

Amendment by section 1872(a)(11) of Pub. L. 116-283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116-283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE

Pub. L. 101-510, div. A, title VIII, §814(b), Nov. 5, 1990, 104 Stat. 1597, provided that: "Section 2417 of title 10, United States Code [now 10 U.S.C. 4961], as added by subsection (a), shall apply with respect to fiscal year 1991 and each fiscal year thereafter."

CHAPTER 389—LOAN GUARANTEE PROGRAMS

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SUBCHAPTER I—DEFENSE EXPORT LOAN GUARANTEES

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§ 4971. Establishment of loan guarantee program

(a) ESTABLISHMENT.—In order to meet the national security objectives in section 4811(a) of this title, the Secretary of Defense shall establish a program under which the Secretary may issue guarantees assuring a lender against losses of principal or interest, or both principal and interest, arising out of the financing of the sale or long-term lease of defense articles, defense services, or design and construction services to a country referred to in subsection (b).

(b) COVERED COUNTRIES.—The authority under subsection (a) applies with respect to the following countries:

- (1) A member nation of the North Atlantic Treaty Organization (NATO).
(2) A country designated as of March 31, 1995, as a major non-NATO ally pursuant to section 2350a(i)(3) of this title, as in effect on that date.
(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, §2540; amended Pub. L. 108-375, div. A, title X, §1084(d)(21), Oct. 28, 2004, 118 Stat. 2062; renum-

bered §4971 and amended Pub. L. 116-283, div. A, title XVIII, §§1873(b), (c)(1), 1883(b)(2), Jan. 1, 2021, 134 Stat. 4290, 4294.)

Editorial Notes

AMENDMENTS

2021—Pub. L. 116-283, §1873(b), (c)(1), renumbered section 2540 of this title as this section.

Subsec. (a). Pub. L. 116-283, §1883(b)(2), substituted "section 4811(a)" for "section 2501(a)".

2004—Subsec. (b)(2). Pub. L. 108-375 inserted "as in effect on that date" before period at end.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116-283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116-283, set out as a note preceding section 3001 of this title.

AUTHORITY TO ISSUE LOAN GUARANTEES

Pub. L. 108-287, title VIII, §8065, Aug. 5, 2004, 118 Stat. 985, as amended by Pub. L. 116-283, div. A, title XVIII, §1873(d), Jan. 1, 2021, 134 Stat. 4290; Pub. L. 117-81, div. A, title XVII, §1702(b)(3), Dec. 27, 2021, 135 Stat. 2155, provided that: "To the extent authorized by subchapter I of chapter 389 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 4974(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 I of chapter 389 of title 10, United States Code."

[Pub. L. 116-283, §1873(d), and Pub. L. 117-81, §1702(b)(3), made identical amendments to section 8065 of Pub. L. 108-287, set out above, substituting "subchapter I of chapter 389" for "subchapter VI of chapter 148" in two places and "section 4974(d)" for "section 2540c(d)". The amendment by Pub. L. 117-81 was effective as if included in title XVIII of Pub. L. 116-283, thus making the amendments effective simultaneously.]

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.

### § 4972. 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, § 2540a; renumbered § 4972, Pub. L. 116-283, div. A, title XVIII, § 1873(b), (c)(1), Jan. 1, 2021, 134 Stat. 4290.)

#### Editorial Notes

##### AMENDMENTS

2021—Pub. L. 116-283 renumbered section 2540a of this title as this section.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116-283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116-283, set out as a note preceding section 3001 of this title.

### § 4973. 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, § 2540b; renumbered § 4973, Pub. L. 116-283, div. A, title XVIII, § 1873(b), (c)(1), Jan. 1, 2021, 134 Stat. 4290.)

#### Editorial Notes

##### AMENDMENTS

2021—Pub. L. 116-283 renumbered section 2540b of this title as this section.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116-283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116-283, set out as a note preceding section 3001 of this title.

### § 4974. 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, § 2540c; amended Pub. L. 106-398, § 1 [[div. A], title X, § 1081(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A-284; renumbered § 4974, Pub. L. 116-283, div. A, title XVIII, § 1873(b), (c)(1), Jan. 1, 2021, 134 Stat. 4290.)

#### Editorial Notes

##### AMENDMENTS

2021—Pub. L. 116-283 renumbered section 2540c of this title as this section.

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

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116-283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116-283, set out as a note preceding section 3001 of this title.

##### 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: