

1973—Pub. L. 98-189 designated text preceding first proviso as subsec. (a) and inserted “Except as otherwise provided in this section,” before “the President”, designated first proviso as subsec. (b) and inserted reference to acceptance of a dependable undertaking of a foreign country or international organization, and struck out further provisions setting forth Presidential powers with respect to sales agreements with and payments by purchasing countries or international organizations.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1996 AMENDMENT; IMPLEMENTING REGULATIONS

Pub. L. 104-107, title V, §531A(b), Feb. 12, 1996, 110 Stat. 731, provided that: “Section 22(d) of the Arms Export Control Act [subsec. (d) of this section], as added by subsection (a)—

- “(1) shall take effect on the 60th day following the date of the enactment of this Act [Feb. 12, 1996];
- “(2) shall be applicable only to contracts made in implementation of sales made after such effective date; and
- “(3) shall be implemented by revised procurement regulations, which shall be issued prior to such effective date.”

EFFECTIVE DATE

Section effective July 1, 1968, see section 41 of Pub. L. 90-629, set out as a note under section 2751 of this title.

SIMILAR PROVISIONS

Provisions similar to those comprising subsec. (d)(2) of this section were contained in the following appropriation acts:

Pub. L. 106-113, div. B, §1000(a)(2) [title V, §556], Nov. 29, 1999, 113 Stat. 1535, 1501A-100.

Pub. L. 105-277, div. A, §101(d) [title V, §536], Oct. 21, 1998, 112 Stat. 2681-150, 2681-181.

Pub. L. 105-118, title V, §535, Nov. 26, 1997, 111 Stat. 2416.

Pub. L. 104-208, div. A, title I, §101(c) [title V, §533A], Sept. 30, 1996, 110 Stat. 3009-121, 3009-153.

Pub. L. 104-107, title V, §531A(c), Feb. 12, 1996, 110 Stat. 731.

REQUIREMENT TO USE FIRM FIXED-PRICE CONTRACTS FOR FOREIGN MILITARY SALES

Pub. L. 116-92, div. A, title VIII, §807(c), Dec. 20, 2019, 133 Stat. 1486, provided that the regulations prescribed pursuant to section 830(a) of title VIII of div. A of Pub. L. 114-328, formerly set out as a note below, would not take effect until Dec. 31, 2020.

Pub. L. 114-328, div. A, title VIII, §830, Dec. 23, 2016, 130 Stat. 2282, as amended by Pub. L. 115-91, div. A, title VIII, §812, Dec. 12, 2017, 131 Stat. 1461, which directed the Secretary of Defense to prescribe regulations to require firm fixed-price contracts for foreign military sales not later than 180 days after Dec. 23, 2016, and to establish a pilot program for acceleration of foreign military sales, was repealed by Pub. L. 116-283, div. A, title VIII, §888, Jan. 1, 2021, 134 Stat. 3791.

Executive Documents

DELEGATION OF FUNCTIONS

For delegation of functions of the President under subsec. (a) of this section, see section 1(d) 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.

§ 2763. Credit sales

(a) Financing procurement of defense articles and services, and design and construction services

The President is authorized to finance the procurement of defense articles, defense services, and design and construction services by friendly foreign countries and international organizations, on such terms and conditions as he may determine consistent with the requirements of this section. Notwithstanding any other provision of law, and subject to the regular notification requirements of the Committees on Appropriations, the authority of this section may be used to provide financing to Israel and Egypt for the procurement by leasing (including leasing with an option to purchase) of defense articles from United States commercial suppliers, not including Major Defense Equipment (other than helicopters and other types of aircraft having possible civilian application), if the President determines that there are compelling foreign policy or national security reasons for those defense articles being provided by commercial lease rather than by government-to-government sale under this chapter.

(b) Repayment period

The President shall require repayment in United States dollars within a period not to exceed twelve years after the loan agreement with the country or international organization is signed on behalf of the United States Government, unless a longer period is specifically authorized by statute for that country or international organization.

(c) Interest rate; definitions

(1) The President shall charge interest under this section at such rate as he may determine, except that such rate may not be less than 5 percent per year.

