to be constructed or acquired has been specifically authorized by law.

(b) Subsection (a) does not apply to the following:

- (1) Housing units acquired under section 404 of the Housing Amendments of 1955 (42 U.S.C. 1594a).
- (2) Housing units leased under section 2828 of this title.
- (3) Housing units acquired under the Homeowners Assistance Program referred to in section 2832 of this title.
- (4) Housing units acquired without consideration.
- (5) Replacement housing units constructed under section 2825(c) of this title.
- (6) Housing units constructed or provided under section 2869 of this title.

(Added Pub. L. 97–214, Sec. 2(a), July 12, 1982, 96 Stat. 158; amended Pub. L. 98–525, title XIV, Sec. 1405(44), Oct. 19, 1984, 98 Stat. 2625; Pub. L. 100–180, div. B, subdiv. 3, title I, Sec. 2308, Dec. 4, 1987, 101 Stat. 1216; Pub. L. 101–510, div. A, title XIII, Sec. 1301(17), Nov. 5, 1990, 104 Stat. 1668; Pub. L. 102–25, title VII, Sec. 701(j)(9), Apr. 6, 1991, 105 Stat. 116; Pub. L. 102–484, div. B, title XXVIII, Sec. 2802(b), Oct. 23, 1992, 106 Stat. 2606; Pub. L. 108–136, div. B, title XXVIII, Sec. 2805(b), Nov. 24, 2003, 117 Stat. 1721.)

**[§ 2823. Repealed. Pub. L. 109–364, div. B, title XXVIII, Sec. 2803(a), Oct. 17, 2006, 120 Stat. 2467]**

**§ 2824. Authorization for acquisition of existing family housing in lieu of construction**

(a) In lieu of constructing any family housing units authorized by law to be constructed, the Secretary concerned may acquire sole interest in existing family housing units that are privately owned or that are held by the Department of Housing and Urban Develop-

ment, except that in foreign countries the Secretary concerned may acquire less than sole interest in existing family housing units.

(b) When authority provided by law to construct military family housing units is used to acquire existing family housing units under subsection (a), the authority includes authority to acquire interests in land.

(c) The net floor area of a family housing unit acquired under the authority of this section may not exceed the applicable limitation specified in section 2826 of this title. The Secretary concerned may waive the limitation set forth in the preceding sentence to family housing units acquired under this section during the five-year period beginning on February 10, 1996.

(d) Family housing units may not be acquired under this section through the exercise of eminent domain authority.

(Added Pub. L. 97-214, Sec. 2(a), July 12, 1982, 96 Stat. 159; amended Pub. L. 104-106, div. B, title XXVIII, Sec. 2813, Feb. 10, 1996, 110 Stat. 553; Pub. L. 104-201, div. A, title X, Sec. 1074(a)(17), Sept. 23, 1996, 110 Stat. 2659.)

**§ 2825. Improvements to family housing units**

(a)(1) Authority provided by law to improve existing military family housing units and ancillary family housing support facilities is authority to make alterations, additions, expansions, and extensions.

(2) In this section, the term “improvement” includes rehabilitation of a housing unit and major maintenance or repair work to be accomplished concurrently with an improvement project. Such term does not include day-to-day maintenance and repair work.

(b)(1) Funds may not be expended for the improvement of any single family housing unit, or for the improvement of two or more housing units that are to be converted into or are to be used as a single family housing unit, if the cost per unit of such improvement will exceed (A) \$50,000 multiplied by the area construction cost index as developed by the Department of Defense for the location concerned at the time of contract award, or (B) in the case of improvements necessary to make the unit suitable for habitation by a handicapped person, \$60,000 multiplied by such index. The Secretary concerned may waive the limitations contained in the preceding sentence if such Secretary determines that, considering the useful life of the structure to be improved and the useful life of a newly constructed unit and the cost of construction and of operation and maintenance of each kind of unit over its useful life, the improvement will be cost-effective. If the Secretary concerned makes a determination under the preceding sentence with respect to an improvement, the waiver under that sentence with respect to that improvement may take effect only after the Secretary transmits a notice of the proposed waiver, together with an economic analysis demonstrating that the improvement will be cost effective, to the appropriate committees of Congress and a period of 21 days has elapsed after the date on which the notification is received by those committees or, if over sooner, a period of 14 days has elapsed after the date on which a copy of the notice is provided in an electronic medium pursuant to section 480 of this title.

(2) In determining the applicability of the limitation contained in paragraph (1), the Secretary concerned shall include as part of

the cost of the improvement of the unit or units concerned the following:

(A) The cost of major maintenance or repair work undertaken in connection with the improvement.

(B) Any cost, other than the cost of activities undertaken beyond a distance of five feet from the unit or units concerned, in connection with—

(i) the furnishing of electricity, gas, water, and sewage disposal;

(ii) the construction or repair of roads, drives, and walks; and

(iii) grading and drainage work.

(3) In determining the applicability of the limitation contained in paragraph (1), the Secretary concerned shall not include as part of the cost of the improvement of the unit or units concerned the following:

(A) The cost of the installation of communications, security, or antiterrorism equipment required by an occupant of the unit or units to perform duties assigned to the occupant as a member of the armed forces.

(B) The cost of the maintenance or repair of equipment described in subparagraph (A) installed for the purpose specified in such subparagraph.

(4) The limitation contained in the first sentence of paragraph (1) does not apply to a project for the improvement of a family housing unit or units referred to in that sentence if the project (including the amount requested for the project) is identified in the budget materials submitted to Congress by the Secretary of Defense in connection with the submission to Congress of the budget for a fiscal year pursuant to section 1105 of title 31.

(c)(1) The Secretary concerned may construct replacement military family housing units in lieu of improving existing military family housing units if—

(A) the improvement of the existing housing units has been authorized by law;

(B) the Secretary determines that the improvement project is no longer cost-effective after a review of post-design or bid cost estimates;

(C) the Secretary submits to the committees referred to in subsection (b)(1) a notice containing—

(i) an economic analysis demonstrating that the improvement project would exceed 70 percent of the cost of constructing replacement housing units intended for members of the armed forces in the same pay grade or grades as those members who occupy the existing housing units; and

(ii) if the replacement housing units are intended for members of the armed forces in a different pay grade or grades, a justification of the need for the replacement housing units based upon the long-term requirements of the armed forces in the location concerned; and

(D) a period of 21 days elapses after the date on which the Secretary submits the notice required by subparagraph (C) or, if over sooner, a period of 14 days elapses after the date on

which a copy of the notice is provided in an electronic medium pursuant to section 480 of this title.

(2) The amount that may be expended to construct replacement military family housing units under this subsection may not exceed the amount that is otherwise available to carry out the previously authorized improvement project.

(d) This section does not apply to projects authorized for restoration or replacement of housing units that have been damaged or destroyed.

(Added Pub. L. 97-214, Sec. 2(a), July 12, 1982, 96 Stat. 159; amended Pub. L. 99-661, div. B, title VII, Sec. 2702(c), Nov. 14, 1986, 100 Stat. 4040; Pub. L. 100-26, Sec. 7(k)(3), Apr. 21, 1987, 101 Stat. 284; Pub. L. 100-180, div. B, subdiv. 3, title I, Sec. 2305, Dec. 4, 1987, 101 Stat. 1215; Pub. L. 101-189, div. B, title XXVIII, Sec. 2804, Nov. 29, 1989, 103 Stat. 1647; Pub. L. 101-510, div. B, title XXVIII, Sec. 2812, Nov. 5, 1990, 104 Stat. 1788; Pub. L. 102-484, div. B, title XXVIII, Sec. 2802(a), Oct. 23, 1992, 106 Stat. 2605; Pub. L. 103-337, div. B, title XXVIII, Sec. 2802, Oct. 5, 1994, 108 Stat. 3050; Pub. L. 104-106, div. A, title XV, Sec. 1502(a)(26), Feb. 10, 1996, 110 Stat. 506; Pub. L. 104-201, div. B, title XXVIII, Sec. 2803, Sept. 23, 1996, 110 Stat. 2788; Pub. L. 106-398, Sec. 1 [div. B, title XXVIII, Sec. 2802], Oct. 30, 2000, 114 Stat. 1654, 1654a-413; Pub. L. 108-136, div. A, title X, Sec. 1031(a)(41), Nov. 24, 2003, 117 Stat. 1601.)

**§ 2826. Military family housing: local comparability of room patterns and floor areas**

(a) LOCAL COMPARABILITY.—In the construction, acquisition, and improvement of military family housing, the Secretary concerned shall ensure that the room patterns and floor areas of military family housing in a particular locality (as designated by the Secretary concerned for purposes of this section) are similar to room patterns and floor areas of similar housing in the private sector in that locality.

(b) REQUESTS FOR AUTHORITY FOR MILITARY FAMILY HOUSING.—(1) In submitting to Congress a request for authority to carry out the construction, acquisition, or improvement of military family housing, the Secretary concerned shall include in the request information on the net floor area of each unit of military family housing to be constructed, acquired, or improved under the authority.

(2) In this subsection, the term “net floor area”, in the case of a military family housing unit, means the total number of square feet of the floor space inside the exterior walls of the unit, excluding the floor area of an unfinished basement, an unfinished attic, a utility space, a garage, a carport, an open or insect-screened porch, a stairwell, and any space used for a solar-energy system.

(Added Pub. L. 97-214, Sec. 2(a), July 12, 1982, 96 Stat. 159; amended Pub. L. 100-26, Sec. 7(k)(3), Apr. 21, 1987, 101 Stat. 284; Pub. L. 102-190, div. B, title XXVIII, Sec. 2808, Dec. 5, 1991, 105 Stat. 1540; Pub. L. 104-106, div. B, title XXVIII, Sec. 2814, 2815, Feb. 10, 1996, 110 Stat. 553; Pub. L. 104-201, div. A, title X, Sec. 1074(a)(17), Sept. 23, 1996, 110 Stat. 2659; Pub. L. 106-398, Sec. 1 [div. B, title XXVIII, Sec. 2803(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A-413.)

**§ 2827. Relocation of military family housing units**

(a) Subject to subsection (b), the Secretary concerned may relocate existing military family housing units from any location where the number of such units exceeds requirements for military family housing to any military installation where there is a housing shortage.

(b) A contract to carry out a relocation of military family housing units under subsection (a) may not be awarded until (1) the Secretary concerned has notified the appropriate committees of Congress of the proposed new locations of the housing units to be relocated and the estimated cost of and source of funds for the relocation, and (2) a period of 21 days has elapsed after the notification has been received by those 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.

(Added Pub. L. 97-214, Sec. 2(a), July 12, 1982, 96 Stat. 160; amended Pub. L. 108-136, div. A, title X, Sec. 1031(a)(42), Nov. 24, 2003, 117 Stat. 1602.)

**§ 2828. Leasing of military family housing**

(a)(1) Subject to paragraph (2), the Secretary of the military department concerned may lease housing facilities at or near a military installation in the United States, Puerto Rico, or Guam for assignment, without rental charge, as family housing to members of the armed forces and for assignment, with fair market rental charge, as family housing to civilian employees of the Department of Defense stationed at such installation.

(2) A lease may only be made under paragraph (1) if the Secretary concerned finds that there is a shortage of adequate housing at or near such military installation and that—

(A) the requirement for such housing is temporary;

(B) leasing would be more cost effective than construction or acquisition of new housing;

(C) family housing is required for personnel attending service school academic courses on permanent change of station orders;

(D) construction of family housing at such installation has been authorized by law but is not yet completed; or

(E) a military construction authorization bill pending in Congress includes a request for authorization of construction of family housing at such installation.

(b)(1) Not more than 10,000 family housing units may be leased at any one time under subsection (a).

(2) Except as provided in paragraphs (3) and (4), expenditures for the rental of housing units under subsection (a) (including the cost of utilities, maintenance, and operation) may not exceed \$12,000 per unit per year, as adjusted from time to time under paragraph (5).

(3) Not more than 500 housing units may be leased under subsection (a) for which the expenditure for the rental of such units (including the cost of utilities, maintenance, and operation) exceeds the maximum amount per unit per year in effect under paragraph (2) but does not exceed \$14,000 per unit per year, as adjusted from time to time under paragraph (5).

(4)(A) The Secretary of the Army may lease not more than eight housing units in the vicinity of Miami, Florida, for key and essential personnel, as designated by the Secretary, for the United States Southern Command for which the expenditure for the rental of such units (including the cost of utilities, maintenance, and oper-

ation, including security enhancements) exceeds the expenditure limitations in paragraphs (2) and (3).

(B) The amount of all leases under this paragraph may not exceed \$280,000 per year, as adjusted from time to time under paragraph (6).

(C) The term of any lease under this paragraph may not exceed 5 years.

(D) Until September 30, 2008, the Secretary of the Army may authorize family members of a member of the armed forces on active duty who is assigned to a family-member-restricted area and who, before such assignment, was occupying a housing unit leased under this paragraph, to remain in the leased housing unit until the member completes the assignment. Costs incurred for the leased housing unit during the assignment shall be included in the costs subject to the limitation under subparagraph (B).

