

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

For delegation of functions of the President under this section, with certain conditions, see section 1(f) of

Ex. Ord. No. 13637, Mar. 8, 2013, 78 F.R. 16129, set out as a note under section 2751 of this title. Functions were previously delegated by Ex. Ord. No. 11958, which was formerly set out as a note under section 2751 of this title and was revoked, subject to a savings provision, by section 4 of Ex. Ord. No. 13637.

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 provisos, 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 guaranties 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 guaranties, 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 guaranties 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 chapter, as well as exports pursuant to a treaty referred to in section 2778(j)(1)(C)(i) of this title, of major weapons or weapons-related defense equipment for \$7,000,000 or more, or of any other weapons or weapons-related defense equipment for \$25,000,000 or more, which are considered eligible for approval during the current calendar year, together with an indication of which sales and licensed commercial exports are deemed most likely actually to result in the issuance of a letter of offer or of an export license during such year;

(2) an estimate of the total amount of sales and licensed commercial exports, as well as exports pursuant to a treaty referred to in section 2778(j)(1)(C)(i) of this title, expected to be made to each foreign nation from the United States;

(3) the United States national security considerations involved in expected sales or licensed commercial exports to each country, an analysis of the relationship between anticipated sales to each country and arms control efforts concerning such country and an analysis of the impact of such anticipated sales on the stability of the region that includes such country;

(4) an estimate with regard to the international volume of arms traffic to and from nations purchasing arms as set forth in paragraphs (1) and (2) of this subsection, together with best estimates of the sale and delivery of weapons and weapons-related defense equipment by all major arms suppliers to all major recipient countries during the preceding fiscal year;

(5)(A) an estimate of the aggregate dollar value and quantity of defense articles and defense services, military education and training, grant military assistance, and credits and guarantees, to be furnished by the United States to each foreign country and international organization in the next fiscal year; and

(B) for each country that is proposed to be furnished credits or guaranties under this

chapter in the next fiscal year and that has been approved for cash flow financing (as defined in subsection (d)¹ of this section) in excess of \$100,000,000 as of October 1 of the current fiscal year—

(i) the amount of such approved cash flow financing,

(ii) a description of administrative ceilings and controls applied, and

(iii) a description of the financial resources otherwise available to such country to pay such approved cash flow financing;

(6) an analysis and description of the services performed during the preceding fiscal year by officers and employees of the United States Government carrying out functions on a full-time basis under this chapter for which reimbursement is provided under section 2792(b) of this title or section 2761(a) of this title, including the number of personnel involved in performing such services;

(7) the total amount of funds in the reserve under section 2764(c) of this title at the end of the fiscal year immediately preceding the fiscal year in which a report under this section is made, together with an assessment of the adequacy of such total amount of funds as a reserve for the payment of claims under guarantees issued pursuant to section 2764 of this title in view of the current debt servicing capacity of borrowing countries, as reported to the Congress pursuant to section 634(a)(5) of the Foreign Assistance Act of 1961 [22 U.S.C. 2394(a)(5)];

(8) a list of all countries with respect to which findings made by the President pursuant to section 2753(a)(1) of this title are in effect on the date of such transmission;

(9) the progress made under the program of the Republic of Korea to modernize its armed forces, the role of the United States in mutual security efforts in the Republic of Korea and the military balance between the People's Republic of Korea and the Republic of Korea;

(10) the amount and nature of Soviet military assistance to the armed forces of Cuba during the preceding fiscal year and the military capabilities of those armed forces;

(11) the status of each loan and each contract of guaranty or insurance theretofore made under the Foreign Assistance Act of 1961 [22 U.S.C. 2151 et seq.], predecessor Acts, or any Act authorizing international security assistance, with respect to which there remains outstanding any unpaid obligation or potential liability; the status of each extension of credit for the procurement of defense articles or defense services, and of each contract of guaranty in connection with any such procurement, theretofore made under this chapter with respect to which there remains outstanding any unpaid obligation or potential liability;

(12)(A) a detailed accounting of all articles, services, credits, guarantees, or any other form of assistance furnished by the United States to each country and international organization, including payments to the United Nations, during the preceding fiscal year for the detection and clearance of landmines, including activities relating to the furnishing of

¹ See References in Text note below.