

4659 of this title and section 48D of Title 26, Internal Revenue Code, amending this section, sections 4652 and 4656 of this title, section 905 of Title 2, The Congress, sections 46, 49, 50, and 1371 of Title 26, and section 906 of Title 47, Telecommunications, and enacting provisions set out as notes under section 4652 of this title and section 905 of Title 2] may be cited as the ‘CHIPS Act of 2022’.”

### Executive Documents

#### EX. ORD. NO. 14080. IMPLEMENTATION OF THE CHIPS ACT OF 2022

Ex. Ord. No. 14080, Aug. 25, 2022, 87 F.R. 52847, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to effectively implement the incentives for semiconductor research, development, and manufacturing provided by division A of H.R. 4346 (the “Act”), it is hereby ordered as follows:

**SECTION 1. *Background.*** The Act, known as the Creating Helpful Incentives to Produce Semiconductors (CHIPS) Act of 2022 [div. A of Pub. L. 117-167], will make transformative investments to restore and advance our Nation’s leadership in the research, development, and manufacturing of semiconductors. These investments will strengthen our Nation’s manufacturing and industrial base; create well-paying, high-skilled jobs in construction, manufacturing, and maintenance; catalyze regional economic development throughout the country; bolster United States technology leadership; and reduce our dependence on critical technologies from China and other vulnerable or overly concentrated foreign supply chains.

Meeting these objectives will require effective implementation of the Act by my Administration, in collaboration with State, local, Tribal, and territorial governments; the private sector; institutions of higher education; workforce development organizations; labor unions and other worker organizations; and allied and partner countries.

**SEC. 2. *Implementation Priorities.*** In implementing the Act, all agencies (as described in section 3502(1) of title 44, United States Code, except for the agencies described in section 3502(5) of title 44) shall, as appropriate and to the extent consistent with law, prioritize:

(a) protecting taxpayer resources, including by ensuring strong compliance and accountability measures for funding recipients;

(b) meeting economic, sustainability, and national security needs, including by building domestic manufacturing capacity that reduces reliance on vulnerable or overly concentrated foreign production for both leading-edge and mature microelectronics;

(c) ensuring long-term leadership in the microelectronics sector, including by establishing a dynamic, collaborative network for microelectronics research and innovation to enable long-term United States leadership in critical industries;

(d) catalyzing private-sector investment, including by reducing risk and maximizing large-scale private investment in production, breakthrough technologies, and worker and workforce development;

(e) generating benefits—such as well-paying, high-skilled union jobs and opportunities for startups; small businesses; and minority-owned, veteran-owned, and women-owned businesses—for a broad range of stakeholders and communities, including by investing in disadvantaged communities and by partnering with State, local, Tribal, and territorial governments and with institutions of higher education; and

(f) strengthening and expanding regional manufacturing and innovation ecosystems, including by investing in suppliers, manufacturers, workforce development, basic and translational research, and related infrastructure and cybersecurity throughout the microelectronics supply chain, and by facilitating the expansion, creation, and coordination of semiconductor clusters.

**SEC. 3. *CHIPS Implementation Steering Council.*** (a) There is established within the Executive Office of the President the CHIPS Implementation Steering Council (Steering Council). The function of the Steering Council is to coordinate policy development to ensure the effective implementation of the Act within the executive branch.

(b) The Assistant to the President for Economic Policy, the Assistant to the President for National Security Affairs, and the Director of the Office of Science and Technology Policy shall serve as Co-Chairs of the Steering Council.

(c) In addition to the Co-Chairs, the Steering Council shall consist of the following members:

(i) the Secretary of State;  
(ii) the Secretary of the Treasury;  
(iii) the Secretary of Defense;  
(iv) the Secretary of Commerce;  
(v) the Secretary of Labor;  
(vi) the Secretary of Energy;  
(vii) the Director of the Office of Management and Budget;

(viii) the Administrator of the Small Business Administration;

(ix) the Director of National Intelligence;

(x) the Assistant to the President for Domestic Policy;

(xi) the Chair of the Council of Economic Advisers;

(xii) the National Cyber Director;

(xiii) the Director of the National Science Foundation; and

(xiv) the heads of such other executive departments, agencies, and offices as the Co-Chairs may from time to time invite to participate.

(d) The Co-Chairs may create and coordinate subgroups consisting of Steering Council members or their designees, as appropriate.

