

(1) sell, rent, lend, or give samples, drawings, and manufacturing or other information (subject to the rights of third parties) to any person or entity;

(2) sell, rent, or lend government equipment or materials to any person or entity—

(A) for use in independent research and development programs, subject to the condition that the equipment or material be used exclusively for such research and development; or

(B) for use in demonstrations to a friendly foreign government;

(3) make available to any person or entity, at an appropriate fee, the services of any government laboratory, center, range, or other testing facility for the testing of materials, equipment, models, computer software, and other items; and

(4) make available to any person or entity, through leases, contracts, or other appropriate arrangements, facilities, services, and equipment of any government laboratory, research center, or range, if the facilities, services, and equipment provided will not be in direct competition with the domestic private sector.

(b) CONFIDENTIALITY OF TEST RESULTS.—The results of tests performed with services made available under subsection (a)(3) are confidential and may not be disclosed outside the Federal Government without the consent of the persons for whom the tests are performed.

(c) FEES.—Fees made available under subsections (a)(3) and (a)(4) shall be established in the regulations prescribed pursuant to subsection (a). Such fees may not exceed the amount necessary to recoup the direct and indirect costs involved, such as direct costs of utilities, contractor support, and salaries of personnel that are incurred by the United States to provide for the testing.

(d) USE OF FEES.—Fees received under subsections (a)(3) and (a)(4) may be credited to the appropriations or other funds of the activity making such services available.

(Added Pub. L. 103-160, div. A, title VIII, § 822(b)(1), Nov. 30, 1993, 107 Stat. 1705, § 2541; renumbered § 2539b, Pub. L. 103-337, div. A, title X, § 1070(a)(13)(A), Oct. 5, 1994, 108 Stat. 2856; amended Pub. L. 103-355, title III, § 3022, Oct. 13, 1994, 108 Stat. 3333; Pub. L. 104-106, div. A, title VIII, § 804, div. D, title XLIII, § 4321(a)(8), Feb. 10, 1996, 110 Stat. 390, 671; Pub. L. 106-65, div. A, title X, § 1066(a)(23), Oct. 5, 1999, 113 Stat. 771; Pub. L. 110-181, div. A, title II, § 232, Jan. 28, 2008, 122 Stat. 46.)

AMENDMENTS

2008—Subsec. (a)(4). Pub. L. 110-181, § 232(1), added par. (4).

Subsec. (c). Pub. L. 110-181, § 232(2), struck out “for services” before “made available” and substituted “subsections (a)(3) and (a)(4)” for “subsection (a)(3)”.

Subsec. (d). Pub. L. 110-181, § 232(3), struck out “for services made available” after “Fees received” and substituted “subsections (a)(3) and (a)(4)” for “subsection (a)(3)”.

1999—Subsec. (a). Pub. L. 106-65 substituted “Secretaries of the military departments” for “secretaries of the military departments”.

1996—Subsec. (a). Pub. L. 104-106, § 4321(a)(8), made technical correction to Pub. L. 103-355, § 3022. See 1994 Amendment note below.

Subsec. (c). Pub. L. 104-106, § 804, inserted “and indirect” after “recoup the direct”.

1994—Pub. L. 103-337 renumbered section 2541 of this title as this section.

Subsec. (a). Pub. L. 103-355, § 3022, as amended by Pub. L. 104-106, § 4321(a)(8), inserted “rent,” after “sell,” in par. (1) and “, rent,” after “sell” in par. (2).

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-106, div. D, title XLIII, § 4321(a), Feb. 10, 1996, 110 Stat. 671, provided that the amendment made by that section is effective as of Oct. 13, 1994, and as if included in Pub. L. 103-355 as enacted.

SUBCHAPTER VI—DEFENSE EXPORT LOAN GUARANTEES

Sec.	
2540.	Establishment of loan guarantee program.
2540a.	Transferability.
2540b.	Limitations.
2540c.	Fees charged and collected.
2540d.	Definitions.

