

conduct, implementation, or results of research, education, and promotion activities under the order except communications described in paragraph (1)(A); or

(C) any lawful action designed to market concrete masonry products directly to a foreign government or political subdivision of a foreign government.

**(h) Periodic evaluation**

The order shall require the Board to provide for the independent evaluation of all research, education, and promotion programs or projects undertaken under the order, beginning 5 years after October 5, 2018, and every 3 years thereafter. The Board shall submit to the Secretary and make available to the public the results of each such evaluation.

**(i) Objectives**

The Board shall establish annual research, education, and promotion objectives and performance metrics for each fiscal year subject to approval by the Secretary.

**(j) Biennial report**

Every 2 years the Board shall prepare and make publicly available a comprehensive and detailed report that includes an identification and description of all programs and projects undertaken by the Board during the previous 2 years as well as those planned for the subsequent 2 years and detail the allocation or planned allocation of Board resources for each such program or project. Such report shall also include—

- (1) the overall financial condition of the Board;
- (2) a summary of the amounts obligated or expended during the 2 preceding fiscal years; and
- (3) a description of the extent to which the objectives of the Board were met according to the metrics required under subsection (i).

**(k) Books and records of persons covered by order**

**(1) In general**

The order shall require that manufacturers shall—

- (A) maintain records sufficient to ensure compliance with the order and regulations; and
- (B) make the records described in subparagraph (A) available, during normal business hours, for inspection by employees or agents of the Board or the Department.

**(2) Time requirement**

Any record required to be maintained under paragraph (1) shall be maintained for such time period as the Secretary may prescribe.

**(3) Confidentiality of information**

**(A) In general**

Except as otherwise provided in this paragraph, trade secrets and commercial or financial information that is privileged or confidential reported to, or otherwise obtained by the Board or the Secretary (or any representative of the Board or the Secretary) under this chapter shall not be disclosed by any officers, employees, and agents of the Department or the Board.

**(B) Suits and hearings**

Information referred to in subparagraph (A) may be disclosed only if—

- (i) the Secretary considers the information relevant; and
- (ii) the information is revealed in a judicial proceeding or administrative hearing brought at the direction or on the request of the Secretary or to which the Secretary or any officer of the Department is a party.

**(C) General statements and publications**

This paragraph does not prohibit—

- (i) the issuance of general statements based on reports or on information relating to a number of persons subject to an order if the statements do not identify the information furnished by any person; or

(ii) the publication, by direction of the Secretary, of the name of any person violating any order and a statement of the particular provisions of the order violated by the person.

**(D) Penalty**

Any officer, employee, or agent of the Department of Commerce or any officer, employee, or agent of the Board who willfully violates this paragraph shall be fined not more than \$1,000 and imprisoned for not more than 1 year, or both.

**(4) Withholding information**

This subsection does not authorize the withholding of information from Congress.

(Pub. L. 115–254, div. E, §1305, Oct. 5, 2018, 132 Stat. 3472.)

## **§8705. Assessments**

**(a) Assessments**

The order shall provide that assessments shall be paid by a manufacturer if the manufacturer has manufactured concrete masonry products during a period of at least 180 days prior to the date the assessment is to be remitted.

**(b) Collection**

**(1) In general**

Assessments required under the order shall be remitted by the manufacturer to the Board in the manner prescribed by the order.

**(2) Timing**

The order shall provide that assessments required under the order shall be remitted to the Board not less frequently than quarterly.

**(3) Records**

As part of the remittance of assessments, manufacturers shall identify the total amount due in assessments on all sales receipts, invoices or other commercial documents of sale as a result of the sale of concrete masonry units in a manner as prescribed by the Board to ensure compliance with the order.

**(c) Assessment rates**

With respect to assessment rates, the order shall contain the following terms:

**(1) Initial rate**

The assessment rate on concrete masonry products shall be \$0.01 per concrete masonry unit sold.

**(2) Changes in the rate**

**(A) Authority to change rate**

The Board shall have the authority to change the assessment rate. A two-thirds majority of voting members of the Board shall be required to approve a change in the assessment rate.

**(B) Limitation on increases**

An increase or decrease in the assessment rate with respect to concrete masonry products may not exceed \$0.01 per concrete masonry unit sold.

**(C) Maximum rate**

The assessment rate shall not be in excess of \$0.05 per concrete masonry unit.

**(D) Limitation on frequency of changes**

The assessment rate may not be increased or decreased more than once annually.

**(d) Late-payment and interest charges**

**(1) In general**

Late-payment and interest charges may be levied on each person subject to the order who fails to remit an assessment in accordance with subsection (b).

**(2) Rate**

The rate for late-payment and interest charges shall be specified by the Secretary.

**(e) Investment of assessments**

Pending disbursement of assessments under a budget approved by the Secretary, the Board may invest assessments collected under this section in—

- (1) obligations of the United States or any agency of the United States;
- (2) general obligations of any State or any political subdivision of a State;
- (3) interest-bearing accounts or certificates of deposit of financial institutions that are members of the Federal Reserve System; or
- (4) obligations fully guaranteed as to principal and interest by the United States.

**(f) Assessment funds for regional initiatives**

**(1) In general**

The order shall provide that not less than 50 percent of the assessments (less administration expenses) paid by a manufacturer shall be used to support research, education, and promotion programs and projects in support of the geographic region of the manufacturer.

**(2) Geographic regions**

The order shall provide for the following geographic regions:

(A) Region I shall comprise Connecticut, Delaware, the District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and West Virginia.

(B) Region II shall comprise Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia.

(C) Region III shall comprise Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin.

(D) Region IV shall comprise Arizona, Arkansas, Kansas, Louisiana, Missouri, New Mexico, Oklahoma, and Texas.

(E) Region V shall comprise Alaska, California, Colorado, Hawaii, Idaho, Montana, Nevada, Oregon, Utah, Washington, and Wyoming.

**(3) Adjustment of geographic regions**

The order shall provide that the Secretary may, upon recommendation of the Board, modify the composition of the geographic regions described in paragraph (2).

(Pub. L. 115–254, div. E, §1306, Oct. 5, 2018, 132 Stat. 3478.)

**§8706. Referenda**

**(a) Initial referendum**

**(1) Referendum required**

During the 60-day period immediately preceding the proposed effective date of the order issued under section 8703 of this title, the Secretary shall conduct a referendum among manufacturers eligible under subsection (b)(2) subject to assessments under section 8705 of this title.

**(2) Approval of order needed**

The order shall become effective only if the Secretary determines that the order has been approved by a majority of manufacturers voting who also represent a majority of the machine

cavities in operation of those manufacturers voting in the referendum.

**(b) Votes permitted**

**(1) In general**

Each manufacturer eligible to vote in a referendum conducted under this section shall be entitled to cast 1 vote.

**(2) Eligibility**

For purposes of paragraph (1), a manufacturer shall be considered to be eligible to vote if the manufacturer has manufactured concrete masonry products during a period of at least 180 days prior to the first day of the period during which voting in the referendum will occur.

**(c) Manner of conducting referenda**

**(1) In general**

Referenda conducted pursuant to this section shall be conducted in a manner determined by the Secretary.

**(2) Advance registration**

A manufacturer who chooses to vote in any referendum conducted under this section shall register with the Secretary prior to the voting period, after receiving notice from the Secretary concerning the referendum under paragraph (4).

**(3) Voting**

The Secretary shall establish procedures for voting in any referendum conducted under this section. The ballots and other information or reports that reveal or tend to reveal the identity or vote of voters shall be strictly confidential.

**(4) Notice**

Not later than 30 days before a referendum is conducted under this section with respect to an order, the Secretary shall notify all manufacturers, in such a manner as determined by the Secretary, of the period during which voting in the referendum will occur. The notice shall explain any registration and voting procedures established under this subsection.

**(d) Subsequent referenda**

If an order is approved in a referendum conducted under subsection (a), the Secretary shall conduct a subsequent referendum—

(1) at the request of the Board, subject to the voting requirements of subsections (b) and (c), to ascertain whether eligible manufacturers favor suspension, termination, or continuance of the order; or

(2) effective beginning on the date that is 5 years after the date of the approval of the order, and at 5-year intervals thereafter, at the request of 25 percent or more of the total number of persons eligible to vote under subsection (b).

**(e) Suspension or termination**

If, as a result of a referendum conducted under subsection (d), the Secretary determines that suspension or termination of the order is favored by a majority of all votes cast in the referendum as provided in subsection (a)(2), the Secretary shall—

(1) not later than 180 days after the referendum, suspend or terminate, as appropriate, collection of assessments under the order; and

(2) suspend or terminate, as appropriate, programs and projects under the order as soon as practicable and in an orderly manner.

**(f) Costs of referenda**

The Board established under an order with respect to which a referendum is conducted under this section shall reimburse the Secretary from assessments for any expenses incurred by the Secretary to conduct the referendum.

(Pub. L. 115–254, div. E, §1307, Oct. 5, 2018, 132 Stat. 3479.)

## **§8707. Petition and review**

### **(a) Petition**

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

A person subject to an order issued under this chapter may file with the Secretary a petition—

(A) stating that the order, any provision of the order, or any obligation imposed in connection with the order, is not established in accordance with law; and

(B) requesting a modification of the order or an exemption from the order.

#### **(2) Hearing**

The Secretary shall give the petitioner an opportunity for a hearing on the petition, in accordance with regulations issued by the Secretary.

#### **(3) Ruling**

After the hearing, the Secretary shall make a ruling on the petition. The ruling shall be final, subject to review as set forth in subsection (b).

#### **(4) Limitation on petition**

Any petition filed under this subsection challenging an order, any provision of the order, or any obligation imposed in connection with the order, shall be filed not less than 2 years after the effective date of the order, provision, or obligation subject to challenge in the petition.

### **(b) Review**

#### **(1) Commencement of action**

The district courts of the United States in any district in which a person who is a petitioner under subsection (a) resides or conducts business shall have jurisdiction to review the ruling of the Secretary on the petition of the person, if a complaint requesting the review is filed no later than 30 days after the date of the entry of the ruling by the Secretary.

#### **(2) Process**

Service of process in proceedings under this subsection shall be conducted in accordance with the Federal Rules of Civil Procedure.

#### **(3) Remands**

If the court in a proceeding under this subsection determines that the ruling of the Secretary on the petition of the person is not in accordance with law, the court shall remand the matter to the Secretary with directions—

(A) to make such ruling as the court shall determine to be in accordance with law; or

(B) to take such further action as, in the opinion of the court, the law requires.

### **(c) Enforcement**

The pendency of proceedings instituted under this section shall not impede, hinder, or delay the Attorney General or the Secretary from obtaining relief under section 8708 of this title.

(Pub. L. 115–254, div. E, §1308, Oct. 5, 2018, 132 Stat. 3480.)

## **§8708. Enforcement**

### **(a) Jurisdiction**

A district court of the United States shall have jurisdiction to enforce, and to prevent and restrain any person from violating, this chapter or an order or regulation issued by the Secretary under this chapter.

**(b) Referral to Attorney General**

A civil action authorized to be brought under this section shall be referred to the Attorney General of the United States for appropriate action.

**(c) Civil penalties and orders**

**(1) Civil penalties**

A person who willfully violates an order or regulation issued by the Secretary under this chapter may be assessed by the Secretary a civil penalty of not more than \$5,000 for each violation.

**(2) Separate offense**

Each violation and each day during which there is a failure to comply with an order or regulation issued by the Secretary shall be considered to be a separate offense.

**(3) Cease-and-desist orders**

In addition to, or in lieu of, a civil penalty, the Secretary may issue an order requiring a person to cease and desist from violating the order or regulation.

**(4) Notice and hearing**

No order assessing a penalty or cease-and-desist order may be issued by the Secretary under this subsection unless the Secretary provides notice and an opportunity for a hearing on the record with respect to the violation.

**(5) Finality**

An order assessing a penalty or a cease-and-desist order issued under this subsection by the Secretary shall be final and conclusive unless the person against whom the order is issued files an appeal from the order with the appropriate district court of the United States.

**(d) Additional remedies**

The remedies provided in this chapter shall be in addition to, and not exclusive of, other remedies that may be available.

(Pub. L. 115–254, div. E, §1309, Oct. 5, 2018, 132 Stat. 3481.)

**§8709. Investigation and power to subpoena**

**(a) Investigations**

The Secretary may conduct such investigations as the Secretary considers necessary for the effective administration of this chapter, or to determine whether any person has engaged or is engaging in any act that constitutes a violation of this chapter or any order or regulation issued under this chapter.

**(b) Subpoenas, oaths, and affirmations**

**(1) Investigations**

For the purpose of conducting an investigation under subsection (a), the Secretary may administer oaths and affirmations, subpoena witnesses, compel the attendance of witnesses, take evidence, and require the production of any records that are relevant to the inquiry. The production of the records may be required from any place in the United States.

**(2) Administrative hearings**

For the purpose of an administrative hearing held under section 8707(a)(2) of this title or section 8708(c)(4) of this title, the presiding officer may administer oaths and affirmations, subpoena witnesses, compel the attendance of witnesses, take evidence, and require the production of any records that are relevant to the inquiry. The attendance of witnesses and the production of the records may be required from any place in the United States.

**(c) Aid of courts**

**(1) In general**

In the case of contumacy by, or refusal to obey a subpoena issued under subsection (b) to, any person, the Secretary may invoke the aid of any court of the United States within the jurisdiction of which the investigation or proceeding is conducted, or where the person resides or conducts business, in order to enforce a subpoena issued under subsection (b).

**(2) Order**

The court may issue an order requiring the person referred to in paragraph (1) to comply with a subpoena referred to in paragraph (1).

**(3) Failure to obey**

Any failure to obey the order of the court may be punished by the court as a contempt of court.

**(4) Process**

Process in any proceeding under this subsection may be served in the United States judicial district in which the person being proceeded against resides or conducts business, or wherever the person may be found.

(Pub. L. 115–254, div. E, §1310, Oct. 5, 2018, 132 Stat. 3482.)

**§8710. Suspension or termination**

**(a) Mandatory suspension or termination**

The Secretary shall suspend or terminate an order or a provision of an order if the Secretary finds that an order or provision of an order obstructs or does not tend to effectuate the purpose of this chapter, or if the Secretary determines that the order or a provision of an order is not favored by a majority of all votes cast in the referendum as provided in section 8706(a)(2) of this title.

**(b) Implementation of suspension or termination**

If, as a result of a referendum conducted under section 8706 of this title, the Secretary determines that the order is not approved, the Secretary shall—

(1) not later than 180 days after making the determination, suspend or terminate, as the case may be, collection of assessments under the order; and

(2) as soon as practicable, suspend or terminate, as the case may be, activities under the order in an orderly manner.

(Pub. L. 115–254, div. E, §1311, Oct. 5, 2018, 132 Stat. 3482.)

**§8711. Amendments to orders**

The provisions of this chapter applicable to the order shall be applicable to any amendment to the order, except that section 8707 of this title shall not apply to an amendment.

(Pub. L. 115–254, div. E, §1312, Oct. 5, 2018, 132 Stat. 3483.)

**§8712. Effect on other laws**

This chapter shall not affect or preempt any other Federal or State law authorizing research, education, and promotion relating to concrete masonry products.

(Pub. L. 115–254, div. E, §1313, Oct. 5, 2018, 132 Stat. 3483.)

**§8713. Regulations**

The Secretary may issue such regulations as may be necessary to carry out this chapter and the

power vested in the Secretary under this chapter.

(Pub. L. 115–254, div. E, §1314, Oct. 5, 2018, 132 Stat. 3483.)

#### **§8714. Limitation on expenditures for administrative expenses**

Funds appropriated to carry out this chapter may not be used for the payment of the expenses or expenditures of the Board in administering the order.

(Pub. L. 115–254, div. E, §1315, Oct. 5, 2018, 132 Stat. 3483.)

#### **§8715. Limitations on obligation of funds**

##### **(a) In general**

In each fiscal year of the covered period, the Board may not obligate an amount greater than the sum of—

(1) 73 percent of the amount of assessments estimated to be collected under section 8705 of this title in such fiscal year;

(2) 73 percent of the amount of assessments actually collected under section 8705 of this title in the most recent fiscal year for which an audit report has been submitted under section 8704(f)(2)(B) of this title as of the beginning of the fiscal year for which the amount that may be obligated is being determined, less the estimate made pursuant to paragraph (1) for such most recent fiscal year; and

(3) amounts permitted in preceding fiscal years to be obligated pursuant to this subsection that have not been obligated.

##### **(b) Excess amounts deposited in escrow account**

Assessments collected under section 8705 of this title in excess of the amount permitted to be obligated under subsection (a) in a fiscal year shall be deposited in an escrow account for the duration of the covered period.

##### **(c) Treatment of amounts in escrow account**

During the covered period, the Board may not obligate, expend, or borrow against amounts required under subsection (b) to be deposited in the escrow account. Any interest earned on such amounts shall be deposited in the escrow account and shall be unavailable for obligation for the duration of the covered period.

##### **(d) Release of amounts in escrow account**

After the covered period, the Board may withdraw and obligate in any fiscal year an amount in the escrow account that does not exceed 1/5 of the amount in the escrow account on the last day of the covered period.

##### **(e) Special rule for estimates for particular fiscal years**

###### **(1) Rule**

For purposes of subsection (a)(1), the amount of assessments estimated to be collected under section 8705 of this title in a fiscal year specified in paragraph (2) shall be equal to 62 percent of the amount of assessments actually collected under such section in the most recent fiscal year for which an audit report has been submitted under section 8704(f)(2)(B) of this title as of the beginning of the fiscal year for which the amount that may be obligated is being determined.

###### **(2) Fiscal years specified**

The fiscal years specified in this paragraph are the 9th and 10th fiscal years that begin on or after October 5, 2018.

##### **(f) Covered period defined**



In this section, the term "covered period" means the period that begins on October 5, 2018, and ends on the last day of the 11th fiscal year that begins on or after such date.

(Pub. L. 115–254, div. E, §1316, Oct. 5, 2018, 132 Stat. 3483.)

### **§8716. Study and report by the Government Accountability Office**

Not later than 5 years after October 5, 2018, the Comptroller General of the United States shall prepare a study, and not later than 8 years after October 5, 2018, the Comptroller General shall submit to Congress and the Secretary a report, examining—

- (1) how the Board spends assessments collected;
- (2) the extent to which the reported activities of the Board help achieve the annual objectives of the Board;
- (3) any changes in demand for concrete masonry products relative to other building materials;
- (4) any impact of the activities of the Board on the market share of competing products;
- (5) any impact of the activities of the Board on the overall size of the market for building products;
- (6) any impact of the activities of the Board on the total number of concrete-masonry-related jobs, including manufacturing, sales, and installation;
- (7) any significant effects of the activities of the Board on downstream purchasers of concrete masonry products and real property into which concrete masonry products are incorporated;
- (8) effects on prices of concrete masonry products as a result of the activities of the Board;
- (9) the cost to the Federal Government of an increase in concrete masonry product prices, if any, as a result of the program established by this chapter;
- (10) the extent to which key statutory requirements are met;
- (11) the extent and strength of Federal oversight of the program established by this chapter;
- (12) the appropriateness of administering the program from within the Office of the Secretary of Commerce and the appropriateness of administering the program from within any division of the Department, including whether the Department has the expertise, knowledge, or other capabilities necessary to adequately administer the program; and
- (13) any other topic that the Comptroller General considers appropriate.

(Pub. L. 115–254, div. E, §1317, Oct. 5, 2018, 132 Stat. 3484.)

### **§8717. Study and report by the Department of Commerce**

Not later than 3 years after October 5, 2018, the Secretary shall prepare a study and submit to Congress a report examining the appropriateness and effectiveness of applying the commodity check-off program model (such as those programs established under the Commodity Promotion, Research, and Information Act of 1996 (7 U.S.C. 7411 et seq.)) to a nonagricultural industry, taking into account the program established by this chapter and any other check-off program involving a nonagricultural industry.

(Pub. L. 115–254, div. E, §1318, Oct. 5, 2018, 132 Stat. 3485.)

## **EDITORIAL NOTES**

### **REFERENCES IN TEXT**

The Commodity Promotion, Research, and Information Act of 1996, referred to in text, is subtitle B of title V of Pub. L. 104–127, Apr. 4, 1996, 110 Stat. 1032, which is classified generally to subchapter II (§7411 et seq.) of chapter 101 of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of Title 7 and Tables.

## CHAPTER 114—NATIONAL QUANTUM INITIATIVE

Sec.

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### SUBCHAPTER I—NATIONAL QUANTUM INITIATIVE

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### SUBCHAPTER II—NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY QUANTUM ACTIVITIES

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## §8801. Definitions

In this chapter:

### (1) Advisory Committee

The term "Advisory Committee" means the National Quantum Initiative Advisory Committee established under section 8814(a) of this title.

### (2) Appropriate committees of Congress

The term "appropriate committees of Congress" means—

(A) the Committee on Commerce, Science, and Transportation of the Senate;

(B) the Committee on Energy and Natural Resources of the Senate; and

(C) the Committee on Science, Space, and Technology of the House of Representatives.

### (3) Coordination Office

The term "Coordination Office" means the National Quantum Coordination Office established under section 8812(a) of this title.

### (4) Institution of higher education

The term "institution of higher education" has the meaning given the term in section 1001(a) of title 20.

### (5) Program

The term "Program" means the National Quantum Initiative Program implemented under section 8811(a) of this title.

### (6) Quantum information science

The term "quantum information science" means the use of the laws of quantum physics for the storage, transmission, manipulation, computing, or measurement of information.

**(7) Quantum network infrastructure**

The term "quantum network infrastructure" means any facility, expertise, or capability that is necessary to enable the development and deployment of scalable and diverse quantum network technologies.

**(8) <sup>1</sup> Subcommittee on Economic and Security Implications**

The term "Subcommittee on Economic and Security Implications" means the Subcommittee on the Economic and Security Implications of Quantum Information Science established under section 8814a(a) of this title.

**(8) <sup>1</sup> Subcommittee on Quantum Information Science**

The term "Subcommittee on Quantum Information Science" means the Subcommittee on Quantum Information Science of the National Science and Technology Council established under section 8813(a) of this title.

(Pub. L. 115–368, §2, Dec. 21, 2018, 132 Stat. 5092; Pub. L. 117–81, div. F, title LXVI, §6606(c)(1), Dec. 27, 2021, 135 Stat. 2443; Pub. L. 117–167, div. B, title I, §10104(b)(1), Aug. 9, 2022, 136 Stat. 1437.)

**EDITORIAL NOTES**

**AMENDMENTS**

**2022**—Pars. (7), (8). Pub. L. 117–167 added par. (7) and redesignated former par. (7) relating to Subcommittee on Economic and Security Implications as (8).

**2021**—Pars. (7), (8). Pub. L. 117–81 added pars. (7) and (8) and struck out former par. (7) which defined "Subcommittee".

**STATUTORY NOTES AND RELATED SUBSIDIARIES**

**SHORT TITLE**

Pub. L. 115–368, §1(a), Dec. 21, 2018, 132 Stat. 5092, provided that: "This Act [enacting this chapter] may be cited as the 'National Quantum Initiative Act'."

*<sup>1</sup> So in original. Two pars. (8) have been enacted.*

**§8802. Purposes**

The purpose of this chapter is to ensure the continued leadership of the United States in quantum information science and its technology applications by—

(1) supporting research, development, demonstration, and application of quantum information science and technology—

(A) to expand the number of researchers, educators, and students with training in quantum information science and technology to develop a workforce pipeline;

(B) to promote the development and inclusion of multidisciplinary curriculum and research opportunities for quantum information science at the undergraduate, graduate, and postdoctoral level;

(C) to address basic research knowledge gaps, including computational research gaps;

(D) to promote the further development of facilities and centers available for quantum information science and technology research, testing and education; and

(E) to stimulate research on and promote more rapid development of quantum-based technologies;

(2) improving the interagency planning and coordination of Federal research and development

of quantum information science and technology;

(3) maximizing the effectiveness of the Federal Government's quantum information science and technology research, development, and demonstration programs;

(4) promoting collaboration among the Federal Government, Federal laboratories, industry, and universities; and

(5) promoting the development of international standards for quantum information science and technology security—

(A) to facilitate technology innovation and private sector commercialization; and

(B) to meet economic and national security goals.

(Pub. L. 115–368, §3, Dec. 21, 2018, 132 Stat. 5093.)

## **SUBCHAPTER I—NATIONAL QUANTUM INITIATIVE**

### **§8811. National Quantum Initiative Program**

#### **(a) In general**

The President shall implement a National Quantum Initiative Program.

