

(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 2540(c)(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 subchapter 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 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 2540(c)(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 2540(c)(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 services, 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;