(e) The Co-Chairs may consult with leaders from industry, labor unions and other worker organizations, institutions of higher education, research institutions, and civil society, as appropriate and consistent with law, to provide individual perspectives and advice to the Steering Council on the effective implementation of the Act.

(f) The Co-Chairs may consult with the President’s Council of Advisors on Science and Technology, as appropriate and consistent with law, to provide advice to the Steering Council.

**SEC. 4. *Effective and Efficient Stewardship and Oversight of Taxpayer Resources.*** The Director of the Office of Management and Budget shall take appropriate actions to promote and monitor, with respect to execution of the Act, the effective and efficient stewardship and oversight of taxpayer resources, in collaboration with the Steering Council and the heads of agencies responsible for implementing the Act.

**SEC. 5. *General Provisions.*** (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

J.R. BIDEN, JR.

### § 4652. Semiconductor incentives

#### (a) Financial assistance program

##### (1) In general

The Secretary shall establish in the Department of Commerce a program that, in accord-

ance with the requirements of this section and subject to the availability of appropriations for such purposes, provides Federal financial assistance to covered entities to incentivize investment in facilities and equipment in the United States for the fabrication, assembly, testing, advanced packaging, production, or research and development of semiconductors, materials used to manufacture semiconductors, or semiconductor manufacturing equipment.

## **(2) Procedure**

### **(A) In general**

A covered entity shall submit to the Secretary an application that describes the project for which the covered entity is seeking financial assistance under this section.

### **(B) Eligibility**

In order for a covered entity to qualify for financial assistance under this section, the covered entity shall demonstrate to the Secretary, in the application submitted by the covered entity under subparagraph (A), that—

(i) the covered entity has a documented interest in constructing, expanding, or modernizing a facility described in paragraph (1)<sup>1</sup>

(ii) with respect to the project described in clause (i), the covered entity has—

(I) been offered a covered incentive;

(II) made commitments to worker and community investment, including through—

(aa) training and education benefits paid by the covered entity; and

(bb) programs to expand employment opportunity for economically disadvantaged individuals; and

(III) secured commitments from regional educational and training entities and institutions of higher education to provide workforce training, including programming for training and job placement of economically disadvantaged individuals;

(IV) an executable plan to sustain the facility described in clause (i) without additional Federal financial assistance under this subsection for facility support;

(V) determined—

(aa) the type of semiconductor technology, equipment, materials, or research and development the covered entity will produce at the facility described in clause (i); and

(bb) the customers, or categories of customers, to which the covered entity plans to sell the semiconductor technology, equipment, materials, or research and development described in item (aa); and

(VI) documented, to the extent practicable, workforce needs and developed a strategy to meet such workforce needs

consistent with the commitments described in subclauses (II) and (III);

(iii) with respect to the project described in clause (i), the covered entity has an executable plan to identify and mitigate relevant semiconductor supply chain security risks, such as risks associated with access, availability, confidentiality, integrity, and a lack of geographic diversification in the covered entity's supply chain; and

(iv) with respect to any project for the production, assembly, or packaging of semiconductors, the covered entity has implemented policies and procedures to combat cloning, counterfeiting, and relabeling of semiconductors, as applicable.

### **(C) Considerations for review**

With respect to the review by the Secretary of an application submitted by a covered entity under subparagraph (A)—

(i) the Secretary may not approve the application unless the Secretary—

(I) confirms that the covered entity has satisfied the eligibility criteria under subparagraph (B);

(II) determines that the project to which the application relates is in the economic and national security interests of the United States; and

(III) has notified the appropriate committees of Congress not later than 15 days before making any commitment to provide a grant to any covered entity that exceeds \$10,000,000;

(ii) the Secretary may consider whether—

(I) the covered entity has previously received financial assistance made under this subsection;

(II) the governmental entity offering the applicable covered incentive has benefitted from financial assistance previously provided under this subsection;

(III) the covered entity has demonstrated that they are responsive to the national security needs or requirements established by the Intelligence Community (or an agency thereof), the National Nuclear Security Administration, or the Department of Defense; and

(IV) when practicable, a consortium that is considered a covered entity includes a small business concern, as defined under section 632 of this title, notwithstanding section 121.103 of title 13, Code of Federal Regulations;

(iii) the Secretary shall consider the type of semiconductor technology produced by the covered entity and whether that semiconductor technology advances the economic and national security interests of the United States;

(iv) the Secretary may not approve an application, unless the covered entity provides a plan that does not use Federal financial assistance to assist efforts to physically relocate existing facility infrastructure to another jurisdiction within the United States, unless the project is in the interest of the United States; and

<sup>1</sup> So in original. Probably should be followed by a semicolon.

