

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:

“(b) EFFECTIVE DATE.—Paragraph (2) of section 2540c(d) of title 10, United States Code [now 10 U.S.C. 4974(d)(2)], 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 2540c(d) of title 10, United States Code [now 10 U.S.C. 4974(d)(2)], as added by subsection (a), until the Secretary submits to Congress a report on the operation of the Defense Export Loan Guarantee Program under [former] subchapter V of chapter 148 of title 10, United States Code [see chapter 385 of this title]. 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 [now 10 U.S.C. 4971(b)], 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.”

§ 4975. 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, §2540d; renumbered §4975, 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 2540d 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.

SUBCHAPTER II—CRITICAL INFRASTRUCTURE PROTECTION LOAN GUARANTEES

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§ 4981. 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 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;

(2) is a company or other business entity the majority ownership or control of which is by United States citizens or is a company or other business of a parent company that is incorporated in a country the government of which—

(A) encourages the participation of firms so owned or controlled in research and development consortia to which the government of that country provides funding directly or provides funding indirectly through international organizations or agreements; and

(B) affords adequate and effective protection for the intellectual property rights of companies incorporated in the United States;

(3) provides technology products or services critical to the operations of the Department of Defense;

(4) meets standards of prevention of cyberterrorism applicable to the Department of Defense; and

(5) agrees to submit the report required under section 4985 of this title.

(c) LOAN LIMITS.—The maximum amount of loan principal guaranteed during a fiscal year