

such term in subsection (d) of section 2765 of this title.

(h) Limitation on use of funds for direct commercial contracts

Of the amounts made available for a fiscal year to carry out this section, not more than \$100,000,000 for such fiscal year may be made available for countries other than Israel and Egypt for the purpose of financing the procurement of defense articles, defense services, and design and construction services that are not sold by the United States Government under this chapter.

(Pub. L. 90-629, ch. 2, §23, Oct. 22, 1968, 82 Stat. 1324; Pub. L. 93-559, §45(a)(2), Dec. 30, 1974, 88 Stat. 1813; Pub. L. 94-329, title II, §208(a), June 30, 1976, 90 Stat. 739; Pub. L. 96-533, title I, §105(b)(3), Dec. 16, 1980, 94 Stat. 3134; Pub. L. 99-83, title I, §102, Aug. 8, 1985, 99 Stat. 195; Pub. L. 100-202, §101(e) [title V, §572], Dec. 22, 1987, 101 Stat. 1329-131, 1329-176; Pub. L. 101-513, title V, §580, Nov. 5, 1990, 104 Stat. 2045; Pub. L. 104-164, title I, §102(a)-(c), July 21, 1996, 110 Stat. 1422.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a), (g)(1), and (h), was in the original “this Act”, meaning Pub. L. 90-629, Oct. 22, 1968, 82 Stat. 1321, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of this title and Tables.

The Foreign Assistance Act of 1961, referred to in subsec. (g)(1), is Pub. L. 87-195, Sept. 4, 1961, 75 Stat. 424, as amended, which is classified principally to chapter 32 (§2151 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2151 of this title and Tables.

AMENDMENTS

1996—Subsecs. (f) to (g). Pub. L. 104-164 added subsecs. (f) to (g).

1990—Subsec. (e). Pub. L. 101-513 added subsec. (e).

1987—Subsec. (a). Pub. L. 100-202 inserted sentence at end authorizing financing to Israel and Egypt for commercial leasing of defense articles, not including Major Defense Equipment, with exception for certain aircraft, upon a Presidential determination that there are compelling foreign policy or national defense reasons for such leasing.

1985—Pub. L. 99-83 amended section generally. Prior to amendment, section read as follows: “The President is authorized to finance procurements of defense articles, defense services, and design and construction services by friendly foreign countries and international organizations on terms requiring the payment to the United States Government in United States dollars of—

“(1) the value of such articles or services within a period not to exceed twelve years after the delivery of such articles or the rendering of such services; and

“(2) interest on the unpaid balance of that obligation for payment of the value of such articles or services, at a rate equivalent to the current average interest rate, as of the last day of the month preceding the financing of such procurement, that the United States Government pays on outstanding marketable obligations of comparable maturity, unless the President certifies to Congress that the national interest requires a lesser rate of interest and states in the certification the lesser rate so required and the justification therefor.”

1980—Pub. L. 96-533 substituted “defense articles, defense services, and design and construction services” for “defense articles and defense services”.

1976—Par. (1). Pub. L. 94-329 substituted “twelve years” for “ten years”.

1974—Pub. L. 93-559 incorporated existing provisions in cl. (1) and added cl. (2).

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-83 effective Oct. 1, 1985, see section 1301 of Pub. L. 99-83, set out as a note under section 2151-1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94-329, title II, §208(b), June 30, 1976, 90 Stat. 739, provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to financing under agreements entered into on or after the date of enactment of this Act [June 30, 1976] for the procurement of defense articles to be delivered, or defense services to be rendered, after such date.”

DELEGATION OF FUNCTIONS

Functions of President under this section and section 580 of Pub. L. 100-461, see Similar Provisions note below, except those functions relating to determinations of a rate of interest which is less than the market rate, delegated to Secretary of Defense, to be exercised in consultation with Secretary of State and Secretary of the Treasury, by section 1(e) of Ex. Ord. No. 11958, Jan. 18, 1977, 42 F.R. 4311, as amended, set out as a note under section 2751 of this title.

SIMILAR PROVISIONS

Provisions similar to those in last sentence of subsec. (a) of this section which were applicable to NATO and major non-NATO allies in addition to Israel and Egypt were contained in the following appropriation acts and were not repeated in subsequent appropriation acts:

Pub. L. 106-113, div. B, §1000(a)(2) [title V, §528], Nov. 29, 1999, 113 Stat. 1535, 1501A-90.

Pub. L. 105-277, div. A, §101(d) [title V, §529], Oct. 21, 1998, 112 Stat. 2681-150, 2681-178.

Pub. L. 105-118, title V, §528, Nov. 26, 1997, 111 Stat. 2413.

Pub. L. 104-208, div. A, title I, §101(c) [title V, §528], Sept. 30, 1996, 110 Stat. 3009-121, 3009-149.

Pub. L. 104-107, title V, §528, Feb. 12, 1996, 110 Stat. 730.

Pub. L. 103-306, title V, §530, Aug. 23, 1994, 108 Stat. 1635.

Pub. L. 103-87, title V, §530, Sept. 30, 1993, 107 Stat. 954.

Pub. L. 102-391, title V, §558, Oct. 6, 1992, 106 Stat. 1676.

Pub. L. 101-513, title V, §561, Nov. 5, 1990, 104 Stat. 2026.

Pub. L. 101-167, title V, §571, Nov. 21, 1989, 103 Stat. 1245.

Pub. L. 100-461, title V, §580, Oct. 1, 1988, 102 Stat. 2268-48.

§ 2764. Guaranties

(a) Guaranty against political and credit risks of nonpayment

The President may guarantee any individual, corporation, partnership, or other juridical entity doing business in the United States (excluding United States Government agencies other than the Federal Financing Bank) against political and credit risks of nonpayment arising out of their financing of credit sales of defense articles, defense services, and design and construction services to friendly countries and international organizations. Fees shall be charged for such guaranties.

(b) Sale of promissory notes of friendly countries and international organizations; guaranty of payment

The President may sell to any individual, corporation, partnership, or other juridical entity

(excluding United States Government agencies other than the Federal Financing Bank) promissory notes issued by friendly countries and international organizations as evidence of their obligations to make repayments to the United States on account of credit sales financed under section 2763 of this title, and may guarantee payment thereof.

(c) Guaranty Reserve Fund; payment of guaranties; guaranty reserve below prescribed amount

Funds obligated under this section before December 16, 1980, which constitute a single reserve for the payment of claims under guaranties issued under this section shall remain available for expenditure for the purposes of this section on and after that date. That single reserve may, on and after August 8, 1985, be referred to as the "Guaranty Reserve Fund". Funds provided for necessary expenses to carry out the provisions of section 2763 of this title and of section 2311 of this title may be used to pay claims on the Guaranty Reserve Fund to the extent that funds in the Guaranty Reserve Fund are inadequate for that purpose. For purposes of any provision in this chapter or any other Act relating to a prohibition or limitation on the availability of funds under this chapter, whenever a guaranty is issued under this section, the principal amount of the loan so guaranteed shall be deemed to be funds made available for use under this chapter. Any guaranties issued hereunder shall be backed by the full faith and credit of the United States.

(Pub. L. 90-629, ch. 2, § 24, Oct. 22, 1968, 82 Stat. 1324; Pub. L. 93-189, § 25(4), Dec. 17, 1973, 87 Stat. 730; Pub. L. 93-559, § 45(a)(3), (4), Dec. 30, 1974, 88 Stat. 1814; Pub. L. 96-533, title I, §§ 104(a), 105(b)(3), Dec. 16, 1980, 94 Stat. 3132, 3134; Pub. L. 99-83, title I, § 106(b), (c), Aug. 8, 1985, 99 Stat. 196; Pub. L. 100-71, title I, July 11, 1987, 101 Stat. 409.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (c), was in the original "this Act", meaning Pub. L. 90-629, Oct. 22, 1968, 82 Stat. 1321, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of this title and Tables.