(5) At the beginning of each fiscal year, the Secretary concerned shall adjust the maximum lease amount provided for leases under paragraphs (2) and (3) for the previous fiscal year by the percentage (if any) by which the national average monthly cost of housing (as calculated for purposes of determining rates of basic allowance for housing under section 403 of title 37) for the preceding fiscal year exceeds the national average monthly cost of housing (as so calculated) for the fiscal year before such preceding fiscal year.

(6) At the beginning of each fiscal year, the Secretary of the Army shall adjust the maximum aggregate amount for leases under paragraph (4) for the previous fiscal year by the percentage (if any) by which the annual average cost of housing for the Miami Military Housing Area (as calculated for purposes of determining rates of basic allowance for housing under section 403 of title 37) for the preceding fiscal year exceeds the annual average cost of housing for the Miami Military Housing Area (as so calculated) for the fiscal year before such preceding fiscal year.

(c) The Secretary concerned may lease housing facilities in foreign countries for assignment, without rental charge, as family housing to members of the armed forces and for assignment, with or without rental charge, as family housing to civilian employees of the Department of Defense—

(1) under circumstances specified in clause (A), (B), (D), or (E) of subsection (a)(2);

(2) for incumbents of special command positions (as determined by the Secretary of Defense);

(3) in countries where excessive costs of housing or other lease terms would cause undue hardship on Department of Defense personnel; and

(4) in countries that prohibit leases by individual military or civilian personnel of the United States.

(d)(1) Leases of housing units in foreign countries under subsection (c) for assignment as family housing may be for any period not in excess of 10 years, or 15 years in the case of leases in Korea, and the costs of such leases for any year may be paid out of annual appropriations for that year.

(2) The Secretary may enter into an agreement under this paragraph in connection with a lease entered into under subsection (c). Such an agreement—

(A) shall be for the purpose of compensating a developer for any costs resulting from the termination of the lease during the construction of the housing units that are to be occupied pursuant to the lease;

(B) may be for a period not in excess of three years; and

(C) shall include a provision that the obligation of the United States to make payments under the agreement in any fiscal year is subject to the availability of appropriations.

(e)(1) Expenditures for the rental of family housing in foreign countries (including the costs of utilities, maintenance, and operation) may not exceed \$20,000 per unit per year, except that 450 units may be leased in foreign countries for not more than \$25,000 per unit per year. These maximum lease amounts may be waived by the Secretary concerned with respect to not more than a total of 350 such units that are leased for incumbents of special positions or for personnel assigned to Defense Attache Offices or that are leased in countries where excessive costs of housing would cause undue hardship on Department of Defense personnel.

(2) In addition to the 450 units of family housing referred to in paragraph (1) for which the maximum lease amount is \$25,000 per unit per year, the Secretary of the Navy may lease not more than 2,800 units of family housing in Italy, and the Secretary of the Army may lease not more than 500 units of family housing in Italy, subject to that maximum lease amount.

(3) In addition to the 450 units of family housing referred to in paragraph (1) for which the maximum lease amount is \$25,000 per unit per year, the Secretary of the Army may lease not more than 1,175 units of family housing in Korea subject to that maximum lease amount.

(4) In addition to the units of family housing referred to in paragraph (1) for which the maximum lease amount is \$25,000 per unit per year, the Secretary of the Army may lease not more than 2,800 units of family housing in Korea subject to a maximum lease amount of \$35,000 per unit per year.

(5) The Secretary concerned shall adjust the maximum lease amounts provided for under paragraphs (1), (2), (3), and (4) for the previous fiscal year—

(A) for foreign currency fluctuations from October 1, 1987; and

(B) at the beginning of each fiscal year, by the percentage (if any) by which the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics, during the preceding fiscal year exceeds such Consumer Price Index for the fiscal year before such preceding fiscal year.

(6) The maximum number of family housing units that may be leased in foreign countries under this section at any one time is 55,775.

(f) A lease for family housing facilities, or for real property related to family housing facilities, in a foreign country for which the average estimated annual rental during the term of the lease exceeds \$500,000 may not be made under this section until (1) the

Secretary concerned provides to the appropriate committees of Congress written notification of the facts concerning the proposed lease, and (2) a period of 21 days elapses after the notification is received by those committees.

(g) Appropriations available to the Department of Defense for maintenance or construction may be used for the acquisition of interests in land under this section.

(Added Pub. L. 97–214, Sec. 2(a), July 12, 1982, 96 Stat. 161; amended Pub. L. 97–321, title VIII, Sec. 805(b)(2), Oct. 15, 1982, 96 Stat. 1573; Pub. L. 98–115, title VIII, Sec. 801, Oct. 11, 1983, 97 Stat. 782; Pub. L. 98–407, title VIII, Sec. 806(a), Aug. 28, 1984, 98 Stat. 1521; Pub. L. 99–167, title VIII, Sec. 801(b), 803, 805, Dec. 3, 1985, 99 Stat. 985, 987, 988; Pub. L. 99–661, div. B, title VII, Sec. 2702(d)–(g), 2713(b), 2714, Nov. 14, 1986, 100 Stat. 4040–4042; Pub. L. 100–26, Sec. 7(j)(8), Apr. 21, 1987, 101 Stat. 283; Pub. L. 100–180, div. B, subdiv. 3, title I, Sec. 2306(a), 2309, 2311, Dec. 4, 1987, 101 Stat. 1216, 1217; Pub. L. 100–370, Sec. 1(i)(2), July 19, 1988, 102 Stat. 849; Pub. L. 100–456, div. B, title XXVIII, Sec. 2802, Sept. 29, 1988, 102 Stat. 2115; Pub. L. 101–189, div. B, title XXVIII, Sec. 2802, 2805, Nov. 29, 1989, 103 Stat. 1646, 1647; Pub. L. 102–190, div. B, title XXVIII, Sec. 2806(b), Dec. 5, 1991, 105 Stat. 1540; Pub. L. 103–35, title II, Sec. 201(d)(7), May 31, 1993, 107 Stat. 99; Pub. L. 103–160, div. B, title XXVIII, Sec. 2801, Nov. 30, 1993, 107 Stat. 1883; Pub. L. 104–106, div. B, title XXVIII, Sec. 2816, Feb. 10, 1996, 110 Stat. 553; Pub. L. 105–85, div. B, title XXVIII, Sec. 2803, Nov. 18, 1997, 111 Stat. 1990; Pub. L. 105–261, div. B, title XXVIII, Sec. 2802, Oct. 17, 1998, 112 Stat. 2202; Pub. L. 106–398, Sec. 1 [div. B, title XXVIII, Sec. 2804], Oct. 30, 2000, 114 Stat. 1654, 1654A–414; Pub. L. 107–314, div. A, title X, Sec. 1062(a)(15), div. B, title XXVIII, Sec. 2801, Dec. 2, 2002, 116 Stat. 2650, 2702; Pub. L. 108–136, div. B, title XXVIII, Secs. 2803, 2804(a), Nov. 24, 2003, 117 Stat. 1719; Pub. L. 109–163, div. B, title XXVIII, Sec. 2802, Jan. 6, 2006, 119 Stat. 3505; Pub. L. 109–364, div. B, title XXVIII, Sec. 2804, Oct. 17, 2006, 120 Stat. 2467.)

**§ 2829. Multi-year contracts for supplies and services**

The Secretary concerned may make contracts for periods of up to four years for supplies and services for the management, maintenance, and operation of military family housing and may pay the costs of such contracts for each year out of annual appropriations for that year.

(Added Pub. L. 97–214, Sec. 2(a), July 12, 1982, 96 Stat. 162.)

**§ 2830. Occupancy of substandard family housing units**

(a)(1) A member of the uniformed services with dependents may, without loss of the member’s basic allowance for housing under section 403 of title 37, occupy a substandard family housing unit under the jurisdiction of the Secretary concerned.

(2) Occupancy of a family housing unit under paragraph (1) shall be subject to a charge against the member’s basic allowance for housing in the amount of the fair rental value of the housing unit. However, such a charge may not be made in an amount in excess of 75 percent of the amount of such allowance.

(b)(1) The Secretary concerned may lease substandard family housing units to members of any of the uniformed services for occupancy by such members.

(2) The authority to enter into leases under paragraph (1) shall be exercised—

(A) in the case of a lease by the Secretary of a military department, subject to regulations prescribed by the Secretary of Defense; and

(B) in the case of a lease by the Secretary of Homeland Security with respect to the Coast Guard when it is not oper-

ating as a service in the Navy, subject to regulations prescribed by that Secretary.

(Added Pub. L. 97-214, Sec. 2(a), July 12, 1982, 96 Stat. 162; amended Pub. L. 99-348, title III, Sec. 304(a)(4), July 1, 1986, 100 Stat. 703; Pub. L. 100-180, div. A, title VI, Sec. 632(a), Dec. 4, 1987, 101 Stat. 1105; Pub. L. 105-85, div. A, title VI, Sec. 603(d)(2)(B), Nov. 18, 1997, 111 Stat. 1782; Pub. L. 107-296, title XVII, Sec. 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

### § 2831. Military family housing management account

(a) ESTABLISHMENT.—There is on the books of the Treasury an account known as the Department of Defense Military Family Housing Management Account (hereinafter in this section referred to as the “account”). The account shall be used for the management and administration of funds appropriated or otherwise made available to the Department of Defense for military family housing programs.

(b) CREDITS TO ACCOUNT.—The account shall be administered as a single account. There shall be transferred into the account—

(1) appropriations made for the purpose of, or which are available for, the payment of costs arising in connection with the construction, acquisition, leasing, relocation, operation and maintenance, and disposal of military family housing, including the cost of principal and interest charges, and insurance premiums, arising in connection with the acquisition of such housing, and mortgage insurance premiums payable under section 222(c) of the National Housing Act (12 U.S.C. 1715m(c));

(2) proceeds from the rental of family housing and mobile home facilities under the control of a military department, reimbursements from the occupants of such facilities for services rendered (including utility costs), funds obtained from individuals as a result of losses, damages, or destruction to such facilities caused by the abuse or negligence of such individuals, and reimbursements from other Government agencies for expenditures from the account; and

(3) proceeds of the handling and the disposal of family housing of a military department (including related land and improvements), whether carried out by a military department or any other Federal agency, but less those expenses payable pursuant to section 572(a) of title 40.

(c) AVAILABILITY OF AMOUNTS IN ACCOUNT.—Amounts in the account shall remain available until spent.

(d) USE OF ACCOUNT.—The Secretary concerned may make obligations against the account, in such amounts as may be specified from time to time in appropriation Acts, for the purpose of defraying, in the manner and to the extent authorized by law, the costs referred to in subsection (b).

(e) REPORTS ON GENERAL OFFICERS AND FLAG OFFICERS QUARTERS.—(1) As part of the budget materials submitted to Congress in connection with the submission of the budget for a fiscal year pursuant to section 1105 of title 31, the Secretary of Defense shall submit a report—

(A) identifying each family housing unit used, or intended for use, as quarters for a general officer or flag officer for which the total operation, maintenance, and repair costs for

the unit are anticipated to exceed \$35,000 in the next fiscal year;

(B) for each family housing unit identified under subparagraph (A), specifying the total of such anticipated operation, maintenance, and repair costs for the unit;

(C) identifying each family housing unit in excess of 6,000 square feet used, or intended for use, as quarters for a general officer or flag officer;

(D) for each family housing unit identified under subparagraph (C), specifying any alternative and more efficient use to which the unit could be converted (which would include any costs necessary to convert the unit) and containing an explanation of the reasons why the unit is not being converted to the alternative use; and

(E) for each family housing unit identified under subparagraph (C) for which costs under subparagraph (A) or new construction costs are anticipated to exceed \$100,000 in the next fiscal year, specifying any alternative use to which the unit could be converted (which would include any costs necessary to convert the unit) and an estimate of the costs to demolish and rebuild the unit to private sector standards.

(2) Not later than 120 days after the end of each fiscal year, the Secretary of Defense shall submit to the congressional defense committees a report specifying, for each family housing unit used as quarters for a general officer or flag officer at any time during that fiscal year, the total expenditures for operation and maintenance, utilities, lease, and repairs of the unit during that fiscal year.

(f) NOTICE AND WAIT REQUIREMENT.—(1) Except as provided in paragraphs (2) and (3), the Secretary concerned may not carry out a maintenance or repair project for a family housing unit used, or intended for use, as quarters for a general officer or flag officer if the project will or may result in the total operation, maintenance, and repair costs for the unit for the fiscal year to exceed \$35,000, until—

(A) the Secretary concerned submits to the congressional defense committees, in writing, a justification of the need for the maintenance or repair project and an estimate of the cost of the project; and

(B) a period of 21 days has expired following the date on which the justification and estimate are received by the committees or, if over sooner, a period of 14 days has expired following the date on which a copy of the justification and estimate are provided in an electronic medium pursuant to section 480 of this title.

(2) The project justification and cost estimate required by paragraph (1)(A) may be submitted after the commencement of a maintenance or repair project for a family housing unit used, or intended for use, as quarters for a general officer or flag officer if the project is a necessary environmental remediation project for the unit or is necessary for occupant safety or security, and the need for the project arose after the submission of the most recent report under subsection (e).

(3) Paragraph (1) shall not apply in the case of a family housing unit used, or intended for use, as quarters for a general officer or flag officer if the unit was identified in the most recent report submitted under subsection (e) and the cost of the maintenance or repair project was included in the total of anticipated operation, maintenance, and repair costs for the unit specified in the report.