#### **(b) Requirements**

In carrying out the Program, the President, acting through Federal agencies, councils, working groups, subcommittees, and the Coordination Office, as the President considers appropriate, shall—

(1) establish the goals, priorities, and metrics for a 10-year plan to accelerate development of quantum information science and technology applications in the United States;

(2) invest in fundamental Federal quantum information science and technology research, development, demonstration, and other activities to achieve the goals established under paragraph (1);

(3) invest in activities to develop a quantum information science and technology workforce pipeline;

(4) provide for interagency planning and coordination of Federal quantum information science and technology research, development, demonstration, standards engagement, and other activities under the Program;

(5) partner with industry and universities to leverage knowledge and resources; and

(6) leverage existing Federal investments efficiently to advance Program goals and priorities established under paragraph (1).

(Pub. L. 115–368, title I, §101, Dec. 21, 2018, 132 Stat. 5094.)

### **TERMINATION OF SECTION**

*For termination of section, see section 8815 of this title.*

### **§8812. National Quantum Coordination Office**

#### **(a) Establishment**

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

The President shall establish a National Quantum Coordination Office.

##### **(2) Administration**

The Coordination Office shall have—

(A) a Director appointed by the Director of the Office of Science and Technology Policy, in consultation with the Secretary of Commerce, the Director of the National Science Foundation,

and the Secretary of Energy; and

(B) staff comprised of employees detailed from the Federal departments and agencies described in section 8813(b) of this title

**(b) Responsibilities**

The Coordination Office shall—

(1) provide technical and administrative support to—

(A) the Subcommittee on Quantum Information Science;

(B) the Advisory Committee; and

(C) the Subcommittee on Economic and Security Implications;

(2) oversee interagency coordination of the Program, including by encouraging and supporting joint agency solicitation and selection of applications for funding of activities under the Program;

(3) serve as the point of contact on Federal civilian quantum information science and technology activities for Federal departments and agencies, industry, universities <sup>1</sup> professional societies, State governments, and such other persons as the Coordination Office considers appropriate to exchange technical and programmatic information;

(4) ensure coordination among the collaborative ventures or consortia established under section 8831(a) of this title, Multidisciplinary Centers for Quantum Research and Education established under section 8842(a) of this title, and the National Quantum Information Science Research Centers established under section 8852(a) of this title;

(5) conduct public outreach, including the dissemination of findings and recommendations of the Advisory Committee, as appropriate;

(6) promote access to and early application of the technologies, innovations, and expertise derived from Program activities to agency missions and systems across the Federal Government, and to industry, including startup companies; and

(7) promote access, through appropriate Federal Government agencies, and an open and competitive merit-reviewed process, to existing quantum computing and communication systems developed by industry, universities, and Federal laboratories to the general user community in pursuit of discovery of the new applications of such systems.

**(c) Funding**

Funds necessary to carry out the activities of the Coordination Office shall be made available each fiscal year by the Federal departments and agencies described in section 8813(b) of this title, as determined by the Director of the Office of Science and Technology Policy.

(Pub. L. 115–368, title I, §102, Dec. 21, 2018, 132 Stat. 5094; Pub. L. 117–81, div. F, title LXVI, §6606(c)(2), Dec. 27, 2021, 135 Stat. 2444.)

**TERMINATION OF SECTION**

*For termination of section, see section 8815 of this title.*

**EDITORIAL NOTES**

**AMENDMENTS**

**2021**—Subsec. (b)(1). Pub. L. 117–81 substituted "on Quantum Information Science;" for "; and" in subpar. (A), inserted "and" after semicolon in subpar. (B), and added subpar. (C).

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

**§8813. Subcommittee on Quantum Information Science**

**(a) Establishment**

The President shall establish, through the National Science and Technology Council, the Subcommittee on Quantum Information Science.

**(b) Membership**

The Subcommittee shall include a representative of—

- (1) the National Institute of Standards and Technology;
- (2) the National Science Foundation;
- (3) the Department of Energy;
- (4) the National Aeronautics and Space Administration;
- (5) the Department of Defense;
- (6) the Office of the Director of National Intelligence;
- (7) the Office of Management and Budget;
- (8) the Office of Science and Technology Policy; and
- (9) such other Federal department or agency as the President considers appropriate.

**(c) Chairpersons**

The Subcommittee shall be jointly chaired by the Director of the National Institute of Standards and Technology, the Director of the National Science Foundation, and the Secretary of Energy.

**(d) Responsibilities**

The Subcommittee shall—

- (1) coordinate the quantum information science and technology research, information sharing about international standards development and use, and education activities and programs of the Federal agencies;
- (2) establish goals and priorities of the Program, based on identified knowledge and workforce gaps and other national needs;
- (3) assess and recommend Federal infrastructure needs to support the Program;
- (4) assess the status, development, and diversity of the United States quantum information science workforce;
- (5) assess the global outlook for quantum information science research and development efforts;
- (6) evaluate opportunities for international cooperation with strategic allies on research and development in quantum information science and technology; and
- (7) propose a coordinated interagency budget for the Program to the Office of Management and Budget to ensure the maintenance of a balanced quantum information science research portfolio and an appropriate level of research effort.

**(e) Strategic plans**

In order to guide the activities of the Program and meet the goals, priorities, and anticipated outcomes of the Federal departments and agencies described in subsection (b), the Subcommittee shall—

- (1) not later than 1 year after December 21, 2018, develop a 5-year strategic plan;
  - (2) not later than 6 years after December 21, 2018, develop a subsequent 5-year strategic plan;
- and
- (3) periodically update each plan, as necessary.

**(f) Submittal to Congress**

The chairpersons of the Subcommittee shall submit to the President, the Advisory Committee, and the appropriate committees of Congress each strategic plan developed under subsection (e) and any updates thereto.

**(g) Annual program budget report**

**(1) In general**

Each year, concurrent with the annual budget request submitted by the President to Congress under section 1105 of title 31, the chairpersons of the Subcommittee shall submit to the appropriate committees of Congress and such other committees of Congress as the chairpersons

deem appropriate a report on the budget for the Program.

**(2) Contents**

Each report submitted under paragraph (1) shall include the following:

(A) The budget of the Program for the current fiscal year, for each Federal department and agency described in subsection (b).

(B) The budget proposed for the Program for the next fiscal year, for each Federal department and agency described in subsection (b).

(C) An analysis of the progress made toward achieving the goals and priorities established under subsection (d)(2).

**(h) Report on quantum networking and communications**

**(1) In general**

Not later than January 1, 2026, the Quantum Networking Working Group within the Subcommittee on Quantum Information Science of the National Science and Technology Council, in coordination with the Subcommittee on the Economic and Security Implications of Quantum Information Science, shall submit to the appropriate committees of Congress a report detailing a plan for the advancement of quantum networking and communications technology in the United States, building on the report entitled *A Strategic Vision for America's Quantum Networks and A Coordinated Approach for Quantum Networking Research*.

**(2) Requirements**

The report under paragraph (1) shall include the following:

(A) An update to the report entitled *Coordinated Approach to Quantum Networking Research Report* focusing on a framework for interagency collaboration regarding the advancement of quantum networking and communications research.

(B) A plan for Federal Government partnership with the private sector and interagency collaboration regarding engagement in international standards for quantum networking and communications technology, including a list of Federal priorities for standards relating to such networking and technology.

(C) A proposal for the protection of national security interests relating to the advancement of quantum networking and communications technology.

(D) An assessment of the relative position of the United States with respect to other countries in the global race to develop, demonstrate, and utilize quantum networking and communications technology.

(E) Recommendations to Congress for legislative action relating to the matters considered under subparagraphs (A), (B), (C), and (D).

(F) Such other matters as the Quantum Network Working Group considers necessary to advance the security of communications and network infrastructure, remain at the forefront of scientific discovery in the quantum information science domain, and transition quantum information science research into the emerging quantum technology economy.

(Pub. L. 115–368, title I, §103, Dec. 21, 2018, 132 Stat. 5095; Pub. L. 117–167, div. B, title VI, §10661(b)(1), Aug. 9, 2022, 136 Stat. 1683.)

**TERMINATION OF SECTION**

*For termination of section, see section 8815 of this title.*

**EDITORIAL NOTES**

**AMENDMENTS**

**2022**—Subsec. (h). Pub. L. 117–167 added subsec. (h).

**§8814. National Quantum Initiative Advisory Committee**

**(a) In general**

The President shall establish a National Quantum Initiative Advisory Committee.

**(b) Qualifications**

The Advisory Committee shall consist of members, appointed by the President, who are representative of industry, universities, and Federal laboratories and are qualified to provide advice and information on quantum information science and technology research, development, demonstrations, standards, education, technology transfer, commercial application, or national security and economic concerns.

**(c) Membership consideration**

In selecting the members of the Advisory Committee, the President may seek and give consideration to recommendations from the Congress, industry, the scientific community (including the National Academy of Sciences, scientific professional societies, and universities), the defense community, and other appropriate organizations.

**(d) Duties**

**(1) In general**

The Advisory Committee shall advise the President, the Subcommittee on Quantum Information Science, and the Subcommittee on Economic and Security Implications and make recommendations for the President to consider when reviewing and revising the Program.

**(2) Independent assessments**

The Advisory Committee shall conduct periodic, independent assessments of—

- (A) any trends or developments in quantum information science and technology;
- (B) the progress made in implementing the Program;
- (C) the management, coordination, implementation, and activities of the Program;
- (D) whether the Program activities and the goals and priorities established under section 8813(d)(2) of this title are helping to maintain United States leadership in quantum information science and technology;
- (E) whether a need exists to revise the Program;
- (F) whether opportunities exist for international cooperation with strategic allies on research and development in, and the development of open standards for, quantum information science and technology; and
- (G) whether national security, societal, economic, legal, and workforce concerns are adequately addressed by the Program.

**(e) Reports**

Not later than 180 days after December 21, 2018, and at least biennially thereafter, the Advisory Committee shall submit to the President, the appropriate committees of Congress, and such other committees of Congress as the Advisory Committee deems appropriate a report on the findings of the independent assessment under subsection (d), including any recommendations for improvements to the Program.

**(f) Travel expenses of non-Federal members**

Non-Federal members of the Advisory Committee, while attending meetings of the Advisory Committee or while otherwise serving at the request of the head of the Advisory Committee away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, for individuals in the Government serving without pay. Nothing in this subsection shall be construed to prohibit members of the Advisory Committee who are officers or employees of the United States from being allowed travel expenses, including per diem in lieu of subsistence, in accordance with existing law.

**(g) FACA exemption**

The Advisory Committee shall be exempt from section 14 of the Federal Advisory Committee Act



(5 U.S.C. App.).<sup>1</sup>

(Pub. L. 115–368, title I, §104, Dec. 21, 2018, 132 Stat. 5096; Pub. L. 117–81, div. F, title LXVI, §6606(c)(3), Dec. 27, 2021, 135 Stat. 2444.)

## TERMINATION OF SECTION

*For termination of section, see section 8815 of this title.*

## EDITORIAL NOTES

### REFERENCES IN TEXT

Section 14 of the Federal Advisory Committee Act, referred to in subsec. (g), is section 14 of Pub. L. 92–463, which was set out in the Appendix to Title 5, Government Organization and Employees, and was repealed and restated as section 1013 of Title 5 by Pub. L. 117–286, §§3(a), 7, Dec. 27, 2022, 136 Stat. 4204, 4361.

## AMENDMENTS

**2021**—Subsec. (d)(1). Pub. L. 117–81 substituted ", the Subcommittee on Quantum Information Science, and the Subcommittee on Economic and Security Implications" for "and the Subcommittee".

## EXECUTIVE DOCUMENTS

### EXECUTIVE ORDER NO. 13885

Ex. Ord. No. 13885, Aug. 30, 2019, 84 F.R. 46873, which established the National Quantum Initiative Advisory Committee, was revoked by Ex. Ord. No. 14073, §5, May 4, 2022, 87 F.R. 27910, set out below.

### EX. ORD. NO. 14073. ENHANCING THE NATIONAL QUANTUM INITIATIVE ADVISORY COMMITTEE

Ex. Ord. No. 14073, May 4, 2022, 87 F.R. 27909, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 104(a) of the National Quantum Initiative Act (Public Law 115–368) (NQI Act) [15 U.S.C. 8814(a)], and section 301 of title 3, United States Code, and in order to ensure continued American leadership in quantum information science and its technology applications, it is hereby ordered as follows:

**SECTION 1. Purpose.** Quantum information science (QIS) can enable transformative advances in knowledge and technology for industry, academia, and government. Accordingly, the National Quantum Initiative (NQI), which aims to ensure the continued leadership of the United States in QIS and its technology applications, is a substantial and sustained national priority. The NQI Program, established pursuant to section 101 of the NQI Act [15 U.S.C. 8811], encompasses contributions from across the Federal Government, as exemplified by the QIS research, development, demonstration, and training activities pursued by executive departments and agencies (agencies) with membership on either the National Science and Technology Council (NSTC) Subcommittee on Quantum Information Science (SCQIS) or the NSTC Subcommittee on Economic and Security Implications of Quantum Science (ESIX).

**SEC. 2. Establishment.** (a) To ensure that the NQI Program and the Nation are informed by evidence, data, and perspectives from a diverse group of experts and stakeholders, the National Quantum Initiative Advisory Committee (Committee) is hereby established. Consistent with the NQI Act [15 U.S.C. 8801 et seq.], the Committee shall advise the President, the SCQIS, and the ESIX on the NQI Program.

(b) The Committee shall consist of the Director of the Office of Science and Technology Policy (Director) or the Director's designee and not more than 26 members, appointed by the President, who are United States citizens representative of industry, universities, and Federal laboratories, and who are qualified to provide advice and information on QIS and technology research, development, demonstrations, standards, education, technology transfer, commercial application, or national security and economic concerns.

(c) The Committee shall have two Co-Chairs. The Director or the Director's designee shall serve as one Co-Chair of the Committee. The President shall designate another Co-Chair from among the appointed members to serve as Co-Chair with the Director.

**SEC. 3. Functions.** (a) The Committee shall advise the President and the SCQIS and the ESIX (Subcommittees) and make recommendations for the President to consider when reviewing and revising the NQI Program. The Committee shall also carry out all responsibilities set forth in section 104 of the NQI Act.

(b) The Committee shall meet at least twice a year and shall:

- (i) respond to requests from the President or the Co-Chairs of the Committee for information, analysis, evaluation, or advice relating to QIS and its technology applications;
- (ii) solicit information and ideas from a broad range of stakeholders on QIS, including the research community, the private sector, academia, national laboratories, agencies, State and local governments, foundations, and nonprofit organizations;
- (iii) review the national strategy for QIS; and
- (iv) respond to requests from the Subcommittees.

SEC. 4. *Administration.* (a) The heads of agencies shall, to the extent permitted by law, provide the Committee with information concerning QIS and its technology applications when requested by a Committee Co-Chair.

(b) The Co-Chairs of the Committee may establish standing subcommittees and ad hoc groups, including technical advisory groups, to assist and provide information to the Committee.

(c) The Director may request that members of the Committee, standing subcommittees, or ad hoc groups who do not hold a current clearance for access to classified information receive appropriate clearances and access determinations pursuant to Executive Order 13526 of December 29, 2009 (Classified National Security Information) [50 U.S.C. 3161 note], as amended, or any successor order.

(d) The National Quantum Coordination Office shall provide technical and administrative support to the Committee, pursuant to section 102(b) of the NQI Act [15 U.S.C. 8812(b)].

(e) Committee members shall serve without any compensation for their work on the Committee, but may receive travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the Government service (5 U.S.C. 5701–5707).

SEC. 5. *Revocation.* Executive Order 13885 of August 30, 2019 (Establishing the National Quantum Initiative Advisory Committee) [formerly set out above], is hereby revoked.

SEC. 6. *General Provisions.* (a) Insofar as the Federal Advisory Committee Act, as amended [Pub. L. 92–463] ([former] 5 U.S.C. App.) [see 5 U.S.C. 1001 et seq.] (FACA), may apply to the Committee, any functions of the President under the FACA, except for those in section 6 of the FACA [see 5 U.S.C. 1005], shall be performed by the Secretary of Energy, in consultation with the Director, in accordance with the guidelines and procedures established by the Administrator of General Services.

(b) 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.

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

(d) 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.

<sup>1</sup> [See References in Text note below.](#)

## **§8814a. Subcommittee on the Economic and Security Implications of Quantum Information Science**

### **(a) Establishment**

The President shall establish, through the National Science and Technology Council, the Subcommittee on the Economic and Security Implications of Quantum Information Science.

### **(b) Membership**

The Subcommittee shall include a representative of—

- (1) the Department of Energy;
- (2) the Department of Defense;
- (3) the Department of Commerce;
- (4) the Department of Homeland Security;
- (5) the Office of the Director of National Intelligence;

- (6) the Office of Management and Budget;
- (7) the Office of Science and Technology Policy;
- (8) the Department of Justice;
- (9) the National Science Foundation;
- (10) the National Institute of Standards and Technology; and
- (11) such other Federal department or agency as the President considers appropriate.

**(c) Responsibilities**

The Subcommittee shall—

(1) in coordination with the Director of the Office and <sup>1</sup> Management and Budget, the Director of the National Quantum Coordination Office, and the Subcommittee on Quantum Information Science, track investments of the Federal Government in quantum information science research and development;

(2) review and assess any economic or security implications of such investments;

(3) review and assess any counterintelligence risks or other foreign threats to such investments;

(4) recommend goals and priorities for the Federal Government and make recommendations to Federal departments and agencies and the Director of the National Quantum Coordination Office to address any counterintelligence risks or other foreign threats identified as a result of an assessment under paragraph (3);

(5) assess the export of technology associated with quantum information science and recommend to the Secretary of Commerce and the Secretary of State export controls necessary to protect the economic and security interests of the United States as a result of such assessment;

(6) recommend to Federal departments and agencies investment strategies in quantum information science that advance the economic and security interest of the United States;

(7) recommend to the Director of National Intelligence and the Secretary of Energy appropriate protections to address counterintelligence risks or other foreign threats identified as a result of the assessment under paragraph (3); and

(8) in coordination with the Subcommittee on Quantum Information Science, ensure the approach of the United States to investments of the Federal Government in quantum information science research and development reflects a balance between scientific progress and the potential economic and security implications of such progress.

**(d) Technical and administrative support**

**(1) In general**

The Secretary of Energy, the Director of National Intelligence, and the Director of the National Quantum Coordination Office may provide to the Subcommittee personnel, equipment, facilities, and such other technical and administrative support as may be necessary for the Subcommittee to carry out the responsibilities of the Subcommittee under this section.

**(2) Support related to classified information**

The Director of the Office of Science and Technology Policy and the Director of National Intelligence shall provide to the Subcommittee technical and administrative support related to the responsibilities of the Subcommittee that involve classified information, including support related to sensitive compartmented information facilities and the storage of classified information.

(Pub. L. 115–368, title I, §105, as added Pub. L. 117–81, div. F, title LXVI, §6606(a)(2), Dec. 27, 2021, 135 Stat. 2442.)

**TERMINATION OF SECTION**

*For termination of section, see section 8815 of this title.*

**EDITORIAL NOTES**

**PRIOR PROVISIONS**

A prior section 105 of Pub. L. 115–368 was renumbered section 106 and is classified to section 8815 of this

title.

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### EFFECTIVE DATE

Pub. L. 117–81, div. F, title LXVI, §6606(b)(2), Dec. 27, 2021, 135 Stat. 2443, provided that: "The amendments made by subsection (a) [enacting this section and amending section 8815 of this title] shall take effect as if included in the enactment of the National Quantum Initiative Act (15 U.S.C. 8801 et seq.)."

*<sup>1</sup> So in original. Probably should be "of".*

## §8815. Sunset

### (a) In general

Except as provided in subsection (b), the authority to carry out sections 8811, 8812, 8813, 8814, and 8814a of this title shall terminate on the date that is 11 years after December 21, 2018.

### (b) Extension

The President may continue the activities under such sections if the President determines that such activities are necessary to meet national economic or national security needs.

(Pub. L. 115–368, title I, §106, formerly §105, Dec. 21, 2018, 132 Stat. 5097; renumbered §106 and amended Pub. L. 117–81, div. F, title LXVI, §6606(a)(1), (b)(1), Dec. 27, 2021, 135 Stat. 2442, 2443.)

## EDITORIAL NOTES

### AMENDMENTS

**2021**—Pub. L. 117–81, §6606(b)(1), substituted "8813, 8814, and 8814a" for "8813, and 8814".

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by section 6606(a)(1) of Pub. L. 117–81 effective as if included in the enactment of the National Quantum Initiative Act, see section 6606(b)(2) of Pub. L. 117–81, set out as an Effective Date note under section 8814a of this title.

## SUBCHAPTER II—NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY QUANTUM ACTIVITIES

## §8831. National Institute of Standards and Technology activities and quantum consortium

### (a) National Institute of Standards and Technology activities

As part of the Program, the Director of the National Institute of Standards and Technology—

(1) shall continue to support and expand basic and applied quantum information science and technology research and development of measurement and standards infrastructure necessary to advance commercial development of quantum applications;

(2) shall use the existing programs of the National Institute of Standards and Technology, in collaboration with other Federal departments and agencies, as appropriate, to train scientists in

quantum information science and technology to increase participation in the quantum fields;

(3) shall carry out research to facilitate the development and standardization of quantum cryptography and post-quantum classical cryptography;

(4) shall carry out research to facilitate the development and standardization of quantum networking, communications, and sensing technologies and applications;

(5) for quantum technologies determined by the Director of the National Institute of Standards and Technology to be at a readiness level sufficient for standardization, shall provide technical review and assistance to such other Federal agencies as the Director considers appropriate for the development of quantum networking infrastructure standards;

(6) shall establish or expand collaborative ventures or consortia with other public or private sector entities, including industry, universities, and Federal laboratories for the purpose of advancing the field of quantum information science and engineering; and

(7) may enter into and perform such contracts, including cooperative research and development arrangements and grants and cooperative agreements or other transactions, as may be necessary in the conduct of the work of the National Institute of Standards and Technology and on such terms as the Director considers appropriate, in furtherance of the purposes of this chapter.

## **(b) Quantum consortium**

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

Not later than 1 year after December 21, 2018, the Director of the National Institute of Standards and Technology shall convene a consortium of stakeholders to identify the future measurement, standards, cybersecurity, and other appropriate needs for supporting the development of a robust quantum information science and technology industry in the United States.

### **(2) Goals**

The goals of the consortium shall be—

(A) to assess the current research on the needs identified in paragraph (1);

(B) to identify any gaps in the research necessary to meet the needs identified in paragraph (1); and

(C) to provide recommendations on how the National Institute of Standards and Technology and the Program can address the gaps in the necessary research identified in subparagraph (B).

### **(3) Report to Congress**

Not later than 2 years after December 21, 2018, the Director of the National Institute of Standards and Technology shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives a report summarizing the findings of the consortium.

## **(c) Funding**

The Director of the National Institute of Standards and Technology shall allocate up to \$80,000,000 to carry out the activities under this section for each of fiscal years 2019 through 2023, subject to the availability of appropriations. Amounts made available to carry out this section shall be derived from amounts appropriated or otherwise made available to the National Institute of Standards and Technology.

(Pub. L. 115–368, title II, §201, Dec. 21, 2018, 132 Stat. 5098; Pub. L. 117–167, div. B, title VI, §10661(c)(1), Aug. 9, 2022, 136 Stat. 1684.)

## **EDITORIAL NOTES**

### **AMENDMENTS**

**2022**—Subsec. (a)(3) to (7). Pub. L. 117–167 added pars. (3) to (5) and redesignated former pars. (3) and (4) as (6) and (7), respectively.

## **SUBCHAPTER III—NATIONAL SCIENCE FOUNDATION QUANTUM ACTIVITIES**

### **§8841. Quantum information science research and education program**

#### **(a) In general**

The Director of the National Science Foundation shall carry out a basic research and education program on quantum information science and engineering, including the competitive award of grants to institutions of higher education or eligible nonprofit organizations (or consortia thereof).

#### **(b) Program components**

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

In carrying out the program under subsection (a), the Director of the National Science Foundation shall carry out activities that—

(A) support basic interdisciplinary quantum information science and engineering research; and

(B) support human resources development in all aspects of quantum information science and engineering.