(v) the Secretary may not approve an application if the Secretary determines that the covered entity is a foreign entity of concern.

**(D) Priority**

In awarding Federal financial assistance to covered entities under this subsection, the Secretary shall—

(i) give priority to ensuring that a covered entity receiving financial assistance will—

(I) manufacture semiconductors necessary to address gaps and vulnerabilities in the domestic supply chain across a diverse range of technology and process nodes; and

(II) provide a secure supply of semiconductors necessary for the national security, manufacturing, critical infrastructure, and technology leadership of the United States and other essential elements of the economy of the United States; and

(ii) ensure that the assistance is awarded to covered entities for both advanced and mature technology nodes to meet the priorities described in clause (i).

**(E) Records**

The Secretary may request records and information from the applicant to review the status of a covered entity. The applicant shall provide the records and information requested by the Secretary.

**(3) Amount**

**(A) In general**

The Secretary shall determine the appropriate amount and funding type for each financial assistance award made to a covered entity under this subsection.

**(B) Larger investment**

Federal investment in any individual project shall not exceed \$3,000,000,000 unless the Secretary, in consultation with the Secretary of Defense and the Director of National Intelligence, recommends to the President, and the President certifies and reports to the appropriate committees of Congress, that a larger investment is necessary to—

(i) significantly increase the proportion of reliable domestic supply of semiconductors relevant for national security and economic competitiveness that can be met through domestic production; and

(ii) meet the needs of national security.

**(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 the purposes 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 na-

tional 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 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 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 award; and

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

**(6) Expansion clawback**

**(A) Definition of legacy semiconductor**

**(i) In general**

In this paragraph, the term “legacy semiconductor”—

(I) includes—

(aa) a semiconductor technology that is of the 28 nanometer generation or older for logic;

(bb) with respect to memory technology, analog technology, packaging technology, and any other relevant technology, any legacy generation of semiconductor technology relative to the generation described in item (aa), as determined by the Secretary, in consultation with the Secretary of Defense and the Director of National Intelligence; and

(cc) any additional semiconductor technology identified by the Secretary in a public notice issued under clause (ii); and

(II) does not include a semiconductor that is critical to national security, as determined by the Secretary, in consultation with the Secretary of Defense and the Director of National Intelligence.

**(ii) Updates**

Not later than 2 years after August 9, 2022, and not less frequently than once every 2 years thereafter for the 8-year period after the last award under this section is made, the Secretary, after public notice and an opportunity for comment and if applicable and necessary, shall issue a public notice identifying any additional semiconductor technology included in the meaning of the term “legacy semiconductor” under clause (i).

**(iii) Functions of the Secretary**

The functions of the Secretary under this paragraph shall not be subject to sections 551, 553 through 559, and 701 through 706 of title 5.

**(iv) Consultation**

In carrying out clause (ii), the Secretary shall consult with the Director of National Intelligence and the Secretary of Defense.

**(v) Considerations**

In carrying out clause (ii), the Secretary shall consider—

(I) state-of-the-art semiconductor technologies in the United States and internationally, including in foreign countries of concern; and

(II) consistency with export controls relating to semiconductors.

**(B) Definition of semiconductor manufacturing**

In this paragraph, the term “semiconductor manufacturing”—

(i) has the meaning given the term by the Secretary, in consultation with the Secretary of Defense and the Director of National Intelligence; and

(ii) includes front-end semiconductor fabrication.

**(C) Required agreement**

**(i) In general**

On or before the date on which the Secretary awards Federal financial assistance

to a covered entity under this section, the covered entity shall enter into an agreement with the Secretary specifying that, during the 10-year period beginning on the date of the award, subject to clause (ii), the covered entity may not engage in any significant transaction, as defined in the agreement, involving the material expansion of semiconductor manufacturing capacity in the People’s Republic of China or any other foreign country of concern.