AMENDMENTS

1987—Subsec. (c). Pub. L. 100-71, which directed that the second par. be struck out and a new one-sentence par. be inserted, was executed to reflect the probable intent of Congress by substituting the new sentence for the third sentence which read as follows: "Funds authorized to be appropriated by section 2771(a) of this title to carry out this chapter which are allocated for credits at market rates of interest may be used to pay claims under such guaranties to the extent funds in the Guaranty Reserve Fund are inadequate for that purpose."

1985—Subsec. (c). Pub. L. 99-83 inserted provisions authorizing the single reserve to be termed the "Guaranty Reserve Fund", and substituted provisions relating to payment of claims under guaranties, for provisions relating to report to Congress respecting any payment of claims reducing the single reserve.

1980—Subsec. (a). Pub. L. 96-533, § 105(b)(3), substituted "defense articles, defense services, and design and construction services" for "defense articles and defense services".

Subsec. (c). Pub. L. 96-533, § 104(a), substituted provisions making funds obligated before Dec. 16, 1980 available for expenditure after such date for payment of guaranteed claims, requiring the President to report to Congress the reduction of the single reserve below \$750,000,000 with recommendation for an appropriations authorization of additional funds and deeming the principal amount of a guaranteed loan to be funds made available for use under this chapter for purposes of any limitation on availability of funds for prior provisions for obligation of available funds in an amount equal to 10 per centum of principal amount of contractual liability related to a guaranty under this section, making such funds a single reserve for payment of guaranteed claims, and providing for transfer of any funds deobligated during any current fiscal year to the general fund of the Treasury.

1974—Subsecs. (a), (b). Pub. L. 93-559, § 45(a)(3), inserted "other than the Federal Financing Bank" in parenthetical text.

Subsec. (c). Pub. L. 93-559, § 45(a)(4), substituted "10" for "25" in two places.

1973—Subsec. (c). Pub. L. 93-189 substituted "to carry out this chapter" for "pursuant to section 2771 of this title" and inserted "principal amount of" before "contractual liability" wherever appearing.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-83 effective Oct. 1, 1985, see section 1301 of Pub. L. 99-83, set out as a note under section 2151-1 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT; ADJUSTMENT OF OBLIGATIONS CHARGED AGAINST APPROPRIATIONS; CREDIT FOR FISCAL YEAR 1975 APPROPRIATIONS

Pub. L. 93-559, § 45(b), Dec. 30, 1974, 88 Stat. 1815, provided that: "The amendment made by paragraph (4) of subsection (a) [amending this section] shall take effect on July 1, 1974. Obligations initially charged against appropriations made available for purposes authorized by section 31(a) of the Foreign Military Sales Act [section 2771(a) of this title] after June 30, 1974, and prior to the enactment of this section [Dec. 30, 1974] in an amount equal to 25 per centum of the principal amount of contractual liability related to guaranties issued pursuant to section 24(a) of that Act [subsec. (a) of this section] shall be adjusted to reflect such amendment with proper credit to the appropriations made available in the fiscal year 1975 to carry out that Act [this chapter]."

DELEGATION OF FUNCTIONS

Functions of President under this section delegated to Secretary of Defense, with Secretary of Defense required to consult with Secretary of State and Secretary of the Treasury in implementing delegated functions, by section 1(f) of Ex. Ord. No. 11958, Jan. 18, 1977, 42 F.R. 4311, as amended, set out as a note under section 2751 of this title.