##### **(2) Requirements**

The activities described in paragraph (1) shall include—

(A) using the existing programs of the National Science Foundation, in collaboration with other Federal departments and agencies, as appropriate—

(i) to improve the teaching and learning of quantum information science and engineering at the undergraduate, graduate, and postgraduate levels; and

(ii) to increase participation in the quantum fields, including by individuals identified in sections 1885a and 1885b of title 42;

(B) formulating goals for quantum information science and engineering research and education activities to be supported by the National Science Foundation;

(C) leveraging the collective body of knowledge from existing quantum information science and engineering research and education activities;

(D) coordinating research efforts funded through existing programs across the directorates of the National Science Foundation; and

(E) engaging with other Federal departments and agencies, research communities, and potential users of information produced under this section.

#### **(c) Graduate traineeships**

The Director of the National Science Foundation may establish a program to provide traineeships to graduate students at institutions of higher education within the United States who are citizens of the United States and who choose to pursue masters or doctoral degrees in quantum information science.

#### **(d) Incorporating QISE into STEM curriculum**

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

The Director of the National Science Foundation shall, through programs carried out or supported by the National Science Foundation, seek to increase the integration of quantum information science and engineering (referred to in this subsection as "QISE") into the STEM curriculum at all education levels, including community colleges, as considered appropriate by the Director.

##### **(2) Curriculum integration**

The curriculum integration under paragraph (1) may include the following:

- (A) Methods to conceptualize QISE for elementary, middle, and high school curricula.
- (B) Methods for strengthening foundational mathematics and science curricula.
- (C) Methods for integrating students who are underserved or historically underrepresented groups in STEM.
- (D) Age-appropriate materials that apply the principles of quantum information science in STEM fields.
- (E) Recommendations for the standardization of key concepts, definitions, and curriculum criteria across government, academia, and industry.
- (F) Materials that specifically address the findings and outcomes of the study to evaluate and make recommendations for the quantum information science workforce pursuant to subsection (d) of section 19261 of title 42 and strategies to account for the skills and workforce needs identified through such study.

### **(3) Coordination**

In carrying out this subsection, the Director shall coordinate with relevant Federal agencies, and consult with nongovernmental entities with expertise in QISE, as appropriate, which may include institutions eligible to participate in the Established Program to Stimulate Competitive Research (EPSCoR).

### **(4) Definition**

In this subsection, the term "STEM" means the academic and professional disciplines of science, technology, engineering, and mathematics, including computer science.

(Pub. L. 115–368, title III, §301, Dec. 21, 2018, 132 Stat. 5099; Pub. L. 117–167, div. B, title VI, §10661(e)(1), Aug. 9, 2022, 136 Stat. 1685.)

## **EDITORIAL NOTES**

### **AMENDMENTS**

**2022**—Subsec. (d). Pub. L. 117–167 added subsec. (d).

## **§8842. Multidisciplinary centers for quantum research and education**

### **(a) In general**

The Director of the National Science Foundation, in consultation with other Federal departments and agencies, as appropriate, shall award grants to institutions of higher education or eligible nonprofit organizations (or consortia thereof) to establish at least 2, but not more than 5, Multidisciplinary Centers for Quantum Research and Education (referred to in this section as "Centers").

### **(b) Collaborations**

A collaboration receiving an award under this subsection may include institutions of higher education, nonprofit organizations, and private sector entities.

### **(c) Purpose**

The purpose of the Centers shall be to conduct basic research and education activities in support of the goals and priorities established under section 8813(d)(2) of this title, including by—

- (1) continuing to advance quantum information science and engineering;
- (2) supporting curriculum and workforce development in quantum information science and engineering; and
- (3) fostering innovation by bringing industry perspectives to quantum research and workforce development, including by leveraging industry knowledge and resources.

### **(d) Requirements**

**(1) In general**

An institution of higher education or an eligible nonprofit organization (or a consortium thereof) seeking funding under this section shall submit an application to the Director of the National Science Foundation at such time, in such manner, and containing such information as the Director may require.

**(2) Applications**

Each application under paragraph (1) shall include a description of—

(A) how the Center will work with other research institutions and industry partners to leverage expertise in quantum science, education and curriculum development, and technology transfer;

(B) how the Center will promote active collaboration among researchers in multiple disciplines involved in quantum research, including physics, engineering, mathematics, computer science, chemistry, and material science;

(C) how the Center will support long-term and short-term workforce development in the quantum field;

(D) how the Center can support an innovation ecosystem to work with industry to translate Center research into applications; and

(E) a long-term plan to become self-sustaining after the expiration of funding under this section.

**(e) Selection and duration**

**(1) In general**

Each Center established under this section is authorized to carry out activities for a period of 5 years.

**(2) Reapplication**

An awardee may reapply for additional, subsequent periods of 5 years on a competitive, merit-reviewed basis.

**(3) Termination**

Consistent with the authorities of the National Science Foundation, the Director of the National Science Foundation may terminate an underperforming Center for cause during the performance period.

**(f) Funding**

The Director of the National Science Foundation shall allocate up to \$10,000,000 for each Center established under this section for each of fiscal years 2019 through 2023, subject to the availability of appropriations. Amounts made available to carry out this section shall be derived from amounts appropriated or otherwise made available to the National Science Foundation.

(Pub. L. 115–368, title III, §302, Dec. 21, 2018, 132 Stat. 5100.)

## **SUBCHAPTER IV—DEPARTMENT OF ENERGY QUANTUM ACTIVITIES**

### **§8851. Quantum information science research program**

**(a) In general**

The Secretary of Energy shall carry out a basic research program on quantum information science.

**(b) Program components**

In carrying out the program under subsection (a), the Secretary of Energy shall—

(1) formulate goals for quantum information science research to be supported by the



Department of Energy;

(2) leverage the collective body of knowledge from existing quantum information science research;

(3) provide research experiences and training for additional undergraduate and graduate students in quantum information science, including in the fields of—

- (A) quantum information theory;
- (B) quantum physics;
- (C) quantum computational science;
- (D) applied mathematics and algorithm development;
- (E) quantum networking;
- (F) quantum sensing and detection; and
- (G) materials science and engineering;

(4) coordinate research efforts funded through existing programs across the Department of Energy, including—

- (A) the Nanoscale Science Research Centers;
- (B) the Energy Frontier Research Centers;
- (C) the Energy Innovation Hubs;
- (D) the National Laboratories;
- (E) the Advanced Research Projects Agency; and
- (F) the National Quantum Information Science Research Centers; and

(5) coordinate with other Federal departments and agencies, research communities, and potential users of information produced under this section.

(Pub. L. 115–368, title IV, §401, Dec. 21, 2018, 132 Stat. 5101.)

## **§8852. National Quantum Information Science Research Centers**

### **(a) Establishment**

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

The Secretary of Energy, acting through the Director of the Office of Science (referred to in this section as the "Director"), shall ensure that the Office of Science carries out a program, in consultation with other Federal departments and agencies, as appropriate, to establish and operate at least 2, but not more than 5, National Quantum Information Science Research Centers (referred to in this section as "Centers") to conduct basic research to accelerate scientific breakthroughs in quantum information science and technology and to support research conducted under section 8851 of this title.

#### **(2) Requirements**

##### **(A) Competitive, merit-reviewed process**

The Centers shall be established through a competitive, merit-reviewed process.

##### **(B) Applications**

An eligible applicant under this subsection shall submit to the Director an application at such time, in such manner, and containing such information as the Director determines to be appropriate.

##### **(C) Eligible applicants**

The Director shall consider applications from National Laboratories, institutions of higher education, research centers, multi-institutional collaborations, and any other entity that the Secretary of Energy determines to be appropriate.

### **(b) Collaborations**

A collaboration that receives an award under this section may include multiple types of research institutions and private sector entities.

**(c) Requirements**

To the maximum extent practicable, the Centers developed, constructed, operated, or maintained under this section shall serve the needs of the Department of Energy, industry, the academic community, and other relevant entities to create and develop processes for the purpose of advancing basic research in quantum information science and improving the competitiveness of the United States.

**(d) Coordination**

The Secretary of Energy shall ensure the coordination, and avoid unnecessary duplication, of the activities of each Center with the activities of—

- (1) other research entities of the Department of Energy, including—
  - (A) the Nanoscale Science Research Centers;
  - (B) the Energy Frontier Research Centers;
  - (C) the Energy Innovation Hubs; and
  - (D) the National Laboratories;
- (2) institutions of higher education; and
- (3) industry.

**(e) Duration**

**(1) In general**

Each Center established under this section is authorized to carry out activities for a period of 5 years.

**(2) Reapplication**

An awardee may reapply for additional, subsequent periods of 5 years. The Director shall approve or disapprove of each reapplication on a competitive, merit-reviewed basis.

**(3) Termination**

Consistent with the authorities of the Department of Energy, the Secretary of Energy may terminate an underperforming Center for cause during the performance period.

**(f) Funding**

The Secretary of Energy shall allocate up to \$25,000,000 for each Center established under this section for each of fiscal years 2019 through 2023, subject to the availability of appropriations. Amounts made available to carry out this section shall be derived from amounts appropriated or otherwise made available to the Department of Energy.

(Pub. L. 115–368, title IV, §402, Dec. 21, 2018, 132 Stat. 5101.)

## **§8853. Department of Energy quantum network infrastructure research and development program**

**(a) In general**

The Secretary of Energy (referred to in this section as the "Secretary") shall carry out a research, development, and demonstration program to accelerate innovation in quantum network infrastructure in order to—

- (1) facilitate the advancement of distributed quantum computing systems through the internet and intranet;
- (2) improve the precision of measurements of scientific phenomena and physical imaging technologies;
- (3) develop secure national quantum communications technologies and strategies;

(4) demonstrate quantum networking utilizing the Department of Energy's Energy Sciences Network User Facility; and

(5) advance the relevant domestic supply chains, manufacturing capabilities, and associated simulations or modeling capabilities.

**(b) Program**

In carrying out this section, the Secretary shall—

(1) coordinate with—

(A) the Director of the National Science Foundation;

(B) the Director of the National Institute of Standards and Technology;

(C) the Chair of the Subcommittee on Quantum Information Science of the National Science and Technology Council established under section 8813(a) of this title; and

(D) the Chair of the Subcommittee on the Economic and Security Implications of Quantum Science;

(2) conduct cooperative research with industry, National Laboratories, institutions of higher education, and other research institutions to facilitate new quantum infrastructure methods and technologies, including—

(A) quantum-limited detectors, ultra-low loss optical channels, space-to-ground connections, and classical networking and cybersecurity protocols;

(B) entanglement and hyper-entangled state sources and transmission, control, and measurement of quantum states;

(C) quantum interconnects that allow short range local connections between quantum processors;

(D) transducers for quantum sources and signals between optical wavelength regimes, including telecommunications regimes and quantum computer-relevant domains, including microwaves;

(E) development of quantum memory buffers and small-scale quantum computers that are compatible with photon-based quantum bits in the optical or telecommunications wavelengths;

(F) long-range entanglement distribution, including allowing entanglement-based protocols between small- and large <sup>1</sup> scale quantum processors, at the terrestrial and space-based level using quantum repeaters and optical or laser communications;

(G) quantum routers, multiplexers, repeaters, and related technologies necessary to create secure long-distance quantum communication; and

(H) integration of systems across the quantum technology stack into traditional computing networks, including the development of remote controlled, high-performance, and reliable implementations of key quantum network components by leveraging the expertise, infrastructure and supplemental investments at the National Laboratories in the Energy Sciences Network User Facility;

(3) engage with the Quantum Economic Development Consortium and other organizations, as applicable, to transition component technologies to help facilitate as appropriate the development of a quantum supply chain for quantum network technologies;

(4) advance basic research in advanced scientific computing, particle and nuclear physics, and material science to enhance the understanding, prediction, and manipulation of materials, processes, and physical phenomena relevant to quantum network infrastructure;

(5) develop experimental tools and testbeds in collaboration with the Energy Sciences Network User Facility necessary to support cross-cutting fundamental research and development activities with diverse stakeholders from industry, National Laboratories, and institutions of higher education; and

(6) consider quantum network infrastructure applications that span the Department of Energy's missions in energy, environment, and national security.

**(c) Leveraging**

In carrying out this section, the Secretary shall leverage resources, infrastructure, and expertise across the Department of Energy and from—

- (1) the National Institute of Standards and Technology;
- (2) the National Science Foundation;
- (3) the National Aeronautics and Space Administration;
- (4) other relevant Federal agencies;
- (5) the National Laboratories;
- (6) industry stakeholders;
- (7) institutions of higher education; and
- (8) the National Quantum Information Science Research Centers.

**(d) Research plan**

Not later than 180 days after August 9, 2022, the Secretary shall submit to the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a 4-year research plan that identifies and prioritizes basic research needs relating to quantum network infrastructure.

**(e) Standard of review**

The Secretary shall review activities carried out under this section to determine the achievement of technical milestones.

**(f) Funding**

Of the funds authorized to be appropriated for the Department of Energy's Office of Science, there is authorized to be appropriated to the Secretary to carry out the activities under this section \$100,000,000 for each of fiscal years 2023 through 2027.

(Pub. L. 115–368, title IV, §403, as added Pub. L. 117–167, div. B, title I, §10104(b)(2)(A), Aug. 9, 2022, 136 Stat. 1438.)

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

## **§8854. Department of Energy Quantum User Expansion for Science and Technology program**

**(a) In general**

The Secretary of Energy (referred to in this section as the "Secretary") shall establish and carry out a program, to be known as the "Quantum User Expansion for Science and Technology program" or "QUEST program", to encourage and facilitate access to United States quantum computing hardware and quantum computing clouds for research purposes—

- (1) to enhance the United States quantum research enterprise;
- (2) to educate the future quantum computing workforce;
- (3) to accelerate the advancement of United States quantum computing capabilities; and
- (4) to advance the relevant domestic supply chains, manufacturing processes, and associated simulations or modeling capabilities.

**(b) Program**

In carrying out this section, the Secretary shall—

- (1) coordinate with—
  - (A) the Director of the National Science Foundation;
  - (B) the Director of the National Institute of Standards and Technology;
  - (C) the Chair of the Subcommittee on Quantum Information Science of the National Science and Technology Council established under section 8813(a) of this title; and
  - (D) the Chair of the Subcommittee on the Economic and Security Implications of Quantum Science;

(2) provide researchers based within the United States with access to, and use of, United States quantum computing resources through a competitive, merit-reviewed process;

(3) consider applications from the National Laboratories, multi-institutional collaborations, institutions of higher education, industry stakeholders, and any other entities that the Secretary determines are appropriate to provide national leadership on quantum computing related issues;

(4) coordinate with private sector stakeholders, the user community, and interagency partners on program development and best management practices; and

(5) to the extent practicable, balance user access to commercial prototypes available for use across a broad class of applications and Federal research prototypes that enable benchmarking a wider variety of early-stage devices.

### **(c) Leveraging**

In carrying out this section, the Secretary shall leverage resources and expertise across the Department of Energy and from—

(1) the National Institute of Standards and Technology;

(2) the National Science Foundation;

(3) the National Aeronautics and Space Administration;

(4) other relevant Federal agencies;

(5) the National Laboratories;

(6) industry stakeholders;

(7) institutions of higher education; and

(8) the National Quantum Information Science Research Centers.

### **(d) Security**

In carrying out the activities authorized by this section, the Secretary, in consultation with the Director of the National Science Foundation and the Director of the National Institute of Standards and Technology, shall ensure proper security controls are in place to protect sensitive information, as appropriate.

### **(e) Funding**

Of the funds authorized to be appropriated for the Department of Energy's Office of Science, there are authorized to be appropriated to the Secretary to carry out the activities under this section—

(1) \$30,000,000 for fiscal year 2023;

(2) \$31,500,000 for fiscal year 2024;

(3) \$33,075,000 for fiscal year 2025;

(4) \$34,728,750 for fiscal year 2026; and

(5) \$36,465,188 for fiscal year 2027.

(Pub. L. 115–368, title IV, §404, as added Pub. L. 117–167, div. B, title I, §10104(b)(2)(A), Aug. 9, 2022, 136 Stat. 1440.)

## **CHAPTER 115—PERFLUOROALKYL AND POLYFLUOROALKYL SUBSTANCES AND EMERGING CONTAMINANTS**

Sec.

8901. Definition of Administrator.

### **SUBCHAPTER I—DRINKING WATER**

8911. Monitoring and detection.

### **SUBCHAPTER II—PFAS RELEASE DISCLOSURE**

8921. Additions to toxics release inventory.

### **SUBCHAPTER III—USGS PERFORMANCE STANDARD**

- 8931. Definitions.
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- 8933. Nationwide sampling.
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#### SUBCHAPTER IV—EMERGING CONTAMINANTS

- 8951. Definitions.
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#### SUBCHAPTER V—OTHER MATTERS

- 8961. PFAS destruction and disposal guidance.
- 8962. PFAS research and development.
- 8963. Interagency body on research related to per- and polyfluoroalkyl substances.

### **§8901. Definition of Administrator**

In this chapter, the term "Administrator" means the Administrator of the Environmental Protection Agency.

(Pub. L. 116–92, div. F, title LXXIII, §7302, Dec. 20, 2019, 133 Stat. 2275.)

#### **EDITORIAL NOTES**

#### **REFERENCES IN TEXT**

This chapter, referred to in text, was in the original "this title", meaning title LXXIII of Pub. L. 116–92, div. F, Dec. 20, 2019, 133 Stat. 2275, known as the PFAS Act of 2019, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

#### **STATUTORY NOTES AND RELATED SUBSIDIARIES**

#### **SHORT TITLE**

Pub. L. 116–92, div. F, title LXXIII, §7301, Dec. 20, 2019, 133 Stat. 2275, provided that: "This title [enacting this chapter and amending section 2607 of this title and sections 300j–12 and 11023 of Title 42, The Public Health and Welfare] may be cited as the 'PFAS Act of 2019'."

### **SUBCHAPTER I—DRINKING WATER**

### **§8911. Monitoring and detection**

#### **(a) Monitoring program for unregulated contaminants**

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

The Administrator shall include each substance described in paragraph (2) in the fifth publication of the list of unregulated contaminants to be monitored under section 300j–4(a)(2)(B)(i) of title 42.

##### **(2) Substances described**

The substances referred to in paragraph (1) are perfluoroalkyl and polyfluoroalkyl substances and classes of perfluoroalkyl and polyfluoroalkyl substances—

(A) for which a method to measure the level in drinking water has been validated by the Administrator; and

(B) that are not subject to a national primary drinking water regulation.

### **(3) Exception**

The perfluoroalkyl and polyfluoroalkyl substances and classes of perfluoroalkyl and polyfluoroalkyl substances included in the list of unregulated contaminants to be monitored under section 300j-4(a)(2)(B)(i) of title 42 under paragraph (1) shall not count towards the limit of 30 unregulated contaminants to be monitored by public water systems under that section.

### **(b) Applicability**

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

The Administrator shall—

(A) require public water systems serving more than 10,000 persons to monitor for the substances described in subsection (a)(2);

(B) subject to paragraph (2) and the availability of appropriations, require public water systems serving not fewer than 3,300 and not more than 10,000 persons to monitor for the substances described in subsection (a)(2); and

(C) subject to paragraph (2) and the availability of appropriations, ensure that only a representative sample of public water systems serving fewer than 3,300 persons are required to monitor for the substances described in subsection (a)(2).

#### **(2) Requirement**

If the Administrator determines that there is not sufficient laboratory capacity to carry out the monitoring required under subparagraphs (B) and (C) of paragraph (1), the Administrator may waive the monitoring requirements in those subparagraphs.

#### **(3) Funds**

The Administrator shall pay the reasonable cost of such testing and laboratory analysis as is necessary to carry out the monitoring required under subparagraphs (B) and (C) of paragraph (1) using—

(A) funds made available pursuant to subsection (a)(2)(H) or subsection (j)(5) of section 300j-4 of title 42; or

(B) any other funds made available for that purpose.

(Pub. L. 116-92, div. F, title LXXIII, §7311, Dec. 20, 2019, 133 Stat. 2276.)

## **SUBCHAPTER II—PFAS RELEASE DISCLOSURE**

### **§8921. Additions to toxics release inventory**

#### **(a) Definition of toxics release inventory**

In this section, the term "toxics release inventory" means the list of toxic chemicals subject to the requirements of section 11023(c) of title 42.

#### **(b) Immediate inclusion**

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

Subject to subsection (e), beginning January 1 of the calendar year following December 20, 2019, the following chemicals shall be deemed to be included in the toxics release inventory:

(A) Perfluorooctanoic acid (commonly referred to as "PFOA") (Chemical Abstracts Service No. 335-67-1).

(B) The salts associated with the chemical described in subparagraph (A) (Chemical Abstracts Service Nos. 3825-26-1, 335-95-5, and 68141-02-6).

(C) Perfluorooctane sulfonic acid (commonly referred to as "PFOS") (Chemical Abstracts Service No. 1763-23-1).

(D) The salts associated with the chemical described in subparagraph (C) (Chemical

Abstracts Service Nos. 2795-39-3, 29457-72-5, 56773-42-3, 29081-56-9, and 70225-14-8).

(E) A perfluoroalkyl or polyfluoroalkyl substance or class of perfluoroalkyl or polyfluoroalkyl substances that is—

- (i) listed as an active chemical substance in the February 2019 update to the inventory under section 2607(b)(1) of this title; and
- (ii) on December 20, 2019, subject to the provisions of—
  - (I) section 721.9582 of title 40, Code of Federal Regulations; or
  - (II) section 721.10536 of title 40, Code of Federal Regulations.

(F) Hexafluoropropylene oxide dimer acid (commonly referred to as "GenX") (Chemical Abstracts Service No. 13252-13-6).

(G) The compound associated with the chemical described in subparagraph (F) identified by Chemical Abstracts Service No. 62037-80-3.

(H) Perfluorononanoic acid (commonly referred to as "PFNA") (Chemical Abstracts Service No. 375-95-1).

(I) Perfluorohexanesulfonic acid (commonly referred to as "PFHxS") (Chemical Abstracts Service No. 355-46-4).

## **(2) Threshold for reporting**

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

Subject to subparagraph (B), the threshold for reporting the chemicals described in paragraph (1) under section 11023 of title 42 is 100 pounds.

### **(B) Revisions**

Not later than 5 years after December 20, 2019, the Administrator shall—

- (i) determine whether revision of the threshold under subparagraph (A) is warranted for any chemical described in paragraph (1); and
- (ii) if the Administrator determines a revision to be warranted under clause (i), initiate a revision under section 11023(f)(2) of title 42.

## **(c) Inclusion following assessment**

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

#### **(A) Date of inclusion**

Subject to subsection (e), notwithstanding section 11023 of title 42, a perfluoroalkyl or polyfluoroalkyl substance or class of perfluoroalkyl or polyfluoroalkyl substances not described in subsection (b)(1) shall be deemed to be included in the toxics release inventory beginning January 1 of the calendar year after any of the following dates:

#### **(i) Final toxicity value**

The date on which the Administrator finalizes a toxicity value for the perfluoroalkyl or polyfluoroalkyl substance or class of perfluoroalkyl or polyfluoroalkyl substances.

#### **(ii) Significant new use rule**

The date on which the Administrator makes a covered determination for the perfluoroalkyl or polyfluoroalkyl substance or class of perfluoroalkyl or polyfluoroalkyl substances.

#### **(iii) Addition to existing significant new use rule**

The date on which the perfluoroalkyl or polyfluoroalkyl substance or class of perfluoroalkyl or polyfluoroalkyl substances is added to a list of substances covered by a covered determination.

#### **(iv) Addition as active chemical substance**

The date on which the perfluoroalkyl or polyfluoroalkyl substance or class of perfluoroalkyl or polyfluoroalkyl substances to which a covered determination applies is—

- (I) added to the list published under paragraph (1) of section 2607(b) of this title and



designated as an active chemical substance under paragraph (5)(A) of such section; or  
(II) designated as an active chemical substance on such list under paragraph (5)(B) of such section.

**(B) Covered determination**

For purposes of this paragraph, a covered determination is a determination made, by rule, under section 2604(a)(2) of this title that a use of a perfluoroalkyl or polyfluoroalkyl substance or class of perfluoroalkyl or polyfluoroalkyl substances is a significant new use (except such a determination made in connection with a determination described in section 2604(a)(3)(B) or section 2604(a)(3)(C) of this title).

**(2) Threshold for reporting**

**(A) In general**

Subject to subparagraph (B), notwithstanding subsection (f)(1) of section 11023 of title 42, the threshold for reporting under such section 11023 of title 42 the substances and classes of substances included in the toxics release inventory under paragraph (1) is 100 pounds.

