

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)<sup>1</sup> 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;

<sup>1</sup> See References in Text note below.

(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)<sup>1</sup> 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 education, training, and technical assistance for the detection and clearance of landmines; and

(B) for each provision of law making funds available or authorizing appropriations for demining activities described in subparagraph (A), an analysis and description of the objectives and activities undertaken during the preceding fiscal year, including the number of personnel involved in performing such activities;

(13) a list of weapons systems that are significant military equipment (as defined in section 2794(9) of this title), and numbers thereof, that are believed likely to become available for transfer as excess defense articles during the next 12 months; and

(14) such other information as the President may deem necessary.

**(b) Congressional request for additional information**

Not later than thirty days following the receipt of a request made by any of the congressional committees described in subsection (e) for additional information with respect to any information submitted pursuant to subsection (a), the President shall submit such information to such committee.

**(c) Submission of information in unclassified form or classified addendum with unclassified summary**

The President shall make every effort to submit all of the information required by subsection (a) or (b) wholly in unclassified form. Whenever the President submits any such information in classified form, he shall submit such classified information in an addendum and shall also submit simultaneously a detailed summary, in unclassified form, of such classified information.

**(d)<sup>2</sup> “Cash flow financing” defined**

For the purposes of subsection (a)(5)(B) of this section, the term “cash flow financing” means the dollar amount of the difference between the total estimated price of a Letter of Offer and Acceptance or other purchase agreement that has been approved for financing under this chapter or under section 503(a)(3) of the Foreign Assistance Act of 1961 [22 U.S.C. 2311(a)(3)] and the amount of the financing that has been approved therefor;<sup>3</sup>

**(d)<sup>2</sup> Transmission of information to Congress**

The information required by subsection (a)(4) of this section shall be transmitted to the Congress no later than April 1 of each year.

**(e) “Appropriate congressional committees” defined**

As used in this section, the term “appropriate congressional committees” means the Committee on Foreign Relations and the Committee on Appropriations of the Senate and the Committee on Foreign Affairs and the Committee on Appropriations of the House of Representatives.

(Pub. L. 90-629, ch. 2, § 25, as added Pub. L. 94-329, title II, § 209(a), June 30, 1976, 90 Stat. 739; amended Pub. L. 95-384, § 18, Sept. 26, 1978, 92 Stat. 740; Pub. L. 96-92, §§ 13, 14, Oct. 29, 1979, 93 Stat. 706; Pub. L. 96-533, title I, §§ 104(c), 107(d), Dec. 16, 1980, 94 Stat. 3133, 3137; Pub. L. 97-113, title VII, § 732, Dec. 29, 1981, 95 Stat. 1557; Pub. L. 99-83, title I, §§ 112, 113, Aug. 8, 1985, 99 Stat. 198; Pub. L. 104-164, title I, § 102(d), July 21, 1996, 110 Stat. 1423; Pub. L. 105-118, title V, § 519, Nov. 26, 1997, 111 Stat. 2411; Pub. L. 107-228, div. B, title XII, § 1232, Sept. 30, 2002, 116 Stat. 1433; Pub. L. 111-266, title I, § 104(c), Oct. 8, 2010, 124 Stat. 2799; Pub. L. 113-276, title II, § 208(a)(3), Dec. 18, 2014, 128 Stat. 2993.)

## REFERENCES IN TEXT

Subsection (d) of this section, referred to in subsec. (a), preceding par. (1), probably means the subsec. (d) added by section 113(2) of Pub. L. 99-83, relating to transmittal of information to Congress.

This chapter, referred to in subsecs. (a)(1), (5)(B), (6) and (d), was in the original “this Act”, and this chapter, referred to in subsec. (a)(11), was in the original “the Arms Export Control Act”, both of which mean 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.

Subsection (d) of this section, referred to in subsec. (a)(5)(B), probably means the subsec. (d) added by section 112(b) of Pub. L. 99-83, defining cash flow financing.

The Foreign Assistance Act of 1961, referred to in subsec. (a)(11), 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

2014—Subsec. (e). Pub. L. 113-276 substituted “Foreign Affairs” for “International Relations”.

2010—Subsec. (a)(1). Pub. L. 111-266, § 104(c)(1), inserted “, as well as exports pursuant to a treaty referred to in section 2778(j)(1)(C)(i) of this title,” after “commercial exports under this chapter”.