**(ii) Exceptions**

The prohibition in the agreement required under clause (i) shall not apply to—

(I) existing facilities or equipment of a covered entity for manufacturing legacy semiconductors; or

(II) significant transactions involving the material expansion of semiconductor manufacturing capacity that—

(aa) produces legacy semiconductors; and

(bb) predominately serves the market of a foreign country of concern.

**(iii) Affiliated group**

For the purpose of applying the requirements in an agreement required under clause (i), a covered entity shall include the covered entity receiving financial assistance under this section, as well as any member of the covered entity’s affiliated group under section 1504(a) of title 26, without regard to section 1504(b)(3) of title 26.

**(D) Notification requirements**

During the applicable term of the agreement of a covered entity required under subparagraph (C)(i), the covered entity shall notify the Secretary of any planned significant transactions of the covered entity involving the material expansion of semiconductor manufacturing capacity in the People’s Republic of China or any other foreign country of concern.

**(E) Violation of agreement**

**(i) Notification to covered entities**

Not later than 90 days after the date of receipt of a notification described in subparagraph (D) from a covered entity, the Secretary, in consultation with the Secretary of Defense and the Director of National Intelligence, shall—

(I) determine whether the significant transaction described in the notification would be a violation of the agreement of the covered entity required under subparagraph (C)(i); and

(II) notify the covered entity of the Secretary’s decision under subclause (I).

**(ii) Opportunity to remedy**

Upon a notification under clause (i)(II) that a planned significant transaction of a covered entity is a violation of the agreement of the covered entity required under subparagraph (C)(i), the Secretary shall—

(I) immediately request from the covered entity tangible proof that the

planned significant transaction has ceased or been abandoned; and

(II) provide the covered entity 45 days to produce and provide to the Secretary the tangible proof described in subclause (I).

**(iii) Failure by the covered entity to cease or remedy the activity**

Subject to clause (iv), if a covered entity fails to remedy a violation as set forth under clause (ii), the Secretary shall recover the full amount of the Federal financial assistance provided to the covered entity under this section.

**(iv) Mitigation**

If the Secretary, in consultation with the Secretary of Defense and the Director of National Intelligence, determines that a covered entity planning a significant transaction that would violate the agreement required under subparagraph (C)(i) could take measures in connection with the transaction to mitigate any risk to national security, the Secretary—

(I) may negotiate, enter into, and enforce any agreement or condition for the mitigation; and,

(II) waive the recovery requirement under clause (iii).

**(F) Submission of records**

**(i) In general**

The Secretary may request from a covered entity records and other necessary information to review the compliance of the covered entity with the agreement required under subparagraph (C)(i).

**(ii) Eligibility**

In order to be eligible for Federal financial assistance under this section, a covered entity shall agree to provide records and other necessary information requested by the Secretary under clause (i).

**(G) Confidentiality of records**

**(i) In general**

Subject to clause (ii), any information derived from records or necessary information disclosed by a covered entity to the Secretary under this section—

(I) shall be exempt from disclosure under section 552(b)(3) of title 5; and

(II) shall not be made public.

**(ii) Exceptions**

Clause (i) shall not prevent the disclosure of any of the following by the Secretary:

(I) Information relevant to any administrative or judicial action or proceeding.

(II) Information that a covered entity has consented to be disclosed to third parties.

(III) Information necessary to fulfill the requirement of the congressional notification under subparagraph (H).

**(H) Congressional notification**

Not later than 60 days after the date on which the Secretary finds a violation by a

covered entity of an agreement required under subparagraph (C)(i), and after providing the covered entity with an opportunity to provide information in response to that finding, the Secretary shall provide to the appropriate Committees of Congress—

(i) a notification of the violation;

(ii) a brief description of how the Secretary determined the covered entity to be in violation; and

(iii) a summary of any actions or planned actions by the Secretary in response to the violation.

**(I) Regulations**

The Secretary may issue regulations implementing this paragraph.