(Added Pub. L. 97–214, Sec. 2(a), July 12, 1982, 96 Stat. 162; amended Pub. L. 107–217, Sec. 3(b)(19), Aug. 21, 2002, 116 Stat. 1297; Pub. L. 108–375, div. B, title XXVIII, Sec. 2802(a), (b), Oct. 28, 2004, 118 Stat. 2119, 2120; Pub. L. 109–364, div. A, title X, Sec. 1071(a)(26), div. B, title XXVIII, Sec. 2805, Oct. 17, 2006, 120 Stat. 2399, 2467.)

### § 2832. Homeowners assistance program

The Secretary of Defense may exercise the authority provided in section 1013 of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3374).

(Added Pub. L. 97–214, Sec. 2(a), July 12, 1982, 96 Stat. 163; amended Pub. L. 101–189, div. B, title XXVIII, Sec. 2831(a), Nov. 29, 1989, 103 Stat. 1660; Pub. L. 104–106, div. A, title XV, Sec. 1502(a)(26), Feb. 10, 1996, 110 Stat. 506; Pub. L. 107–107, div. A, title X, Sec. 1048(e)(11), Dec. 28, 2001, 115 Stat. 1228.)

### § 2833. Family housing support

Amounts authorized by law for support of military family housing include amounts for—

- (1) operating expenses;
- (2) leasing expenses;
- (3) maintenance of real property expenses;
- (4) payments of principal and interest on mortgage debts incurred; and
- (5) payments of mortgage insurance premiums authorized under section 222 of the National Housing Act (12 U.S.C. 1715m).

(Added Pub. L. 99–167, title VIII, Sec. 804(b)(1), Dec. 3, 1985, 99 Stat. 987.)

### § 2834. Participation in Department of State housing pools

(a) The Secretary concerned may enter into an agreement with the Secretary of State under which the Secretary of State agrees to provide housing and related services for personnel under the jurisdiction of the Secretary concerned who are assigned to duty in a foreign country if the Secretary concerned determines—

- (1) that there is a shortage of adequate housing in the area of the foreign country in which such personnel are assigned to duty; and
- (2) that participation in the Department of State housing pool is the most cost-effective means of providing housing for such personnel.

The Secretary concerned shall reimburse the Secretary of State, as provided in the agreement, for housing and related services furnished personnel under the jurisdiction of the Secretary concerned.

(b) The maximum lease amounts specified in section 2828(e)(1) of this title for the rental of family housing in foreign countries shall not apply to housing made available to the Department of Defense under this section. To the extent that the lease amount for units of housing made available under this subsection exceeds such maximum lease amounts, such units shall not be counted in apply-

ing the limitation contained in such section on the number of units of family housing for which the Secretary concerned may waive such maximum lease amounts.

(Added Pub. L. 99-167, title VIII, Sec. 808(a), Dec. 3, 1985, 99 Stat. 989; amended Pub. L. 101-510, div. A, title XIII, Sec. 1301(18), Nov. 5, 1990, 104 Stat. 1668; Pub. L. 103-160, div. B, title XXVIII, Sec. 2806, Nov. 30, 1993, 107 Stat. 1887.)

**§ 2835. Long-term leasing of military family housing to be constructed**

(a) BUILD AND LEASE AUTHORIZED.—Subject to subsection (b), the Secretary of a military department, or the Secretary of Homeland Security with respect to the Coast Guard, may enter into a contract for the lease of family housing units to be constructed or rehabilitated to residential use near a military installation within the United States under the Secretary's jurisdiction at which there is a shortage of family housing. Housing units leased under this section shall be assigned, without rental charge, as family housing to members of the armed forces who are eligible for assignment to military family housing.

(b) SUBMISSION AND AUTHORIZATION OF PROPOSED LEASE CONTRACTS.—(1) The Secretary of a military department, or the Secretary of Homeland Security with respect to the Coast Guard, may enter into a lease contract under subsection (a) for such military housing as is authorized by law for the purposes of this section.

(2) The budget material submitted to Congress by the Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard, in connection with the budget submitted pursuant to section 1105 of title 31 for each fiscal year shall include materials that identify the military housing projects for which lease contracts are proposed to be entered into under subsection (a) in such fiscal year.

(c) COMPETITIVE PROCESS.—Each contract under subsection (a) shall be awarded through the use of publicly advertised, competitively bid, or competitively negotiated, contracting procedures as provided in chapter 137 of this title. In accordance with such procedures, the Secretary of a military department, or the Secretary of Homeland Security, as the case may be, shall solicit bids or proposals for a contract for the lease of military housing authorized in accordance with subsection (b)(1). Such a contract may provide for the contractor of the housing facilities to operate and maintain such housing facilities during the term of the lease.

(d) CONDITIONS ON OBLIGATION OF FUNDS.—A lease contract entered into for a military housing project under subsection (a) shall include the following provisions:

(1) A statement that the obligation of the United States to make payments under the contract in any fiscal year is subject to appropriations being provided specifically for that fiscal year and specifically for that project.

(2) A commitment to obligate the necessary amount for each fiscal year covered by the contract when and to the extent that funds are appropriated for that project for that fiscal year.

(3) A statement that such a commitment entered into under the authority of this section does not constitute an obligation of the United States.

(4) A requirement that housing units constructed pursuant to the contract shall be constructed—

(A) to Department of Defense specifications, in the case of a Department of Defense contract; and

(B) to Department of Homeland Security specifications, in the case of a contract for the Coast Guard.

(e) LEASE TERM.—A contract under this section may be for any period not in excess of 20 years (excluding the period required for construction of the housing facilities).

(f) RIGHT OF FIRST REFUSAL TO ACQUIRE.—A contract under this section shall provide that, upon the termination of the lease period, the United States shall have the right of first refusal to acquire all right, title, and interest to the housing facilities constructed and leased under the contract.

(g) NOTICE AND WAIT REQUIREMENTS.—A contract may not be entered into for the lease of housing facilities under this section until—

(1) the Secretary of Defense, or the Secretary of Homeland Security with respect to the Coast Guard, submits to the appropriate committees of Congress, in writing, an economic analysis (based upon accepted life cycle costing procedures) which demonstrates that the proposed contract is cost-effective when compared with alternative means of furnishing the same housing facilities; and

(2) a period of 21 calendar days has expired following the date on which the economic analysis is received by those committees.

(h) SUPPORT BUILDINGS.—A contract for the lease of family housing under this section may include provision for the lease of a child care center, civic center building, and similar type buildings constructed for the support of family housing.

(Added Pub. L. 102–190, div. B, title XXVIII, Sec. 2806(a)(1), Dec. 5, 1991, 105 Stat. 1539; amended Pub. L. 107–296, title XVII, Sec. 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

### § 2836. Military housing rental guarantee program

(a) AUTHORITY.—Subject to subsection (b), the Secretary of a military department, or the Secretary of Homeland Security with respect to the Coast Guard, may enter into an agreement to assure the occupancy of rental housing to be constructed or rehabilitated to residential use by a private developer or by a State or local housing authority on private land, on land owned by a State or local government, or on land owned by the United States, if the housing is to be located on or near a new military installation or an existing military installation that has a shortage of housing to meet the requirements of eligible members of the armed forces (with or without accompanying dependents). The authority provided under this subsection shall be exercised under uniform regulations prescribed by the Secretary of Defense.

(b) SUBMISSION AND AUTHORIZATION OF PROPOSED AGREEMENTS.—(1) The Secretary of a military department, or the Secretary of Homeland Security with respect to the Coast Guard, may enter into agreements pursuant to subsection (a) for such military housing rental guaranty projects as are authorized by law.

(2) The budget material submitted to Congress by the Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard, in connection with the budget submitted pursuant to section 1105 of title 31 for each fiscal year shall include materials that identify the military housing rental guaranty projects for which agreements are proposed to be entered into under subsection (a) in that fiscal year.

(c) CONTENT OF AGREEMENT.—An agreement under subsection (a)—

(1) may not assure the occupancy of more than 97 percent of the units constructed under the agreement;

(2) shall establish initial rental rates that are not more than rates for comparable rental dwelling units in the same general market area and may include an escalation clause;

(3) may apply to existing housing;

(4) shall require that the housing units be constructed—

(A) in the case of a Department of Defense agreement, to Department of Defense specifications or, at the discretion of the Secretary of the military department concerned, in compliance with the local building codes; and

(B) in the case of an agreement for the Coast Guard, to Department of Homeland Security specifications;

(5) may not be for a term in excess of 25 years;

(6) may not be renewed unless the project is located on government owned land, in which case the renewal period may not exceed the original contract term;

(7) may not assure more than an amount equivalent to the shelter rent of the housing units, determined on the basis of amortizing initial construction costs;

(8) may only be entered into to the extent that there is a shortage in military family housing;

(9) may only be entered into if existing military-controlled housing at all installations in the commuting area (except for a new installation or an installation for which there is projected a significant increase in the number of families due to an increase in the number of authorized personnel) has exceeded 97 percent use for a period of not less than 18 consecutive months immediately preceding the date on which the agreement is entered into, excluding units temporarily inactivated for major repair or improvements;

(10) shall provide for priority of occupancy for military families;

(11) shall include a provision authorizing the Secretary of the military department concerned, or the Secretary of Homeland Security with respect to the Coast Guard, to take such action as the Secretary considers appropriate to protect the interests of the United States, including rendering the agreement null and void if, in the opinion of the Secretary, the owner of the housing fails to maintain a satisfactory level of operation and maintenance;

(12) may provide in the agreement for the rental of a child care center, civic center building, and similar type buildings constructed for the support of family housing;

(13) may provide that utilities, trash collection, snow removal, and entomological services will be furnished by the Federal Government at no cost to the occupant to the same extent that these items are provided to occupants of housing owned by the Federal Government; and

(14) may require that rent collection and operation and maintenance services in connection with the housing be under the terms of a separate agreement or be carried out by personnel of the Federal Government.

(d) **CONDITIONS ON OBLIGATION OF FUNDS.**—An agreement entered into for a project pursuant to subsection (a) shall include the following provisions:

(1) A statement that the obligation of the United States to make payments under the agreement in any fiscal year is subject to appropriations being provided specifically for that fiscal year and specifically for that project.

(2) A commitment to obligate the necessary amount for each fiscal year covered by the agreement when and to the extent that funds are appropriated for such project for such fiscal year.

(3) A statement that such a commitment entered into under the authority of this section does not constitute an obligation of the United States.

(e) **COMPETITIVE PROCESS.**—An agreement under subsection (a) shall be made through the use of publicly advertised, competitively bid, or competitively negotiated, contracting procedures as provided in chapter 137 of this title. In accordance with such procedures, the Secretary of a military department, or the Secretary of Homeland Security, as the case may be, shall solicit bids or proposals for a guaranty agreement for each military housing rental guaranty project authorized in accordance with subsection (b).

(f) **NOTICE AND WAIT REQUIREMENTS.**—An agreement may not be entered into under subsection (a) until—

(1) the Secretary of Defense, or the Secretary of Homeland Security with respect to the Coast Guard, submits to the appropriate committees of Congress, in writing, an economic analysis (based upon accepted life cycle costing procedures) which demonstrates that the proposed agreement is cost effective when compared with alternative means of furnishing the same housing facilities; and

(2) a period of 21 days has expired following the date on which the economic analysis is received by those committees or, if over sooner, a period of 14 days has expired following the date on which a copy of the economic analysis is provided in an electronic medium pursuant to section 480 of this title.

(g) **DISPUTES.**—The Secretary concerned may require that disputes arising under an agreement entered into under subsection (a) be decided in accordance with the procedures provided for by the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.).

(Added Pub. L. 102-190, div. B, title XXVIII, Sec. 2809(a)(1), Dec. 5, 1991, 105 Stat. 1541; amended Pub. L. 107-296, title XVII, Sec. 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 108-136, div. A, title X, Sec. 1031(a)(43), Nov. 24, 2003, 117 Stat. 1602.)

**§ 2837. Limited partnerships with private developers of housing**

(a) LIMITED PARTNERSHIPS.—(1) In order to meet the housing requirements of members of the armed forces, and the dependents of such members, at a military installation described in paragraph (2), the Secretary of a military department may enter into a limited partnership with one or more private developers to encourage the construction of housing and accessory structures within commuting distance of the installation. The Secretary may contribute not less than five percent, but not more than 35 percent, of the development costs under a limited partnership.

(2) Paragraph (1) applies to a military installation under the jurisdiction of the Secretary concerned at which there is a shortage of suitable housing to meet the requirements of members and dependents referred to in such paragraph.

(b) COLLATERAL INCENTIVE AGREEMENTS.—The Secretary concerned may also enter into collateral incentive agreements with private developers who enter into a limited partnership under subsection (a) to ensure that, where appropriate—

(1) a suitable preference will be afforded members of the armed forces in the lease or purchase, as the case may be, of a reasonable number of the housing units covered by the limited partnership; or

(2) the rental rates or sale prices, as the case may be, for some or all of such units will be affordable for such members.

(c) SELECTION OF INVESTMENT OPPORTUNITIES.—(1) The Secretary concerned shall use publicly advertised, competitively bid or competitively negotiated, contracting procedures, as provided in chapter 137 of this title, to enter into limited partnerships under subsection (a).