<sup>2</sup> So in original. Two subsecs. (d) have been enacted.

<sup>3</sup> So in original. The semicolon probably should be a period.

Subsec. (a)(2). Pub. L. 111-266, § 104(c)(2), inserted “, as well as exports pursuant to a treaty referred to in section 2778(j)(1)(C)(i) of this title,” after “commercial exports”.

2002—Subsec. (a)(13), (14). Pub. L. 107-228 added par. (13) and redesignated former par. (13) as (14).

1997—Subsec. (a). Pub. L. 105-118, § 519(1), substituted “appropriate congressional committees” for “Congress” in introductory provisions.

Subsec. (b). Pub. L. 105-118, § 519(2), substituted “any of the congressional committees described in subsection (e)” for “the Committee on Foreign Relations of the Senate or the Committee on Foreign Affairs of the House of Representatives”.

Subsec. (e). Pub. L. 105-118, § 519(3), added subsec. (e). 1996—Subsec. (a)(12), (13). Pub. L. 104-164 added par. (12) and redesignated former par. (12) as (13).

1985—Subsec. (a). Pub. L. 99-83, § 113(1), substituted “Except as provided in subsection (d) of this section, no” for “No”.

Subsec. (a)(5). Pub. L. 99-83, § 112(a), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (d). Pub. L. 99-83, § 112(b), added subsec. (d) defining “cash flow financing”.

Pub. L. 99-83, § 113(2), added subsec. (d) relating to transmittal of information to Congress.

1981—Subsec. (a). Pub. L. 97-113, in provision preceding par. (1), required transmission of the report no later than Feb. 1 of each year and substituted provision for annual presentation materials for programs proposed for next fiscal year for provision for presentation materials for programs proposed for each fiscal year.

Subsec. (a)(1). Pub. L. 97-113 added par. (1) which incorporated provisions of former subsec. (d)(1) of this section. See subsec. (d) amendment note. Former par. (1) covered in par. (3).

Subsec. (a)(2). Pub. L. 97-113 added par. (2). Former par. (2), which required the report to contain an estimate of amount of credits and guaranties expected to be extended to each country under sections 2763 and 2764 of this title, covered in par. (5).

Subsec. (a)(3). Pub. L. 97-113 added par. (3) which incorporated provisions of former par. (1) requiring the report to contain an estimate of amounts of expected sales to each country under sections 2761 and 2762 of this title, including detailed explanations of foreign policy and United States national security considerations in expected sales to each country, and (5) requiring inclusion of an arms control impact statement for each purchasing country, covering (A) an analysis of the relationship between expected sales to each country and arms control efforts relating to that country, and (B) the impact of such expected sales on the stability of the region that included the purchasing country. Former par. (3) redesignated (7).

Subsec. (a)(4). Pub. L. 97-113 added par. (4) which incorporated provisions of former subsec. (e), which had required executive estimates of international arms traffic, including estimates on an annual basis 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 three years. Former par. (4) covered in par. (8).

Subsec. (a)(5). Pub. L. 97-113 added par. (5) which incorporated provisions of former par. (2) requiring the report to contain an estimate of amount of credits and guaranties expected to be extended to each country under sections 2763 and 2764 of this title. Former par. (5) covered in par. (3).

Subsec. (a)(6). Pub. L. 97-113 added par. (6).

Subsec. (a)(7). Pub. L. 97-113 redesignated former par. (3) as (7).

Subsec. (a)(8). Pub. L. 97-113 added par. (8), which incorporated provisions of former par. (4), requiring the report to contain a list of all findings in effect on date of its transmission made by the President pursuant to section 2753(a)(1) of this title, together with a full and complete justification for each finding, explaining how sales to each country with respect to which findings were made would strengthen the security of the United States and promote world peace.

Subsecs. (a)(9) to (12). Pub. L. 97-113 added pars. (9) to (12).

Subsec. (b). Pub. L. 97-113 substituted “Committee on Foreign Affairs” for “Committee on International Relations”, and “with respect to any information” for “with respect to any estimate”.

Subsec. (c). Pub. L. 97-113 substituted “Whenever the President” for “In the event the President”.