FOREIGN MILITARY SALES DEBT REFORM

Pub. L. 102-145, § 118, as added by Pub. L. 102-266, § 102, Apr. 1, 1992, 106 Stat. 93, provided that the authority and conditions provided under the heading "Foreign Military Sales Debt Reform" in H.R. 2621, One Hundred Second Congress, 1st session, as passed by the House of Representatives on June 19, 1991, shall be applicable to funds appropriated by Pub. L. 102-145 (and are hereby enacted) in lieu of the authority and conditions provided under the heading "Foreign Military Sales Debt Reform" in Pub. L. 101-513 [set out below]. Provisions under the heading "Foreign Military Sales Debt Reform" in H.R. 2621, as referred to above, provided that: "Subsection (b) under the heading 'Foreign Military Sales Debt Reform' in the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 [Pub. L. 100-202, § 101(e) [title III, § 301], set out below], is hereby repealed."

Pub. L. 101-513, title III, Nov. 5, 1990, 104 Stat. 1999, provided that: "Funds made available by the Foreign

Operations, Export Financing, and Related Programs Appropriations Act, 1988 [Pub. L. 100-202, §101(e) [title III], set out below], for obligation and expenditure after October 1, 1988, subject to a Presidential budget request, under the heading 'Foreign Military Sales Debt Reform', subsection (b) 'Interest Rate Reduction' shall be available, subject to the same conditions and provisions, only after October 1, 1991." Similar provisions were contained in the following prior appropriation acts:

Pub. L. 101-167, title III, Nov. 21, 1989, 103 Stat. 1214.

Pub. L. 100-461, title III, Oct. 1, 1988, 102 Stat. 2268-18.

Pub. L. 100-202, §101(e) [title III], Dec. 22, 1987, 101 Stat. 1329-131, 1329-148, as amended by Pub. L. 101-167, title III, Nov. 21, 1989, 103 Stat. 1214; Pub. L. 102-145, §118, as added by Pub. L. 102-266, §102, Apr. 1, 1992, 106 Stat. 93, provided in part that:

"(a) REFINANCING.—Notwithstanding any other provision of law, the President is authorized during fiscal years 1988 through 1991 to transfer existing United States guaranties of outstanding Foreign Military Sales (FMS) credit debt, or to issue new guaranties, either of which would be applied to loans, bonds, notes or other obligations made or issued (as the case may be) by private United States financial institutions (the private lender) to finance the prepayment at par of the principal amounts maturing after September 30, 1989 of existing FMS loans bearing interest rates of eight percent or higher, and arrearages thereon. The loans, bonds, notes or other obligations are hereinafter referred to as the 'private loan': *Provided*, That such guaranties which are transferred or are made pursuant to paragraph (a) shall cover no more and no less than ninety percent of the private loan or any portion or derivative thereof plus unpaid accrued interest and arrearages, if any, outstanding at the time of guaranty transfer or extension: *Provided further*, That the total amount of the guaranty of the private loan cannot exceed ninety percent of the outstanding principal, unpaid accrued interest and arrearages, if any, at any time: *Provided further*, That of the total amount of the private loan, the ninety percent guaranteed portion of the private loan cannot be separated from the private loan at any time: *Provided further*, That no sums in addition to the payment of the outstanding principal amounts maturing after September 30, 1989 of the loan (or advance), plus unpaid accrued interest thereon, and arrearages, if any, shall be charged by the private lender or the Federal Financing Bank as a result of such prepayment against the borrower, the guarantor, or the Guaranty Reserve Fund (GRF), except that the private lender may include, in the interest rate charged, a standard fee to cover costs, such fee which will be set at prevailing market rates, and no guaranty fee shall be charged on guarantees transferred or issued pursuant to this provision: *Provided further*, That the terms of guaranties transferred or issued under this paragraph shall be exactly the same as the existing loans or guarantees, except as modified by this paragraph and including but not limited to the final maturity and principal and interest payment structure of the existing loans which shall not be altered, except that the repayments of the private loan issued debt may be consolidated into two payments per year: *Provided further*, That the private loan or guarantees transferred or issued pursuant to this paragraph shall be fully and freely transferable, except that any guaranty transferred or extended shall cease to be effective if the private loan or any derivative thereof is to be used to provide significant support for any non-registered obligation: *Provided further*, That for purposes of sections 23 and 24 of the Arms Export Control Act (AECA) [22 U.S.C. 2763, 2764], the term 'defense services' shall be deemed to include the refinancing of FMS debt outstanding at the date of the enactment of this Act [Dec. 22, 1987]: *Provided further*, That not later than ninety days after the enactment of this Act, the Secretary of the Treasury (Secretary) shall issue regulations to carry out the purposes of this heading and that in issuing such regulations, the Secretary shall (1) facilitate the prepayment

