

(4) Use of funds

A covered entity that receives a financial assistance award under this subsection may only use the financial assistance award amounts to—

(A) finance the construction, expansion, or modernization of a facility or equipment to be used for semiconductors described in paragraph (1), as documented in the application submitted by the covered entity under paragraph (2)(B), as determined necessary by the Secretary for purposes relating to the national security and economic competitiveness of the United States;

(B) support workforce development for a facility described in subparagraph (A);

(C) support site development and modernization for a facility described in subparagraph (A); and

(D) pay reasonable costs related to the operating expenses for a facility described in subparagraph (A), including specialized workforce, essential materials, and complex equipment maintenance, as determined by the Secretary.

(5) Clawback**(A) Target dates**

For all major awards to covered entities, the Secretary shall—

- (i) determine target dates by which a project shall commence and complete; and
- (ii) set these dates by the time of award.

(B) Progressive recovery for delays

If the project does not commence and complete by the set target dates in (A), the Secretary shall progressively recover up to the full amount of an award provided to a covered entity under this subsection.

(C) Technology clawback

The Secretary shall recover the full amount of an award provided to a covered entity under this subsection if, during the applicable term with respect to the award, the covered entity knowingly engages in any joint research or technology licensing effort—

- (i) with a foreign entity of concern; and
- (ii) that relates to a technology or product that raises national security concerns, as determined by the Secretary and communicated to the covered entity before engaging in such joint research or technology licensing.

(D) Waiver

In the case of delayed projects, the Secretary may waive elements of the clawback provisions incorporated in each major award after—

- (i) making a formal determination that circumstances beyond the ability of the covered entity to foresee or control are responsible for delays; and
- (ii) submitting congressional notification.

(E) Congressional notification

The Secretary shall notify appropriate committees of Congress—

(i) of the clawback provisions attending each such major award; and

(ii) of any waivers provided, not later than 15 days after the date on which such a waiver was provided.

(b) Coordination required

In carrying out the program established under subsection (a), the Secretary shall coordinate with the Secretary of State, the Secretary of Defense, the Secretary of Homeland Security, the Secretary of Energy, and the Director of National Intelligence.

(c) GAO reviews

The Comptroller General of the United States shall—

(1) not later than 2 years after the date of disbursement of the first financial award under subsection (a), and biennially thereafter for 10 years, conduct a review of the program established under subsection (a), which shall include, at a minimum—

(A) a determination of the number of instances in which financial assistance awards were provided under that subsection during the period covered by the review;

(B) an evaluation of how—

- (i) the program is being carried out, including how recipients of financial assistance awards are being selected under the program; and
- (ii) other Federal programs are leveraged for manufacturing, research, and training to complement the financial assistance awards awarded under the program; and

(C) a description of the outcomes of projects supported by awards made under the program, including a description of—

- (i) facilities described in subsection (a)(1) that were constructed, expanded, or modernized as a result of awards made under the program;
- (ii) research and development carried out with awards made under the program;
- (iii) workforce training programs carried out with awards made under the program, including efforts to hire individuals from disadvantaged populations; and
- (iv) the impact of projects on the United States share of global microelectronics production; and

(2) submit to the appropriate committees of Congress the results of each review conducted under paragraph (1).

(Pub. L. 116-283, div. H, title XCIX, §9902, Jan. 1, 2021, 134 Stat. 4846.)

§ 4653. Department of Defense**(a) Department of Defense efforts****(1) In general**

Subject to the availability of appropriations for such purposes, the Secretary of Defense, in consultation with the Secretary of Commerce, the Secretary of Energy, the Secretary of Homeland Security, and the Director of National Intelligence, shall establish a public-private partnership through which the Secretary shall work to incentivize the formation

of one or more consortia of companies (or other such partnerships of private-sector entities, as appropriate) to ensure the development and production of measurably secure microelectronics, including integrated circuits, logic devices, memory, and the packaging and testing practices that support these microelectronic components by the Department of Defense, the intelligence community, critical infrastructure sectors, and other national security applications. Such incentives may include the use of grants under section 4652 of this title, and providing incentives for the creation, expansion, or modernization of one or more commercially competitive and sustainable microelectronics manufacturing or advanced research and development facilities in the United States.