(2) When a decision is made to enter into a limited partnership under subsection (a), the Secretary shall submit a report in writing to the appropriate committees of Congress on that decision. Each such report shall include the justification for the limited partnership, the terms and conditions of the limited partnership, a description of the development costs for projects under the limited partnership, and a description of the share of such costs to be incurred by the Secretary. The Secretary may then enter into the limited partnership only after the end of the 21-day period beginning on the date the report is received by such committees or, if earlier, the end of the 14-day period beginning on the date on which a copy of the report is provided in an electronic medium pursuant to section 480 of this title.

(d) ACCOUNT.—(1) There is hereby established on the books of the Treasury an account to be known as the “Defense Housing Investment Account”.

(2) There shall be deposited into the Account—

(A) such funds as may be authorized for and appropriated to the Account; and

(B) any proceeds received by the Secretary concerned from the repayment of investments or profits on investments of the Secretary under subsection (a).

(3) From such amounts as are provided in advance in appropriation Acts, funds in the Account shall be available to the Secretaries concerned in amounts determined by the Secretary of Defense for contracts, investments, and expenses necessary for the implementation of this section.

(4) The Secretary concerned may not enter into a contract in connection with a limited partnership under subsection (a) or a collateral incentive agreement under subsection (b) unless a sufficient amount of the unobligated balance of the funds in the Account is available to the Secretary, as of the time the contract is entered into, to satisfy the total obligations to be incurred by the United States under the contract.

[(e) Repealed. Pub. L. 104–106, div. B, title XXVIII, Sec. 2802(d)(1), Feb. 10, 1996, 110 Stat. 552.]

(f) REPORT.—Not later than 60 days after the end of each fiscal year in which activities are carried out under this section, the Secretaries concerned shall jointly transmit to Congress a report specifying the amount and nature of the deposits into, and the expenditures from, the Account during such fiscal year and of the amount and nature of all other expenditures made pursuant to such section during such fiscal year.

(g) TRANSFER OF LANDS PROHIBITED.—Nothing in this section shall be construed to permit the Secretary, as part of a limited partnership entered into under this section, to transfer the right, title, or interest of the United States in any real property under the jurisdiction of the Secretary concerned.

(h) EXPIRATION AND TERMINATION OF AUTHORITY.—The authority of the Secretary concerned to enter into a limited partnership under this section shall expire on September 30, 2000.

(Added Pub. L. 103–337, div. B, title XXVIII, Sec. 2803(a), Oct. 5, 1994, 108 Stat. 3051; Pub. L. 104–106, div. B, title XXVIII, Sec. 2802, Feb. 10, 1996, 110 Stat. 551; Pub. L. 106–65, div. A, title X, Sec. 1066(a)(28), Oct. 5, 1999, 113 Stat. 772; Pub. L. 108–136, div. A, title X, Sec. 1031(a)(44), Nov. 24, 2003, 117 Stat. 1602.)

### SUBCHAPTER III—ADMINISTRATION OF MILITARY CONSTRUCTION AND MILITARY FAMILY HOUSING

Sec.	
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**§ 2851. Supervision of military construction projects**

(a) SUPERVISION OF MILITARY DEPARTMENT PROJECTS.—Each contract entered into by the United States in connection with a military construction project or a military family housing project shall be carried out under the direction and supervision of the Secretary of the Army (acting through the Chief of Engineers), the Secretary of the Navy (acting through the Commander of the Naval Facilities Engineering Command), or such other department or Government agency as the Secretary of Defense approves to assure the most efficient, expeditious, and cost-effective completion of the project.

(b) SUPERVISION OF DEFENSE AGENCY PROJECTS.—A military construction project for an activity or agency of the Department of Defense (other than a military department) financed from appropriations for military functions of the Department of Defense shall be accomplished by or through a military department designated by the Secretary of Defense.

(c) MAINTENANCE OF MILITARY CONSTRUCTION INFORMATION ON INTERNET; ACCESS.—(1) The Secretary of Defense shall maintain an Internet site that, when activated by a person authorized under paragraph (3), will permit the person to access and view on a separate page of the Internet site a document or other file containing the information required by paragraph (2) for the following:

(A) Each military construction project or military family housing project that has been specifically authorized by Act of Congress.

(B) Each project carried out with funds authorized for the operation and maintenance of military family housing.

(C) Each project carried out with funds authorized for the improvement of military family housing units.

(D) Each unspecified minor construction project carried out under the authority of section 2805(a) of this title.

(E) Each military construction project or military family housing project regarding which a statutory requirement exists to notify Congress.

(2) The information to be provided via the Internet site required by paragraph (1) for each project described in such paragraph shall include the following:

(A) The solicitation date and award date (or anticipated dates) for each contract entered into (or to be entered into) by the United States in connection with the project.

(B) The contract recipient, contract award amount, construction milestone schedule proposed by the contractor, and construction completion date stipulated in the awarded contract.

(C) The most current Department of Defense Form 1391, Military Construction Project Data, for the project.

(D) The progress of the project, including the percentage of construction currently completed and the current estimated construction completion date.

(E) The current contract obligation of funds for the project, including any changes to the original contract award amount.

(F) The estimated final cost of the project and, if the estimated final cost of the project exceeds the amount appropriated for the project and funds have been provided from another source to meet the increased cost, the source of the funds and the amount provided.

(G) If funds appropriated for the project have been diverted for use in another project, the project to which the funds were diverted and the amount so diverted.

(H) For accounts such as planning and design, unspecified minor construction, and family housing operation and maintenance, detailed information regarding expenditures and anticipated expenditures under these accounts and the purposes for which the expenditures are made.

(3) Access to the Internet site required by paragraph (1) shall be restricted to the following persons:

(A) Members of the congressional defense committees and their staff.

(B) Staff of the congressional defense committees.

(4) The information required to be provided for each project described in paragraph (1) shall be made available to the persons referred to in paragraph (3) not later than 90 days after the award of a contract or delivery order for the project. The Secretary of Defense shall update the required information as promptly as practicable, but not less frequently than once a month, to ensure that the information is available to such persons in a timely manner.

(Added Pub. L. 97-214, Sec. 2(a), July 12, 1982, 96 Stat. 163; amended Pub. L. 109-163, div. B, title XXVIII, Sec. 2803(a), (c), Jan. 6, 2006, 119 Stat. 3505, 3506.)

#### **§ 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.

(Added Pub. L. 97-214, Sec. 2(a), July 12, 1982, 96 Stat. 164; amended Pub. L. 97-295, Sec. 1(35), Oct. 12, 1982, 96 Stat. 1296; Pub. L. 97-321, title VIII, Sec. 805(a)(1), Oct. 15, 1982, 96 Stat. 1573; Pub. L. 99-145, title XIII, Sec. 1303(a)(19), Nov. 8, 1985, 99 Stat. 739; Pub. L. 107-217, Sec. 3(b)(20), Aug. 21, 2002, 116 Stat. 1297.)

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

(a) Except as provided in subsection (c) or (d), 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 amount appropriated for such project or 200 percent of the minor construction project ceiling specified in section 2805(a)(1), 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 approved originally by Congress.

(b) 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 approved for that project, construction, improvement, or acquisition by Congress.

(c) The limitation on cost variations in subsection (a) or the limitation on scope reduction in subsection (b) does not apply if the variation in cost or reduction in the scope of work is approved by the Secretary concerned and—

(1) in the case of a cost increase or a reduction in the scope of work—

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

(B) 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; or

(2) in the case of a cost decrease, the Secretary concerned notifies the appropriate committees of Congress in writing not later than 14 days after the date funds are obligated in connection with the military construction project or military family housing project.

(d) 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.

(Added Pub. L. 97-214, Sec. 2(a), July 12, 1982, 96 Stat. 164; amended Pub. L. 98-407, title VIII, Sec. 807, Aug. 28, 1984, 98 Stat. 1521; Pub. L. 100-26, Sec. 7(f)(2), Apr. 21, 1987, 101 Stat. 281; Pub. L. 100-180, div. B, subdiv. 3, title 1, Sec. 2312, 2313, Dec. 4, 1987, 101 Stat. 1217, 1218; Pub. L. 101-189, div. B, title XXVIII, Sec. 2808, Nov. 29, 1989, 103 Stat. 1648; Pub. L. 104-106, div. B, title XXVIII, Sec. 2817, Feb. 10, 1996, 110 Stat. 553; Pub. L. 107-107, div. B, title XXVIII, Sec. 2802, Dec. 28, 2001, 115 Stat. 1305; Pub. L. 108-375, div. B, title XXVIII, Sec. 2803, Oct. 28, 2004, 118 Stat. 2121; Pub. L. 109-163, div. B, title XXVIII, Sec. 2804(a)-(c)(1), Jan.

6, 2006, 119 Stat. 3506; Pub. L. 109-364, div. B, title XXVIII, Sec. 2806, Oct. 17, 2006, 120 Stat. 2468.)

**§ 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 this section 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 in writing 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 21-day period beginning on the date the notification is received by such committees 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.

(Added Pub. L. 97-214, Sec. 2(a), July 12, 1982, 96 Stat. 165; amended Pub. L. 102-190, div. B, title XXVIII, Sec. 2870(7), Dec. 5, 1991, 105 Stat. 1563; Pub. L. 108-136, div. A, title X, Sec. 1031(a)(45), Nov. 24, 2003, 117 Stat. 1602.)

**§ 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 facility that, due to damage or deterioration, is in a condition that is uneconomical to repair. Any conveyance of a family housing facility under this section may include a conveyance of the real property associated with the facility conveyed.

(2) The authority of this section does not apply to family housing facilities located at military installations approved for closure under a base closure law or family housing facilities located at an installation outside the United States at which the Secretary of Defense terminates operations.

(3) The aggregate total value of the family housing facilities conveyed by the Department of Defense under the authority in this subsection in any fiscal year may not exceed \$5,000,000.

(4) For purposes of this subsection, a family housing facility is in a condition that is uneconomical to repair if the cost of the necessary repairs for the facility would exceed the amount equal to 70 percent of the cost of constructing a family housing facility to replace such facility.

(b) **CONSIDERATION.**—(1) As consideration for the conveyance of a family housing facility under subsection (a), the person to whom the facility is conveyed shall pay the United States an amount equal to the fair market value of the facility conveyed, including any real property conveyed along with the facility.

(2) The Secretary concerned shall determine the fair market value of any family housing facility and associated real property

that is conveyed under subsection (a). Such determination shall be final.

(c) NOTICE AND WAIT REQUIREMENTS.—The Secretary concerned may not enter into an agreement to convey a family housing facility under this section until—

(1) the Secretary submits to the appropriate committees of Congress, in writing, a justification for the conveyance under the agreement, including—

(A) an estimate of the consideration to be provided the United States under the agreement;

(B) an estimate of the cost of repairing the family housing facility to be conveyed; and

(C) an estimate of the cost of replacing the family housing facility to be conveyed; and

(2) a period of 21 days has elapsed after the date on which the justification 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 justification is provided in an electronic medium pursuant to section 480 of this title.

(d) INAPPLICABILITY OF CERTAIN PROPERTY DISPOSAL LAWS.—The following provisions of law do not apply to the conveyance of a family housing facility under this section:

(1) Subtitle I of title 40 and title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.).

(2) Title V of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11411 et seq.).

(e) USE OF PROCEEDS.—(1) The proceeds of any conveyance of a family housing facility under this section shall be credited to the appropriate fund established under section 2883 of this title and shall be available—

(A) to construct family housing units to replace the family housing facility conveyed under this section, but only to the extent that the number of units constructed with such proceeds does not exceed the number of units of military family housing of the facility conveyed;

(B) to repair or restore existing military family housing; and

(C) to reimburse the Secretary concerned for the costs incurred by the Secretary in conveying the family housing facility.

(2) Notwithstanding section 2883(d) of this title, proceeds derived from a conveyance of a family housing facility under this section shall be available under paragraph (1) without any further appropriation.

(f) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of any family housing facility conveyed under this section, including any real property associated with such facility, shall be determined by such means as the Secretary concerned considers satisfactory, including by survey in the case of real property.

(g) ADDITIONAL TERMS AND CONDITIONS.—The Secretary concerned may require such additional terms and conditions in connection with the conveyance of family housing facilities under this sec-

tion as the Secretary considers appropriate to protect the interests of the United States.

(Added Pub. L. 104–106, div. B, title XXVIII, Sec. 2818(a)(1), Feb. 10, 1996, 110 Stat. 553; amended Pub. L. 107–107, div. A, title X, Sec. 1048(d)(1), Dec. 28, 2001, 115 Stat. 1227; Pub. L. 107–217, Sec. 3(b)(21), Aug. 21, 2002, 116 Stat. 1297; Pub. L. 108–136, div. A, title X, Sec. 1031(a)(46), Nov. 24, 2003, 117 Stat. 1602.)

**§ 2855. Law applicable to contracts for architectural and engineering services and construction design**

(a) Contracts for architectural and engineering services and construction design in connection with a military construction project or a military family housing project shall be awarded in accordance with chapter 11 of title 40.

(b)(1) In the case of a contract referred to in subsection (a)—

(A) if the Secretary concerned estimates that the initial award of the contract will be in an amount greater than or equal to the threshold amount determined under paragraph (2), the contract may not be set aside exclusively for award to small business concerns; and

(B) if the Secretary concerned estimates that the initial award of the contract will be in an amount less than the threshold amount determined under paragraph (2), the contract shall be awarded in accordance with the set aside provisions of the Small Business Act (15 U.S.C. 631 et seq.).

(2) The initial threshold amount under paragraph (1) is \$300,000. The Secretary of Defense may revise that amount in order to ensure that small business concerns receive a reasonable share of contracts referred to in subsection (a).

(3) This subsection does not restrict the award of contracts to small business concerns under section 8(a) of the Small Business Act (15 U.S.C. 637(a)).

(Added Pub. L. 97–214, Sec. 2(a), July 12, 1982, 96 Stat. 166; amended Pub. L. 98–407, title VIII, Sec. 808(a), Aug. 28, 1984, 98 Stat. 1521; Pub. L. 107–217, Sec. 3(b)(22), Aug. 21, 2002, 116 Stat. 1297; Pub. L. 108–136, div. A, title XIV, Sec. 1427(a), Nov. 24, 2003, 117 Stat. 1670.)

**§ 2856. Military unaccompanied housing: local comparability of floor areas**

In the construction, acquisition, and improvement of military unaccompanied housing, the Secretary concerned shall ensure that the floor areas of such housing in a particular locality (as designated by the Secretary concerned for purposes of this section) do not exceed the floor areas of similar housing in the private sector in that locality.

(Added Pub. L. 97–214, Sec. 2(a), July 12, 1982, 96 Stat. 166; amended Pub. L. 101–510, div. A, title XIII, Sec. 1301(19), Nov. 5, 1990, 104 Stat. 1668; Pub. L. 109–364, div. B, title XXVIII, Sec. 2807(a)(1), Oct. 17, 2006, 120 Stat. 2468.)

**§ 2857. Renumbered 2915**

**§ 2858. Limitation on the use of funds for expediting a construction project**

Funds appropriated for military construction (including military family housing) may not be expended for additional costs involved in expediting a construction project unless the Secretary

concerned (1) certifies that expenditures for such costs are necessary to protect the national interest, and (2) establishes a reasonable completion date for the project. In establishing such a completion date, the Secretary shall take into consideration the urgency of the requirement for completion of the project, the type and location of the project, the climatic and seasonal conditions affecting the construction involved, and the application of economical construction practices.

(Added Pub. L. 97-214, Sec. 2(a), July 12, 1982, 96 Stat. 167.)

**§ 2859. Construction requirements related to antiterrorism and force protection or urban-training operations**

(a) ANTITERRORISM AND FORCE PROTECTION GUIDANCE AND CRITERIA.—The Secretary of Defense shall develop common guidance and criteria to be used by each Secretary concerned—

(1) to assess the vulnerability of military installations located inside and outside of the United States to terrorist attack;

(2) to develop construction standards designed to reduce the vulnerability of structures to terrorist attack and improve the security of the occupants of such structures;

(3) to prepare and carry out military construction projects, such as gate and fence construction, to improve the physical security of military installations; and

(4) to assist in prioritizing such projects within the military construction budget of each of the armed forces.

(b) VULNERABILITY ASSESSMENTS.—The Secretary of Defense shall require vulnerability assessments of military installations to be conducted, at regular intervals, using the criteria developed under subsection (a).

(c) MILITARY CONSTRUCTION REQUIREMENTS.—As part of the budget materials submitted to Congress in connection with the submission of the budget for a fiscal year pursuant to section 1105 of title 31, but in no case later than March 15 of each year, the Secretary of Defense shall submit a report, in both classified and unclassified form, describing—

(1) the location and results of the vulnerability assessments conducted under subsection (b) during the most recently completed fiscal year;

(2) the military construction requirements anticipated to be necessary during the period covered by the then-current future-years defense plan under section 221 of this title to improve the physical security of military installations; and

(3) the extent to which funds to meet those requirements are not requested in the Department of Defense budget for the fiscal year for which the budget is submitted.

(d) CERTIFICATION REQUIRED FOR MILITARY CONSTRUCTION PROJECTS DESIGNED TO PROVIDE TRAINING IN URBAN OPERATIONS.—(1) Except as provided in paragraph (3), the Secretary concerned may not carry out a military construction project to construct a facility designed to provide training in urban operations for members of the armed forces or personnel of the Department of Defense or other Federal agencies until—

(A) the Secretary of Defense approves a strategy for training and facility construction for operations in urban terrain; and

(B) the Under Secretary of Defense for Personnel and Readiness evaluates the project and certifies to the appropriate committees of Congress that the project—

(i) is consistent with the strategy; and

(ii) incorporates the appropriate capabilities for joint and interagency use in accordance with the strategy.

(2) The Under Secretary of Defense for Personnel and Readiness shall conduct the evaluation required by paragraph (1)(B) in consultation with the Commander of the United States Joint Forces Command.

(3) This subsection shall not apply with respect to a military construction project carried out under the authority of section 2803, 2804, or 2808 of this title or section 2808 of the Military Construction Authorization Act for Fiscal Year 2004 (division B of Public Law 108–136; 117 Stat. 1723).

(Added Pub. L. 108–375, div. B, title XXVIII, Sec. 2804(a)(1), Oct. 28, 2004, 118 Stat. 2121; amended Pub. L. 109–364, div. B, title XXVIII, Sec. 2808(a), (b)(1), Oct. 17, 2006, 120 Stat. 2469.)

#### **§ 2860. Availability of appropriations**

Funds appropriated to a military department or to the Secretary of Defense for a fiscal year for military construction or military family housing purposes may remain available for obligation beyond such fiscal year to the extent provided in appropriation Acts.

(Added Pub. L. 97–214, Sec. 2(a), July 12, 1982, 96 Stat. 167; amended Pub. L. 99–167, title VIII, Sec. 812(a), Dec. 3, 1985, 99 Stat. 991; Pub. L. 99–173, Sec. 121(b), Dec. 10, 1985, 99 Stat. 1029; Pub. L. 99–661, div. A, title XIII, Sec. 1343(a)(21)(A), Nov. 14, 1986, 100 Stat. 3994.)

#### **§ 2861. Military construction projects in connection with industrial facility investment program**

(a) **AUTHORITY.**—The Secretary of Defense may carry out a military construction project, not previously authorized, for the purpose of carrying out activities under section 2474(a)(2) of this title, using funds appropriated or otherwise made available for that purpose in military construction accounts.

(b) **CREDITING OF FUNDS TO CAPITAL BUDGET.**—Funds appropriated or otherwise made available in a fiscal year for the purpose of carrying out a military construction project with respect to a covered depot (as defined in subsection (e) of section 2476 of this title) may be credited to the amount required by subsection (a) of such section to be invested in the capital budgets of the covered depots in that fiscal year.

(c) **NOTICE AND WAIT REQUIREMENT.**—When a decision is made to carry out a project under subsection (a), the Secretary of Defense shall notify in writing the appropriate committees of Congress of that decision and the savings estimated to be realized from the project. The project may then be carried out only after the end of the 21-day period beginning on the date the notification is received by such committees or, if earlier, the end of the 14-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.

(d) ANNUAL REPORT.—Not later than December 31 of each year, the Secretary shall submit to Congress a report describing actions taken under this section and the savings realized from such actions during the fiscal year ending in the year in which the report is submitted.

(Added Pub. L. 109–364, div. B, title XXVIII, Sec. 2809(a), Oct. 17, 2006, 120 Stat. 2470.)

**§ 2862. Turn-key selection procedures**

(a) AUTHORITY TO USE.—The Secretary concerned may use one-step turn-key selection procedures for the purpose of entering into contracts for the construction of authorized military construction projects.

(b) DEFINITION.—In this section, the term “one-step turn-key selection procedures” means procedures used for the selection of a contractor on the basis of price and other evaluation criteria to perform, in accordance with the provisions of a firm fixed-price contract, both the design and construction of a facility using performance specifications supplied by the Secretary concerned.

(Added Pub. L. 99–167, title VIII, Sec. 807(a), Dec. 3, 1985, 99 Stat. 988; amended Pub. L. 100–26, Sec. 7(k)(3), Apr. 21, 1987, 101 Stat. 284; Pub. L. 100–180, div. B, subdiv. 3, title I, Sec. 2301, Dec. 4, 1987, 101 Stat. 1214; Pub. L. 101–189, div. B, title XXVIII, Sec. 2806, Nov. 29, 1989, 103 Stat. 1647; Pub. L. 102–190, div. B, title XXVIII, Sec. 2802, Dec. 5, 1991, 105 Stat. 1537.)

**§ 2863. Payment of contractor claims**

Notwithstanding any other provision of law, the Secretary concerned may pay meritorious contractor claims that arise under military construction contracts or family housing contracts. The Secretary of Defense, with respect to a Defense Agency, or the Secretary of a military department may use for such purpose any unobligated funds appropriated to such department and available for military construction or family housing construction, as the case may be.

(Added Pub. L. 100–180, div. B, subdiv. 3, title I, Sec. 2303(a), Dec. 4, 1987, 101 Stat. 1215.)

**[§ 2864. Repealed. Pub. L. 109–364, div. B, title XXVIII, Sec. 2810(a), Oct. 17, 2006, 120 Stat. 2470]**

**[§ 2865. Repealed. Pub. L. 109–364, div. B, title XXVIII, Sec. 2851(a)(2), Oct. 17, 2006, 120 Stat. 2494]**

**§ 2866. Water conservation at military installations**

(a) WATER CONSERVATION ACTIVITIES.—(1) The Secretary of Defense shall permit and encourage each military department, Defense Agency, and other instrumentality of the Department of Defense to participate in programs conducted by a utility for the management of water demand or for water conservation.

(2) The Secretary of Defense may authorize a military installation to accept a financial incentive (including an agreement to reduce the amount of a future water bill), goods, or services generally

available from a utility, for the purpose of adopting technologies and practices that—

(A) relate to the management of water demand or to water conservation; and

(B) as determined by the Secretary, are cost effective for the Federal Government.

(3) Subject to paragraph (4), the Secretary of Defense may authorize the Secretary of a military department having jurisdiction over a military installation to enter into an agreement with a utility to design and implement a cost-effective program that provides incentives for the management of water demand and for water conservation and that addresses the requirements and circumstances of the installation. Activities under the program may include the provision of water management services, the alteration of a facility, and the installation and maintenance by the utility of a water-saving device or technology.

(4)(A) If an agreement under paragraph (3) provides for a utility to pay in advance the financing costs for the design or implementation of a program referred to in that paragraph and for such advance payment to be repaid by the United States, the cost of such advance payment may be recovered by the utility under terms that are not less favorable than the terms applicable to the most favored customer of the utility.

(B) Subject to the availability of appropriations, a repayment of an advance payment under subparagraph (A) shall be made from funds available to a military department for the purchase of utility services.

(C) An agreement under paragraph (3) shall provide that title to a water-saving device or technology installed at a military installation pursuant to the agreement shall vest in the United States. Such title may vest at such time during the term of the agreement, or upon expiration of the agreement, as determined to be in the best interests of the United States.

(b) USE OF FINANCIAL INCENTIVES AND WATER COST SAVINGS.—(1) Financial incentives received from utilities for management of water demand or water conservation under subsection (a)(2) shall be credited to an appropriation designated by the Secretary of Defense. Amounts so credited shall be merged with the appropriation to which credited and shall be available for the same purposes and the same period as the appropriation with which merged.

(2) Water cost savings realized under subsection (a)(3) shall be used as follows:

(A) One-half of the amount shall be used for water conservation activities at such buildings, facilities, or installations of the Department of Defense as may be designated (in accordance with regulations prescribed by the Secretary of Defense) by the head of the department, agency, or instrumentality that realized the water cost savings.

(B) One-half of the amount shall be used at the installation at which the savings were realized, as determined by the commanding officer of such installation consistent with applicable law and regulations, for—

- (i) improvements to existing military family housing units;
- (ii) any unspecified minor construction project that will enhance the quality of life of personnel; or
- (iii) any morale, welfare, or recreation facility or service.

(3) The Secretary of Defense shall include in the budget material submitted to Congress in connection with the submission of the budget for a fiscal year pursuant to section 1105 of title 31 a separate statement of the amounts available for obligation under this subsection in that fiscal year.

(c) WATER CONSERVATION CONSTRUCTION PROJECTS.—(1) The Secretary of Defense may carry out a military construction project for water conservation, not previously authorized, using funds appropriated or otherwise made available to the Secretary for water conservation.

(2) When a decision is made to carry out a project under paragraph (1), the Secretary of Defense shall notify the appropriate committees of Congress of that decision. Such project may be carried out only after the end of the 21-day period beginning on the date the notification is received by such committees or, if earlier, the end of the 14-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.

(Added Pub. L. 103–160, div. B, title XXVIII, Sec. 2803(a), Nov. 30, 1993, 107 Stat. 1884; Pub. L. 104–106, div. A, title XV, Sec. 1502(a)(27), Feb. 10, 1996, 110 Stat. 506; Pub. L. 105–85, div. B, title XXVIII, Sec. 2804(b), Nov. 18, 1997, 111 Stat. 1991; Pub. L. 108–136, div. A, title X, Sec. 1031(a)(48), Nov. 24, 2003, 117 Stat. 1602; Pub. L. 109–364, div. B, title XXVIII, Sec. 2851(d), Oct. 17, 2006, 120 Stat. 2495.)