**(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;

(ii) other Federal programs are leveraged for manufacturing, research, and training to complement the financial assistance awards awarded under the program; and

(iii) the Federal Government could take specific actions to address shortages in the semiconductor supply chain, including—

(I) demand-side incentives, including incentives related to the information and communications technology supply chain; and

(II) additional incentives, at national and global scales, to accelerate utilization of leading-edge semiconductor nodes to address shortages in mature semiconductor nodes; 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;

(v) how projects are supporting the semiconductor needs of critical infrastructure industries in the United States, including those industries designated by the Cybersecurity and Infrastructure Security Agency as essential infrastructure industries; and

(D) drawing on data made available by the Department of Labor or other sources, to the extent practicable, an analysis of—

(i) semiconductor industry data regarding businesses that are—

(I) majority owned and controlled by minority individuals;

(II) majority owned and controlled by women; or

(III) majority owned and controlled by both women and minority individuals;

(ii) the number and amount of contracts and subcontracts awarded by each covered entity using funds made available under subsection (a) disaggregated by recipients of each such contract or subcontracts that are majority owned and controlled by minority individuals and majority owned and controlled by women; and

(iii) aggregated workforce data, including data by race or ethnicity, sex, and job categories.<sup>2</sup>

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

#### **(d) Sense of Congress**

It is the sense of Congress that, in carrying out subsection (a), the Secretary should allocate funds in a manner that—

(1) strengthens the security and resilience of the semiconductor supply chain, including by mitigating gaps and vulnerabilities;

(2) provides a supply of secure semiconductors relevant for national security;

(3) strengthens the leadership of the United States in semiconductor technology;

(4) grows the economy of the United States and supports job creation in the United States;

(5) bolsters the semiconductor and skilled technical workforces in the United States;

(6) promotes the inclusion of economically disadvantaged individuals and small businesses; and

(7) improves the resiliency of the semiconductor supply chains of critical manufacturing industries.

#### **(e) Additional assistance for mature technology nodes**

##### **(1) In general**

The Secretary shall establish within the program established under subsection (a) an additional program that provides Federal financial assistance to covered entities to incentivize investment in facilities and equipment in the United States for the fabrication, assembly, testing, or packaging of semiconductors at mature technology nodes.

#### **(2) Eligibility and requirements**

In order for an entity to qualify to receive Federal financial assistance under this subsection, the covered entity shall agree to—

(A) submit an application under subsection (a)(2)(A);

(B) meet the eligibility requirements under subsection (a)(2)(B);

(C)(i) provide equipment or materials for the fabrication, assembly, testing, or packaging of semiconductors at mature technology nodes in the United States; or

(ii) fabricate, assemble using packaging, or test semiconductors at mature technology nodes in the United States;

(D) commit to using any Federal financial assistance received under this section to increase the production of semiconductors at mature technology nodes; and

(E) be subject to the considerations described in subsection (a)(2)(C).

#### **(3) Procedures**

In granting Federal financial assistance to covered entities under this subsection, the Secretary may use the procedures established under subsection (a).

#### **(4) Considerations**

In addition to the considerations described in subsection (a)(2)(C), in granting Federal financial assistance under this subsection, the Secretary may consider whether a covered entity produces or supplies equipment or materials used in the fabrication, assembly, testing, or packaging of semiconductors at mature technology nodes that are necessary to support a critical manufacturing industry.

#### **(5) Priority**

In awarding Federal financial assistance to covered entities under this subsection, the Secretary shall give priority to covered entities that support the resiliency of semiconductor supply chains for critical manufacturing industries in the United States.

#### **(6) Authorization of appropriations**

There are authorized to be appropriated to the Secretary to carry out this subsection \$2,000,000,000, which shall remain available until expended.

#### **(f) Construction projects**

Section 3212 of title 42 shall apply to a construction project that receives financial assistance from the Secretary under this section.

#### **(g) Loans and loan guarantees**

##### **(1) In general**

Subject to the requirements of subsection (a) and this subsection, the Secretary may make or guarantee loans to covered entities as financial assistance under this section.

##### **(2) Conditions**

The Secretary may select eligible projects to receive loans or loan guarantees under this subsection if the Secretary determines that—

(A) the covered entity—

(i) has a reasonable prospect of repaying the principal and interest on the loan; and

(ii) has met such other criteria as may be established and published by the Secretary; and

<sup>2</sup> So in original. The period probably should be “; and”.

(B) the amount of the loan (when combined with amounts available to the loan recipient from other sources) will be sufficient to carry out the project.