**(B) Revisions**

Not later than 5 years after the date on which a perfluoroalkyl or polyfluoroalkyl substance or class of perfluoroalkyl or polyfluoroalkyl substances is included in the toxics release inventory under paragraph (1), the Administrator shall—

- (i) determine whether revision of the threshold under subparagraph (A) is warranted for the substance or class of substances; and
- (ii) if the Administrator determines a revision to be warranted under clause (i), initiate a revision under section 11023(f)(2) of title 42.

**(d) Inclusion following determination**

**(1) In general**

Not later than 2 years after December 20, 2019, the Administrator shall determine whether the substances and classes of substances described in paragraph (2) meet any one of the criteria described in section 11023(d)(2) of title 42 for inclusion in the toxics release inventory.

**(2) Substances described**

The substances and classes of substances referred to in paragraph (1) are perfluoroalkyl and polyfluoroalkyl substances and classes of perfluoroalkyl and polyfluoroalkyl substances not described in subsection (b)(1), including—

(A) perfluoro[(2-pentafluoroethoxy-ethoxy)acetic acid] ammonium salt (Chemical Abstracts Service No. 908020-52-0);

(B) 2,3,3,3-tetrafluoro 2-(1,1,2,3,3,3-hexafluoro)-2-(trifluoromethoxy) propanoyl fluoride (Chemical Abstracts Service No. 2479-75-6);

(C) 2,3,3,3-tetrafluoro 2-(1,1,2,3,3,3-hexafluoro)-2-(trifluoromethoxy) propionic acid (Chemical Abstracts Service No. 2479-73-4);

(D) 3H-perfluoro-3-[(3-methoxy-propoxy) propanoic acid] (Chemical Abstracts Service No. 919005-14-4);

(E) the salts associated with the chemical described in subparagraph (D) (Chemical Abstracts Service Nos. 958445-44-8, 1087271-46-2, and NOCAS 892452);

(F) 1-octanesulfonic acid 3,3,4,4,5,5,6,6,7,7,8,8-tridecafluoro-potassium salt (Chemical Abstracts Service No. 59587-38-1);

(G) perfluorobutanesulfonic acid (Chemical Abstracts Service No. 375-73-5);

(H) 1-Butanesulfonic acid, 1,1,2,2,3,3,4,4,4-nonafluoro-potassium salt (Chemical Abstracts Service No. 29420-49-3);

(I) the component associated with the chemical described in subparagraph (H) (Chemical Abstracts Service No. 45187-15-3);

(J) heptafluorobutyric acid (Chemical Abstracts Service No. 375-22-4);

- (K) perfluorohexanoic acid (Chemical Abstracts Service No. 307–24–4);
- (L) the compound associated with the chemical described in subsection (b)(1)(F) identified by Chemical Abstracts Service No. 2062–98–8;
- (M) perfluoroheptanoic acid (commonly referred to as "PFHpA") (Chemical Abstracts Service No. 375–85–9);
- (N) each perfluoroalkyl or polyfluoroalkyl substance or class of perfluoroalkyl or polyfluoroalkyl substances for which a method to measure levels in drinking water has been validated by the Administrator; and
- (O) a perfluoroalkyl and polyfluoroalkyl substance or class of perfluoroalkyl or polyfluoroalkyl substances other than the chemicals described in subparagraphs (A) through (N) that is used to manufacture fluorinated polymers, as determined by the Administrator.

### **(3) Addition to toxics release inventory**

Subject to subsection (e), if the Administrator determines under paragraph (1) that a substance or a class of substances described in paragraph (2) meets any one of the criteria described in section 11023(d)(2) of title 42, the Administrator shall revise the toxics release inventory in accordance with such section 11023(d) of title 42 to include that substance or class of substances not later than 2 years after the date on which the Administrator makes the determination.

### **(e) Confidential business information**

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

Prior to including on the toxics release inventory pursuant to subsection (b)(1), (c)(1), or (d)(3) any perfluoroalkyl or polyfluoroalkyl substance or class of perfluoroalkyl or polyfluoroalkyl substances the chemical identity of which is subject to a claim of a person of protection from disclosure under subsection (a) of section 552 of title 5, pursuant to subsection (b)(4) of that section, the Administrator shall—

- (A) review any such claim of protection from disclosure; and
- (B) require that person to reassert and substantiate or resubstantiate that claim in accordance with section 2613(f) of this title.

#### **(2) Nondisclosure of protection information**

If the Administrator determines that the chemical identity of a perfluoroalkyl or polyfluoroalkyl substance or class of perfluoroalkyl or polyfluoroalkyl substances qualifies for protection from disclosure pursuant to paragraph (1), the Administrator shall include the substance or class of substances, as applicable, on the toxics release inventory in a manner that does not disclose the protected information.

(Pub. L. 116–92, div. F, title LXXIII, §7321, Dec. 20, 2019, 133 Stat. 2277.)

## **EDITORIAL NOTES**

### **CODIFICATION**

Section is comprised of section 7321 of Pub. L. 116–92. Subsec. (f) of section 7321 of Pub. L. 116–92 amended section 11023 of Title 42, The Public Health and Welfare.

## **SUBCHAPTER III—USGS PERFORMANCE STANDARD**

### **§8931. Definitions**

In this subchapter:

#### **(1) Director**

The term "Director" means the Director of the United States Geological Survey.

## **(2) Highly fluorinated compound**

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

The term "highly fluorinated compound" means a perfluoroalkyl substance or a polyfluoroalkyl substance with at least one fully fluorinated carbon atom.

### **(B) Definitions**

In this paragraph:

#### **(i) Fully fluorinated carbon atom**

The term "fully fluorinated carbon atom" means a carbon atom on which all the hydrogen substituents have been replaced by fluorine.

#### **(ii) Perfluoroalkyl substance**

The term "perfluoroalkyl substance" means a chemical of which all of the carbon atoms are fully fluorinated carbon atoms.

#### **(iii) Polyfluoroalkyl substance**

The term "polyfluoroalkyl substance" means a chemical containing at least one fully fluorinated carbon atom and at least one carbon atom that is not a fully fluorinated carbon atom.

(Pub. L. 116–92, div. F, title LXXIII, §7331, Dec. 20, 2019, 133 Stat. 2281.)

## **§8932. Performance standard for the detection of highly fluorinated compounds**

### **(a) In general**

The Director, in consultation with the Administrator, shall establish a performance standard for the detection of highly fluorinated compounds.

### **(b) Emphasis**

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

In developing the performance standard under subsection (a), the Director shall emphasize the ability to detect as many highly fluorinated compounds present in the environment as possible using validated analytical methods that—

(A) achieve limits of quantitation (as defined in the document of the United States Geological Survey entitled "Analytical Methods for Chemical Analysis of Geologic and Other Materials, U.S. Geological Survey" and dated 2002); and

(B) are as sensitive as is feasible and practicable.

#### **(2) Requirement**

In developing the performance standard under subsection (a), the Director may—

(A) develop quality assurance and quality control measures to ensure accurate sampling and testing;

(B) develop a training program with respect to the appropriate method of sample collection and analysis of highly fluorinated compounds; and

(C) coordinate as necessary with the Administrator, including, if appropriate, to develop methods to detect individual and different highly fluorinated compounds simultaneously.

(Pub. L. 116–92, div. F, title LXXIII, §7332, Dec. 20, 2019, 133 Stat. 2282.)

## **§8933. Nationwide sampling**

### **(a) In general**

The Director shall carry out a nationwide sampling to determine the concentration of highly

fluorinated compounds in estuaries, lakes, streams, springs, wells, wetlands, rivers, aquifers, and soil using the performance standard developed under section 8932(a) of this title.

**(b) Requirements**

In carrying out the sampling under subsection (a), the Director shall—

- (1) first carry out the sampling at sources of drinking water near locations with known or suspected releases of highly fluorinated compounds;
- (2) when carrying out sampling of sources of drinking water under paragraph (1), carry out the sampling prior to and, at the request of the Administrator, after any treatment of the water;
- (3) survey for ecological exposure to highly fluorinated compounds, with a priority in determining direct human exposure through drinking water; and
- (4) consult with—
  - (A) States to determine areas that are a priority for sampling; and
  - (B) the Administrator—
    - (i) to enhance coverage of the sampling; and
    - (ii) to avoid unnecessary duplication.

**(c) Report**

Not later than 120 days after the completion of the sampling under subsection (a), the Director shall prepare a report describing the results of the sampling and submit the report to—

- (1) the Committee on Environment and Public Works and the Committee on Energy and Natural Resources of the Senate;
- (2) the Committee on Energy and Commerce and the Committee on Natural Resources of the House of Representatives;
- (3) the Senators of each State in which the Director carried out the sampling; and
- (4) each Member of the House of Representatives who represents a district in which the Director carried out the sampling.

(Pub. L. 116–92, div. F, title LXXIII, §7333, Dec. 20, 2019, 133 Stat. 2282.)

**§8934. Data usage**

**(a) In general**

The Director shall provide the sampling data collected under section 8933 of this title to—

- (1) the Administrator; and
- (2) other Federal and State regulatory agencies on request.

**(b) Usage**

The sampling data provided under subsection (a) shall be used to inform and enhance assessments of exposure, likely health and environmental impacts, and remediation priorities.

(Pub. L. 116–92, div. F, title LXXIII, §7334, Dec. 20, 2019, 133 Stat. 2283.)

**§8935. Collaboration**

In carrying out this subchapter, the Director shall collaborate with—

- (1) appropriate Federal and State regulators;
- (2) institutions of higher education;
- (3) research institutions; and
- (4) other expert stakeholders.

(Pub. L. 116–92, div. F, title LXXIII, §7335, Dec. 20, 2019, 133 Stat. 2283.)

## SUBCHAPTER IV—EMERGING CONTAMINANTS

### §8951. Definitions

In this subchapter:

#### (1) Contaminant

The term "contaminant" means any physical, chemical, biological, or radiological substance or matter in water.

#### (2) Contaminant of emerging concern; emerging contaminant

The terms "contaminant of emerging concern" and "emerging contaminant" mean a contaminant—

- (A) for which the Administrator has not promulgated a national primary drinking water regulation; and
- (B) that may have an adverse effect on the health of individuals.

#### (3) Federal research strategy

The term "Federal research strategy" means the coordinated cross-agency plan for addressing critical research gaps related to detecting, assessing exposure to, and identifying the adverse health effects of emerging contaminants in drinking water developed by the Office of Science and Technology Policy in response to the report of the Committee on Appropriations of the Senate accompanying S. 1662 of the 115th Congress (S. Rept. 115–139).

#### (4) Technical assistance and support

The term "technical assistance and support" includes—

(A) assistance with—

- (i) identifying appropriate analytical methods for the detection of contaminants;
- (ii) understanding the strengths and limitations of the analytical methods described in clause (i);
- (iii) troubleshooting the analytical methods described in clause (i);

(B) providing advice on laboratory certification program elements;

(C) interpreting sample analysis results;

(D) providing training with respect to proper analytical techniques;

(E) identifying appropriate technology for the treatment of contaminants; and

(F) analyzing samples, if—

- (i) the analysis cannot be otherwise <sup>1</sup> obtained in a practicable manner otherwise; <sup>1</sup> and
- (ii) the capability and capacity to perform the analysis is available at a Federal facility.

#### (5) Working Group

The term "Working Group" means the Working Group established under section 8952(b)(1) of this title.

(Pub. L. 116–92, div. F, title LXXIII, §7341, Dec. 20, 2019, 133 Stat. 2283.)

### EDITORIAL NOTES

### REFERENCES IN TEXT

S. 1662 of the 115th Congress, referred to in par. (3), is the Commerce, Justice, Science, and Related Agencies Appropriations Act, 2018, which became div. B of Pub. L. 115–141, Mar. 23, 2018, 132 Stat. 400. For complete classification of this Act to the Code, see Tables.

<sup>1</sup> *So in original.*

## **§8952. Research and coordination plan for enhanced response on emerging contaminants**

### **(a) In general**

The Administrator shall—

(1) review Federal efforts—

(A) to identify, monitor, and assist in the development of treatment methods for emerging contaminants; and

(B) to assist States in responding to the human health risks posed by contaminants of emerging concern; and

(2) in collaboration with owners and operators of public water systems, States, and other interested stakeholders, establish a strategic plan for improving the Federal efforts referred to in paragraph (1).

### **(b) Interagency Working Group on emerging contaminants**

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

Not later than 180 days after December 20, 2019, the Administrator and the Secretary of Health and Human Services shall jointly establish a Working Group to coordinate the activities of the Federal Government to identify and analyze the public health effects of drinking water contaminants of emerging concern.

#### **(2) Membership**

The Working Group shall include representatives of the following:

(A) The Environmental Protection Agency, appointed by the Administrator.

(B) The following agencies, appointed by the Secretary of Health and Human Services:

(i) The National Institutes of Health.

(ii) The Centers for Disease Control and Prevention.

(iii) The Agency for Toxic Substances and Disease Registry.

(C) The United States Geological Survey, appointed by the Secretary of the Interior.

(D) Any other Federal agency the assistance of which the Administrator determines to be necessary to carry out this subsection, appointed by the head of the respective agency.

#### **(3) Existing working group**

The Administrator may expand or modify the duties of an existing working group to perform the duties of the Working Group under this subsection.

### **(c) National Emerging Contaminant Research Initiative**

#### **(1) Federal research strategy**

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

Not later than 180 days after December 20, 2019, the Director of the Office of Science and Technology Policy (referred to in this subsection as the "Director") shall coordinate with the heads of the agencies described in subparagraph (C) to establish a research initiative, to be known as the "National Emerging Contaminant Research Initiative", that shall—

(i) use the Federal research strategy to improve the identification, analysis, monitoring, and treatment methods of contaminants of emerging concern; and

(ii) develop any necessary program, policy, or budget to support the implementation of the Federal research strategy, including mechanisms for joint agency review of research proposals, for interagency cofunding of research activities, and for information sharing across agencies.

##### **(B) Research on emerging contaminants**

In carrying out subparagraph (A), the Director shall—

- (i) take into consideration consensus conclusions from peer-reviewed, pertinent research on emerging contaminants; and
- (ii) in consultation with the Administrator, identify priority emerging contaminants for research emphasis.

**(C) Federal participation**

The agencies referred to in subparagraph (A) include—

- (i) the National Science Foundation;
- (ii) the National Institutes of Health;
- (iii) the Environmental Protection Agency;
- (iv) the National Institute of Standards and Technology;
- (v) the United States Geological Survey; and
- (vi) any other Federal agency that contributes to research in water quality, environmental exposures, and public health, as determined by the Director.

**(D) Participation from additional entities**

In carrying out subparagraph (A), the Director shall consult with nongovernmental organizations, State and local governments, and science and research institutions determined by the Director to have scientific or material interest in the National Emerging Contaminant Research Initiative.

**(2) Implementation of research recommendations**

**(A) In general**

Not later than 1 year after the date on which the Director and heads of the agencies described in paragraph (1)(C) establish the National Emerging Contaminant Research Initiative under paragraph (1)(A), the head of each agency described in paragraph (1)(C) shall—

- (i) issue a solicitation for research proposals consistent with the Federal research strategy and that agency's mission; and
- (ii) make grants to applicants that submit research proposals consistent with the Federal research strategy and in accordance with subparagraph (B).

**(B) Selection of research proposals**

The head of each agency described in paragraph (1)(C) shall select research proposals to receive grants under this paragraph on the basis of merit, using criteria identified by the head of each such agency, including the likelihood that the proposed research will result in significant progress toward achieving the objectives identified in the Federal research strategy.

**(C) Eligible entities**

Any entity or group of 2 or more entities may submit to the head of each agency described in paragraph (1)(C) a research proposal in response to the solicitation for research proposals described in subparagraph (A)(i), including, consistent with that agency's grant policies—

- (i) State and local agencies;
- (ii) public institutions, including public institutions of higher education;
- (iii) private corporations; and
- (iv) nonprofit organizations.

**(d) Federal technical assistance and support for States**

**(1) Study**

**(A) In general**

Not later than 1 year after December 20, 2019, the Administrator shall conduct a study on actions the Administrator can take to increase technical assistance and support for States with respect to emerging contaminants in drinking water samples.

**(B) Contents of study**

In carrying out the study described in subparagraph (A), the Administrator shall identify—

(i) methods and effective treatment options to increase technical assistance and support with respect to emerging contaminants to States, including identifying opportunities for States to improve communication with various audiences about the risks associated with emerging contaminants;

(ii) means to facilitate access to qualified contract testing laboratory facilities that conduct analyses for emerging contaminants; and

(iii) actions to be carried out at existing Federal laboratory facilities, including the research facilities of the Administrator, to provide technical assistance and support for States that require testing facilities for emerging contaminants.

**(C) Availability of analytical resources**

In carrying out the study described in subparagraph (A), the Administrator shall consider—

(i) the availability of—

(I) Federal and non-Federal laboratory capacity; and

(II) validated methods to detect and analyze contaminants; and

(ii) other factors determined to be appropriate by the Administrator.

**(2) Report**

Not later than 18 months after December 20, 2019, the Administrator shall submit to Congress a report describing the results of the study described in paragraph (1).

**(3) Program to provide Federal assistance to States**

**(A) In general**

Not later than 3 years after December 20, 2019, based on the findings in the report described in paragraph (2), the Administrator shall develop a program to provide technical assistance and support to eligible States for the testing and analysis of emerging contaminants.

**(B) Application**

**(i) In general**

To be eligible for technical assistance and support under this paragraph, a State shall submit to the Administrator an application at such time, in such manner, and containing such information as the Administrator may require.

**(ii) Criteria**

The Administrator shall evaluate an application for technical assistance and support under this paragraph on the basis of merit using criteria identified by the Administrator, including—

(I) the laboratory facilities available to the State;

(II) the availability and applicability of existing analytical methodologies;

(III) the potency and severity of the emerging contaminant, if known; and

(IV) the prevalence and magnitude of the emerging contaminant.

**(iii) Prioritization**

In selecting States to receive technical assistance and support under this paragraph, the Administrator—

(I) shall give priority to States with affected areas primarily in financially distressed communities;

(II) may—

(aa) waive the application process in an emergency situation; and

(bb) require an abbreviated application process for the continuation of work specified in a previously approved application that continues to meet the criteria described in clause (ii); and

(III) shall consider the relative expertise and availability of—



- (aa) Federal and non-Federal laboratory capacity available to the State;
- (bb) analytical resources available to the State; and
- (cc) other types of technical assistance available to the State.

**(C) Database of available resources**

The Administrator shall establish and maintain a database of resources available through the program developed under subparagraph (A) to assist States with testing for emerging contaminants that—

(i) is—

(I) available to States and stakeholder groups determined by the Administrator to have scientific or material interest in emerging contaminants, including—

- (aa) drinking water and wastewater utilities;
- (bb) laboratories;
- (cc) Federal and State emergency responders;
- (dd) State primacy agencies;
- (ee) public health agencies; and
- (ff) water associations;

(II) searchable; and

(III) accessible through the website of the Administrator; and

(ii) includes a description of—

(I) qualified contract testing laboratory facilities that conduct analyses for emerging contaminants; and

(II) the resources available in Federal laboratory facilities to test for emerging contaminants.

**(D) Water contaminant information tool**

The Administrator shall integrate the database established under subparagraph (C) into the Water Contaminant Information Tool of the Environmental Protection Agency.

**(4) Funding**

Of the amounts available to the Administrator, the Administrator may use not more than \$15,000,000 in a fiscal year to carry out this subsection.

**(e) Report**

Not less frequently than once every 2 years until 2029, the Administrator shall submit to Congress a report that describes the progress made in carrying out this subchapter.

**(f) Effect**

Nothing in this section modifies any obligation of a State, local government, or Indian Tribe with respect to treatment methods for, or testing or monitoring of, drinking water.

(Pub. L. 116–92, div. F, title LXXIII, §7342, Dec. 20, 2019, 133 Stat. 2284.)

## **SUBCHAPTER V—OTHER MATTERS**

### **§8961. PFAS destruction and disposal guidance**

**(a) In general**

Not later than 1 year after December 20, 2019, the Administrator shall publish interim guidance on the destruction and disposal of perfluoroalkyl and polyfluoroalkyl substances and materials containing perfluoroalkyl and polyfluoroalkyl substances, including—

- (1) aqueous film-forming foam;
- (2) soil and biosolids;
- (3) textiles, other than consumer goods, treated with perfluoroalkyl and polyfluoroalkyl substances;
- (4) spent filters, membranes, resins, granular carbon, and other waste from water treatment;
- (5) landfill leachate containing perfluoroalkyl and polyfluoroalkyl substances; and
- (6) solid, liquid, or gas waste streams containing perfluoroalkyl and polyfluoroalkyl substances from facilities manufacturing or using perfluoroalkyl and polyfluoroalkyl substances.

**(b) Considerations; inclusions**

The interim guidance under subsection (a) shall—

- (1) take into consideration—
  - (A) the potential for releases of perfluoroalkyl and polyfluoroalkyl substances during destruction or disposal, including through volatilization, air dispersion, or leachate; and
  - (B) potentially vulnerable populations living near likely destruction or disposal sites; and
- (2) provide guidance on testing and monitoring air, effluent, and soil near potential destruction or disposal sites for releases described in paragraph (1)(A).

**(c) Revisions**

The Administrator shall publish revisions to the interim guidance under subsection (a) as the Administrator determines to be appropriate, but not less frequently than once every 3 years.

(Pub. L. 116–92, div. F, title LXXIII, §7361, Dec. 20, 2019, 133 Stat. 2289.)

## **§8962. PFAS research and development**

**(a) In general**

The Administrator, acting through the Assistant Administrator for the Office of Research and Development, shall—

- (1)(A) further examine the effects of perfluoroalkyl and polyfluoroalkyl substances on human health and the environment; and
- (B) make publicly available information relating to the findings under subparagraph (A);
- (2) develop a process for prioritizing which perfluoroalkyl and polyfluoroalkyl substances, or classes of perfluoroalkyl and polyfluoroalkyl substances, should be subject to additional research efforts that is based on—
  - (A) the potential for human exposure to the substances or classes of substances;
  - (B) the potential toxicity of the substances or classes of substances; and
  - (C) information available about the substances or classes of substances;
- (3) develop new tools to characterize and identify perfluoroalkyl and polyfluoroalkyl substances in the environment, including in drinking water, wastewater, surface water, groundwater, solids, and the air;
- (4) evaluate approaches for the remediation of contamination by perfluoroalkyl and polyfluoroalkyl substances in the environment; and
- (5) develop and implement new tools and materials to communicate with the public about perfluoroalkyl and polyfluoroalkyl substances.

**(b) Funding**

There is authorized to be appropriated to the Administrator to carry out this section \$15,000,000 for each of fiscal years 2020 through 2024.

(Pub. L. 116–92, div. F, title LXXIII, §7362, Dec. 20, 2019, 133 Stat. 2290.)

## **§8963. Interagency body on research related to per- and polyfluoroalkyl substances**

### **(a) Establishment**

The Director of the Office of Science and Technology Policy, acting through the National Science and Technology Council, shall establish, or designate, an interagency working group to coordinate Federal activities related to PFAS research and development.

### **(b) Agency participation**

The interagency working group shall include a representative of each of—

- (1) the Environmental Protection Agency;
- (2) the National Institute of Environmental Health Sciences;
- (3) the Agency for Toxic Substances and Disease Registry;
- (4) the National Science Foundation;
- (5) the Department of Defense;
- (6) the National Institutes of Health;
- (7) the National Institute of Standards and Technology;
- (8) the National Oceanic and Atmospheric Administration;
- (9) the Department of the Interior;
- (10) the Department of Transportation;
- (11) the Department of Homeland Security;
- (12) the National Aeronautics and Space Administration;
- (13) the National Toxicology Program;
- (14) the Department of Agriculture;
- (15) the Geological Survey;
- (16) the Department of Commerce;
- (17) the Department of Energy;
- (18) the Office of Information and Regulatory Affairs;
- (19) the Office of Management and Budget; and
- (20) any such other Federal department or agency as the Director of the Office of Science and Technology Policy considers appropriate.

### **(c) Co-chairs**

The Interagency working group shall be co-chaired by the Director of the Office of Science and Technology Policy and, on a biannual rotating basis, a representative from a member agency, as selected by the Director of the Office of Science and Technology Policy.