§ 2540. Establishment of loan guarantee program

(a) ESTABLISHMENT.—In order to meet the national security objectives in section 2501(a) of this title, the Secretary of Defense shall establish a program under which the Secretary may issue guarantees assuring a lender against losses of principal or interest, or both principal and interest, arising out of the financing of the sale or long-term lease of defense articles, defense services, or design and construction services to a country referred to in subsection (b).

(b) COVERED COUNTRIES.—The authority under subsection (a) applies with respect to the following countries:

(1) A member nation of the North Atlantic Treaty Organization (NATO).

(2) A country designated as of March 31, 1995, as a major non-NATO ally pursuant to section 2350a(i)(3) of this title, as in effect on that date.

(3) A country in Central Europe that, as determined by the Secretary of State—

(A) has changed its form of national government from a nondemocratic form of government to a democratic form of government since October 1, 1989; or

(B) is in the process of changing its form of national government from a nondemocratic form of government to a democratic form of government.

(4) A noncommunist country that was a member nation of the Asia Pacific Economic Cooperation (APEC) as of October 31, 1993.

(c) AUTHORITY SUBJECT TO PROVISIONS OF APPROPRIATIONS.—The Secretary may guarantee a loan under this subchapter only to such extent or in such amounts as may be provided in advance in appropriations Acts.

(Added Pub. L. 104-106, div. A, title XIII, § 1321(a)(1), Feb. 10, 1996, 110 Stat. 475; amended Pub. L. 108-375, div. A, title X, § 1084(d)(21), Oct. 28, 2004, 118 Stat. 2062.)

PRIOR PROVISIONS

A prior section 2540, acts Aug. 10, 1956, ch. 1041, 70A Stat. 141, § 2511; renumbered § 2521, Nov. 5, 1990, Pub. L. 101-510, div. A, title VIII, § 823(a)(2), 104 Stat. 1600; renumbered § 2540, Dec. 5, 1991, Pub. L. 102-190, div. A,

title VIII, §821(e)(3), 105 Stat. 1432, related to availability or issuance to reserve components of supplies, services, and facilities of armed forces, prior to repeal by Pub. L. 103-337, div. A, title XVI, §§1664(c)(2), 1691, Oct. 5, 1994, 108 Stat. 3012, 3026, effective Dec. 1, 1994. See section 18502 of this title.

Another prior section 2540 was renumbered section 2539a of this title.

AMENDMENTS

2004—Subsec. (b)(2). Pub. L. 108-375 inserted “, as in effect on that date” before period at end.

AUTHORITY TO ISSUE LOAN GUARANTEES

Pub. L. 108-287, title VIII, §8065, Aug. 5, 2004, 118 Stat. 985, provided that: “To the extent authorized by subchapter VI of chapter 148 of title 10, United States Code, for the current fiscal year and hereafter the Secretary of Defense may issue loan guarantees in support of United States defense exports not otherwise provided for: *Provided*, That the total contingent liability of the United States for guarantees issued under the authority of this section may not exceed \$15,000,000,000: *Provided further*, That the exposure fees charged and collected by the Secretary for each guarantee shall be paid by the country involved and shall not be financed as part of a loan guaranteed by the United States: *Provided further*, That the Secretary shall provide quarterly reports to the Committees on Appropriations, Armed Services, and Foreign Relations of the Senate and the Committees on Appropriations, Armed Services, and International Relations [now Committee on Foreign Affairs] in the House of Representatives on the implementation of this program: *Provided further*, That amounts charged for administrative fees and deposited to the special account provided for under section 2540c(d) of title 10, shall be available for paying the costs of administrative expenses of the Department of Defense that are attributable to the loan guarantee program under subchapter VI of chapter 148 of title 10, United States Code.”

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 108-87, title VIII, §8066, Sept. 30, 2003, 117 Stat. 1087.

Pub. L. 107-248, title VIII, §8067, Oct. 23, 2002, 116 Stat. 1551.

Pub. L. 107-117, div. A, title VIII, §8073, Jan. 10, 2002, 115 Stat. 2264.