(2) For purposes of financing provided under this section—

(A) the term “concessional rate of interest” means any rate of interest which is less than market rates of interest; and

(B) the term “market rate of interest” means any rate of interest which is equal to or greater than the current average interest rate (as of the last day of the month preceding the financing of the procurement under this section) that the United States Government pays on outstanding marketable obligations of comparable maturity.

(d) Participations in credits

References in any law to credits extended under this section shall be deemed to include reference to participations in credits.

(e) Payments on account of prior credits or loans

(1) Funds made available to carry out this section may be used by a foreign country to make payments of principal and interest which it owes to the United States Government on account of credits previously extended under this section or loans previously guaranteed under section 2764 of this title, subject to paragraph (2).

(2) Funds made available to carry out this section may not be used for prepayment of prin-

cipal or interest pursuant to the authority of paragraph (1).

(f) Audit of certain private firms

For each fiscal year, the Secretary of Defense, as requested by the Director of the Defense Security Assistance Agency, shall conduct audits on a nonreimbursable basis of private firms that have entered into contracts with foreign governments under which defense articles, defense services, or design and construction services are to be procured by such firms for such governments from financing under this section.

(g) Notification requirements with respect to cash flow financing

(1) For each country and international organization that has been approved for cash flow financing under this section, any letter of offer and acceptance or other purchase agreement, or any amendment thereto, for a procurement of defense articles, defense services, or design and construction services in excess of \$100,000,000 that is to be financed in whole or in part with funds made available under this chapter or the Foreign Assistance Act of 1961 [22 U.S.C. 2151 et seq.] shall be submitted to the congressional committees specified in section 634A(a) of the Foreign Assistance Act of 1961 [22 U.S.C. 2394-1(a)] in accordance with the procedures applicable to reprogramming notifications under that section.

(2) For purposes of this subsection, the term "cash flow financing" has the meaning given such term in subsection (d) of section 2765 of this title.

(h) Limitation on use of funds for direct commercial contracts

Of the amounts made available for a fiscal year to carry out this section, not more than \$100,000,000 for such fiscal year may be made available for countries other than Israel and Egypt for the purpose of financing the procurement of defense articles, defense services, and design and construction services that are not sold by the United States Government under this chapter.

(Pub. L. 90-629, ch. 2, § 23, Oct. 22, 1968, 82 Stat. 1324; Pub. L. 93-559, § 45(a)(2), Dec. 30, 1974, 88 Stat. 1813; Pub. L. 94-329, title II, § 208(a), June 30, 1976, 90 Stat. 739; Pub. L. 96-533, title I, § 105(b)(3), Dec. 16, 1980, 94 Stat. 3134; Pub. L. 99-83, title I, § 102, Aug. 8, 1985, 99 Stat. 195; Pub. L. 100-202, § 101(e) [title V, § 572], Dec. 22, 1987, 101 Stat. 1329-131, 1329-176; Pub. L. 101-513, title V, § 580, Nov. 5, 1990, 104 Stat. 2045; Pub. L. 104-164, title I, § 102(a)-(c), July 21, 1996, 110 Stat. 1422.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a), (g)(1), and (h), 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.

The Foreign Assistance Act of 1961, referred to in subsec. (g)(1), is Pub. L. 87-195, Sept. 4, 1961, 75 Stat. 424, 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

1996—Subsecs. (f) to (h). Pub. L. 104-164 added subsecs. (f) to (h).

1990—Subsec. (e). Pub. L. 101-513 added subsec. (e).

1987—Subsec. (a). Pub. L. 100-202 inserted sentence at end authorizing financing to Israel and Egypt for commercial leasing of defense articles, not including Major Defense Equipment, with exception for certain aircraft, upon a Presidential determination that there are compelling foreign policy or national defense reasons for such leasing.

1985—Pub. L. 99-83 amended section generally. Prior to amendment, section read as follows: "The President is authorized to finance procurements of defense articles, defense services, and design and construction services by friendly foreign countries and international organizations on terms requiring the payment to the United States Government in United States dollars of—

"(1) the value of such articles or services within a period not to exceed twelve years after the delivery of such articles or the rendering of such services; and

"(2) interest on the unpaid balance of that obligation for payment of the value of such articles or services, at a rate equivalent to the current average interest rate, as of the last day of the month preceding the financing of such procurement, that the United States Government pays on outstanding marketable obligations of comparable maturity, unless the President certifies to Congress that the national interest requires a lesser rate of interest and states in the certification the lesser rate so required and the justification therefor."