### **(d) Responsibilities of the working group**

The interagency working group established under subsection (a) shall—

- (1) provide for interagency coordination of federally funded PFAS research and development; and
- (2) not later than 12 months after January 1, 2021, develop and make publicly available a strategic plan for Federal support for PFAS research and development (to be updated not less frequently than once every three years) that—
  - (A) identifies all current federally funded PFAS research and development, including the nature and scope of such research and development and the amount of funding associated with such research and development during the current fiscal year, disaggregated by agency;
  - (B) identifies all federally funded PFAS research and development having taken place in the last three years, excluding the research listed under subparagraph (A), including the nature and scope of such research and development and the amount of funding associated with such research and development during the current fiscal year, disaggregated by agency;
  - (C) identifies scientific and technological challenges that must be addressed to understand and to significantly reduce the environmental and human health impacts of PFAS and to identify cost-effective—

- (i) alternatives to PFAS that are designed to be safer and more environmentally friendly;
- (ii) methods for removal of PFAS from the environment; and
- (iii) methods to safely destroy or degrade PFAS;

(D) establishes goals, priorities, and metrics for federally funded PFAS research and development that takes into account the current state of research and development identified in subparagraph (A) and the challenges identified in subparagraph (C); and

(E) an implementation plan for Federal agencies and, for each update to the strategic plan under this paragraph, a description of how Federal agencies have been following the implementation plan.

**(e) Consultation**

In developing the strategic plan under subsection (d)(2), the interagency working group shall consult with States, tribes, territories, local governments, appropriate industries, academic institutions and nongovernmental organizations with expertise in PFAS research and development, treatment, management, and alternative development.

**(f) Sunset**

The strategic plan requirement described under section <sup>1</sup>(d)(2) shall cease on the date that is 20 years after the initial strategic plan is developed.

**(g) Definitions**

In this section:

**(1) PFAS**

The term "PFAS" means—

(A) man-made chemicals of which all of the carbon atoms are fully fluorinated carbon atoms; and

(B) man-made chemicals containing a mix of fully fluorinated carbon atoms, partially fluorinated carbon atoms, and nonfluorinated carbon atoms.

**(2) PFAS research and development defined**

The term "PFAS research and development" includes any research or project that has the goal of accomplishing the following:

(A) The removal of PFAS from the environment.

(B) The safe destruction or degradation of PFAS.

(C) The development and deployment of safer and more environmentally friendly alternative substances that are functionally similar to those made with PFAS.

(D) The understanding of sources of environmental PFAS contamination and pathways to exposure for the public.

(E) The understanding of the toxicity of PFAS to humans and animals.

(Pub. L. 116–283, div. A, title III, §332, Jan. 1, 2021, 134 Stat. 3529.)

**EDITORIAL NOTES**

**CODIFICATION**

Section was enacted as part of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, and not as part of the PFAS Act of 2019 which comprises this chapter.

**STATUTORY NOTES AND RELATED SUBSIDIARIES**

**GUARANTEEING EQUIPMENT SAFETY FOR FIREFIGHTERS**

Pub. L. 116–283, div. A, title III, §338, Jan. 1, 2021, 134 Stat. 3533, provided that:

"(a) **SHORT TITLE.**—This section may be cited as the 'Guaranteeing Equipment Safety for Firefighters Act of 2020'.

"(b) NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY STUDY ON PER- AND POLYFLUOROALKYL SUBSTANCES IN PERSONAL PROTECTIVE EQUIPMENT WORN BY FIREFIGHTERS.—

"(1) IN GENERAL.—Not later than 3 years after the date of the enactment of this Act [Jan. 1, 2021], the Director of the National Institute of Standards and Technology shall, subject to availability of appropriations, in consultation with the Director of the National Institute for Occupational Safety and Health, complete a study of the contents and composition of new and unused personal protective equipment worn by firefighters.

"(2) CONTENTS OF STUDY.—In carrying out the study required by paragraph (1), the Director of the National Institute of Standards and Technology shall examine—

"(A) the identity, prevalence, and concentration of per- and polyfluoroalkyl substances (commonly known as 'PFAS') in the personal protective equipment worn by firefighters;

"(B) the conditions and extent to which per- and polyfluoroalkyl substances are released into the environment over time from the degradation of personal protective equipment from normal use by firefighters; and

"(C) the relative risk of exposure to per- and polyfluoroalkyl substances faced by firefighters from—

"(i) their use of personal protective equipment; and

"(ii) degradation of personal protective equipment from normal use by firefighters.

"(3) REPORTS.—

"(A) PROGRESS REPORTS.—Not less frequently than once each year for the duration of the study conducted under paragraph (1), the Director shall submit to Congress a report on the progress of the Director in conducting such study.

"(B) FINAL REPORT.—Not later than 90 days after the date on which the Director completes the study required by paragraph (1), the Director shall submit to Congress a report describing—

"(i) the findings of the Director with respect to the study; and

"(ii) recommendations on what additional research or technical improvements to personal protective equipment materials or components should be pursued to avoid unnecessary occupational exposure among firefighters to per- and polyfluoroalkyl substances through personal protective equipment.

"(4) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated \$2,500,000 for each of fiscal years 2021 and 2022.

"(c) RESEARCH ON PER- AND POLYFLUOROALKYL SUBSTANCES IN PERSONAL PROTECTIVE EQUIPMENT WORN BY FIREFIGHTERS.—

"(1) IN GENERAL.—Not later than 180 days after the date of the submittal of the report required by subsection (b)(3)(B), the Director of the National Institute of Standards and Technology shall, subject to the availability of appropriations—

"(A) issue a solicitation for research proposals to carry out the research recommendations identified in the report submitted under subsection (b)(3)(B); and

"(B) award grants to applicants that submit research proposals to develop safe alternatives to per- and polyfluoroalkyl substances in personal protective equipment.

"(2) CRITERIA.—The Director shall select research proposals to receive a grant under paragraph (1) on the basis of merit, using criteria identified by the Director, including the likelihood that the research results will address the findings of the Director with respect to the study conducted under subsection (b)(1).

"(3) ELIGIBLE ENTITIES.—Any entity or group of 2 or more entities may submit to the Director a research proposal in response to the solicitation for research proposals under paragraph (1), including—

"(A) State and local agencies;

"(B) public institutions, including public institutions of higher education;

"(C) private corporations; and

"(D) nonprofit organizations.

"(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated \$5,000,000 for fiscal year 2023, \$5,000,000 for fiscal year 2024, and \$5,000,000 for fiscal year 2025 to carry out this section.

"(d) AUTHORITY FOR DIRECTOR OF THE NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY TO CONSULT WITH EXPERTS ON MATTERS RELATING TO PER- AND POLYFLUOROALKYL SUBSTANCES.—In carrying out this section, the Director of the National Institute of Standards and Technology may consult with Federal agencies, nongovernmental organizations, State and local governments, and science and research institutions determined by the Director to have scientific or

material interest in reducing unnecessary occupational exposure to per- and polyfluoroalkyl substances by firefighters."

<sup>1</sup> So in original. Probably should be "subsection".

## **CHAPTER 116—CORONAVIRUS ECONOMIC STABILIZATION (CARES ACT)**

### **SUBCHAPTER I—KEEPING AMERICAN WORKERS PAID AND EMPLOYED**

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# **SUBCHAPTER I—KEEPING AMERICAN WORKERS PAID AND EMPLOYED**

## **§9001. Definitions**

In this title— [1](#)

(1) the terms "Administration" and "Administrator" mean the Small Business Administration and the Administrator thereof, respectively; and

(2) the term "small business concern" has the meaning given the term in section 632 of this title.

(Pub. L. 116–136, div. A, title I, §1101, Mar. 27, 2020, 134 Stat. 286.)

## **EDITORIAL NOTES**

### **REFERENCES IN TEXT**

This title, referred to in text, is title I of div. A of Pub. L. 116–136, Mar. 27, 2020, 134 Stat. 286, which enacted this subchapter and amended, and enacted provisions set out as notes under, section 636 of this title and several sections in Title 11, Bankruptcy. For complete classification of title I to the Code, see Tables.

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **SHORT TITLE OF 2022 AMENDMENT**

Pub. L. 117–165, §1, Aug. 5, 2022, 136 Stat. 1363, provided that: "This Act [amending sections 636, 9009, and 9009b of this title] may be cited as the 'COVID–19 EIDL Fraud Statute of Limitations Act of 2022'."

### **SHORT TITLE OF 2021 AMENDMENT**

Pub. L. 117–2, §1, Mar. 11, 2021, 135 Stat. 4, provided that: "This Act [see Tables for classification] may be cited as the 'American Rescue Plan Act of 2021'."

### **SHORT TITLE OF 2020 AMENDMENT**

Pub. L. 116–260, div. N, title II, §200, Dec. 27, 2020, 134 Stat. 1950, provided that: "This chapter [chapter 1 (§§200–266) of subtitle A of title II of div. N of Pub. L. 116–260, see Tables for classification] may be cited as the 'Continued Assistance for Unemployed Workers Act of 2020'."

Pub. L. 116–260, div. N, title III, §301, Dec. 27, 2020, 134 Stat. 1993, provided that: "This title [see Tables for classification] may be cited as the 'Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act'."

Pub. L. 116–260, div. N, title IV, §420, Dec. 27, 2020, 134 Stat. 2061, provided that: "This subtitle [subtitle B (§§420, 421) of title IV of div. N of Pub. L. 116–260, enacting part D of subchapter III of this chapter] may be cited as the 'Coronavirus Economic Relief for Transportation Services Act'."

Pub. L. 116–139, §1, Apr. 24, 2020, 134 Stat. 620, provided that: "This Act [amending sections 636, 9006, and 9009 of this title] may be cited as the 'Paycheck Protection Program and Health Care Enhancement Act'."

### **SHORT TITLE**

Pub. L. 116–136, §1, Mar. 27, 2020, 134 Stat. 281, provided that: "This Act [see Tables for classification] may be cited as the 'Coronavirus Aid, Relief, and Economic Security Act' or the 'CARES Act'."

Pub. L. 116–136, div. A, title II, §2101, Mar. 27, 2020, 134 Stat. 313, provided that: "This subtitle [subtitle A (§§2101–2116) of title II of div. A of Pub. L. 116–136, enacting subchapter II of this chapter, amending



section 3306 of Title 26, Internal Revenue Code, section 1103 of Title 42, The Public Health and Welfare, and section 352 of Title 45, Railroads, enacting provisions set out as a note under section 352 of Title 45, amending provisions set out as a note under section 3304 of Title 26, and repealing provisions set out as a note under section 3306 of Title 26], may be cited as the 'Relief for Workers Affected by Coronavirus Act'."

Pub. L. 116–136, div. A, title IV, §4001, Mar. 27, 2020, 134 Stat. 469, provided that: "This subtitle [subtitle A (§§4001–4029) of title IV of div. A of Pub. L. 116–136, enacting part A of subchapter III of this chapter, amending section 1681s–2 of this title, sections 84, 1795a, 1795c, 1795e, 1795f, and 5612 of Title 12, Banks and Banking, and section 5302 of Title 31, Money and Finance, and enacting provisions set out as notes under sections 84, 1795a, and 5236 of Title 12 and section 4532 of Title 50, War and National Defense] may be cited as the 'Coronavirus Economic Stabilization Act of 2020'."

## DEFINITIONS

Pub. L. 116–260, div. N, title III, §302, Dec. 27, 2020, 134 Stat. 1993, provided that: "In this Act [probably means "this title", title III of div. N of Pub. L. 116–260, see Tables for classification]:

"(1) ADMINISTRATION; ADMINISTRATOR.—The terms 'Administration' and 'Administrator' mean the Small Business Administration and the Administrator thereof, respectively.

"(2) SMALL BUSINESS CONCERN.—The term 'small business concern' has the meaning given the term in section 3 of the Small Business Act (15 U.S.C. 632)."

## EXECUTIVE DOCUMENTS

### EX. ORD. NO. 14002. ECONOMIC RELIEF RELATED TO THE COVID–19 PANDEMIC

Ex. Ord. No. 14002, Jan. 22, 2021, 86 F.R. 7229, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

SECTION 1. *Background.* The pandemic caused by the coronavirus disease 2019 (COVID–19) has led to an economic crisis marked by the closure of small businesses, job loss, food and housing insecurity, and increased challenges for working families balancing jobs and caregiving responsibilities. The current economic crisis has affected Americans throughout the Nation, but it is particularly dire in communities of color. The problems are exacerbated because State and local governments are being forced to consider steep cuts to critical programs to address revenue shortfalls the pandemic has caused. In addition, many individuals, families, and small businesses have had difficulties navigating relief programs with varying eligibility requirements, and some are not receiving the intended assistance. The economic crisis resulting from the pandemic must be met by the full resources of the Federal Government.

SEC. 2. *Providing Relief to Individuals, Families, and Small Businesses; and to State, Local, Tribal, and Territorial Governments.* (a) All executive departments and agencies (agencies) shall promptly identify actions they can take within existing authorities to address the current economic crisis resulting from the pandemic. Agencies should specifically consider actions that facilitate better use of data and other means to improve access to, reduce unnecessary barriers to, and improve coordination among programs funded in whole or in part by the Federal Government.

(b) Agencies should take the actions identified in subsection (a) of this section, as appropriate and consistent with applicable law, and in doing so should prioritize actions that provide the greatest relief to individuals, families, and small businesses; and to State, local, Tribal, and territorial governments.

(c) Independent agencies, as enumerated in 44 U.S.C. 3502(5), are strongly encouraged to comply with this section.

SEC. 3. *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.

<sup>1</sup> [\*See References in Text note below.\*](#)

## **§9002. Entrepreneurial development**

### **(a) Definitions**

In this section—

(1) the term "covered small business concern" means a small business concern that has experienced, as a result of COVID–19—

(A) supply chain disruptions, including changes in—

(i) quantity and lead time, including the number of shipments of components and delays in shipments;

(ii) quality, including shortages in supply for quality control reasons; and

(iii) technology, including a compromised payment network;

(B) staffing challenges;

(C) a decrease in gross receipts or customers; or

(D) a closure;

(2) the term "resource partner" means—

(A) a small business development center; and

(B) a women's business center;

(3) the term "small business development center" has the meaning given the term in section 632 of this title; and

(4) the term "women's business center" means a women's business center described in section 656 of this title.

### **(b) Education, training, and advising grants**

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

The Administration may provide financial assistance in the form of grants to resource partners to provide education, training, and advising to covered small business concerns.

#### **(2) Use of funds**

Grants under this subsection shall be used for the education, training, and advising of covered small business concerns and their employees on—

(A) accessing and applying for resources provided by the Administration and other Federal resources relating to access to capital and business resiliency;

(B) the hazards and prevention of the transmission and communication of COVID–19 and other communicable diseases;

(C) the potential effects of COVID–19 on the supply chains, distribution, and sale of products of covered small business concerns and the mitigation of those effects;

(D) the management and practice of telework to reduce possible transmission of COVID–19;

(E) the management and practice of remote customer service by electronic or other means;

(F) the risks of and mitigation of cyber threats in remote customer service or telework practices;

(G) the mitigation of the effects of reduced travel or outside activities on covered small business concerns during COVID–19 or similar occurrences; and

(H) any other relevant business practices necessary to mitigate the economic effects of COVID–19 or similar occurrences.

#### **(3) Grant determination**

##### **(A) Small business development centers**

###### **(i) In general**

The Administration shall award 80 percent of funds authorized to carry out this subsection

to small business development centers, which shall be awarded pursuant to a formula jointly developed, negotiated, and agreed upon, with full participation of both parties, between the association formed under section 648(a)(3)(A) of this title and the Administration.

**(ii) Clarification of use**

Awards made under clause (i) shall be in addition to, and separate from, any amounts appropriated to make grants under section 648(a) of this title and such an award may be used to complement and support such a grant, except that priority with respect to the receipt of that assistance shall be given to small business development centers that have been affected by issues described in paragraph (2).

**(B) Women's business centers**

The Administration shall award 20 percent of funds authorized to carry out this subsection to women's business centers, which shall be awarded pursuant to a process established by the Administration in consultation with recipients of assistance.

**(C) No matching funds required**

Matching funds shall not be required for any grant under this subsection.

**(4) Goals and metrics**

**(A) In general**

Goals and metrics for the funds made available under this subsection shall be jointly developed, negotiated, and agreed upon, with full participation of both parties, between the resource partners and the Administrator, which shall—

- (i) take into consideration the extent of the circumstances relating to the spread of COVID-19, or similar occurrences, that affect covered small business concerns located in the areas covered by the resource partner, particularly in rural areas or economically distressed areas;
- (ii) generally follow the use of funds outlined in paragraph (2), but shall not restrict the activities of resource partners in responding to unique situations; and
- (iii) encourage resource partners to develop and provide services to covered small business concerns.

**(B) Public availability**

The Administrator shall make publicly available the methodology by which the Administrator and resource partners jointly develop the metrics and goals described in subparagraph (A).

**(c) Resource partner association grants**

**(1) In general**

The Administrator may provide grants to an association or associations representing resource partners under which the association or associations shall establish a single centralized hub for COVID-19 information, which shall include—

- (A) 1 online platform that consolidates resources and information available across multiple Federal agencies for small business concerns related to COVID-19; and
- (B) a training program to educate resource partner counselors, members of the Service Corps of Retired Executives established under section 637(b)(1)(B) of this title, and counselors at veterans business outreach centers described in section 657b of this title on the resources and information described in subparagraph (A).

**(2) Goals and metrics**

Goals and metrics for the funds made available under this subsection shall be jointly developed, negotiated, and agreed upon, with full participation of both parties, between the association or associations receiving a grant under this subsection and the Administrator.

**(d) Report**

Not later than 6 months after March 27, 2020, and annually thereafter, the Administrator shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report that describes—

(1) with respect to the initial year covered by the report—

(A) the programs and services developed and provided by the Administration and resource partners under subsection (b);

(B) the initial efforts to provide those services under subsection (b); and

(C) the online platform and training developed and provided by the Administration and the association or associations under subsection (c); and

(2) with respect to the subsequent years covered by the report—

(A) with respect to the grant program under subsection (b)—

(i) the efforts of the Administrator and resource partners to develop services to assist covered small business concerns;

(ii) the challenges faced by owners of covered small business concerns in accessing services provided by the Administration and resource partners;

(iii) the number of unique covered small business concerns that were served by the Administration and resource partners; and

(iv) other relevant outcome performance data with respect to covered small business concerns, including the number of employees affected, the effect on sales, the disruptions of supply chains, and the efforts made by the Administration and resource partners to mitigate these effects; and

(B) with respect to the grant program under subsection (c)—

(i) the efforts of the Administrator and the association or associations to develop and evolve an online resource for small business concerns; and

(ii) the efforts of the Administrator and the association or associations to develop a training program for resource partner counselors, including the number of counselors trained.

(Pub. L. 116–136, div. A, title I, §1103, Mar. 27, 2020, 134 Stat. 294; Pub. L. 116–260, div. N, title III, §346(a), Dec. 27, 2020, 134 Stat. 2051.)

## EDITORIAL NOTES

### AMENDMENTS

**2020**—Subsec. (b)(3)(A). Pub. L. 116–260 designated existing provisions as cl. (i), inserted heading, and added cl. (ii).

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### EFFECTIVE DATE OF 2020 AMENDMENT

Pub. L. 116–260, div. N, title III, §346(b), Dec. 27, 2020, 134 Stat. 2052, provided that: "The amendments made by subsection (a) [amending this section] shall be effective as if included in the CARES Act (Public Law 116–136; 134 Stat. 281)."

## §9003. State Trade Expansion Program

### (a) In general

Notwithstanding paragraph (3)(C)(iii) of section 649(l) of this title, for grants under the State Trade Expansion Program under such section 649(l) of this title using amounts made available for fiscal year 2018 or fiscal year 2019, the period of the grant shall continue through the end of fiscal year 2021.

### (b) Reimbursement

The Administrator shall reimburse any recipient of assistance under section 649(l) of this title for financial losses relating to a foreign trade mission or a trade show exhibition that was cancelled solely due to a public health emergency declared due to COVID-19 if the reimbursement does not exceed a recipient's grant funding.

(Pub. L. 116-136, div. A, title I, §1104, Mar. 27, 2020, 134 Stat. 297.)

#### **§9004. Waiver of matching funds requirement under the Women's Business Center program**

During the period beginning on March 27, 2020, and ending on June 30, 2021, the requirement relating to obtaining cash contributions from non-Federal sources under section 656(c)(1) of this title is waived for any recipient of assistance under such section 656 of this title.

(Pub. L. 116-136, div. A, title I, §1105, Mar. 27, 2020, 134 Stat. 297; Pub. L. 116-260, div. N, title III, §345(a), Dec. 27, 2020, 134 Stat. 2051.)

#### **EDITORIAL NOTES**

##### **AMENDMENTS**

**2020**—Pub. L. 116-260 substituted "the period beginning on March 27, 2020, and ending on June 30, 2021" for "the 3-month period beginning on March 27, 2020".

#### **STATUTORY NOTES AND RELATED SUBSIDIARIES**

##### **EFFECTIVE DATE OF 2020 AMENDMENT**

Pub. L. 116-260, div. N, title III, §345(b), Dec. 27, 2020, 134 Stat. 2051, provided that: "The amendment made by subsection (a) [amending this section] shall be effective as if included in the CARES Act (Public Law 116-136; 134 Stat. 281)."

#### **§9005. Transferred**

#### **EDITORIAL NOTES**

##### **CODIFICATION**

Section, Pub. L. 116-136, div. A, title I, §1106, Mar. 27, 2020, 134 Stat. 297; Pub. L. 116-142, §3(b), June 5, 2020, 134 Stat. 641, which related to loan forgiveness, was renumbered as section 7A of Pub. L. 85-536 by Pub. L. 116-260, div. N, title III, §304(b)(1)(A), Dec. 27, 2020, 134 Stat. 1993, and transferred to section 636m of this title.

#### **§9006. Direct appropriations**

##### **(a) In general**

There is appropriated, out of amounts in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 2020, to remain available until September 30, 2021, for additional amounts—

(1) \$670,335,000,000 under the heading "Small Business Administration—Business Loans Program Account, CARES Act" for the cost of guaranteed loans as authorized under paragraph (36) of section 636(a) of this title, as added by section 1102(a) of this Act;

(2) \$675,000,000 under the heading "Small Business Administration—Salaries and Expenses" for salaries and expenses of the Administration;

(3) \$25,000,000 under the heading "Small Business Administration—Office of Inspector

General", to remain available until September 30, 2024, for necessary expenses of the Office of Inspector General of the Administration in carrying out the provisions of the Inspector General Act of 1978 (5 U.S.C. App.); <sup>1</sup>

(4) \$265,000,000 under the heading "Small Business Administration—Entrepreneurial Development Programs", of which—

- (A) \$240,000,000 shall be for carrying out section 9002(b) of this title; and
- (B) \$25,000,000 shall be for carrying out section 9002(c) of this title;

(5) \$10,000,000 under the heading "Department of Commerce—Minority Business Development Agency" for minority business centers of the Minority Business Development Agency to provide technical assistance to small business concerns;

(6) \$10,000,000,000 under the heading "Small Business Administration—Emergency EIDL Grants" shall be for carrying out section 9009 of this title;

(7) \$17,000,000,000 under the heading "Small Business Administration—Business Loans Program Account, CARES Act" shall be for carrying out section 9011 of this title; and

(8) \$25,000,000 under the heading "Department of the Treasury—Departmental Offices—Salaries and Expenses" shall be for carrying out section 9008 of this title.

### **(b) Secondary market**

During the period beginning on March 27, 2020, and ending on September 30, 2021, guarantees of trust certificates authorized by section 634(g) of this title with respect to loans under any paragraph of section 636(a) of this title shall not exceed a principal amount of \$100,000,000,000.

### **(c) Reports**

Not later than 180 days after March 27, 2020, the Administrator shall submit to the Committee on Appropriations of the Senate and the Committee on Appropriations of the House of Representatives a detailed expenditure plan for using the amounts appropriated to the Administration under subsection (a).

(Pub. L. 116–136, div. A, title I, §1107, Mar. 27, 2020, 134 Stat. 301; Pub. L. 116–139, div. A, §101(a)(2), Apr. 24, 2020, 134 Stat. 620; Pub. L. 116–260, div. N, title III, §323(b), Dec. 27, 2020, 134 Stat. 2019.)

## **EDITORIAL NOTES**

### **REFERENCES IN TEXT**

The CARES Act, referred to in subsec. (a)(1), (7), is Pub. L. 116–136, Mar. 27, 2020, 134 Stat. 281, also known as the Coronavirus Aid, Relief, and Economic Security Act. For complete classification of this Act to the Code, see Short Title note set out under section 9001 of this title and Tables.