of loans and loan advances hereunder, (2) provide for full processing of each application within thirty days of its submission to the Secretary, and (3) except as provided in section 24(a) of the AECA, impose no restriction that increases the cost to borrowers of obtaining private financing for prepayment hereunder or that inhibits the ability of the borrower to enter into prepayment arrangements hereunder: *Provided further*, That the Secretary of State shall transmit to the Committee on Foreign Affairs of the House of Representatives, the Committee on Foreign Relations of the Senate, and the Committees on Appropriations of the House of Representatives and Senate, a copy of the text of any agreement entered into pursuant to this section not more than thirty days after its entry into force, together with a description of the transaction.

"[(b) Repealed. Pub. L. 102-145, §118, as added by Pub. L. 102-266, §102, Apr. 1, 1992, 106 Stat. 93.]

"(c) ARREARAGES.—(1) None of the funds provided pursuant to the Arms Export Control Act (relating to Foreign Military Sales credits) [22 U.S.C. 2751 et seq.] or pursuant to chapter 2 of part II of the Foreign Assistance Act (relating to the Military Assistance program) [22 U.S.C. 2311 et seq.] shall be made available to any country for which one or more loans is refinanced pursuant to paragraph (a) of this heading and which is in default for a period in excess of ninety days in payment of principal or interest on (A) any loan made to such country guaranteed by the United States pursuant to paragraph (a) of this heading, and (B) any other loan issued pursuant to the Arms Export Control Act outstanding on the date of enactment of this provision [Dec. 22, 1987].

"(2) In conjunction with any interest rate reduction pursuant to the authority provided in paragraph (b) of this heading, the President shall require the country to commit in writing that within two years of the effective date of the interest rate reduction it will be no more than ninety days in arrears on the repayment of principal and interest on all loans for which the interest rate is thus reduced and will remain no more than ninety days in arrears for the remaining life of all such loans. None of the funds provided pursuant to the Arms Export Control Act [22 U.S.C. 2751 et seq.] or chapter 2 of part II of the Foreign Assistance Act [22 U.S.C. 2311 et seq.] shall be made available to any country during any period in which it fails to comply with such commitment.

"(d) PURPOSES AND REPORTS.—The authorities of paragraphs (a) and (b) of this heading may be utilized by the President in efforts to negotiate base rights and base access agreements, and for other bilateral foreign policy matters: *Provided further*, That the Secretaries of Defense, State, and Treasury shall transmit to the Committee on Foreign Affairs of the House of Representatives, the Committee on Foreign Relations of the Senate, and the Committees on Appropriations of the House of Representatives and Senate a joint report detailing the United States financial and foreign policy purposes served by implementation of this authority on a country by country basis not later than March 1, 1989, and a second joint report not later than August 1, 1989."

§ 2765. Annual estimate and justification for sales program

(a) Report to Congress; contents

Except as provided in subsection (d)¹ of this section, no later than February 1 of each year, the President shall transmit to the appropriate congressional committees, as a part of the annual presentation materials for security assistance programs proposed for the next fiscal year, a report which sets forth—

- (1) an arms sales proposal covering all sales and licensed commercial exports under this

¹ See References in Text note below.