

(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 for amounts expended under subparagraph (A) as soon as the Secretary determines practicable.

(Added Pub. L. 104-106, div. A, title XIII, §1321(a)(1), Feb. 10, 1996, 110 Stat. 476; amended Pub. L. 106-398, §1 [[div. A], title X, §1081(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A-284.)

#### AMENDMENTS

2000—Subsec. (d). Pub. L. 106-398 designated existing provisions as par. (1) and added par. (2).

#### EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106-398, §1 [[div. A], title X, §1081(b), (c)], Oct. 30, 2000, 114 Stat. 1654, 1654A-284, provided that:

“(b) EFFECTIVE DATE.—Paragraph (2) of section 2540c(d) of title 10, United States Code, as added by subsection (a), shall take effect on October 1, 2000.

“(c) LIMITATION PENDING SUBMISSION OF REPORT.—The Secretary of Defense may not exercise the authority provided by paragraph (2) of section 2540c(d) of title 10, United States Code, as added by subsection (a), until the Secretary submits to Congress a report on the operation of the Defense Export Loan Guarantee Program under subchapter V of chapter 148 of title 10, United States Code. The report shall include the following:

“(1) A discussion of the effectiveness of the loan guarantee program in furthering the sale of United States defense articles, defense services, and design and construction services to nations that are specified in section 2540(b) of such title, to include a comparison of the loan guarantee program with other United States Government programs that are intended to contribute to the sale of United States defense articles, defense services, and design and construction services and other comparisons the Secretary determines to be appropriate.

“(2) A discussion of the requirements and resources (including personnel and funds) for continued administration of the loan guarantee program by the Defense Department, to include—

“(A) an itemization of the requirements necessary and resources available (or that could be made available) to administer the loan guarantee program for each of the following entities: the Defense Security Cooperation Agency, the Department of Defense International Cooperation Office, and other Defense Department agencies, offices, or activities as the Secretary may specify; and

“(B) for each such activity, agency, or office, a comparison of the use of Defense Department personnel exclusively to administer, manage, and oversee the program with the use of contracted commercial entities to administer and manage the program.

“(3) Any legislative recommendations that the Secretary believes could improve the effectiveness of the program.

“(4) A determination made by the Secretary of Defense indicating which Defense Department agency, office, or other activity should administer, manage, and oversee the loan guarantee program to increase sales of United States defense articles, defense serv-

ices, and design and construction services, such determination to be made based on the information and analysis provided in the report.”

#### § 2540d. Definitions

In this subchapter:

(1) The terms “defense article”, “defense services”, and “design and construction services” have the meanings given those terms in section 47 of the Arms Export Control Act (22 U.S.C. 2794).

(2) The term “cost”, with respect to a loan guarantee, has the meaning given that term in section 502 of the Congressional Budget and Impoundment Control Act of 1974 (2 U.S.C. 661a).

(Added Pub. L. 104-106, div. A, title XIII, §1321(a)(1), Feb. 10, 1996, 110 Stat. 477.)

#### SUBCHAPTER VII—CRITICAL INFRASTRUCTURE PROTECTION LOAN GUARANTEES

Sec.

2541. Establishment of loan guarantee program.

2541a. Fees charged and collected.

2541b. Administration.

2541c. Transferability, additional limitations, and definition.

2541d. Reports.

#### § 2541. 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 lenders against losses of principal or interest, or both principal and interest, for loans made to qualified commercial firms to fund, in whole or in part, any of the following activities:

(1) The improvement of the protection of the critical infrastructure of the commercial firms.

(2) The refinancing of improvements previously made to the protection of the critical infrastructure of the commercial firms.

(b) QUALIFIED COMMERCIAL FIRMS.—For purposes of this section, a qualified commercial firm is a company or other business entity (including a consortium of such companies or other business entities, as determined by the Secretary) that the Secretary determines—

(1) conducts a significant level of its research, development, engineering, and manufacturing activities in the United States;

(2) is a company or other business entity the majority ownership or control of which is by United States citizens or is a company or other business of a parent company that is incorporated in a country the government of which—

(A) encourages the participation of firms so owned or controlled in research and development consortia to which the government of that country provides funding directly or provides funding indirectly through international organizations or agreements; and

(B) affords adequate and effective protection for the intellectual property rights of companies incorporated in the United States;

(3) provides technology products or services critical to the operations of the Department of Defense;

(4) meets standards of prevention of cyberterrorism applicable to the Department of Defense; and

(5) agrees to submit the report required under section 2541d of this title.