**(3) Reasonable prospect of repayment**

The Secretary shall base a determination of whether there is a reasonable prospect of repayment of the principal and interest on a loan under paragraph (2)(A)(i) on a comprehensive evaluation of whether the covered entity has a reasonable prospect of repaying the principal and interest, including, as applicable, an evaluation of—

(A) the strength of the contractual terms of the project the covered entity plans to perform (if commercially reasonably available);

(B) the forecast of noncontractual cash flows supported by market projections from reputable sources, as determined by the Secretary;

(C) cash sweeps and other structure enhancements;

(D) the projected financial strength of the covered entity—

(i) at the time of loan close; and

(ii) throughout the loan term after the project is completed;

(E) the financial strength of the investors and strategic partners of the covered entity, if applicable;

(F) other financial metrics and analyses that the private lending community and nationally recognized credit rating agencies rely on, as determined appropriate by the Secretary; and

(G) such other criteria the Secretary may determine relevant.

**(4) Rates, terms, and repayments of loans**

A loan provided under this subsection—

(A) shall have an interest rate that does not exceed a level that the Secretary determines appropriate, taking into account, as of the date on which the loan is made, the cost of funds to the Department of the Treasury for obligations of comparable maturity; and

(B) shall have a term of not more than 25 years.

**(5) Additional terms**

A loan or guarantee provided under this subsection may include any other terms and conditions that the Secretary determines to be appropriate.

**(6) Responsible lender**

No loan may be guaranteed under this subsection, unless the Secretary determines that—

(A) the lender is responsible; and

(B) adequate provision is made for servicing the loan on reasonable terms and protecting the financial interest of the United States.

**(7) Advanced budget authority**

New loans may not be obligated and new loan guarantees may not be committed to under this subsection, unless appropriations of

budget authority to cover the costs of such loans and loan guarantees are made in advance in accordance with section 661c(b) of title 2.

**(8) Continued oversight**

The loan agreement for a loan guaranteed under this subsection shall provide that no provision of the loan agreement may be amended or waived without the consent of the Secretary.

**(h) Oversight**

Not later than 4 years after disbursement of the first financial award under subsection (a), the Inspector General of the Department of Commerce shall audit the program under this section to assess—

(1) whether the eligibility requirements for covered entities receiving financial assistance under the program are met;

(2) whether eligible entities use the financial assistance received under the program in accordance with the requirements of this section;

(3) whether the covered entities receiving financial assistance under this program have carried out the commitments made to worker and community investment under subsection (a)(2)(B)(ii)(II) by the target date for completion set by the Secretary under subsection (a)(5)(A);

(4) whether the required agreement entered into by covered entities and the Secretary under subsection (a)(6)(C)(i), including the notification process, has been carried out to provide covered entities sufficient guidance about a violation of the required agreement;

(5) whether the Secretary has provided timely Congressional notification about violations of the required agreement under subsection (a)(6)(C)(i), including the required information on how the Secretary reached a determination of whether a covered entity was in violation under subsection (a)(6)(E); and

(6) whether the Secretary has sufficiently reviewed any covered entity engaging in a listed exception under subsection (a)(6)(C)(ii).

**(i) Prohibition on use of funds**

No funds made available under this section may be used to construct, modify, or improve a facility outside of the United States.

(Pub. L. 116–283, div. H, title XCIX, § 9902, Jan. 1, 2021, 134 Stat. 4846; Pub. L. 117–167, div. A, §§ 103(b), 105(a), Aug. 9, 2022, 136 Stat. 1380, 1391.)

**Editorial Notes**

**AMENDMENTS**

2022—Subsec. (a)(1). Pub. L. 117–167, § 103(b)(1), substituted “for the fabrication” for “for semiconductor fabrication” and “of semiconductors, materials used to manufacture semiconductors, or semiconductor manufacturing equipment.” for period at end and inserted “production,” before “or research and development”.

Subsec. (a)(2)(B)(ii)(V), (VI). Pub. L. 117–167, § 103(b)(2)(B), added subcls. (V) and (VI).

Subsec. (a)(2)(B)(iii), (iv). Pub. L. 117–167, § 103(b)(2)(A), (C), added cls. (iii) and (iv).

Subsec. (a)(2)(C)(i)(II). Pub. L. 117–167, § 103(b)(2)(D)(i)(I), substituted “is in the economic and national security interests of the United States” for “is in the interest of the United States”.

Subsec. (a)(2)(C)(i)(III). Pub. L. 117–167, § 103(b)(2)(D)(i)(II), struck out “and” at end.

Subsec. (a)(2)(C)(iii) to (v). Pub. L. 117–167, § 103(b)(2)(D)(ii)–(iv), added cls. (iii) and (iv) and redesignated former cl. (iii) as (v).