Section 1102(a) of this Act, referred to in subsec. (a)(1), means section 1102(a) of div. A of Pub. L. 116–136.

The Inspector General Act of 1978, referred to in subsec. (a)(3), is Pub. L. 95–452, Oct. 12, 1978, 92 Stat. 1101, which was set out in the Appendix to Title 5, Government Organization and Employees, and was substantially repealed and restated in chapter 4 (§401 et seq.) of Title 5 by Pub. L. 117–286, §§3(b), 7, Dec. 27, 2022, 136 Stat. 4206, 4361. For disposition of sections of the Act into chapter 4 of Title 5, see Disposition Table preceding section 101 of Title 5.

## **AMENDMENTS**

**2020**—Subsec. (a)(1). Pub. L. 116–139 substituted "\$670,335,000,000" for "\$349,000,000,000".

Subsec. (b). Pub. L. 116–260 inserted "with respect to loans under any paragraph of section 636(a) of this title" before "shall not exceed".

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **EFFECTIVE DATE OF 2020 AMENDMENT**

Amendment by Pub. L. 116–260 effective on Dec. 27, 2020, and applicable to loans and grants made on or

after Dec. 27, 2020, see section 348 of Pub. L. 116–260, set out as a note under section 636 of this title.

<sup>1</sup> [See References in Text note below.](#)

## **§9007. Minority Business Development Agency**

### **(a) Definitions**

In this section—

(1) the term "Agency" means the Minority Business Development Agency of the Department of Commerce;

(2) the term "minority business center" means a Business Center of the Agency;

(3) the term "minority business enterprise" means a for-profit business enterprise—

(A) not less than 51 percent of which is owned by 1 or more socially disadvantaged individuals, as determined by the Agency; and

(B) the management and daily business operations of which are controlled by 1 or more socially disadvantaged individuals, as determined by the Agency; and

(4) the term "minority chamber of commerce" means a chamber of commerce developed specifically to support minority business enterprises.

### **(b) Education, training, and advising grants**

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

The Agency may provide financial assistance in the form of grants to minority business centers and minority chambers of commerce to provide education, training, and advising to minority business enterprises.

#### **(2) Use of funds**

Grants under this section shall be used for the education, training, and advising of minority business enterprises and their employees on—

(A) accessing and applying for resources provided by the Agency and other Federal resources relating to access to capital and business resiliency;

(B) the hazards and prevention of the transmission and communication of COVID–19 and other communicable diseases;

(C) the potential effects of COVID–19 on the supply chains, distribution, and sale of products of minority business enterprises and the mitigation of those effects;

(D) the management and practice of telework to reduce possible transmission of COVID–19;

(E) the management and practice of remote customer service by electronic or other means;

(F) the risks of and mitigation of cyber threats in remote customer service or telework practices;

(G) the mitigation of the effects of reduced travel or outside activities on minority business enterprises during COVID–19 or similar occurrences; and

(H) any other relevant business practices necessary to mitigate the economic effects of COVID–19 or similar occurrences.

#### **(3) No matching funds required**

Matching funds shall not be required for any grant under this section.

#### **(4) Goals and metrics**

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

Goals and metrics for the funds made available under this section shall be jointly developed, negotiated, and agreed upon, with full participation of both parties, between the minority business centers, minority chambers of commerce, and the Agency, which shall—

(i) take into consideration the extent of the circumstances relating to the spread of

COVID–19, or similar occurrences, that affect minority business enterprises located in the areas covered by minority business centers and minority chambers of commerce, particularly in rural areas or economically distressed areas;

(ii) generally follow the use of funds outlined in paragraph (2), but shall not restrict the activities of minority business centers and minority chambers of commerce in responding to unique situations; and

(iii) encourage minority business centers and minority chambers of commerce to develop and provide services to minority business enterprises.

**(B) Public availability**

The Agency shall make publicly available the methodology by which the Agency, minority business centers, and minority chambers of commerce jointly develop the metrics and goals described in subparagraph (A).

**(c) Waivers**

**(1) In general**

Notwithstanding any other provision of law or regulation, the Agency may, during the 3-month period that begins on March 27, 2020, waive any matching requirement imposed on a minority business center or a specialty center of the Agency under a cooperative agreement between such a center and the Agency if the applicable center is unable to raise funds, or has suffered a loss of revenue, because of the effects of COVID–19.

**(2) Remaining compliant**

Notwithstanding any provision of a cooperative agreement between the Agency and a minority business center, if, during the period beginning on March 27, 2020, and ending on September 30, 2021, such a center decides not to collect fees because of the economic consequences of COVID–19, the center shall be considered to be in compliance with that agreement if—

(A) the center notifies the Agency with respect to that decision, which the center may provide through electronic mail; and

(B) the Agency, not later than 15 days after the date on which the center provides notice to the Agency under subparagraph (A)—

(i) confirms receipt of the notification under subparagraph (A); and

(ii) accepts the decision of the center.

**(d) Report**

Not later than 6 months after March 27, 2020, and annually thereafter, the Agency shall submit to the Committee on Small Business and Entrepreneurship and the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Small Business and the Committee on Energy and Commerce of the House of Representatives a report that describes—

(1) with respect to the period covered by the initial report—

(A) the programs and services developed and provided by the Agency, minority business centers, and minority chambers of commerce under subsection (b); and

(B) the initial efforts to provide those services under subsection (b); and

(2) with respect to subsequent years covered by the report—

(A) 1 with respect to the grant program under subsection (b)—

(i) the efforts of the Agency, minority business centers, and minority chambers of commerce to develop services to assist minority business enterprises;

(ii) the challenges faced by owners of minority business enterprises in accessing services provided by the Agency, minority business centers, and minority chambers of commerce;

(iii) the number of unique minority business enterprises that were served by the Agency, minority business centers, or minority chambers of commerce; and

(iv) other relevant outcome performance data with respect to minority business enterprises, including the number of employees affected, the effect on sales, the disruptions of supply



chains, and the efforts made by the Agency, minority business centers, and minority chambers of commerce to mitigate these effects.

**(e) Authorization of appropriations**

There is authorized to be appropriated \$10,000,000 to carry out this section, to remain available until expended.

(Pub. L. 116–136, div. A, title I, §1108, Mar. 27, 2020, 134 Stat. 302.)

<sup>1</sup> So in original. No subpar. (B) has been enacted.

**§9008. United States Treasury program management authority**

**(a) Definitions**

In this section—

(1) the terms "appropriate Federal banking agency" and "insured depository institution" have the meanings given those terms in section 1813 of title 12;

(2) the term "insured credit union" has the meaning given the term in section 1752 of title 12; and

(3) the term "Secretary" means the Secretary of the Treasury.

**(b) Authority to include additional financial institutions**

The Department of the Treasury, in consultation with the Administrator, and the Chairman of the Farm Credit Administration shall establish criteria for insured depository institutions, insured credit unions, institutions of the Farm Credit System chartered under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.), and other lenders that do not already participate in lending under programs of the Administration, to participate in the paycheck protection program to provide loans under this section until the date on which the national emergency declared by the President under the National Emergencies Act (50 U.S.C. 1601 et seq.) with respect to the Coronavirus Disease 2019 (COVID–19) expires.

**(c) Safety and soundness**

An insured depository institution, insured credit union, institution of the Farm Credit System chartered under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.), or other lender may only participate in the program established under this section if participation does not affect the safety and soundness of the institution or lender, as determined by the Secretary in consultation with the appropriate Federal banking agencies or the National Credit Union Administration Board, as applicable.

**(d) Regulations for lenders and loans**

**(1) In general**

The Secretary may issue regulations and guidance as necessary to carry out the purposes of this section, including to—

(A) allow additional lenders to originate loans under this section; and

(B) establish terms and conditions for loans under this section, including terms and conditions concerning compensation, underwriting standards, interest rates, and maturity.

**(2) Requirements**

The terms and conditions established under paragraph (1) shall provide for the following:

(A) A rate of interest that does not exceed the maximum permissible rate of interest available on a loan of comparable maturity under paragraph (36) of section 7(a) of the Small Business Act (15 U.S.C. 636(a)), as added by section 1102 of this Act.

(B) Terms and conditions that, to the maximum extent practicable, are consistent with the terms and conditions required under the following provisions of paragraph (36) of section 7(a)

of the Small Business Act (15 U.S.C. 636(a)), as added by section 1102 of this Act:

- (i) Subparagraph (D), pertaining to borrower eligibility.
- (ii) Subparagraph (E), pertaining to the maximum loan amount.
- (iii) Subparagraph (F)(i), pertaining to allowable uses of program loans.
- (iv) Subparagraph (H), pertaining to fee waivers.
- (v) Subparagraph (M), pertaining to loan deferment.

(C) A guarantee percentage that, to the maximum extent practicable, is consistent with the guarantee percentage required under subparagraph (F) of section 7(a)(2) of the Small Business Act (15 U.S.C. 636(a)(2)), as added by section 1102 of this Act.

(D) Loan forgiveness under terms and conditions that, to the maximum extent practicable, is consistent with the terms and conditions for loan forgiveness under section 7A of the Small Business Act [15 U.S.C. 636m].

**(e) Additional regulations generally**

The Secretary may issue regulations and guidance as necessary to carry out the purposes of this section, including to allow additional lenders to originate loans under this title <sup>1</sup> and to establish terms and conditions such as compensation, underwriting standards, interest rates, and maturity for under <sup>2</sup> this section.

**(f) Certification**

As a condition of receiving a loan under this section, a borrower shall certify under terms acceptable to the Secretary that the borrower—

- (1) does not have an application pending for a loan under section 7(a) of the Small Business Act (15 U.S.C. 636(a)) for the same purpose; and
- (2) has not received such a loan during the period beginning on February 15, 2020 and ending on December 31, 2020.

**(g) Opt-in for SBA qualified lenders**

Lenders qualified to participate as a lender under 7(a) <sup>3</sup> of the Small Business Act (15 U.S.C. 636(a)) may elect to participate in the paycheck protection program under the criteria, terms, and conditions established under this section. Such participation shall not preclude the lenders from continuing participation as a lender under section 7(a) of the Small Business Act (15 U.S.C. 636(a)).

**(h) Program administration**

With guidance from the Secretary, the Administrator shall administer the program established under this section, including the making and purchasing of guarantees on loans under the program, until the date on which the national emergency declared by the President under the National Emergencies Act (50 U.S.C. 1601 et seq.) with respect to the Coronavirus Disease 2019 (COVID-19) expires.

**(i) Criminal penalties**

A loan under this section shall be deemed to be a loan under the Small Business Act (15 U.S.C. 631 et seq.) for purposes of section 16 of such Act (15 U.S.C. 645).

(Pub. L. 116-136, div. A, title I, §1109, Mar. 27, 2020, 134 Stat. 304; Pub. L. 116-260, div. N, title III, §304(b)(1)(C)(i), Dec. 27, 2020, 134 Stat. 1994.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

The Farm Credit Act of 1971, referred to in subsecs. (b) and (c), is Pub. L. 92-181, Dec. 10, 1971, 85 Stat. 583, which is classified principally to chapter 23 (§2001 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 2001 of Title 12 and Tables.

The National Emergencies Act, referred to in subsecs. (b) and (h), is Pub. L. 94-412, Sept. 14, 1976, 90 Stat. 1255, which is classified principally to chapter 34 (§1601 et seq.) of Title 50, War and National Defense.

For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 50 and Tables.

Section 1102 of this Act, referred to in subsec. (d)(2), means section 1102 of div. A of Pub. L. 116–136.

This title, referred to in subsec. (e), is title I of div. A of Pub. L. 116–136, Mar. 27, 2020, 134 Stat. 286, which enacted this subchapter and amended, and enacted provisions set out as notes under, section 636 of this title and several sections in Title 11, Bankruptcy. For complete classification of title I to the Code, see Tables.

The Small Business Act, referred to in subsec. (i), is Pub. L. 85–536, §2(1 et seq.), July 18, 1958, 72 Stat. 384, which is classified generally to chapter 14A (§631 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 631 of this title and Tables.

## **AMENDMENTS**

**2020**—Subsec. (d)(2)(D). Pub. L. 116–260 substituted "section 7A of the Small Business Act" for "section 9005 of this title".

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **EFFECTIVE DATE OF 2020 AMENDMENT**

Amendment by Pub. L. 116–260 effective as if included in Pub. L. 116–136 and applicable to any loan made pursuant to section 636(a)(36) of this title before, on, or after Dec. 27, 2020, including forgiveness of such a loan, with provisions relating to exclusion of loans already forgiven, see section 304(c) of Pub. L. 116–260, set out as a note under section 636 of this title.

### **CLARIFICATION OF TAX TREATMENT OF CERTAIN LOAN FORGIVENESS AND OTHER BUSINESS FINANCIAL ASSISTANCE**

Pub. L. 116–260, div. N, title II, §278, Dec. 27, 2020, 134 Stat. 1980, provided that:

"(a) UNITED STATES TREASURY PROGRAM MANAGEMENT AUTHORITY.—For purposes of the Internal Revenue Code of 1986 [26 U.S.C. 1 et seq.]—

"(1) no amount shall be included in the gross income of a borrower by reason of forgiveness of indebtedness described in section 1109(d)(2)(D) of the CARES Act [15 U.S.C. 9008(d)(2)(D)],

"(2) no deduction shall be denied, no tax attribute shall be reduced, and no basis increase shall be denied, by reason of the exclusion from gross income provided by paragraph (1), and

"(3) in the case of a borrower that is a partnership or S corporation—

"(A) any amount excluded from income by reason of paragraph (1) shall be treated as tax exempt income for purposes of sections 705 and 1366 of the Internal Revenue Code of 1986 [26 U.S.C. 705, 1366], and

"(B) except as provided by the Secretary of the Treasury (or the Secretary's delegate), any increase in the adjusted basis of a partner's interest in a partnership under section 705 of the Internal Revenue Code of 1986 with respect to any amount described in subparagraph (A) shall equal the partner's distributive share of deductions resulting from costs giving rise to forgiveness described in section 1109(d)(2)(D) of the CARES Act.

"(b) EMERGENCY EIDL GRANTS AND TARGETED EIDL ADVANCES.—For purposes of the Internal Revenue Code of 1986—

"(1) any advance described in section 1110(e) of the CARES Act [15 U.S.C. 9009(e)] or any funding under section 331 of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act [15 U.S.C. 9009b] shall not be included in the gross income of the person that receives such advance or funding,

"(2) no deduction shall be denied, no tax attribute shall be reduced, and no basis increase shall be denied, by reason of the exclusion from gross income provided by paragraph (1), and

"(3) in the case of a partnership or S corporation that receives such advance or funding—

"(A) any amount excluded from income by reason of paragraph (1) shall be treated as tax exempt income for purposes of sections 705 and 1366 of the Internal Revenue Code of 1986, and

"(B) the Secretary of the Treasury (or the Secretary's delegate) shall prescribe rules for determining a partner's distributive share of any amount described in subparagraph (A) for purposes of section 705 of the Internal Revenue Code of 1986.

"(c) SUBSIDY FOR CERTAIN LOAN PAYMENTS.—For purposes of the Internal Revenue Code of 1986—

"(1) any payment described in section 1112(c) of the CARES Act [15 U.S.C. 9011(c)] shall not be included in the gross income of the person on whose behalf such payment is made,

"(2) no deduction shall be denied, no tax attribute shall be reduced, and no basis increase shall be denied, by reason of the exclusion from gross income provided by paragraph (1), and

"(3) in the case of a partnership or S corporation on whose behalf of a payment described in section 1112(c) of the CARES Act is made—

"(A) any amount excluded from income by reason of paragraph (1) shall be treated as tax exempt income for purposes of sections 705 and 1366 of the Internal Revenue Code of 1986, and

"(B) except as provided by the Secretary of the Treasury (or the Secretary's delegate), any increase in the adjusted basis of a partner's interest in a partnership under section 705 of the Internal Revenue Code of 1986 with respect to any amount described in subparagraph (A) shall equal the sum of the partner's distributive share of deductions resulting from interest and fees described in section 1112(c) of the CARES Act and the partner's share, as determined under section 752 of the Internal Revenue Code of 1986, of principal described in section 1112(c) of the CARES Act.

"(d) GRANTS FOR SHUTTERED VENUE OPERATORS.—For purposes of the Internal Revenue Code of 1986—

"(1) any grant made under section 324 of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act [15 U.S.C. 9009a] shall not be included in the gross income of the person that receives such grant,

"(2) no deduction shall be denied, no tax attribute shall be reduced, and no basis increase shall be denied, by reason of the exclusion from gross income provided by paragraph (1), and

"(3) in the case of a partnership or S corporation that receives such grant—

"(A) any amount excluded from income by reason of paragraph (1) shall be treated as tax exempt income for purposes of sections 705 and 1366 of the Internal Revenue Code of 1986, and

"(B) the Secretary of the Treasury (or the Secretary's delegate) shall prescribe rules for determining a partner's distributive share of any amount described in subparagraph (A) for purposes of section 705 of the Internal Revenue Code of 1986.

"(e) EFFECTIVE DATES.—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, subsections (a), (b), and (c) shall apply to taxable years ending after the date of the enactment of the CARES Act [Pub. L. 116–136, approved Mar. 27, 2020].

"(2) GRANTS FOR SHUTTERED VENUE OPERATORS; TARGETED EIDL ADVANCES.—Subsection (d), and so much of subsection (b) as relates to funding under section 331 of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act, shall apply to taxable years ending after the date of the enactment of this Act [Dec. 27, 2020]."

<sup>1</sup> [\*See References in Text note below.\*](#)

<sup>2</sup> [\*So in original.\*](#)

<sup>3</sup> [\*So in original. Probably should be preceded by "section".\*](#)

## **§9009. Emergency EIDL grants**

### **(a) Definitions**

In this section—

(1) the term "covered period" means the period beginning on January 31, 2020 and ending on December 31, 2021; and

(2) the term "eligible entity" means—

(A) a business with not more than 500 employees;

(B) any individual who operates under a sole proprietorship, with or without employees, or as an independent contractor;

(C) a cooperative with not more than 500 employees;

(D) an ESOP (as defined in section 632 of this title) with not more than 500 employees;

(E) a tribal small business concern, as described in section 657a(b)(2)(C) of this title, with not more than 500 employees; or

(F) an agricultural enterprise (as defined in section 647(b) of this title <sup>1</sup> with not more than 500 employees.

**(b) Eligible entities**

During the covered period, in addition to small business concerns, private nonprofit organizations, and small agricultural cooperatives, an eligible entity shall be eligible for a loan made under section 636(b)(2) of this title.

**(c) Terms; credit elsewhere**

With respect to a loan made under section 636(b)(2) of this title in response to COVID–19 during the covered period, the Administrator shall waive—

(1) any rules related <sup>2</sup> the personal guarantee on advances and loans of not more than \$200,000 during the covered period for all applicants;

(2) the requirement that an applicant needs to be in business for the 1-year period before the disaster, except that no waiver may be made for a business that was not in operation on January 31, 2020; and

(3) the requirement in the flush matter following subparagraph (E) of section 636(b)(2) of this title, as so redesignated by subsection (f) of this section, <sup>3</sup> that an applicant be unable to obtain credit elsewhere.

**(d) Approval and ability to repay for small dollar loans**

With respect to a loan made under section 636(b)(2) of this title in response to COVID–19 during the covered period, the Administrator may—

(1) approve an applicant—

(A) based solely on the credit score of the applicant; or

(B) by using alternative appropriate methods to determine an applicant's ability to repay; and

(2) use information from the Department of the Treasury to confirm that—

(A) an applicant is eligible to receive such a loan; or

(B) the information contained in an application for such a loan is accurate.

**(e) Emergency grant**

**(1) In general**

**(A) Advances**

During the covered period, an entity included for eligibility in subsection (b), including small business concerns, private nonprofit organizations, and small agricultural cooperatives, that applies for a loan under section 636(b)(2) of this title in response to COVID–19 may request that the Administrator provide an advance that is, subject to paragraph (3), in the amount requested by such applicant to such applicant.

**(B) Timing**

With respect to each request submitted to the Administrator under subparagraph (A), the Administrator shall, not later than 21 days after the date on which the Administrator receives the request—

(i) verify whether the entity is an entity that is eligible for a loan made under section 636(b)(2) of this title during the covered period, as described in subsection (b);

(ii) if the Administrator, under clause (i), verifies that the entity submitting the request is an entity that is eligible, as described in that clause, provide the advance requested by the entity; and

(iii) with respect to an entity that the Administrator determines is not entitled to receive an advance under this subsection, provide the entity with a notification explaining why the Administrator reached that determination.

**(2) Verification**

Before disbursing amounts under this subsection, the Administrator shall verify that the applicant is an eligible entity by accepting a self-certification from the applicant under penalty of perjury pursuant to section 1746 of title 28.

**(3) Amount**

The amount of an advance provided under this subsection shall be not more than \$10,000.

**(4) Use of funds**

An advance provided under this subsection may be used to address any allowable purpose for a loan made under section 636(b)(2) of this title, including—

(A) providing paid sick leave to employees unable to work due to the direct effect of the COVID-19;

(B) maintaining payroll to retain employees during business disruptions or substantial slowdowns;

(C) meeting increased costs to obtain materials unavailable from the applicant's original source due to interrupted supply chains;

(D) making rent or mortgage payments; and

(E) repaying obligations that cannot be met due to revenue losses.

**(5) Repayment**

An applicant shall not be required to repay any amounts of an advance provided under this subsection, even if subsequently denied a loan under section 636(b)(2) of this title.

**(6) Repealed. Pub. L. 116–260, div. N, title III, §333(c), Dec. 27, 2020, 134 Stat. 2046**

**(7) Authorization of appropriations**

There is authorized to be appropriated to the Administration \$40,000,000,000 to carry out this subsection.

**(8) Termination**

The authority to carry out grants under this subsection shall terminate on December 31, 2021.

**(9) Statute of limitations**

Notwithstanding any other provision of law, any criminal charge or civil enforcement action alleging that a borrower engaged in fraud with respect to the use of an advance received under this subsection shall be filed not later than 10 years after the offense was committed.

(Pub. L. 116–136, div. A, title I, §1110, Mar. 27, 2020, 134 Stat. 306; Pub. L. 116–139, div. A, §101(b), (c), Apr. 24, 2020, 134 Stat. 620, 621; Pub. L. 116–260, div. N, title III, §§332, 333(c), Dec. 27, 2020, 134 Stat. 2045, 2046; Pub. L. 117–165, §2(b), Aug. 5, 2022, 136 Stat. 1363.)

**EDITORIAL NOTES**

**CODIFICATION**

Section is comprised of section 1110 of Pub. L. 116–136. Subsec. (f) of section 1110 of Pub. L. 116–136 amended section 636 of this title.

**AMENDMENTS**

**2022**—Subsec. (e)(9). Pub. L. 117–165 added par. (9).

**2020**—Subsec. (a)(1). Pub. L. 116–260, §332(1), substituted "December 31, 2021" for "December 31, 2020".

Subsec. (a)(2)(F). Pub. L. 116–139, §101(c), added subpar. (F).

Subsec. (d)(1), (2). Pub. L. 116–260, §332(2), added pars. (1) and (2) and struck out former pars. (1) and (2) which read as follows:

"(1) approve an applicant based solely on the credit score of the applicant and shall not require an applicant to submit a tax return or a tax return transcript for such approval; or

"(2) use alternative appropriate methods to determine an applicant's ability to repay."

Subsec. (e)(1). Pub. L. 116–260, §332(3)(A), designated existing provisions as subpar. (A), inserted

heading, struck out "within 3 days after the Administrator receives an application from such applicant" after "to such applicant", and added subpar. (B).

Subsec. (e)(6). Pub. L. 116–260, §333(c), struck out par. (6). Text read as follows: "If an applicant that receives an advance under this subsection transfers into, or is approved for, the loan program under section 636(a) of this title, the advance amount shall be reduced from the loan forgiveness amount for a loan for payroll costs made under such section 636(a) of this title."

Subsec. (e)(7). Pub. L. 116–260, §332(3)(B), substituted "\$40,000,000,000" for "\$20,000,000,000".

Pub. L. 116–139, §101(b), substituted "\$20,000,000,000" for "\$10,000,000,000".

Subsec. (e)(8). Pub. L. 116–260, §332(3)(C), substituted "December 31, 2021" for "December 31, 2020".