#### **§ 2867. Renumbered 2916**

#### **§ 2868. Utility services: furnishing for certain buildings**

Appropriations for the Department of Defense may be used for utility services for buildings constructed at private cost, as authorized by law.

(Added Pub. L. 100–370, Sec. 1(j)(1), July 19, 1988, 102 Stat. 848, Sec. 2490; renumbered Sec. 2868, Pub. L. 105–85, div. A, title III, Sec. 371(b)(2), Nov. 18, 1997, 111 Stat. 1705; Pub. L. 108–375, div. A, title VI, Sec. 651(e)(2), Oct. 28, 2004, 118 Stat. 1972.)

#### **§ 2869. Conveyance of property at military installations to support military construction or limit encroachment**

(a) CONVEYANCE AUTHORIZED; CONSIDERATION.—(1) The Secretary concerned may enter into an agreement to convey real property, including any improvements thereon, described in paragraph (2) to any person who agrees, in exchange for the real property—

(A) to carry out a military construction project or land acquisition, including the acquisition of all right, title, and interest or a lesser interest in real property under an agreement entered into under section 2684a of this title to limit encroachments and other constraints on military training, testing, and operations; or

(B) to transfer to the Secretary concerned housing that is constructed or provided by the person and located at or near a military installation at which there is a shortage of suitable military family housing, military unaccompanied housing, or both.

(2) Paragraph (1) applies with respect to real property under the jurisdiction of the Secretary concerned that—

(A) is located on a military installation that is closed or realigned under a base closure law; or

(B) is located on a military installation not covered by subparagraph (A) and is determined to be excess to the needs of the Department of Defense.

(3) Subparagraph (B) of paragraph (2) shall apply only during the period beginning on the date of the enactment of the John Warner National Defense Authorization Act for Fiscal Year 2007 and ending on September 30, 2008. Any conveyance of real property described in such subparagraph for which the Secretary concerned has provided the advance public notice required by subsection (d)(1) before the expiration date may be completed after that date.

(b) **CONDITIONS ON CONVEYANCE AUTHORITY.**—The fair market value of the military construction, military family housing, or military unaccompanied housing to be obtained by the Secretary concerned under subsection (a) in exchange for the conveyance of real property by the Secretary under such subsection shall be at least equal to the fair market value of the conveyed real property, as determined by the Secretary. If the fair market value of the military construction, military family housing, or military unaccompanied housing is less than the fair market value of the real property to be conveyed, the recipient of the property shall pay to the United States an amount equal to the difference in the fair market values.

(c) **PILOT PROGRAM FOR USE OF AUTHORITY.**—(1) To the maximum extent practicable, the Secretary of each military department shall use the conveyance authority provided by subsection (a) at least once before December 31, 2004, for the purposes specified in such subsection.

(2) The value of the consideration received by the Secretary concerned in a conveyance carried out under this subsection shall not be less than \$1,000,000.

(3) In the case of the report required under subsection (f) to be submitted in 2005, the Secretary of Defense shall include the following:

(A) A description of the conveyances carried out or proposed under this subsection.

(B) A description of the procedures utilized to enter into any agreements for the conveyance of property under this subsection.

(C) An assessment of the utility of such procedures for the disposal of property at military installations closed or realigned under the base closure laws, and for securing services described in subsection (a), including an assessment of any time saved and cost-savings achieved as a result of the use of the conveyance authority provided by this section.

(D) An assessment of private sector interest in the use of the conveyance authority provided by this section.

(E) A description of the projects for which the Secretary concerned considered using the conveyance authority provided by this section, but did not do so, and an explanation of the decision.

(d) ADVANCE NOTICE OF USE OF AUTHORITY.—(1) Notice of the proposed use of the conveyance authority provided by subsection (a) shall be provided in such manner as the Secretary of Defense may prescribe, including publication in the Federal Register and otherwise. When real property located at a military installation is proposed for conveyance by means of a public sale, the Secretary concerned may notify prospective purchasers that consideration for the property may be provided in the manner authorized by such subsection.

(2) The Secretary concerned may not enter into an agreement under subsection (a) for the conveyance of real property until—

(A) the Secretary submits to Congress notice of the conveyance, including—

(i) a description of the real property to be conveyed by the Secretary under the agreement;

(ii) a description of the military construction project, land acquisition, military family housing, or military unaccompanied housing to be carried out under the agreement in exchange for the conveyance of the property; and

(iii) the amount of any payment to be made under subsection (b) or under section 2684a(d) of this title to equalize the fair market values of the property to be conveyed and the military construction project, land acquisition, military family housing, or military unaccompanied housing to be carried out under the agreement in exchange for the conveyance of the property; and

(B) the waiting period applicable to that notice under paragraph (3) expires.

(3) If the notice submitted under paragraph (2) deals with the conveyance of real property located on a military installation that is closed or realigned under a base closure law or the conveyance of real property under an agreement entered into under section 2684a of this title, the Secretary concerned may enter into the agreement under subsection (a) for the conveyance of the property after a period of 21 days has elapsed from the date of receipt of the notice or, if over sooner, a period of 14 days has elapsed from the date on which a copy of the notice is provided in an electronic medium pursuant to section 480 of this title. In the case of other real property to be conveyed under subsection (a), the Secretary concerned may enter into the agreement only after a period of 60 days has elapsed from the date of receipt of the notice or, if over sooner, a period of 45 days has elapsed from the date on which the electronic copy is provided.

(e) DEPOSIT AND USE OF FUNDS.—(1) Except as provided in paragraph (2), the Secretary concerned may deposit funds received under subsection (b) in the Department of Defense housing funds established under section 2883(a) of this title.

(2) During the period specified in paragraph (3) of subsection (a), the Secretary concerned shall deposit funds received under subsection (b) in the appropriation “Foreign Currency Fluctuations, Construction, Defense”.

(3) The funds deposited under paragraph (2) shall be available, in such amounts as provided in appropriation Acts, for the purpose of paying increased costs of overseas military construction and family housing construction or improvement associated with unfavorable fluctuations in currency exchange rates. The use of such funds for this purpose does not relieve the Secretary concerned from the duty to provide advance notice to Congress under section 2853(c) of this title whenever the Secretary approves an increase in the cost of an overseas project under such section.

(f) ANNUAL REPORTS; EFFECT OF FAILURE TO SUBMIT.—(1) Not later than March 15 of each year, the Secretary of Defense shall submit to Congress a report detailing the following:

(A) The extent to which the Secretaries concerned used the authority provided by subsection (a) during the preceding fiscal year to convey real property in exchange for military construction and military housing, including the total value of the real property that was actually conveyed during such fiscal year using such authority and the total value of the military construction and military housing services obtained in exchange.

(B) The plans for the use of such authority for the current fiscal year, the fiscal year covered by the budget, and the period covered by the current future-years defense program under section 221 of this title.

(C) The current inventory of unconveyed lands at military installations closed or realigned under a base closure law and of excess real property at military installations.

(2) If the report for a year is not submitted to Congress by the date specified in paragraph (1), the Secretary concerned may not enter into an agreement under subsection (a) after that date for the conveyance of real property until the date on which the report is finally submitted.

(g) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of real property conveyed under subsection (a) shall be determined by surveys satisfactory to the Secretary concerned.

(h) ADDITIONAL TERMS AND CONDITIONS.—The Secretary concerned may require such additional terms and conditions in connection with a conveyance under subsection (a) as the Secretary considers appropriate to protect the interests of the United States.

(Added Pub. L. 108–136, div. B, title XXVIII, Sec. 2805(a)(1), Nov. 24, 2003, 117 Stat. 1719; amended Pub. L. 109–364, div. B, title XXVIII, Sec. 2811(a)–(f)(1), Oct. 17, 2006, 120 Stat. 2471.)

#### SUBCHAPTER IV—ALTERNATIVE AUTHORITY FOR ACQUISITION AND IMPROVEMENT OF MILITARY HOUSING

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**§ 2871. Definitions**

In this subchapter:

(1) The term “ancillary supporting facilities” means facilities related to military housing units, including facilities to provide or support elementary or secondary education, child care centers, day care centers, child development centers, tot lots, community centers, housing offices, dining facilities, unit offices, and other similar facilities for the support of military housing.

(2) The term “child development center” includes a facility, and the utilities to support such facility, the function of which is to support the daily care of children aged six weeks old through five years old for full-day, part-day, and hourly service.

(3) The term “construction” means the construction of military housing units and ancillary supporting facilities or the improvement or rehabilitation of existing units or ancillary supporting facilities.

(4) The term “contract” includes any contract, lease, or other agreement entered into under the authority of this subchapter.

(5) The term “eligible entity” means any private person, corporation, firm, partnership, company, State or local government, or housing authority of a State or local government.

(6) The term “Fund” means the Department of Defense Family Housing Improvement Fund or the Department of Defense Military Unaccompanied Housing Improvement Fund established under section 2883(a) of this title.

(7) The term “military unaccompanied housing” means military housing intended to be occupied by members of the armed forces serving a tour of duty unaccompanied by dependents and transient housing intended to be occupied by members of the armed forces on temporary duty.

(8) The term “United States” includes the Commonwealth of Puerto Rico.

(Added Pub. L. 104–106, div. B, title XXVIII, Sec. 2801(a)(1), Feb. 10, 1996, 110 Stat. 544; Pub. L. 105–271, div. B, title XXVIII, Sec. 2803, Oct. 17, 1998, 112 Stat. 2202; Pub. L. 106–65, div. B, title XXVIII, Sec. 2803(a), Oct. 5, 1999, 113 Stat. 848; Pub. L. 107–314, div. B, title XXVIII, Sec. 2803(b), Dec. 2, 2002, 116 Stat. 2705; Pub. L. 108–136, div. A, title X, Sec. 1043(c)(6), Nov. 24, 2003, 117 Stat. 1612; Pub. L. 109–163, div. B, title XXVIII, Sec. 2805(b), Jan. 6, 2006, 119 Stat. 3507.)

**§ 2872. General authority**

In addition to any other authority provided under this chapter for the acquisition or construction of military family housing or military unaccompanied housing, the Secretary concerned may exercise any authority or any combination of authorities provided under this subchapter in order to provide for the acquisition or construction by eligible entities of the following:

- (1) Family housing units on or near military installations within the United States and its territories and possessions.
- (2) Military unaccompanied housing units on or near such military installations.

(Added Pub. L. 104–106, div. B, title XXVIII, Sec. 2801(a)(1), Feb. 10, 1996, 110 Stat. 545; amended Pub. L. 106–65, div. B, title XXVIII, Sec. 2803(b), Oct. 5, 1999, 113 Stat. 849.)

**§ 2872a. Utilities and services**

(a) **AUTHORITY TO FURNISH.**—The Secretary concerned may furnish utilities and services referred to in subsection (b) in connection with any military housing acquired or constructed pursuant to the exercise of any authority or combination of authorities under this subchapter if the military housing is located on a military installation.

(b) **COVERED UTILITIES AND SERVICES.**—The utilities and services that may be furnished under subsection (a) are the following:

- (1) Electric power.
- (2) Steam.
- (3) Compressed air.
- (4) Water.
- (5) Sewage and garbage disposal.
- (6) Natural gas.
- (7) Pest control.
- (8) Snow and ice removal.
- (9) Mechanical refrigeration.
- (10) Telecommunications service.
- (11) Firefighting and fire protection services.
- (12) Police protection services.

(c) **REIMBURSEMENT.**—(1) The Secretary concerned shall be reimbursed for any utilities or services furnished under subsection (a).

(2) The amount of any cash payment received under paragraph (1) shall be credited to the appropriation or working capital account from which the cost of furnishing the utilities or services concerned was paid. Amounts so credited to an appropriation or account shall be merged with funds in such appropriation or account, and shall be available to the same extent, and subject to the same terms and conditions, as such funds.

(Added Pub. L. 106–398, Sec. 1 [div. B, title XXVIII, Sec. 2805(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A-414; amended Pub. L. 107–314, div. B, title XXVIII, Sec. 2802(a), Dec. 2, 2002, 116 Stat. 2703.)

**§ 2873. Direct loans and loan guarantees**

(a) **DIRECT LOANS.**—(1) Subject to subsection (c), the Secretary concerned may make direct loans to an eligible entity in order to provide funds to the eligible entity for the acquisition or construc-

tion of housing units that the Secretary determines are suitable for use as military family housing or as military unaccompanied housing.

(2) The Secretary concerned shall establish such terms and conditions with respect to loans made under this subsection as the Secretary considers appropriate to protect the interests of the United States, including the period and frequency for repayment of such loans and the obligations of the obligors on such loans upon default.

(b) LOAN GUARANTEES.—(1) Subject to subsection (c), the Secretary concerned may guarantee a loan made to an eligible entity if the proceeds of the loan are to be used by the eligible entity to acquire, or construct housing units that the Secretary determines are suitable for use as military family housing or as military unaccompanied housing.