Subsec. (a)(2)(D), (E). Pub. L. 117–167, § 103(b)(2)(E), (F), added subpar. (D) and redesignated former subpar. (D) as (E).

Subsec. (a)(4)(A). Pub. L. 117–167, § 103(b)(3), substituted “used for the purposes” for “used for semiconductor”.

Subsec. (a)(5)(A). Pub. L. 117–167, § 103(b)(4)(A), struck out “major” before “awards” in introductory provisions.

Subsec. (a)(5)(D). Pub. L. 117–167, § 103(b)(4)(B), struck out “major” before “award” in introductory provisions.

Subsec. (a)(5)(E)(i). Pub. L. 117–167, § 103(b)(4)(C), struck out “major” before “award”.

Subsec. (a)(6). Pub. L. 117–167, § 103(b)(5), added par. (6).

Subsec. (c)(1)(B)(iii). Pub. L. 117–167, § 105(a)(1)(A), added cl. (iii).

Subsec. (c)(1)(C)(v). Pub. L. 117–167, § 105(a)(1)(B), added cl. (v).

Subsec. (c)(1)(D). Pub. L. 117–167, § 105(a)(2), added subpar. (D).

Subsecs. (d) to (i). Pub. L. 117–167, § 103(b)(6), added subsecs. (d) to (i).

## Statutory Notes and Related Subsidiaries

### OPPORTUNITY AND INCLUSION

Pub. L. 117–167, div. A, § 104, Aug. 9, 2022, 136 Stat. 1390, provided that:

“(a) ESTABLISHMENT.—Not later than 180 days after the date of enactment of this Act [Aug. 9, 2022], the Secretary of Commerce shall establish activities in the Department of Commerce, within the program established under section 9902 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (15 U.S.C. 4652), to carry out this section using funds appropriated under this Act [div. A of Pub. L. 117–167, see Tables for classification].

“(b) IN GENERAL.—The Secretary of Commerce shall assign personnel to lead and support the activities carried out under this section, including coordination with other workforce development activities of the Department of Commerce or of Federal agencies, as defined in section 551 of title 5, United States Code, as appropriate.

“(c) ACTIVITIES.—Personnel assigned by the Secretary to carry out the activities under this section shall—

“(1) assess the eligibility of a covered entity, as defined in section 9901 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (15 U.S.C. 4651), for financial assistance for a project with respect to the requirements under subclauses (II) and (III) of section 9902(a)(2)(B)(ii) of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (15 U.S.C. 4652(a)(2)(B)(ii)(II) and (III));

“(2) ensure that each covered entity, as defined in section 9901 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (15 U.S.C. 4651), that is awarded financial assistance under section 9902 of that Act (15 U.S.C. 4652) is carrying out the commitments of the covered entity to economically disadvantaged individuals as described in the application of the covered entity under that section by the target dates for completion established by the Secretary of Commerce under subsection(a)(5)(A) of that section; and

“(3) increase participation of and outreach to economically disadvantaged individuals, minority-owned businesses, veteran-owned businesses, and women-owned businesses, as defined by the Secretary of Commerce, respectively, in the geographic area of a project under section 9902 of the William M. (Mac)

Thornberry National Defense Authorization Act for Fiscal Year 2021 (15 U.S.C. 4652) and serve as a resource for those individuals, businesses, and covered entities.

“(d) STAFF.—The activities under this section shall be staffed at the appropriate levels to carry out the functions and responsibilities under this section until 95 percent of the amounts of funds made available for the program established under section 9902 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (15 U.S.C. 4652) have been expended.

“(e) REPORT.—Beginning on the date that is 1 year after the date on which the Secretary of Commerce establishes the activities described in subsection (c), the Secretary of Commerce shall submit to the appropriate committees of Congress, as defined in section 9901(1) of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (15 U.S.C. 4651), and make publicly available on the website of the Department of Commerce an annual report regarding the actions taken by the Department of Commerce under this section.”

### REFERENCES IN PUB. L. 117–167

Pub. L. 117–167, § 2, Aug. 9, 2022, 136 Stat. 1371, provided that: “Except as expressly provided otherwise, any reference to ‘this Act’ contained in any division of this Act [see Tables for classification] shall be treated as referring only to the provisions of that division.”

## § 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;