Pub. L. 106-259, title VIII, §8071, Aug. 9, 2000, 114 Stat. 690.

Pub. L. 106-79, title VIII, §8075, Oct. 25, 1999, 113 Stat. 1246.

Pub. L. 105-262, title VIII, §8075, Oct. 17, 1998, 112 Stat. 2314.

Pub. L. 105-56, title VIII, §8081, Oct. 8, 1997, 111 Stat. 1237.

Pub. L. 104-208, div. A, title I, §101(b) [title VIII, §8093], Sept. 30, 1996, 110 Stat. 3009-71, 3009-107.

Pub. L. 104-61, title VIII, §8075, Dec. 1, 1995, 109 Stat. 665.

REPORT ON DEFENSE EXPORT LOAN GUARANTEE PROGRAM

Pub. L. 104-106, div. A, title XIII, §1321(b), Feb. 10, 1996, 110 Stat. 477, provided that, not later than two years after Feb. 10, 1996, the President was to submit to Congress a report on the loan guarantee program established pursuant to this section.

§ 2540a. Transferability

A guarantee issued under this subchapter shall be fully and freely transferable.

(Added Pub. L. 104-106, div. A, title XIII, §1321(a)(1), Feb. 10, 1996, 110 Stat. 476.)

§ 2540b. Limitations

(a) TERMS AND CONDITIONS OF LOAN GUARANTEES.—In issuing a guarantee under this sub-

chapter for a medium-term or long-term loan, the Secretary may not offer terms and conditions more beneficial than those that would be provided to the recipient by the Export-Import Bank of the United States under similar circumstances in conjunction with the provision of guarantees for nondefense articles and services.

(b) LOSSES ARISING FROM FRAUD OR MISREPRESENTATION.—No payment may be made under a guarantee issued under this subchapter for a loss arising out of fraud or misrepresentation for which the party seeking payment is responsible.

(c) NO RIGHT OF ACCELERATION.—The Secretary of Defense may not accelerate any guaranteed loan or increment, and may not pay any amount, in respect of a guarantee issued under this subchapter, other than in accordance with the original payment terms of the loan.

(Added Pub. L. 104-106, div. A, title XIII, §1321(a)(1), Feb. 10, 1996, 110 Stat. 476.)

§ 2540c. Fees charged and collected

(a) EXPOSURE FEES.—The Secretary of Defense shall charge a fee (known as “exposure fee”) for each guarantee issued under this subchapter.

(b) AMOUNT OF EXPOSURE FEE.—To the extent that the cost of the loan guarantees under this subchapter is not otherwise provided for in appropriations Acts, the fee imposed under subsection (a) with respect to a loan guarantee shall be fixed in an amount that is sufficient to meet potential liabilities of the United States under the loan guarantee.

(c) PAYMENT TERMS.—The fee under subsection (a) for each guarantee shall become due as the guarantee is issued. In the case of a guarantee for a loan which is disbursed incrementally, and for which the guarantee is correspondingly issued incrementally as portions of the loan are disbursed, the fee shall be paid incrementally in proportion to the amount of the guarantee that is issued.

(d) ADMINISTRATIVE FEES.—(1) The Secretary of Defense shall charge a fee for each guarantee issued under this subchapter to reflect the additional administrative costs of the Department of Defense that are directly attributable to the administration of the program under this subchapter. Such fees shall be credited to a special account in the Treasury. Amounts in the special account shall be available, to the extent and in amounts provided in appropriations Acts, for paying the costs of administrative expenses of the Department of Defense that are attributable to the loan guarantee program under this subchapter.

(2)(A) If for any fiscal year amounts in the special account established under paragraph (1) are not available (or are not anticipated to be available) in a sufficient amount for administrative expenses of the Department of Defense for that fiscal year that are directly attributable to the administration of the program under this subchapter, the Secretary may use amounts currently available for operations and maintenance for Defense-wide activities, not to exceed \$500,000 in any fiscal year, for those expenses.

(B) The Secretary shall, from funds in the special account established under paragraph (1), replenish operations and maintenance accounts