(2) The amount of a guarantee on a loan that may be provided under paragraph (1) may not exceed the amount equal to the lesser of—

(A) the amount equal to 80 percent of the value of the project; or

(B) the amount of the outstanding principal of the loan.

(3) The Secretary concerned shall establish such terms and conditions with respect to guarantees of loans under this subsection as the Secretary considers appropriate to protect the interests of the United States, including the rights and obligations of obligors of such loans and the rights and obligations of the United States with respect to such guarantees.

(c) LIMITATION ON DIRECT LOAN AND GUARANTEE AUTHORITY.—Direct loans and loan guarantees may be made under this section only to the extent that appropriations of budget authority to cover their cost (as defined in section 502(5) of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a(5))) are made in advance, or authority is otherwise provided in appropriation Acts. If such appropriation or other authority is provided, there may be established a financing account (as defined in section 502(7) of such Act (2 U.S.C. 661a(7))), which shall be available for the disbursement of direct loans or payment of claims for payment on loan guarantees under this section and for all other cash flows to and from the Government as a result of direct loans and guarantees made under this section.

(Added Pub. L. 104–106, div. B, title XXVIII, Sec. 2801(a)(1), Feb. 10, 1996, 110 Stat. 545; amended Pub. L. 106–65, div. B, title XXVIII, Sec. 2803(c), Oct. 5, 1999, 113 Stat. 849.)

#### § 2874. Leasing of housing

(a) LEASE AUTHORIZED.—The Secretary concerned may enter into contracts for the lease of housing units that the Secretary determines are suitable for use as military family housing or military unaccompanied housing.

(b) USE OF LEASED UNITS.—The Secretary concerned shall utilize housing units leased under this section as military family housing or military unaccompanied housing, as appropriate.

(c) LEASE TERMS.—A contract under this section may be for any period that the Secretary concerned determines appropriate

and may provide for the owner of the leased property to operate and maintain the property.

(Added Pub. L. 104–106, div. B, title XXVIII, Sec. 2801(a)(1), Feb. 10, 1996, 110 Stat. 546; amended Pub. L. 107–314, div. B, title XXVIII, Sec. 2802(b)(1), (2), Dec. 2, 2002, 116 Stat. 2703.)

### § 2875. Investments

(a) INVESTMENTS AUTHORIZED.—The Secretary concerned may make investments in an eligible entity carrying out projects for the acquisition or construction of housing units suitable for use as military family housing or as military unaccompanied housing.

(b) FORMS OF INVESTMENT.—An investment under this section may take the form of an acquisition of a limited partnership interest by the United States, a purchase of stock or other equity instruments by the United States, a purchase of bonds or other debt instruments by the United States, or any combination of such forms of investment.

(c) LIMITATION ON VALUE OF INVESTMENT.—(1) The cash amount of an investment under this section in an eligible entity may not exceed an amount equal to 33 $\frac{1}{3}$  percent of the capital cost (as determined by the Secretary concerned) of the project or projects that the eligible entity proposes to carry out under this section with the investment.

(2) If the Secretary concerned conveys land or facilities to an eligible entity as all or part of an investment in the entity under this section, the total value of the investment by the Secretary under this section may not exceed an amount equal to 45 percent of the capital cost (as determined by the Secretary) of the project or projects that the eligible entity proposes to carry out under this section with the investment.

(3) In this subsection, the term “capital cost”, with respect to a project for the acquisition or construction of housing, means the total amount of the costs included in the basis of the housing for Federal income tax purposes.

(d) COLLATERAL INCENTIVE AGREEMENTS.—The Secretary concerned shall enter into collateral incentive agreements with eligible entities in which the Secretary makes an investment under this section to ensure that a suitable preference will be afforded members of the armed forces and their dependents in the lease or purchase, as the case may be, of a reasonable number of the housing units covered by the investment.

(e) CONGRESSIONAL NOTIFICATION REQUIRED.—Amounts in the Department of Defense Family Housing Improvement Fund or the Department of Defense Military Unaccompanied Housing Improvement Fund may be used to make a cash investment under this section in an eligible entity only after the end of the 30-day period beginning on the date the Secretary of Defense submits written notice of, and justification for, the investment to the appropriate committees of Congress or, if earlier, the end of the 14-day period beginning on the date on which a copy of the notice and justification is provided in an electronic medium pursuant to section 480 of this title.

(Added Pub. L. 104–106, div. B, title XXVIII, Sec. 2801(a)(1), Feb. 10, 1996, 110 Stat. 546; amended Pub. L. 105–85, div. B, title XXVIII, Sec. 2805, Nov. 18, 1997,

111 Stat. 1991; Pub. L. 106–65, div. B, title XXVIII, Sec. 2803(d), (h)(1), Oct. 5, 1999, 113 Stat. 849; Pub. L. 108–136, div. A, title X, Sec. 1031(a)(50), Nov. 24, 2003, 117 Stat. 1602.)

**§ 2876. Rental guarantees**

The Secretary concerned may enter into agreements with eligible entities that acquire or construct military family housing units or military unaccompanied housing units under this subchapter in order to assure—

- (1) the occupancy of such units at levels specified in the agreements; or
- (2) rental income derived from rental of such units at levels specified in the agreements.

(Added Pub. L. 104–106, div. B, title XXVIII, Sec. 2801(a)(1), Feb. 10, 1996, 110 Stat. 546; amended Pub. L. 106–65, div. B, title XXVIII, Sec. 2803(e), Oct. 5, 1999, 113 Stat. 849.)

**§ 2877. Differential lease payments**

Pursuant to an agreement entered into by the Secretary concerned and a lessor of military family housing or military unaccompanied housing to members of the armed forces, the Secretary may pay the lessor an amount in addition to the rental payments for the housing made by the members as the Secretary determines appropriate to encourage the lessor to make the housing available to members of the armed forces as military family housing or as military unaccompanied housing.

(Added Pub. L. 104–106, div. B, title XXVIII, Sec. 2801(a)(1), Feb. 10, 1996, 110 Stat. 547; amended Pub. L. 106–65, div. B, title XXVIII, Sec. 2803(f), Oct. 5, 1999, 113 Stat. 849.)

**§ 2878. Conveyance or lease of existing property and facilities**

(a) CONVEYANCE OR LEASE AUTHORIZED.—The Secretary concerned may convey or lease property or facilities (including ancillary supporting facilities) to eligible entities for purposes of using the proceeds of such conveyance or lease to carry out activities under this subchapter.

(b) INAPPLICABILITY TO PROPERTY AT INSTALLATION APPROVED FOR CLOSURE.—The authority of this section does not apply to property or facilities located on or near a military installation approved for closure under a base closure law.

(c) TERMS AND CONDITIONS.—(1) The conveyance or lease of property or facilities under this section shall be for such consideration and upon such terms and conditions as the Secretary concerned considers appropriate for the purposes of this subchapter and to protect the interests of the United States.

(2) As part or all of the consideration for a conveyance or lease under this section, the purchaser or lessor (as the case may be) shall enter into an agreement with the Secretary to ensure that a suitable preference will be afforded members of the armed forces and their dependents in the lease or sublease of a reasonable number of the housing units covered by the conveyance or lease, as the case may be, or in the lease of other suitable housing units made available by the purchaser or lessee.

(d) **INAPPLICABILITY OF CERTAIN PROPERTY MANAGEMENT LAWS.**—The conveyance or lease of property or facilities under this section shall not be subject to the following provisions of law:

- (1) Section 2667 of this title.
- (2) Subtitle I of title 40 and title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.).
- (3) Section 1302 of title 40.
- (4) Section 501 of the McKinney-Vento Homeless Assistance Act

(Added Pub. L. 104–106, div. B, title XXVIII, Sec. 2801(a)(1), Feb. 10, 1996, 110 Stat. 547; amended Pub. L. 105–85, div. A, title X, Sec. 1073(a)(60), Nov. 18, 1997, 111 Stat. 1903; Pub. L. 106–65, div. B, title XXVIII, Sec. 2803(g), Oct. 5, 1999, 113 Stat. 849; Pub. L. 107–107, div. A, title X, Sec. 1048(d)(1), Dec. 28, 2001, 115 Stat. 1227; Pub. L. 107–217, Sec. 3(b)(23), Aug. 21, 2002, 116 Stat. 1297.)

**[§ 2879. Repealed. Pub. L. 107–314, div. B, title XXVIII, Sec. 2802(c)(1), Dec. 2, 2002, 116 Stat. 2703]**

#### **§ 2880. Unit size and type**

(a) **CONFORMITY WITH SIMILAR HOUSING UNITS IN LOCALE.**—The Secretary concerned shall ensure that the room patterns and floor areas of military family housing units and military unaccompanied housing units acquired or constructed under this subchapter are generally comparable to the room patterns and floor areas of similar housing units in the locality concerned.

(b) **INAPPLICABILITY OF LIMITATIONS ON SPACE BY PAY GRADE.**—Sections 2826 and 2856 of this title shall not apply to military family housing or military unaccompanied housing units acquired or constructed under this subchapter.

(Added Pub. L. 104–106, div. B, title XXVIII, Sec. 2801(A)(1), Feb. 10, 1996, 110 Stat. 548; amended Pub. L. 108–136, div. B, title XXVIII, Sec. 2806, Nov. 24, 2003, 117 Stat. 1722; Pub. L. 109–364, div. B, title XXVIII, Sec. 2807(b), Oct. 17, 2006, 120 Stat. 2469.)

#### **§ 2881. Ancillary supporting facilities**

(a) **AUTHORITY TO ACQUIRE OR CONSTRUCT.**—Any project for the acquisition or construction of military family housing units or military unaccompanied housing units under this subchapter may include the acquisition or construction of ancillary supporting facilities for the housing units concerned.

(b) **RESTRICTION.**—A project referred to in subsection (a) may not include the acquisition or construction of an ancillary supporting facility (other than a child development center) if, as determined by the Secretary concerned, the facility is to be used for providing merchandise or services in direct competition with—

- (1) the Army and Air Force Exchange Service;
- (2) the Navy Exchange Service Command;
- (3) a Marine Corps exchange;
- (4) the Defense Commissary Agency; or
- (5) any nonappropriated fund activity of the Department of Defense for the morale, welfare, and recreation of members of the armed forces.

(Added Pub. L. 104–106, div. B, title XXVIII, Sec. 2801(a)(1), Feb. 10, 1996, 110 Stat. 548; amended Pub. L. 106–65, div. B, title XXVIII, Sec. 2804, Oct. 5, 1999,

113 Stat. 849; Pub. L. 109–163, div. B, title XXVIII, Sec. 2805(a), Jan. 6, 2006, 119 Stat. 3507.)

**§ 2881a. Pilot projects for acquisition or construction of military unaccompanied housing**

(a) PILOT PROJECTS AUTHORIZED.—The Secretary of the Navy may carry out not more than three pilot projects under the authority of this section or another provision of this subchapter to use the private sector for the acquisition or construction of military unaccompanied housing in the United States, including any territory or possession of the United States.

(b) TREATMENT OF HOUSING; ASSIGNMENT OF MEMBERS.—The Secretary of the Navy may assign members of the armed forces without dependents to housing units acquired or constructed under the pilot projects, and such housing units shall be considered as quarters of the United States or a housing facility under the jurisdiction of the Secretary for purposes of section 403 of title 37.

(c) BASIC ALLOWANCE FOR HOUSING.—(1) The Secretary of Defense may prescribe and, under section 403(n) of title 37, pay for members of the armed forces without dependents in privatized housing acquired or constructed under the pilot projects higher rates of partial basic allowance for housing than the rates authorized under paragraph (2) of such section.

(2) The partial basic allowance for housing paid for a member at a higher rate under this subsection may be paid directly to the private sector source of the housing to whom the member is obligated to pay rent or other charge for residing in such housing if the private sector source credits the amount so paid against the amount owed by the member for the rent or other charge.

(d) FUNDING.—(1) The Secretary of the Navy shall use the Department of Defense Military Unaccompanied Housing Improvement Fund to carry out activities under the pilot projects.

(2) Subject to 30 days prior notification to the appropriate committees of Congress, such additional amounts as the Secretary of Defense considers necessary may be transferred to the Department of Defense Military Unaccompanied Housing Improvement Fund from amounts appropriated for construction of military unaccompanied housing in military construction accounts. The amounts so transferred shall be merged with and be available for the same purposes and for the same period of time as amounts appropriated directly to the Fund.

(e) REPORTS.—(1) The Secretary of the Navy shall transmit to the appropriate committees of Congress a report describing—

(A) each contract for the acquisition of military unaccompanied housing that the Secretary proposes to solicit under the pilot projects;

(B) each conveyance or lease proposed under section 2878 of this title in furtherance of the pilot projects; and

(C) the proposed partial basic allowance for housing rates for each contract as they vary by grade of the member and how they compare to basic allowance for housing rates for other contracts written under the authority of the pilot programs.

(2) The report shall describe the proposed contract, conveyance, or lease and the intended method of participation of the United

States in the contract, conveyance, or lease and provide a justification of such method of participation. The report shall be submitted not later than 30 days before the date on which the Secretary issues the contract solicitation or offers the conveyance or lease.

(f) EXPIRATION.—The authority of the Secretary of the Navy to enter into a contract under the pilot programs shall expire September 30, 2009.