1980—Pub. L. 96-533 substituted "defense articles, defense services, and design and construction services" for "defense articles and defense services".

1976—Par. (1). Pub. L. 94-329 substituted "twelve years" for "ten years".

1974—Pub. L. 93-559 incorporated existing provisions in cl. (1) and added cl. (2).

Statutory Notes and Related Subsidiaries

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.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94-329, title II, § 208(b), June 30, 1976, 90 Stat. 739, provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to financing under agreements entered into on or after the date of enactment of this Act [June 30, 1976] for the procurement of defense articles to be delivered, or defense services to be rendered, after such date."

EFFECTIVE DATE

Section effective July 1, 1968, see section 41 of Pub. L. 90-629, set out as a note under section 2751 of this title.

SIMILAR PROVISIONS

Provisions similar to those in last sentence of subsec. (a) of this section which were applicable to NATO and major non-NATO allies in addition to Israel and Egypt were contained in the following appropriation acts:

Pub. L. 118-47, div. F, title VII, § 7035(b)(3), Mar. 23, 2024, 138 Stat. 795.

Pub. L. 117-328, div. K, title VII, § 7035(b)(3), Dec. 29, 2022, 136 Stat. 5037.

Pub. L. 117-103, div. K, title VII, § 7035(b)(4), Mar. 15, 2022, 136 Stat. 629.

Pub. L. 116-260, div. G, title VII, § 7035(b)(4), Dec. 27, 2020, 134 Stat. 1756.

Pub. L. 116-94, div. G, title VII, § 7035(b)(4), Dec. 20, 2019, 133 Stat. 2878.

Pub. L. 116-6, div. F, title VII, § 7049(b)(5), Feb. 15, 2019, 133 Stat. 366.

Pub. L. 115-141, div. K, title VII, § 7068, Mar. 23, 2018, 132 Stat. 950.

Pub. L. 115–31, div. J, title VII, § 7068, May 5, 2017, 131 Stat. 704.

Pub. L. 114–113, div. K, title VII, § 7068, Dec. 18, 2015, 129 Stat. 2811.

Pub. L. 113–235, div. J, title VII, § 7068, Dec. 16, 2014, 128 Stat. 2676.

Pub. L. 113–76, div. K, title VII, § 7068, Jan. 17, 2014, 128 Stat. 558.

Pub. L. 112–74, div. I, title VII, § 7069, Dec. 23, 2011, 125 Stat. 1253.

Pub. L. 111–117, div. F, title VII, § 7083, Dec. 16, 2009, 123 Stat. 3400.

Pub. L. 111–8, div. H, title VII, § 7085, Mar. 11, 2009, 123 Stat. 912.

Pub. L. 110–161, div. J, title VI, § 610, Dec. 26, 2007, 121 Stat. 2316.

Pub. L. 109–102, title V, § 510, Nov. 14, 2005, 119 Stat. 2198.

Pub. L. 108–447, div. D, title V, § 510, Dec. 8, 2004, 118 Stat. 2993.

Pub. L. 108–199, div. D, title V, § 510, Jan. 23, 2004, 118 Stat. 170.

Pub. L. 108–7, div. E, title V, § 575, Feb. 20, 2003, 117 Stat. 210.

Pub. L. 107–115, title V, § 580, Jan. 10, 2002, 115 Stat. 2170.

Pub. L. 106–429, § 101(a) [title V, § 589], Nov. 6, 2000, 114 Stat. 1900, 1900A–59.

Pub. L. 106–113, div. B, § 1000(a)(2) [title V, § 528], Nov. 29, 1999, 113 Stat. 1535, 1501A–90.

Pub. L. 105–277, div. A, § 101(d) [title V, § 529], Oct. 21, 1998, 112 Stat. 2681–150, 2681–178.

Pub. L. 105–118, title V, § 528, Nov. 26, 1997, 111 Stat. 2413.

Pub. L. 104–208, div. A, title I, § 101(c) [title V, § 528], Sept. 30, 1996, 110 Stat. 3009–121, 3009–149.