(2) Risk mitigation requirements

A participant in a consortium formed with incentives under paragraph (1)—

(A) shall have the potential to enable design, perform fabrication, assembly, package, or test functions for microelectronics deemed critical to national security as defined by the National Security Advisor and the Secretary of Defense;

(B) may be a fabless company migrating its designs to the facility envisioned in paragraph (1) or migrating to an existing facility onshore;

(C) may be companies, including fabless companies and companies that procure large quantities of microelectronics, willing to co-invest to achieve the objectives set forth in paragraph (1);

(D) shall include management processes to identify and mitigate supply chain security risks; and

(E) shall be capable of providing microelectronic components that are consistent with applicable measurably secure supply chain and operational security standards established under section 224(b) of the National Defense Authorization Act for Fiscal Year 2020 (Public Law 116-92).

(3) National security considerations

The Secretary of Defense and the Director of National Intelligence shall select participants for each consortium and or¹ partnership formed with incentives under paragraph (1). In selecting such participants, the Secretary and the Director may jointly consider whether the companies—

(A) have participated in previous programs and projects of the Department of Defense, Department of Energy, or the intelligence community, including—

(i) the Trusted Integrated Circuit program of the Intelligence Advanced Research Projects Activity;

(ii) trusted and assured microelectronics projects, as administered by the Department of Defense;

(iii) the Electronics Resurgence Initiative program of the Defense Advanced Research Projects Agency; or

(iv) relevant semiconductor research programs of the Advanced Research Projects Agency-Energy;

(B) have demonstrated an ongoing commitment to performing contracts for the Department of Defense and the intelligence community;

(C) are approved by the Defense Counterintelligence and Security Agency or the Office of the Director of National Intelligence as presenting an acceptable security risk, taking into account supply chain assurance vulnerabilities, counterintelligence risks, and any risks presented by companies whose beneficial owners are located outside the United States; and

(D) are evaluated periodically for foreign ownership, control, or influence by a foreign entity of concern.

(4) Nontraditional defense contractors and commercial entities

Arrangements entered into to carry out paragraph (1) shall be in such form as the Secretary of Defense determines appropriate to encourage industry participation of nontraditional defense contractors or commercial entities and may include a contract, a grant, a cooperative agreement, a commercial agreement, the use of other transaction authority under section 2371² of title 10 or another such arrangement.

(5) Implementation

Subject to the availability of appropriations for such purposes, the Secretary of Defense—

(A) shall carry out paragraph (1) jointly through the Office of the Under Secretary of Defense for Research and Engineering and the Office of the Under Secretary of Defense for Acquisition and Sustainment; and

(B) may carry out paragraph (1) in collaboration with any such other component of the Department of Defense as the Secretary of Defense considers appropriate.

(6) Other initiatives

(A) Required initiatives

Subject to the availability of appropriations for such purposes, the Secretary of Defense, in consultation with the Secretary of Energy and the Administrator of the National Nuclear Security Administration, as appropriate, may dedicate initiatives within the Department of Defense to carry out activities to advance radio frequency, mixed signal, radiation tolerant, and radiation hardened microelectronics that support national security and dual-use applications.

(B) Support plan required

The Secretary of Defense, in consultation with the heads of appropriate departments and agencies of the Federal Government, shall develop a plan, including assessment of resource requirements and designation of responsible officials, for the maintenance of capabilities to produce trusted and assured microelectronics to support current and leg-

¹ So in original.

² See References in Text note below.

acy defense systems, other government systems essential for national security, and critical infrastructure of the United States, especially for items with otherwise limited commercial demand.

(C) Assessment of public private partnerships and activities

In conjunction with the activities carried out under this section, the Secretary of Defense shall enter into an agreement with the National Academies of Science, Engineering, and Medicine to undertake a study to make recommendations and provide policy options for optimal public-private partnerships and partnership activities, including an analysis of establishing a semiconductor manufacturing corporation to leverage private sector technical, managerial, and investment expertise, and private capital, as well as an assessment of and response to the industrial policies of other nations to support industries in similar critical technology sectors, and deliver such study to the congressional defense committees not later than October 1, 2022.