(Added Pub. L. 107–314, div. B, title XXVIII, Sec. 2803(a)(1), Dec. 2, 2002, 116 Stat. 2703; amended Pub. L. 109–163, div. A, title X, Sec. 1056(c)(10), Jan. 6, 2006, 119 Stat. 3440; Pub. L. 109–364, div. B, title XXVIII, Sec. 2812, Oct. 17, 2006, 120 Stat. 2473.)

### **§ 2882. Assignment of members of the armed forces to housing units**

(a) IN GENERAL.—The Secretary concerned may assign members of the armed forces to housing units acquired or constructed under this subchapter.

(b) EFFECT OF CERTAIN ASSIGNMENTS ON ENTITLEMENT TO HOUSING ALLOWANCES.—(1) Except as provided in paragraph (2), housing referred to in subsection (a) shall be considered as quarters of the United States or a housing facility under the jurisdiction of a uniformed service for purposes of section 403 of title 37.

(2) A member of the armed forces who is assigned in accordance with subsection (a) to a housing unit not owned or leased by the United States shall be entitled to a basic allowance for housing under section 403 of title 37.

(c) LEASE PAYMENTS THROUGH PAY ALLOTMENTS.—The Secretary concerned may require members of the armed forces who lease housing in housing units acquired or constructed under this subchapter to make lease payments for such housing pursuant to allotments of the pay of such members under section 701 of title 37.

(Added Pub. L. 104–106, div. B, title XXVIII, Sec. 2801(a)(1), Feb. 10, 1996, 110 Stat. 548; amended Pub. L. 105–85, div. A, title VI, Sec. 603(d)(2)(C), Nov. 18, 1997, 111 Stat. 1783.)

### **§ 2883. Department of Defense Housing Funds**

(a) ESTABLISHMENT.—There are hereby established on the books of the Treasury the following accounts:

(1) The Department of Defense Family Housing Improvement Fund.

(2) The Department of Defense Military Unaccompanied Housing Improvement Fund.

(b) COMMINGLING OF FUNDS PROHIBITED.—(1) The Secretary of Defense shall administer each Fund separately.

(2) Amounts in the Department of Defense Family Housing Improvement Fund may be used only to carry out activities under this subchapter with respect to military family housing.

(3) Amounts in the Department of Defense Military Unaccompanied Housing Improvement Fund may be used only to carry out activities under this subchapter with respect to military unaccompanied housing.

(c) CREDITS TO FUNDS.—(1) There shall be credited to the Department of Defense Family Housing Improvement Fund the following:

- (A) Amounts authorized for and appropriated to that Fund.
  - (B) Subject to subsection (f), any amounts that the Secretary of Defense transfers, in such amounts as provided in appropriation Acts, to that Fund from amounts authorized and appropriated to the Department of Defense for the acquisition, improvement, or construction of military family housing.
  - (C) Proceeds from the conveyance or lease of property or facilities under section 2878 of this title for the purpose of carrying out activities under this subchapter with respect to military family housing.
  - (D) Income derived from any activities under this subchapter with respect to military family housing, including interest on loans made under section 2873 of this title, income and gains realized from investments under section 2875 of this title, and any return of capital invested as part of such investments.
  - (E) Any amounts that the Secretary of the Navy transfers to that Fund pursuant to section 2814(i)(3) of this title, subject to the restrictions on the use of the transferred amounts specified in that section.
  - (F) Any amounts that the Secretary concerned transfers to that Fund pursuant to section 2869 of this title.
- (2) There shall be credited to the Department of Defense Military Unaccompanied Housing Improvement Fund the following:
- (A) Amounts authorized for and appropriated to that Fund.
  - (B) Subject to subsection (f), any amounts that the Secretary of Defense transfers, in such amounts as provided in appropriation Acts, to that Fund from amounts authorized and appropriated to the Department of Defense for the acquisition or construction of military unaccompanied housing.
  - (C) Proceeds from the conveyance or lease of property or facilities under section 2878 of this title for the purpose of carrying out activities under this subchapter with respect to military unaccompanied housing.
  - (D) Income derived from any activities under this subchapter with respect to military unaccompanied housing, including interest on loans made under section 2873 of this title, income and gains realized from investments under section 2875 of this title, and any return of capital invested as part of such investments.
  - (E) Any amounts that the Secretary of the Navy transfers to that Fund pursuant to section 2814(i)(3) of this title, subject to the restrictions on the use of the transferred amounts specified in that section.
  - (F) Any amounts that the Secretary concerned transfers to that Fund pursuant to section 2869 of this title.
- (d) USE OF AMOUNTS IN FUNDS.—(1) In such amounts as provided in appropriation Acts and except as provided in subsection (e), the Secretary of Defense may use amounts in the Department of Defense Family Housing Improvement Fund to carry out activities under this subchapter with respect to military family housing,

including activities required in connection with the planning, execution, and administration of contracts entered into under the authority of this subchapter. The Secretary may also use for expenses of activities required in connection with the planning, execution, and administration of such contracts funds that are otherwise available to the Department of Defense for such types of expenses.

(2) In such amounts as provided in appropriation Acts and except as provided in subsection (e), the Secretary of Defense may use amounts in the Department of Defense Military Unaccompanied Housing Improvement Fund to carry out activities under this subchapter with respect to military unaccompanied housing, including activities required in connection with the planning, execution, and administration of contracts entered into under the authority of this subchapter. The Secretary may also use for expenses of activities required in connection with the planning, execution, and administration of such contracts funds that are otherwise available to the Department of Defense for such types of expenses.

(3) Amounts made available under this subsection shall remain available until expended. The Secretary of Defense may transfer amounts made available under this subsection to the Secretaries of the military departments to permit such Secretaries to carry out the activities for which such amounts may be used.

(e) LIMITATION ON OBLIGATIONS.—(1) The Secretary may not incur an obligation under a contract or other agreement entered into under this subchapter in excess of the unobligated balance, at the time the contract is entered into, of the Fund required to be used to satisfy the obligation.

(2) The Funds established under subsection (a) shall be the sole source of funds for activities carried out under this subchapter.

(f) NOTIFICATION REQUIRED FOR TRANSFERS.—A transfer of appropriated amounts to a Fund under paragraph (1)(B) or (2)(B) of subsection (c) may be made only after the end of the 30-day period beginning on the date the Secretary of Defense submits written notice of, and justification for, the transfer to the appropriate committees of Congress or, if earlier, the end of the 14-day period beginning on the date on which a copy of the notice and justification is provided in an electronic medium pursuant to section 480 of this title.

(Added Pub. L. 104–106, div. B, title XXVIII, Sec. 2801(a)(1), Feb. 10, 1996, 110 Stat. 548; amended Pub. L. 104–201, div. B, title XXVIII, Sec. 2804, Sept. 23, 1996, 110 Stat. 2788; Pub. L. 106–65, div. B, title XXVIII, Sec. 2802(b), Oct. 5, 1999, 113 Stat. 848; Pub. L. 108–136, div. A, title X, Sec. 1031(a)(51), div. B, title XXVIII, Sec. 2805(c), Nov. 24, 2003, 117 Stat. 1603, 1721; Pub. L. 108–375, div. B, title XXVIII, Sec. 2805(a), Oct. 28, 2004, 118 Stat. 2122; Pub. L. 109–163, div. B, title XXVIII, Sec. 2806(a), (b), Jan. 6, 2006, 119 Stat. 3507.)

**§ 2883a. Funds for housing allowances of members of the armed forces assigned to certain military family housing units**

(a) AUTHORITY TO TRANSFER FUNDS TO COVER HOUSING ALLOWANCES.—During the fiscal year in which a contract is awarded for the acquisition or construction of military family housing units under this subchapter that are not to be owned by the United States, the Secretary of Defense may transfer the amount determined under subsection (b) with respect to such housing from

appropriations available for support of military housing for the armed force concerned for that fiscal year to appropriations available for pay and allowances of military personnel of that same armed force for that same fiscal year.

(b) AMOUNT TRANSFERRED.—The total amount authorized to be transferred under subsection (a) in connection with a contract under this subchapter may not exceed an amount equal to any additional amounts payable during the fiscal year in which the contract is awarded to members of the armed forces assigned to the acquired or constructed housing units as basic allowance for housing under section 403 of title 37 that would not otherwise have been payable to such members if not for assignment to such housing units.

(c) TRANSFERS SUBJECT TO APPROPRIATIONS.—The transfer of funds under the authority of subsection (a) is limited to such amounts as may be provided in advance in appropriations Acts.

(Added Pub. L. 107–107, div. B, title XXVIII, Sec. 2804(a), Dec. 28, 2001, 115 Stat. 1305.)

#### § 2884. Reports

(a) PROJECT REPORTS.—(1) The Secretary of Defense shall transmit to the appropriate committees of Congress a report describing—

(A) each contract for the acquisition or construction of family housing units or unaccompanied housing units that the Secretary proposes to solicit under this subchapter; and

(B) each conveyance or lease proposed under section 2878 of this title.

(2) For each proposed contract, conveyance, or lease described in paragraph (1), the report required by such paragraph shall include the following:

(A) A description of the contract, conveyance, or lease, including a summary of the terms of the contract, conveyance, or lease.

(B) A description of the authorities to be utilized in entering into the contract, conveyance, or lease and the intended method of participation of the United States in the contract, conveyance, or lease, including a justification of the intended method of participation.

(C) A statement of the scored cost of the contract, conveyance, or lease, as determined by the Office of Management and Budget.

(D) A statement of the United States funds required for the contract, conveyance, or lease and a description of the source of such funds, including a description of the specific construction, acquisition, or improvement projects from which funds were transferred to the Funds established under section 2883 of this title in order to finance the contract, conveyance, or lease.

(E) An economic assessment of the life cycle costs of the contract, conveyance, or lease, including an estimate of the amount of United States funds that would be paid over the life of the contract, conveyance, or lease from amounts derived from payments of government allowances, including the basic

allowance for housing under section 403 of title 37, if the housing affected by the project were fully occupied by military personnel over the life of the contract, conveyance, or lease.

(3)(A) In the case of a contract described in paragraph (1) proposed to be entered into with a private party, the report shall specify whether the contract will or may include a guarantee (including the making of mortgage or rental payments) by the Secretary to the private party in the event of—

(i) the closure or realignment of the installation for which housing will be provided under the contract;

(ii) a reduction in force of units stationed at such installation; or

(iii) the extended deployment of units stationed at such installation.

(B) If the contract will or may include such a guarantee, the report shall also—

(i) describe the nature of the guarantee; and

(ii) assess the extent and likelihood, if any, of the liability of the United States with respect to the guarantee.

(4) The report shall be submitted not later than 30 days before the date on which the Secretary issues the contract solicitation or offers the conveyance or lease.

(b) ANNUAL REPORTS.—The Secretary of Defense shall include each year in the materials that the Secretary submits to Congress in support of the budget submitted by the President pursuant to section 1105 of title 31 the following:

(1) A separate report on the expenditures and receipts during the preceding fiscal year covering each of the Funds established under section 2883 of this title, including a description of the specific construction, acquisition, or improvement projects from which funds were transferred and the privatization projects or contracts to which those funds were transferred. Each report shall also include, for each military department or defense agency, a description of all funds to be transferred to such Funds for the current fiscal year and the next fiscal year.

(2) A methodology for evaluating the extent and effectiveness of the use of the authorities under this subchapter during such preceding fiscal year, and such recommendations as the Secretary considers necessary for improving the extent and effectiveness of the use of such authorities in the future.

(3) A review of activities of the Secretary under this subchapter during such preceding fiscal year, shown for military family housing, military unaccompanied housing, dual military family housing and military unaccompanied housing, and ancillary supporting facilities.

(4) If a contract for the acquisition or construction of military family housing, military unaccompanied housing, or dual military family housing and military unaccompanied housing entered into during the preceding fiscal year did not include the acquisition or construction of the types of ancillary supporting facilities specifically referred to in section 2871(1) of this title, a explanation of the reasons why such ancillary supporting facilities were not included.

(5) A report setting forth, by armed force—

(A) an estimate of the amounts of basic allowance for housing under section 403 of title 37 that will be paid, during the current fiscal year and the fiscal year for which the budget is submitted, to members of the armed forces living in housing provided under the authorities in this subchapter; and

(B) the number of units of military family housing and military unaccompanied housing upon which the estimate under subparagraph (A) for the current fiscal year and the next fiscal year is based.

(6) A description of the Secretary's plans for housing privatization activities under this subchapter: (A) during the fiscal year for which the budget is submitted; and (B) during the period covered by the then-current future-years defense plan under section 221 of this title.

(Added Pub. L. 104–106, div. B, title XXVIII, Sec. 2801(a)(1), Feb. 10, 1996, 110 Stat. 550; amended Pub. L. 108–136, div. B, title XXVIII, Sec. 2807, Nov. 24, 2003, 117 Stat. 1722; Pub. L. 108–375, div. B, title XXVIII, Sec. 2806, Oct. 28, 2004, 118 Stat. 2122; Pub. L. 109–163, div. B, title XXVIII, Sec. 2806(c), Jan. 6, 2006, 119 Stat. 3507.)

**【§ 2885. Repealed. Pub. L. 108–375, div. B, title XXVIII, Sec. 2805(b)(1), Oct. 28, 2004, 118 Stat. 2122】**