Subsec. (d). Pub. L. 97-113 incorporated in subsec. (a) introductory text and subsec. (a)(1), provisions of former subsec. (d)(1) which had required transmission to the Speaker of the House and the chairman of the Senate Foreign Relations Committee the Arms Sales Proposal covering sales and licensed commercials exports under this chapter (other than such transactions to members of North Atlantic Treaty Organization, Japan, Australia, and New Zealand) of major weapons or weapons-related defense equipment for \$7,000,000 or more, or of any other weapons or similar equipment for \$25,000,000 or more, which were eligible for approval during fiscal year beginning October 1 of such year and had required identification in the reports of sales and licensed commercial exports deemed most likely actually to result in issuance of a letter of offer or of an export license during such fiscal year, and subsec. (d)(2) which had required Presidential six month written notifications of Congress of any change in the Arms Sales Proposal for such fiscal year, together with reasons therefor.

Subsec. (e). Pub. L. 97-113 incorporated, in subsec. (a) introductory text and subsec. (a)(4), provisions of former subsec. (e) which had required transmission to Congress on or before Nov. 15 of each year executive estimates of international arms traffic, including estimates on an annual basis 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 three years.

1980—Subsec. (a)(3) to (5). Pub. L. 96-533, §104(c), added par. (3) and redesignated former pars. (3) and (4) as (4) and (5), respectively.

Subsec. (d)(1). Pub. L. 96-533, §107(d), included coverage of licensed commercial exports and substituted “letter of offer or of an export license” for “letter of offer”.

1979—Subsec. (d). Pub. L. 96-92, §13(1)–(4), designated existing provision as par. (1), substituted “major weapons or weapons-related defense equipment” for “major defense equipment” and “weapons or weapons-related defense equipment” for “defense articles or defense services”, required identification of sales likely to result in issuance of a letter of offer in the furnished reports, and added par. (2).

Subsec. (e). Pub. L. 96-92, §14, added subsec. (e).

1978—Subsec. (c). Pub. L. 95-384, §18(b), substituted “subsection (a) or (b)” for “this section”.

Subsec. (d). Pub. L. 95-384, §18(a), added subsec. (d).

#### 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.

#### DELEGATION OF FUNCTIONS

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

### § 2766. Security assistance surveys

#### (a) Statement of findings and policy

The Congress finds that security assistance surveys prepared by the United States for foreign countries have had a significant impact on

subsequent military procurement decisions of those countries. It is the policy of the United States that the results of security assistance surveys conducted by the United States clearly do not represent a commitment by the United States to provide any military equipment to any foreign country. Further, recommendations in such surveys should be consistent with the arms export control policy provided for in this chapter.

#### (b) Reporting requirements

As part of the quarterly report required by section 2776(a) of this title, the President shall include a list of all security assistance surveys authorized during the preceding calendar quarter, specifying the country with respect to which the survey was or will be conducted, the purpose of the survey, and the number of United States Government personnel who participated or will participate in the survey.

#### (c) Submission of surveys to Congress

Upon a request of the chairman of the Committee on Foreign Affairs of the House of Representatives or the chairman of the Committee on Foreign Relations of the Senate, the President shall submit to that committee copies of security assistance surveys conducted by United States Government personnel.

#### (d) “Security assistance surveys” defined

As used in this section, the term “security assistance surveys” means any survey or study conducted in a foreign country by United States Government personnel for the purpose of assessing the needs of that country for security assistance, and includes defense requirement surveys, site surveys, general surveys or studies, and engineering assessment surveys.

(Pub. L. 90-629, ch. 2, §26, as added Pub. L. 95-384, §19, Sept. 26, 1978, 92 Stat. 740; amended Pub. L. 99-83, title I, §114, Aug. 8, 1985, 99 Stat. 198; Pub. L. 103-437, §9(a)(7), Nov. 2, 1994, 108 Stat. 4588.)

#### REFERENCES IN TEXT

This chapter, referred to in subsec. (a), 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

1994—Subsec. (c). Pub. L. 103-437 substituted “Foreign Affairs” for “International Relations”.

1985—Pub. L. 99-83, §114(a)(1), substituted “Security assistance” for “Defense requirement” in section catchline.

Subsecs. (a), (b). Pub. L. 99-83, §114(a)(2), substituted “security assistance” for “defense requirement” wherever appearing.

Subsec. (c). Pub. L. 99-83, §114(a)(2), (b), substituted “submit to that committee copies of security assistance surveys” for “grant that committee access to defense requirement surveys”.

Subsec. (d). Pub. L. 99-83, §114(a)(3), added subsec. (d).

#### 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.