(7) Reports

(A) Report by Secretary of Defense

Not later than 90 days after January 1, 2021, the Secretary of Defense shall submit to Congress a report on the plans of the Secretary to carry out paragraphs (1) and (6).

(B) Biennial reports by Comptroller General of the United States

Not later than one year after the date on which the Secretary submits the report required by subparagraph (A) and not less frequently than once every two years thereafter for a period of 10 years, the Comptroller General of the United States shall submit to Congress a report on the activities carried out under this subsection.

(b) National network for microelectronics research and development

(1) In general

Subject to the availability of appropriations for such purposes, the Secretary of Defense shall establish a national network for microelectronics research and development—

(A) to enable the laboratory to fabrication transition of microelectronics innovations in the United States; and

(B) to expand the global leadership in microelectronics of the United States.

(2) Activities

The national network for microelectronics research and development shall—

(A) enable cost effective exploration of new materials, devices, and architectures, and prototyping in domestic facilities to safeguard domestic intellectual property;

(B) accelerate the transition of new technologies to domestic microelectronics manufacturers; and

(C) conduct other relevant activities deemed necessary by the Secretary of Defense for accomplishing the purposes of the national network for microelectronics research and development.

(3) Selection of entities

(A) In general

In carrying out paragraph (1), the Secretary shall, through a competitive process, select two or more entities to carry out the activities described in paragraph (2) as part of the network established under paragraph (1).

(B) Geographic diversity

The Secretary shall, to the extent practicable, ensure that the entities selected under subparagraph (A) collectively represent the geographic diversity of the United States.

(Pub. L. 116–283, div. H, title XCIX, §9903, Jan. 1, 2021, 134 Stat. 4849; Pub. L. 117–81, div. A, title II, §217, Dec. 27, 2021, 135 Stat. 1596.)

Editorial Notes

REFERENCES IN TEXT

Section 224 of the National Defense Authorization Act for Fiscal Year 2020, referred to in subsec. (a)(2)(E), is section 224 of Pub. L. 116–92, which is set out as a note preceding section 4501 of Title 10, Armed Forces.

Section 2371 of title 10, referred to in subsec. (a)(4), was renumbered section 4021 of Title 10, Armed Forces, by Pub. L. 116–283, §1841(b)(1), as amended by Pub. L. 117–81, §1701(u)(2)(B), Dec. 27, 2021, 135 Stat. 2151.

AMENDMENTS

2021—Subsec. (b)(1). Pub. L. 117–81, §217(1), substituted “shall” for “may” in introductory provisions.

Subsec. (b)(3). Pub. L. 117–81, §217(2), added par. (3).

Statutory Notes and Related Subsidiaries

“CONGRESSIONAL DEFENSE COMMITTEES” DEFINED

For definition of “congressional defense committees”, see section 3 of Pub. L. 116–283, listed in a table under section 101 of Title 10, Armed Forces.

§ 4654. Department of Commerce study on status of microelectronics technologies in the United States industrial base

(a) In general

Beginning not later than 180 days after January 1, 2021, the Secretary, in consultation with the heads of other Federal departments and agencies, as appropriate, including the Secretary of Defense, Secretary of Homeland Security, and the Secretary of Energy, shall undertake a review, which shall include a survey, using authorities in section 4555 of title 50, to assess the capabilities of the United States industrial base to support the national defense in light of the global nature of the supply chain and significant interdependencies between the United States industrial base and the industrial bases of foreign countries with respect to the manufacture, design, and end use of microelectronics.

(b) Response to survey

To the extent authorized by section 4555 of title 50 and section¹ 702 of title 15, Code of Federal Regulations, the Secretary shall ensure all relevant potential respondents reply to the survey, including the following:

(1) Corporations, partnerships, associations, or any other organized groups domiciled and

¹ So in original. Probably should be “part”.