(c) **LOAN LIMITS.**—The maximum amount of loan principal guaranteed during a fiscal year under this section may not exceed \$10,000,000, with respect to all borrowers.

(d) **GOALS AND STANDARDS.**—The Secretary shall prescribe regulations setting forth goals for the use of the loan guarantees provided under this section and standards for evaluating whether those goals are met by each entity receiving such loan guarantees.

(e) **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. 106-398, §1 [[div. A], title X, §1033(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A-258.)

#### PRIOR PROVISIONS

A prior section 2541 was renumbered section 2551 of this title.

Another prior section 2541 was renumbered section 2539b of this title.

#### § 2541a. Fees charged and collected

(a) **FEE REQUIRED.**—The Secretary of Defense shall assess a fee for providing a loan guarantee under this subchapter.

(b) **AMOUNT OF FEE.**—The amount of the fee shall be not less than 75 percent of the amount incurred by the Secretary to provide the loan guarantee.

(c) **SPECIAL ACCOUNT.**—(1) Such fees shall be credited to a special account in the Treasury.

(2) 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.

(3)(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 for amounts expended under subparagraph (A).

(Added Pub. L. 106-398, §1 [[div. A], title X, §1033(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A-259.)

#### § 2541b. Administration

(a) **AGREEMENTS REQUIRED.**—The Secretary of Defense may enter into one or more agreements,

each with an appropriate Federal or private entity, under which such entity may, under this subchapter—

(1) process applications for loan guarantees;

(2) administer repayment of loans; and

(3) provide any other services to the Secretary to administer this subchapter.

(b) **TREATMENT OF COSTS.**—The costs of such agreements shall be considered, for purposes of the special account established under section 2541a(c), to be costs of administrative expenses of the Department of Defense that are attributable to the loan guarantee program under this subchapter.

(Added Pub. L. 106-398, §1 [[div. A], title X, §1033(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A-259.)

#### § 2541c. Transferability, additional limitations, and definition

The following provisions of subchapter VI of this chapter apply to guarantees issued under this subchapter:

(1) Section 2540a, relating to transferability of guarantees.

(2) Subsections (b) and (c) of section 2540b, providing limitations.

(3) Section 2540d(2), providing a definition of the term “cost”.

(Added Pub. L. 106-398, §1 [[div. A], title X, §1033(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A-260; amended Pub. L. 107-107, div. A, title X, §1048(a)(24), Dec. 28, 2001, 115 Stat. 1224.)

#### AMENDMENTS

2001—Pub. L. 107-107 substituted “subchapter” for “subtitle” in two places in introductory provisions.

#### § 2541d. Reports

The Secretary of Defense shall require each qualified commercial firm for which a loan is guaranteed under this subchapter to submit to the Secretary a report on the improvements financed or refinanced with the loan. The report shall include an assessment of the value of the improvements for the protection of the critical infrastructure of that commercial firm. The Secretary shall prescribe the time for submitting the report.

(Added Pub. L. 106-398, §1 [[div. A], title X, §1033(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A-260; amended Pub. L. 108-136, div. A, title X, §1031(a)(25), Nov. 24, 2003, 117 Stat. 1598.)

#### PRIOR PROVISIONS

Prior sections 2542 to 2550 were renumbered sections 2552 to 2560 of this title, respectively.

#### AMENDMENTS

2003—Pub. L. 108-136 struck out subsec. (a) designation and heading and struck out subsec. (b) which directed that the Secretary of Defense annually submit to Congress a report on the loan guarantee program under this subchapter.

### CHAPTER 149—DEFENSE ACQUISITION SYSTEM

Sec.  
2545. Definitions.