Pub. L. 104–107, title V, § 528, Feb. 12, 1996, 110 Stat. 730.

Pub. L. 103–306, title V, § 530, Aug. 23, 1994, 108 Stat. 1635.

Pub. L. 103–87, title V, § 530, Sept. 30, 1993, 107 Stat. 954.

Pub. L. 102–391, title V, § 558, Oct. 6, 1992, 106 Stat. 1676.

Pub. L. 101–513, title V, § 561, Nov. 5, 1990, 104 Stat. 2026.

Pub. L. 101–167, title V, § 571, Nov. 21, 1989, 103 Stat. 1245.

Pub. L. 100–461, title V, § 580, Oct. 1, 1988, 102 Stat. 2268–48.

EASTERN EUROPEAN SECURITY

Pub. L. 116–332, Jan. 13, 2021, 134 Stat. 5111, provided that:

“SECTION 1. SHORT TITLE.

“This Act may be cited as the ‘Eastern European Security Act’.

“SEC. 2. SENSE OF CONGRESS.

“It is the sense of Congress that it is in the national security interest of the United States to—

“(1) deter aggression against North Atlantic Treaty Organization (NATO) allies by Russia or any other adversary;

“(2) assist NATO allies in acquiring and deploying modern, NATO interoperable military equipment and reducing their dependence on Russian or former Soviet-era defense articles;

“(3) ensure that NATO allies meet alliance defense commitments, including through adequate investments in national defense;

“(4) supplement existing grant assistance to key allies through foreign military financing loans, at rates competitive with those already available on commercial markets, to purchase NATO-interoperable military equipment; and

“(5) work to maintain and strengthen the democratic institutions and practices of all NATO allies, in accordance with the goals of Article 2 of the North Atlantic Treaty.

“SEC. 3. FOREIGN MILITARY LOAN AUTHORITY.

“(a) IN GENERAL.—Beginning in fiscal year 2021, subject to the notification requirements under subsection (b) and to the availability of appropriations, the President, acting through the Secretary of State, is authorized—

“(1) to make direct loans under section 23 of the Arms Export Control Act (22 U.S.C. 2763) to NATO member countries that joined the alliance after March 1, 1999, notwithstanding the minimum interest rate required by subsection (c)(1) of such section; and

“(2) to charge fees for such loans under paragraph (1), which shall be collected from borrowers in accordance with section 502(7) of the Congressional Budget Act of 1974 [2 U.S.C. 661a(7)], and which may be used to cover the costs of such loans as defined in section 502 of the Congressional Budget Act of 1974 [2 U.S.C. 661a].

“(b) NOTIFICATION.—A loan may not be made under the authority provided by subsection (a) unless the Secretary of State submits to the appropriate congressional committees a certification, not fewer than fifteen days before entering into an agreement to make such loan, that—

“(1) the recipient country is making demonstrable progress toward meeting its defense spending commitments in accordance with the 2014 NATO Wales Summit Declaration; and

“(2) the government of such recipient country is respecting that country’s constitution and upholds democratic values such as freedom of religion, freedom of speech, freedom of the press, the rule of law, and the rights of religious minorities.

“(c) REPAYMENT.—A loan made under the authority provided by subsection (a) shall be repaid in not more than 12 years, but may include a grace period of up to 1 year on the repayment of the principal.

“(d) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this Act, the term ‘appropriate congressional committees’ means—

“(1) the Committee on Foreign Affairs and the Committee on Appropriations of the House of Representatives; and

“(2) the Committee on Foreign Relations and the Committee on Appropriations of the Senate.”

Executive Documents

DELEGATION OF FUNCTIONS

For delegation of functions of the President under this section and section 7069 of div. I of Pub. L. 112–74 (see Similar Provisions note below), with certain conditions and exceptions, see section 1(e) 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.

§ 2764. Guaranties

(a) Guaranty against political and credit risks of nonpayment

The President may guarantee any individual, corporation, partnership, or other juridical entity doing business in the United States (excluding United States Government agencies other than the Federal Financing Bank) against political and credit risks of nonpayment arising out of their financing of credit sales of defense articles, defense services, and design and construction services to friendly countries and international organizations. Fees shall be charged for such guaranties.