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **EFFECTIVE DATE OF 2020 AMENDMENT**

Pub. L. 116–260, div. N, title III, §333(d), Dec. 27, 2020, 134 Stat. 2046, provided that: "The amendment made by subsection (c) [amending this section] shall be effective as if included in the CARES Act (Public Law 116–136; 134 Stat. 281)."

Except as otherwise provided, amendment by Pub. L. 116–260 effective on Dec. 27, 2020, and applicable to loans and grants made on or after Dec. 27, 2020, see section 348 of Pub. L. 116–260, set out as a note under section 636 of this title.

### **TARGETED EIDL ADVANCE**

Pub. L. 117–2, title V, §5002, Mar. 11, 2021, 135 Stat. 85, provided that:

"(a) DEFINITIONS.—In this section—

"(1) the term 'Administrator' means the Administrator of the Small Business Administration; and

"(2) the terms 'covered entity' and 'economic loss' have the meanings given the terms in section 331(a) of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (title III of division N of Public Law 116–260) [15 U.S.C. 9009b(a)].

"(b) APPROPRIATIONS.—In addition to amounts otherwise available, there is appropriated to the Administrator for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, \$15,000,000,000—

"(1) to remain available until expended; and

"(2) of which, the Administrator shall use—

"(A) \$10,000,000,000 to make payments to covered entities that have not received the full amounts to which the covered entities are entitled under section 331 of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (title III of division N of Public Law 116–260) [15 U.S.C. 9009b]; and

"(B) \$5,000,000,000 to make payments under section 1110(e) of the CARES Act (15 U.S.C. 9009(e)), each of which shall be—

"(i) made to a covered entity that—

"(I) has suffered an economic loss of greater than 50 percent; and

"(II) employs not more than 10 employees;

"(ii) in an amount that is \$5,000; and

"(iii) with respect to the covered entity to which the payment is made, in addition to any payment made to the covered entity under section 1110(e) of the CARES Act (15 U.S.C. 9009(e)) or section 331 of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (title III of division N of Public Law 116–260)."

### **CLARIFICATION OF TAX TREATMENT OF CERTAIN LOAN FORGIVENESS AND OTHER BUSINESS FINANCIAL ASSISTANCE**

Advance described in subsec. (e) of this section not included in gross income of recipient, see section 278 of div. N of Pub. L. 116–260, set out as a note under section 9008 of this title.

### **REPEAL OF EIDL ADVANCE DEDUCTION**

Pub. L. 116–260, div. N, title III, §333(a), (e), Dec. 27, 2020, 134 Stat. 2046, 2047, provided that:

"(a) DEFINITIONS.—In this section [amending this section and enacting provisions set out as notes under this section]—

"(1) the term 'covered entity' means an entity that receives an advance under section 1110(e) of the CARES Act (15 U.S.C. 9009(e)), including an entity that received such an advance before the date of



enactment of this Act [Dec. 27, 2020]; and

"(2) the term 'covered period' has the meaning given the term in section 1110(a)(1) of the CARES Act (15 U.S.C. 9009(a)(1)), as amended by section 332 of this Act [div. N of Pub. L. 116–260].

"(e) RULEMAKING.—

"(1) IN GENERAL.—Not later than 15 days after the date of enactment of this Act [Dec. 27, 2020], the Administrator [of the Small Business Administration] shall issue rules that ensure the equal treatment of all covered entities with respect to the amendment made by subsection (c) [amending this section], which shall include consideration of covered entities that, before the date of enactment of this Act, completed the loan forgiveness process described in section 1110(e)(6) of the CARES Act (15 U.S.C. 9009(e)(6)), as in effect before that date of enactment.

"(2) NOTICE AND COMMENT.— The notice and comment requirements under section 553 of title 5, United States Code, shall not apply with respect to the rules issued under paragraph (1)."

<sup>1</sup> *So in original. Probably should be followed by a closing parenthesis.*

<sup>2</sup> *So in original. Probably should be followed by "to".*

<sup>3</sup> *See Codification note below.*

## **§9009a. Grants for shuttered venue operators**

### **(a) Definitions**

In this section:

#### **(1) Eligible person or entity**

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

The term "eligible person or entity" means a live venue operator or promoter, theatrical producer, or live performing arts organization operator, a relevant museum operator, a motion picture theatre operator, or a talent representative that meets the following requirements:

(i) The live venue operator or promoter, theatrical producer, or live performing arts organization operator, the relevant museum operator, the motion picture theatre operator, or the talent representative—

(I) was fully operational as a live venue operator or promoter, theatrical producer, or live performing arts organization operator, a relevant museum operator, a motion picture theatre operator, or a talent representative on February 29, 2020; and

(II) has gross earned revenue during the first, second, third, or, only with respect to an application submitted on or after January 1, 2021, fourth quarter in 2020 that demonstrates not less than a 25 percent reduction from the gross earned revenue of the live venue operator or promoter, theatrical producer, or live performing arts organization operator, the relevant museum operator, the motion picture theatre operator, or the talent representative during the same quarter in 2019.

(ii) As of the date of the grant under this section—

(I) the live venue operator or promoter, theatrical producer, or live performing arts organization operator is or intends to resume organizing, promoting, producing, managing, or hosting future live events described in paragraph (3)(A)(i);

(II) the motion picture theatre operator is open or intends to reopen for the primary purpose of public exhibition of motion pictures;

(III) the relevant museum operator is open or intends to reopen; or

(IV) the talent representative is representing or managing artists and entertainers.

(iii) The venues at which the live venue operator or promoter, theatrical producer, or live performing arts organization operator promotes, produces, manages, or hosts events



described in paragraph (3)(A)(i) or the artists and entertainers represented or managed by the talent representative perform have the following characteristics:

- (I) A defined performance and audience space.
- (II) Mixing equipment, a public address system, and a lighting rig.
- (III) Engages 1 or more individuals to carry out not less than 2 of the following roles:
  - (aa) A sound engineer.
  - (bb) A booker.
  - (cc) A promoter.
  - (dd) A stage manager.
  - (ee) Security personnel.
  - (ff) A box office manager.

(IV) There is a paid ticket or cover charge to attend most performances and artists are paid fairly and do not play for free or solely for tips, except for fundraisers or similar charitable events.

(V) For a venue owned or operated by a nonprofit entity that produces free events, the events are produced and managed primarily by paid employees, not by volunteers.

(VI) Performances are marketed through listings in printed or electronic publications, on websites, by mass email, or on social media.

(iv) A motion picture theatre or motion picture theatres operated by the motion picture theatre operator have the following characteristics:

- (I) At least 1 auditorium that includes a motion picture screen and fixed audience seating.
- (II) A projection booth or space containing not less than 1 motion picture projector.
- (III) A paid ticket charge to attend exhibition of motion pictures.
- (IV) Motion picture exhibitions are marketed through showtime listings in printed or electronic publications, on websites, by mass mail, or on social media.

(v) The relevant museum or relevant museums for which the relevant museum operator is seeking a grant under this section have the following characteristics:

- (I) Serving as a relevant museum as its principal business activity.
- (II) Indoor exhibition spaces that are a component of the principal business activity and which have been subjected to pandemic-related occupancy restrictions.
- (III) At least 1 auditorium, theater, or performance or lecture hall with fixed audience seating and regular programming.

(vi)(I) The live venue operator or promoter, theatrical producer, or live performing arts organization operator, the relevant museum operator, the motion picture theatre operator, or the talent representative does not have, or is not majority owned or controlled by an entity with, any of the following characteristics:

- (aa) Being an issuer, the securities of which are listed on a national securities exchange.
- (bb) Receiving more than 10 percent of gross revenue from Federal funding during 2019, excluding amounts received by the live venue operator or promoter, theatrical producer, or live performing arts organization operator, the relevant museum operator, the motion picture theatre operator, or the talent representative under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).

(II) The live venue operator or promoter, theatrical producer, or live performing arts organization operator, the relevant museum operator, the motion picture theatre operator, or the talent representative does not have, or is not majority owned or controlled by an entity with, more than 2 of the following characteristics:

- (aa) Owning or operating venues, relevant museums, motion picture theatres, or talent

agencies or talent management companies in more than 1 country.

(bb) Owning or operating venues, relevant museums, motion picture theatres, or talent agencies or talent management companies in more than 10 States.

(cc) Employing more than 500 employees as of February 29, 2020, determined on a full-time equivalent basis in accordance with subparagraph (C).

(III) For purposes of applying the characteristics described in subclauses (I) and (II) to an entity owned by a State or a political subdivision of a State, the relevant entity—

(aa) shall be the live venue operator or promoter, theatrical producer, or live performing arts organization operator, the relevant museum operator, the motion picture theatre operator, or the talent representative; and

(bb) shall not include entities of the State or political subdivision other than the live venue operator or promoter, theatrical producer, or live performing arts organization operator, the relevant museum operator, the motion picture theatre operator, or the talent representative.

#### **(B) Exclusion**

The term "eligible person or entity" shall not include a live venue operator or promoter, theatrical producer, or live performing arts organization operator, a relevant museum operator, a motion picture theatre operator, or a talent representative that—

(i) presents live performances of a prurient sexual nature; or

(ii) derives, directly or indirectly, more than de minimis gross revenue through the sale of products or services, or the presentation of any depictions or displays, of a prurient sexual nature.

#### **(C) Calculation of full-time employees**

For purposes of determining the number of full-time equivalent employees under subparagraph (A)(vi)(II)(cc) of this paragraph and under paragraph (2)(E)—

(i) any employee working not fewer than 30 hours per week shall be considered a full-time employee; and

(ii) any employee working not fewer than 10 hours and fewer than 30 hours per week shall be counted as one-half of a full-time employee.

#### **(D) Multiple business entities**

Each business entity of an eligible person or entity that also meets the requirements under subparagraph (A) and that is not described in subparagraph (B) shall be treated by the Administrator as an independent, non-affiliated entity for the purposes of this section.

#### **(2) Exchange; issuer; security**

The terms "exchange", "issuer", and "security" have the meanings given those terms in section 78c(a) of this title.

#### **(3) Live venue operator or promoter, theatrical producer, or live performing arts organization operator**

The term "live venue operator or promoter, theatrical producer, or live performing arts organization operator"—

(A) means—

(i) an individual or entity—

(I) that, as a principal business activity, organizes, promotes, produces, manages, or hosts live concerts, comedy shows, theatrical productions, or other events by performing artists for which—

(aa) a cover charge through ticketing or front door entrance fee is applied; and

(bb) performers are paid in an amount that is based on a percentage of sales, a guarantee (in writing or standard contract), or another mutually beneficial formal agreement; and

(II) for which not less than 70 percent of the earned revenue of the individual or entity is generated through, to the extent related to a live event described in subclause (I), cover charges or ticket sales, production fees or production reimbursements, nonprofit educational initiatives, or the sale of event beverages, food, or merchandise; or

(ii) an individual or entity that, as a principal business activity, makes available for purchase by the public an average of not less than 60 days before the date of the event tickets to events—

(I) described in clause (i)(I); and

(II) for which performers are paid in an amount that is based on a percentage of sales, a guarantee (in writing or standard contract), or another mutually beneficial formal agreement; and

(B) includes an individual or entity described in subparagraph (A) that—

(i) operates for profit;

(ii) is a nonprofit organization;

(iii) is government-owned; or

(iv) is a corporation, limited liability company, or partnership or operated as a sole proprietorship.

#### **(4) Motion picture theatre operator**

The term "motion picture theatre operator" means an individual or entity that—

(A) as the principal business activity of the individual or entity, owns or operates at least 1 place of public accommodation for the purpose of motion picture exhibition for a fee; and

(B) includes an individual or entity described in subparagraph (A) that—

(i) operates for profit;

(ii) is a nonprofit organization;

(iii) is government-owned; or

(iv) is a corporation, limited liability company, or partnership or operated as a sole proprietorship.

#### **(5) National securities exchange**

The term "national securities exchange" means an exchange registered as a national securities exchange under section 78f of this title.

#### **(6) Nonprofit**

The term "nonprofit", with respect to an organization, means that the organization is exempt from taxation under section 501(a) of title 26.

#### **(7) Relevant museum**

The term "relevant museum"—

(A) has the meaning given the term "museum" in section 9172 of title 20; and

(B) shall not include any entity that is organized as a for-profit entity.

#### **(8) Seasonal employer**

The term "seasonal employer" has the meaning given that term in subparagraph (A) of section 636(a)(36) of this title, as amended by this Act.

#### **(9) State**

The term "State" means—

(A) a State;

(B) the District of Columbia;

(C) the Commonwealth of Puerto Rico; and

(D) any other territory or possession of the United States.

**(10) Talent representative**

The term "talent representative"—

(A) means an agent or manager that—

(i) as not less than 70 percent of the operations of the agent or manager, is engaged in representing or managing artists and entertainers;

(ii) books or represents musicians, comedians, actors, or similar performing artists primarily at live events in venues or at festivals; and

(iii) represents performers described in clause (ii) that are paid in an amount that is based on the number of tickets sold, or a similar basis; and

(B) includes an agent or manager described in subparagraph (A) that—

(i) operates for profit;

(ii) is a nonprofit organization;

(iii) is government-owned; or

(iv) is a corporation, limited liability company, or partnership or operated as a sole proprietorship.

**(b) Authority**

**(1) In general**

**(A) Administration**

The Associate Administrator for the Office of Disaster Assistance of the Administration shall coordinate and formulate policies relating to the administration of grants made under this section.

**(B) Certification of need**

An eligible person or entity applying for a grant under this section shall submit a good faith certification that the uncertainty of current economic conditions makes necessary the grant to support the ongoing operations of the eligible person or entity.

**(2) Initial grants**

**(A) In general**

The Administrator may make initial grants to eligible persons or entities in accordance with this section.

**(B) Initial priorities for awarding grants**

**(i) First priority in awarding grants**

During the initial 14-day period during which the Administrator awards grants under this paragraph, the Administrator shall only award grants to an eligible person or entity with revenue, during the period beginning on April 1, 2020 and ending on December 31, 2020, that is not more than 10 percent of the revenue of the eligible person or entity during the period beginning on April 1, 2019 and ending on December 31, 2019, due to the COVID-19 pandemic.

**(ii) Second priority in awarding grants**

During the 14-day period immediately following the 14-day period described in clause (i), the Administrator shall only award grants to an eligible person or entity with revenue, during the period beginning on April 1, 2020 and ending on December 31, 2020, that is not more than 30 percent of the revenue of the eligible person or entity during the period beginning on April 1, 2019 and ending on December 31, 2019, due to the COVID-19 pandemic.

**(iii) Determination of revenue**

For purposes of clauses (i) and (ii)—

(I) any amounts received by an eligible person or entity under the CARES Act (Public Law 116-136; 134 Stat. 281) or an amendment made by the CARES Act shall not be

counted as revenue of an eligible person or entity;

(II) the Administrator shall use an accrual method of accounting for determining revenue; and

(III) the Administrator may use alternative methods to establish revenue losses for an eligible person or entity that is a seasonal employer and that would be adversely impacted if January, February, and March are excluded from the calculation of year-over-year revenues.

**(iv) Limit on use of amounts for priority applicants**

The Administrator may use not more than 80 percent of the amounts appropriated under section 323(d)(1)(H) of this Act to carry out this section to make initial grants under this paragraph to eligible persons or entities described in clause (i) or (ii) of this subparagraph that apply for a grant under this paragraph during the initial 28-day period during which the Administrator awards grants under this paragraph.

**(C) Grants after priority periods**

After the end of the initial 28-day period during which the Administrator awards grants under this paragraph, the Administrator may award an initial grant to any eligible person or entity.

**(D) Limits on number of initial grants to affiliates**

Not more than 5 business entities of an eligible person or entity that would be considered affiliates under the affiliation rules of the Administration may receive a grant under this paragraph.

**(E) Set-aside for small employers**

**(i) In general**

Subject to clause (ii), not less than \$2,000,000,000 of the total amount of grants made available under this paragraph shall be awarded to eligible persons or entities which employ not more than 50 full-time employees, determined in accordance with subsection (a)(1)(C).

**(ii) Time limit**

Clause (i) shall not apply on and after the date that is 60 days after the Administrator begins awarding grants under this section and, on and after such date, amounts available for grants under this section may be used for grants under this section to any eligible person or entity.

**(3) Supplemental grants**

**(A) In general**

Subject to subparagraph (B), the Administrator may make a supplemental grant in accordance with this section to an eligible person or entity that receives a grant under paragraph (2) if, as of April 1, 2021, the revenues of the eligible person or entity for the most recent calendar quarter are not more than 30 percent of the revenues of the eligible person or entity for the corresponding calendar quarter during 2019 due to the COVID-19 pandemic.

**(B) Processing timely initial grant applications first**

The Administrator may not award a supplemental grant under subparagraph (A) until the Administrator has completed processing (including determining whether to award a grant) each application for an initial grant under paragraph (2) that is submitted by an eligible person or entity on or before the date that is 60 days after the date on which the Administrator begins accepting such applications.

**(4) Certification**

An eligible person or entity applying for a grant under this section that is an eligible business described in the matter preceding subclause (I) of section 4003(c)(3)(D)(i) of the CARES Act (15 U.S.C. 9042(c)(3)(D)(i)), shall make a good-faith certification described in subclauses (IX) and (X) of such section.

**(c) Amount**

**(1) Initial grants**

**(A) In general**

Subject to subparagraphs (B) and (C), a grant under subsection (b)(2) shall be in the amount equal to the lesser of—

(i)(I) for an eligible person or entity that was in operation on January 1, 2019, the amount equal to 45 percent of the gross earned revenue of the eligible person or entity during 2019; or

(II) for an eligible person or entity that began operations after January 1, 2019, the amount equal to the product obtained by multiplying—

(aa) the average monthly gross earned revenue for each full month during which the eligible person or entity was in operation during 2019; by

(bb) 6; or

(ii) \$10,000,000.

**(B) Application to relevant museum operators**

A relevant museum operator may not receive grants under subsection (b)(2) in a total amount that is more than \$10,000,000 with respect to all relevant museums operated by the relevant museum operator.

**(C) Reduction for recipients of new PPP loans**

**(i) In general**

The otherwise applicable amount of a grant under subsection (b)(2) to an eligible person or entity shall be reduced by the total amount of loans guaranteed under paragraph (36) or (37) of section 636(a) of this title that are received on or after December 27, 2020 by the eligible person or entity.

**(ii) Application to governmental entities**

For purposes of applying clause (i) to an eligible person or entity owned by a State or a political subdivision of a State, the relevant entity—

(I) shall be the eligible person or entity; and

(II) shall not include entities of the State or political subdivision other than the eligible person or entity.

**(2) Supplemental grants**

A grant under subsection (b)(3) shall be in the amount equal to 50 percent of the grant received by the eligible person or entity under subsection (b)(2).

**(3) Overall maximums**

The total amount of grants received under paragraphs (2) and (3) of subsection (b) by an eligible person or entity shall be not more than \$10,000,000.

**(d) Use of funds**

**(1) Timing**

**(A) Expenses incurred**

**(i) In general**

Except as provided in clause (ii), amounts received under a grant under this section may be used for costs incurred during the period beginning on March 1, 2020, and ending on December 31, 2021.

**(ii) Extension for supplemental grants**

If an eligible person or entity receives a grant under subsection (b)(3), amounts received

under either grant under this section may be used for costs incurred during the period beginning on March 1, 2020, and ending on June 30, 2022.

**(B) Expenditure**

**(i) In general**

Except as provided in clause (ii), an eligible person or entity shall return to the Administrator any amounts received under a grant under this section that are not expended on or before the date that is 1 year after the date of disbursement of the grant.

**(ii) Extension for supplemental grants**

If an eligible person or entity receives a grant under subsection (b)(3), the eligible person or entity shall return to the Administrator any amounts received under either grant under this section that are not expended on or before the date that is 18 months after the date of disbursement to the eligible person or entity of the grant under subsection (b)(2).

**(2) Allowable expenses**

**(A) Definitions**

In this paragraph—

(i) the terms "covered mortgage obligation", "covered rent obligation", "covered utility payment", and "covered worker protection expenditure" have the meanings given those terms in section 636m(a) of this title, as redesignated, transferred, and amended by this Act; and

(ii) the term "payroll costs" has the meaning given that term in section 636(a)(36)(A) of this title.

**(B) Expenses**

An eligible person or entity may use amounts received under a grant under this section for—

- (i) payroll costs;
- (ii) payments on any covered rent obligation;
- (iii) any covered utility payment;
- (iv) scheduled payments of interest or principal on any covered mortgage obligation (which shall not include any prepayment of principal on a covered mortgage obligation);
- (v) scheduled payments of interest or principal on any indebtedness or debt instrument (which shall not include any prepayment of principal) incurred in the ordinary course of business that is a liability of the eligible person or entity and was incurred prior to February 15, 2020;
- (vi) covered worker protection expenditures;
- (vii) payments made to independent contractors, as reported on Form-1099 MISC, not to exceed a total of \$100,000 in annual compensation for any individual employee of an independent contractor; and
- (viii) other ordinary and necessary business expenses, including—
  - (I) maintenance expenses;
  - (II) administrative costs, including fees and licensing costs;
  - (III) State and local taxes and fees;
  - (IV) operating leases in effect as of February 15, 2020;
  - (V) payments required for insurance on any insurance policy; and
  - (VI) advertising, production transportation, and capital expenditures related to producing a theatrical or live performing arts production, concert, exhibition, or comedy show, except that a grant under this section may not be used primarily for such expenditures.

**(3) Prohibited expenses**

An eligible person or entity may not use amounts received under a grant under this section—

- (A) to purchase real estate;
- (B) for payments of interest or principal on loans originated after February 15, 2020;
- (C) to invest or re-lend funds;

(D) for contributions or expenditures to, or on behalf of, any political party, party committee, or candidate for elective office; or

(E) for any other use as may be prohibited by the Administrator.

**(e) Increased oversight of shuttered venue operator grants**

The Administrator shall increase oversight of eligible persons and entities receiving grants under this section, which may include the following:

**(1) Documentation**

Additional documentation requirements that are consistent with the eligibility and other requirements under this section, including requiring an eligible person or entity that receives a grant under this section to retain records that document compliance with the requirements for grants under this section—

(A) with respect to employment records, for the 4-year period following receipt of the grant; and

(B) with respect to other records, for the 3-year period following receipt of the grant.

**(2) Reviews of use**

Reviews of the use of the grant proceeds by an eligible person or entity to ensure compliance with requirements established under this section and by the Administrator, including that the Administrator may—

(A) review and audit grants under this section; and

(B) in the case of fraud or other material noncompliance with respect to a grant under this section—

(i) require repayment of misspent funds; or

(ii) pursue legal action to collect funds.

**(f) Shuttered venue oversight and audit plan**

**(1) In general**

Not later than 45 days after December 27, 2020, the Administrator shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives an audit plan that details—

(A) the policies and procedures of the Administrator for conducting oversight and audits of grants under this section; and

(B) the metrics that the Administrator shall use to determine which grants under this section will be audited pursuant to subsection (e).

**(2) Reports**

Not later than 60 days after December 27, 2020, and each month thereafter until the date that is 1 year after the date on which all amounts made available under section 323(d)(1)(H) of this Act have been expended, the Administrator shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report on the oversight and audit activities of the Administrator under this subsection, which shall include—

(A) the total number of initial grants approved and disbursed;

(B) the total amount of grants received by each eligible person or entity, including any supplemental grants;

(C) the number of active investigations and audits of grants under this section;

(D) the number of completed reviews and audits of grants under this section, including a description of any findings of fraud or other material noncompliance.<sup>1</sup>

(E) any substantial changes made to the oversight and audit plan submitted under paragraph (1).



## EDITORIAL NOTES

### REFERENCES IN TEXT

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, referred to in subsec. (a)(1)(A)(vi)(I)(bb), is Pub. L. 93–288, May 22, 1974, 88 Stat. 143, which is classified principally to chapter 68 (§5121 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of Title 42 and Tables.

Subparagraph (A) of section 636(a)(36) of this title, as amended by this Act, referred to in subsec. (a)(8), probably means subpar. (A) of section 636(a)(36) of this title, as amended by title III of div. N of Pub. L. 116–260.

The CARES Act, referred to in subsec. (b)(2)(B)(iii)(I), also known as the Coronavirus Aid, Relief, and Economic Security Act, is Pub. L. 116–136, Mar. 27, 2020, 134 Stat. 281, which enacted this chapter and enacted, amended, and repealed numerous other sections and notes in the Code. For complete classification of this Act to the Code, see Short Title note set out under section 9001 of this title and Tables.

Section 323(d)(1)(H) of this Act, referred to in subsecs. (b)(2)(B)(iv) and (f)(2), is section 323(d)(1)(H) of title III of div. N of Pub. L. 116–260, Dec. 27, 2020, 134 Stat. 2021, which is not classified to the Code.

Section 636m(a) of this title, as redesignated, transferred, and amended by this Act, referred to in subsec. (d)(2)(A)(i), probably means section 636m(a) of this title, as redesignated, transferred, and amended by title III of div. N of Pub. L. 116–260.

### CODIFICATION

Section was enacted as part of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act, and not as part of the CARES Act which in part comprises this chapter.

### AMENDMENTS

**2021**—Subsec. (a)(1)(A)(vi)(III), (IV). Pub. L. 117–2, §5005(b)(1), redesignated subcl. (IV) as (III), substituted "subclauses (I) and (II)" for "subclauses (I), (II), and (III)", and struck out former subcl. (III) which read as follows: "The live venue operator or promoter, theatrical producer, or live performing arts organization operator, the relevant museum operator, the motion picture theatre operator, or the talent representative has not received, on or after December 27, 2020, a loan guaranteed under paragraph (36) or (37) of section 636(a) of this title, as amended and added by this division."

Subsec. (c)(1)(A). Pub. L. 117–2, §5005(b)(2)(A), substituted "Subject to subparagraphs (B) and (C), a grant" for "A grant" in introductory provisions.

Subsec. (c)(1)(C). Pub. L. 117–2, §5005(b)(2)(B), added subpar. (C).

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### EFFECTIVE DATE

Section effective on Dec. 27, 2020, and applicable to loans and grants made on or after Dec. 27, 2020, see section 348 of Pub. L. 116–260, set out as an Effective Date of 2020 Amendment note under section 636 of this title.

### CLARIFICATION OF TAX TREATMENT OF CERTAIN LOAN FORGIVENESS AND OTHER BUSINESS FINANCIAL ASSISTANCE

Grant made under this section not included in gross income of recipient, see section 278 of div. N of Pub. L. 116–260, set out as a note under section 9008 of this title.

### DEFINITIONS

"Administration" and "Administrator" mean the Small Business Administration and Administrator of the Small Business Administration, see section 302 of div. N of Pub. L. 116–260, set out as a note under section 9001 of this title.

<sup>1</sup> *So in original. The period probably should be "; and".*

## **§9009b. Targeted EIDL advance for small business continuity, adaptation, and resiliency**

### **(a) Definitions**

In this section:

#### **(1) Agricultural enterprise**

The term "agricultural enterprise" has the meaning given the term in section 647(b) of this title.

#### **(2) Covered entity**

The term "covered entity"—

(A) means an eligible entity that—

(i) applies for a loan under section 636(b)(2) of this title during the covered period, including before December 27, 2020;

(ii) is located in a low-income community;

(iii) has suffered an economic loss of greater than 30 percent; and

(iv) employs not more than 300 employees; and

(B) except with respect to an entity included under section 123.300(c) of title 13, Code of Federal Regulations, or any successor regulation, does not include an agricultural enterprise.

#### **(3) Covered period**

The term "covered period" has the meaning given the term in section 9009(a)(1) of this title, as amended by section 332 of this Act.

#### **(4) Economic loss**

The term "economic loss" means, with respect to a covered entity—

(A) the amount by which the gross receipts of the covered entity declined during an 8-week period between March 2, 2020, and December 31, 2021, relative to a comparable 8-week period immediately preceding March 2, 2020, or during 2019; or

(B) if the covered entity is a seasonal business concern, such other amount determined appropriate by the Administrator.

#### **(5) Eligible entity**

The term "eligible entity" means an entity that, during the covered period, is eligible for a loan made under section 636(b)(2) of this title, as described in section 9009(b) of this title.

#### **(6) Low-income community**

The term "low-income community" has the meaning given the term in section 45D(e) of title 26.

### **(b) Entitlement to full amount**

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

Subject to paragraph (2), a covered entity, after submitting a request to the Administrator that the Administrator verifies under subsection (c), shall receive a total of \$10,000 under section 9009(e) of this title, without regard to whether—

(A) the applicable loan for which the covered entity applies or applied under section 636(b)(2) of this title is or was approved;

(B) the covered entity accepts or accepted the offer of the Administrator with respect to an approved loan described in subparagraph (A); or

(C) the covered entity has previously received a loan under section 636(a)(36) of this title.

#### **(2) Effect of previously received amounts**

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

With respect to a covered entity that received an emergency grant under section 9009(e) of this title before December 27, 2020, the amount of the payment that the covered entity shall

receive under this subsection (after satisfaction of the procedures required under subparagraph (B)) shall be the difference between \$10,000 and the amount of that previously received grant.

**(B) Procedures**

If the Administrator receives a request under paragraph (1) from a covered entity described in subparagraph (A) of this paragraph, the Administrator shall, not later than 21 days after the date on which the Administrator receives the request—

- (i) perform the verification required under subsection (c);
- (ii) if the Administrator, under subsection (c), verifies that the entity is a covered entity, provide to the covered entity a payment in the amount described in subparagraph (A); and
- (iii) with respect to a covered entity that the Administrator determines is not entitled to a payment under this section, provide the covered entity with a notification explaining why the Administrator reached that determination.

**(C) Rule of construction**

Nothing in this paragraph may be construed to require any entity that received an emergency grant under section 9009(e) of this title before December 27, 2020, to repay any amount of that grant.

**(c) Verification**

In carrying out this section, the Administrator shall require any information, including any tax records, from an entity submitting a request under subsection (b) that the Administrator determines to be necessary to verify that the entity is a covered entity, without regard to whether the entity has previously submitted such information to the Administrator.

**(d) Order of processing**

The Administrator shall process and approve requests for payments under subsection (b) in the order that the Administrator receives the requests, except that the Administrator shall give—

- (1) first priority to covered entities described in subsection (b)(2)(A); and
- (2) second priority to covered entities that have not received emergency grants under section 9009(e) of this title, as of the date on which the Administrator receives such a request, because of the unavailability of funding to carry out such section 9009(e).

**(e) Applicability**

In addition to any other restriction imposed under this section, any eligibility restriction applicable to a loan made under section 636(b)(2) of this title, including any restriction under section 123.300 or 123.301 of title 13, Code of Federal Regulations, or any successor regulation, shall apply with respect to funding provided under this section.

**(f) Notification required**

The Administrator shall provide notice to each of the following entities stating that the entity may be eligible for a payment under this section if the entity satisfies the requirements under clauses (ii), (iii), and (iv) of subsection (a)(2)(A):

- (1) Each entity that received an emergency grant under section 9009(e) of this title before December 27, 2020.
- (2) Each entity that, before December 27, 2020—
  - (A) applied for a loan under section 636(b)(2) of this title; and
  - (B) did not receive an emergency grant under section 9009(e) of this title because of the unavailability of funding to carry out such section 9009(e).

**(g) Administration**

In carrying out this section, the Administrator may rely on loan officers and other personnel of the Office of Disaster Assistance of the Administration and other resources of the Administration, including contractors of the Administration.

**(h) Authorization of appropriations**

There are authorized to be appropriated to the Administrator \$20,000,000,000 to carry out this

section—

(1) which shall remain available through December 31, 2021; and

(2) of which \$20,000,000 is authorized to be appropriated to the Inspector General of the Administration to prevent waste, fraud, and abuse with respect to funding provided under this section.

**(i) Statute of limitations**

Notwithstanding any other provision of law, any criminal charge or civil enforcement action alleging that a borrower engaged in fraud with respect to the use of any amount received pursuant to this section shall be filed not later than 10 years after the offense was committed.

(Pub. L. 116–260, div. N, title III, §331, Dec. 27, 2020, 134 Stat. 2043; Pub. L. 117–165, §2(c), Aug. 5, 2022, 136 Stat. 1363.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

Section 332 of this Act, referred to in subsec. (a)(3), is section 332 of div. N of Pub. L. 116–260.

**CODIFICATION**

Section was enacted as part of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act, and not as part of the CARES Act which in part comprises this chapter.

**AMENDMENTS**

**2022**—Subsec. (i). Pub. L. 117–165 added subsec. (i).

**STATUTORY NOTES AND RELATED SUBSIDIARIES**

**EFFECTIVE DATE**

Section effective on Dec. 27, 2020, and applicable to loans and grants made on or after Dec. 27, 2020, see section 348 of Pub. L. 116–260, set out as an Effective Date of 2020 Amendment note under section 636 of this title.

**TAX TREATMENT OF TARGETED EIDL ADVANCES**

Pub. L. 117–2, title IX, §9672, Mar. 11, 2021, 135 Stat. 184, provided that: "For purposes of the Internal Revenue Code of 1986 [26 U.S.C. 1 et seq.]—

"(1) amounts received from the Administrator of the Small Business Administration in the form of a targeted EIDL advance under section 331 of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (title III of division N of Public Law 116–260) [15 U.S.C. 9009b] shall not be included in the gross income of the person that receives such amounts,

"(2) no deduction shall be denied, no tax attribute shall be reduced, and no basis increase shall be denied, by reason of the exclusion from gross income provided by paragraph (1), and

"(3) in the case of a partnership or S corporation that receives such amounts—

"(A) any amount excluded from income by reason of paragraph (1) shall be treated as tax exempt income for purposes of sections 705 and 1366 of the Internal Revenue Code of 1986 [26 U.S.C. 705, 1366], and

"(B) the Secretary of the Treasury (or the Secretary's delegate) shall prescribe rules for determining a partner's distributive share of any amount described in subparagraph (A) for purposes of section 705 of the Internal Revenue Code of 1986."

**CLARIFICATION OF TAX TREATMENT OF CERTAIN LOAN FORGIVENESS AND OTHER BUSINESS FINANCIAL ASSISTANCE**

Funding under this section not included in gross income of recipient, see section 278 of div. N of Pub. L. 116–260, set out as a note under section 9008 of this title.

**DEFINITIONS**

"Administration" and "Administrator" mean the Small Business Administration and Administrator of the Small Business Administration, see section 302 of div. N of Pub. L. 116–260, set out as a note under section

9001 of this title.

## **§9009c. Support for restaurants**

### **(a) Definitions**

In this section:

#### **(1) Administrator**

The term "Administrator" means the Administrator of the Small Business Administration.

#### **(2) Affiliated business**

The term "affiliated business" means a business in which an eligible entity has an equity or right to profit distributions of not less than 50 percent, or in which an eligible entity has the contractual authority to control the direction of the business, provided that such affiliation shall be determined as of any arrangements or agreements in existence as of March 13, 2020.

#### **(3) Covered period**

The term "covered period" means the period—

(A) beginning on February 15, 2020; and

(B) ending on December 31, 2021, or a date to be determined by the Administrator that is not later than 2 years after March 11, 2021.

#### **(4) Eligible entity**

The term "eligible entity"—

(A) means a restaurant, food stand, food truck, food cart, caterer, saloon, inn, tavern, bar, lounge, brewpub, tasting room, taproom, licensed facility or premise of a beverage alcohol producer where the public may taste, sample, or purchase products, or other similar place of business in which the public or patrons assemble for the primary purpose of being served food or drink;

(B) includes an entity described in subparagraph (A) that is located in an airport terminal or that is a Tribally-owned concern; and

(C) does not include—

(i) an entity described in subparagraph (A) that—

(I) is a State or local government-operated business;

(II) as of March 13, 2020, owns or operates (together with any affiliated business) more than 20 locations, regardless of whether those locations do business under the same or multiple names; or

(III) has a pending application for or has received a grant under section 9009a of this title; or

(ii) a publicly-traded company.

#### **(5) Exchange; issuer; security**

The terms "exchange", "issuer", and "security" have the meanings given those terms in section 78c(a) of this title.

#### **(6) Fund**

The term "Fund" means the Restaurant Revitalization Fund established under subsection (b).

#### **(7) Pandemic-related revenue loss**

The term "pandemic-related revenue loss" means, with respect to an eligible entity—

(A) except as provided in subparagraphs (B), (C), and (D), the gross receipts, as established using such verification documentation as the Administrator may require, of the eligible entity during 2020 subtracted from the gross receipts of the eligible entity in 2019, if such sum is greater than zero;

(B) if the eligible entity was not in operation for the entirety of 2019—

(i) the difference between—

(I) the product obtained by multiplying the average monthly gross receipts of the eligible entity in 2019 by 12; and

(II) the product obtained by multiplying the average monthly gross receipts of the eligible entity in 2020 by 12; or

(ii) an amount based on a formula determined by the Administrator;

(C) if the eligible entity opened during the period beginning on January 1, 2020, and ending on the day before March 11, 2021—

(i) the expenses described in subsection (c)(5)(A) that were incurred by the eligible entity minus any gross receipts received; or

(ii) an amount based on a formula determined by the Administrator; or

(D) if the eligible entity has not yet opened as of the date of application for a grant under subsection (c), but has incurred expenses described in subsection (c)(5)(A) as of March 11, 2021—

(i) the amount of those expenses; or

(ii) an amount based on a formula determined by the Administrator.

For purposes of this paragraph, the pandemic-related revenue losses for an eligible entity shall be reduced by any amounts received from a covered loan made under paragraph (36) or (37) of section 636(a) of this title in 2020 or 2021.

#### **(8) Payroll costs**

The term "payroll costs" has the meaning given the term in section 636(a)(36)(A) of this title, except that such term shall not include—

(A) qualified wages (as defined in subsection (c)(3) of section 2301 of the CARES Act) taken into account in determining the credit allowed under such section 2301; or

(B) premiums taken into account in determining the credit allowed under section 6432 of title 26.

#### **(9) Publicly-traded company**

The term "publicly-traded company" means an entity that is majority owned or controlled by an entity that is an issuer, the securities of which are listed on a national securities exchange under section 78f of this title.

#### **(10) Tribally-owned concern**

The term "Tribally-owned concern" has the meaning given the term in section 124.3 of title 13, Code of Federal Regulations, or any successor regulation.

### **(b) Restaurant Revitalization Fund**

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

There is established in the Treasury of the United States a fund to be known as the Restaurant Revitalization Fund.

#### **(2) Appropriations**

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

In addition to amounts otherwise available, there is appropriated to the Restaurant Revitalization Fund for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, \$28,600,000,000, to remain available until expended.

##### **(B) Distribution**

###### **(i) In general**

Of the amounts made available under subparagraph (A)—

(I) \$5,000,000,000 shall be available to eligible entities with gross receipts during 2019 of not more than \$500,000; and

(II) \$23,600,000,000 shall be available to the Administrator to award grants under subsection (c) in an equitable manner to eligible entities of different sizes based on annual gross receipts.

**(ii) Adjustments**

The Administrator may make adjustments as necessary to the distribution of funds under clause (i)(II) based on demand and the relative local costs in the markets in which eligible entities operate.

**(C) Grants after initial period**

Notwithstanding subparagraph (B), on and after the date that is 60 days after March 11, 2021, or another period of time determined by the Administrator, the Administrator may make grants using amounts appropriated under subparagraph (A) to any eligible entity regardless of the annual gross receipts of the eligible entity.

**(3) Use of funds**

The Administrator shall use amounts in the Fund to make grants described in subsection (c).

**(c) Restaurant revitalization grants**

**(1) In general**

Except as provided in subsection (b) and paragraph (3), the Administrator shall award grants to eligible entities in the order in which applications are received by the Administrator.

**(2) Application**

**(A) Certification**

An eligible entity applying for a grant under this subsection shall make a good faith certification that—

(i) the uncertainty of current economic conditions makes necessary the grant request to support the ongoing operations of the eligible entity; and

(ii) the eligible entity has not applied for or received a grant under section 9009a of this title.

**(B) Business identifiers**

In accepting applications for grants under this subsection, the Administrator shall prioritize the ability of each applicant to use their existing business identifiers over requiring other forms of registration or identification that may not be common to their industry and imposing additional burdens on applicants.

**(3) Priority in awarding grants**

**(A) In general**

During the initial 21-day period in which the Administrator awards grants under this subsection, the Administrator shall prioritize awarding grants to eligible entities that are small business concerns owned and controlled by women (as defined in section 632(n) of this title), small business concerns owned and controlled by veterans (as defined in section 632(q) of this title), or socially and economically disadvantaged small business concerns (as defined in section 637(a)(4)(A) of this title). The Administrator may take such steps as necessary to ensure that eligible entities described in this subparagraph have access to grant funding under this section after the end of such 21-day period.

**(B) Certification**

For purposes of establishing priority under subparagraph (A), an applicant shall submit a self-certification of eligibility for priority with the grant application.

#### **(4) Grant amount**

##### **(A) Aggregate maximum amount**

The aggregate amount of grants made to an eligible entity and any affiliated businesses of the eligible entity under this subsection—

- (i) shall not exceed \$10,000,000; and
- (ii) shall be limited to \$5,000,000 per physical location of the eligible entity.

##### **(B) Determination of grant amount**

###### **(i) In general**

Except as provided in this paragraph, the amount of a grant made to an eligible entity under this subsection shall be equal to the pandemic-related revenue loss of the eligible entity.

###### **(ii) Return to Treasury**

Any amount of a grant made under this subsection to an eligible entity based on estimated receipts that is greater than the actual gross receipts of the eligible entity in 2020 shall be returned to the Treasury.

#### **(5) Use of funds**

During the covered period, an eligible entity that receives a grant under this subsection may use the grant funds for the following expenses incurred as a direct result of, or during, the COVID–19 pandemic:

(A) Payroll costs.

(B) Payments of principal or interest on any mortgage obligation (which shall not include any prepayment of principal on a mortgage obligation).

(C) Rent payments, including rent under a lease agreement (which shall not include any prepayment of rent).

(D) Utilities.

(E) Maintenance expenses, including—

- (i) construction to accommodate outdoor seating; and
- (ii) walls, floors, deck surfaces, furniture, fixtures, and equipment.

(F) Supplies, including protective equipment and cleaning materials.

(G) Food and beverage expenses that are within the scope of the normal business practice of the eligible entity before the covered period.

(H) Covered supplier costs, as defined in section 636m(a) of this title (as redesignated, transferred, and amended by section 304(b) of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (Public Law 116–260)).

(I) Operational expenses.

(J) Paid sick leave.

(K) Any other expenses that the Administrator determines to be essential to maintaining the eligible entity.

#### **(6) Returning funds**

If an eligible entity that receives a grant under this subsection fails to use all grant funds or permanently ceases operations on or before the last day of the covered period, the eligible entity shall return to the Treasury any funds that the eligible entity did not use for the allowable expenses under paragraph (5).

(Pub. L. 117–2, title V, §5003, Mar. 11, 2021, 135 Stat. 85.)

#### **EDITORIAL NOTES**

#### **REFERENCES IN TEXT**



Section 2301 of the CARES Act, referred to in subsec. (a)(8)(A), is section 2301 of Pub. L. 116–136, which is set out as a note under section 3111 of Title 26, Internal Revenue Code.

Section 636m(a) of this title (as redesignated, transferred, and amended by section 304(b) of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (Public Law 116–260)), referred to in subsec. (c)(5)(H), probably means section 636m(a) of this title, as redesignated, transferred, and amended by section 304(b) of title III of div. N of Pub. L. 116–260.

### **CODIFICATION**

Section was enacted as part of the American Rescue Plan Act of 2021, and not as part of the CARES Act which in part comprises this chapter.

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **TAX TREATMENT OF RESTAURANT REVITALIZATION GRANTS**

Pub. L. 117–2, title IX, §9673, Mar. 11, 2021, 135 Stat. 184, provided that: "For purposes of the Internal Revenue Code of 1986 [26 U.S.C. 1 et seq.]—

"(1) amounts received from the Administrator of the Small Business Administration in the form of a restaurant revitalization grant under section 5003 [15 U.S.C. 9009c] shall not be included in the gross income of the person that receives such amounts,

"(2) no deduction shall be denied, no tax attribute shall be reduced, and no basis increase shall be denied, by reason of the exclusion from gross income provided by paragraph (1), and

"(3) in the case of a partnership or S corporation that receives such amounts—

"(A) except as otherwise provided by the Secretary of the Treasury (or the Secretary's delegate), any amount excluded from income by reason of paragraph (1) shall be treated as tax exempt income for purposes of sections 705 and 1366 of the Internal Revenue Code of 1986 [26 U.S.C. 705, 1366], and

"(B) the Secretary of the Treasury (or the Secretary's delegate) shall prescribe rules for determining a partner's distributive share of any amount described in subparagraph (A) for purposes of section 705 of the Internal Revenue Code of 1986."

## **§9010. Resources and services in languages other than English**

### **(a) In general**

The Administrator shall provide the resources and services made available by the Administration to small business concerns in the 10 most commonly spoken languages, other than English, in the United States, which shall include Mandarin, Cantonese, Japanese, and Korean.

### **(b) Authorization of appropriations**

There is authorized to be appropriated to the Administrator \$25,000,000 to carry out this section. (Pub. L. 116–136, div. A, title I, §1111, Mar. 27, 2020, 134 Stat. 309.)

## **§9011. Subsidy for certain loan payments**

### **(a) Definition of covered loan**

In this section, the term "covered loan" means a loan that is—

(1) guaranteed by the Administration under—

(A) section 636(a) of this title—

(i) including a loan made under the Community Advantage Pilot Program of the Administration; and

(ii) excluding a loan made under paragraph (36) of such section 636(a) of this title, as added by section 1102; or

(B) title V of the Small Business Investment Act of 1958 (15 U.S.C. 695 et seq.); or

(2) made by an intermediary to a small business concern using loans or grants received under

section 636(m) of this title.

**(b) Sense of Congress**

It is the sense of Congress that—

- (1) all borrowers are adversely affected by COVID-19;
- (2) relief payments by the Administration are appropriate for all borrowers; and
- (3) in addition to the relief provided under this Act, the Administration should encourage lenders to provide payment deferments, when appropriate, and to extend the maturity of covered loans, so as to avoid balloon payments or any requirement for increases in debt payments resulting from deferments provided by lenders during the period of the national emergency declared by the President under the National Emergencies Act (50 U.S.C. 1601 et seq.) with respect to the Coronavirus Disease 2019 (COVID-19).

**(c) Principal and interest payments**

**(1) In general**

Subject to the other provisions of this section, the Administrator shall pay the principal, interest, and any associated fees that are owed on a covered loan in a regular servicing status, without regard to the date on which the covered loan is fully disbursed, and subject to availability of funds, as follows:

(A) With respect to a covered loan made before March 27, 2020, and not on deferment, the Administrator shall make those payments as follows:

(i) The Administrator shall make those payments for the 6-month period beginning with the next payment due on the covered loan.

(ii) In addition to the payments under clause (i)—

(I) with respect to a covered loan other than a covered loan described in paragraph

(1)(A)(i) or (2) of subsection (a), the Administrator shall make those payments for—

(aa) the 3-month period beginning with the first payment due on the covered loan on or after February 1, 2021; and

(bb) an additional 5-month period immediately following the end of the 3-month period provided under item (aa) if the covered loan is made to a borrower that, according to records of the Administration, is assigned a North American Industry Classification System code beginning with 61, 71, 72, 213, 315, 448, 451, 481, 485, 487, 511, 512, 515, 532, or 812; and

(II) with respect to a covered loan described in paragraph (1)(A)(i) or (2) of subsection (a), the Administrator shall make those payments for the 8-month period beginning with the first payment due on the covered loan on or after February 1, 2021.

(B) With respect to a covered loan made before March 27, 2020, and on deferment, the Administrator shall make those payments as follows:

(i) The Administrator shall make those payments for the 6-month period beginning with the next payment due on the covered loan after the deferment period.

(ii) In addition to the payments under clause (i)—

(I) with respect to a covered loan other than a covered loan described in paragraph

(1)(A)(i) or (2) of subsection (a), the Administrator shall make those payments for—

(aa) the 3-month period (beginning on or after February 1, 2021) beginning with the later of—

(AA) the next payment due on the covered loan after the deferment period; or

(BB) the first month after the Administrator has completed the payments under clause (i); and

(bb) an additional 5-month period immediately following the end of the 3-month period provided under item (aa) if the covered loan is made to a borrower that, according to records of the Administration, is assigned a North American Industry Classification

System code beginning with 61, 71, 72, 213, 315, 448, 451, 481, 485, 487, 511, 512, 515, 532, or 812; and

(II) with respect to a loan described in paragraph (1)(A)(i) or (2) of subsection (a), the 8-month period (beginning on or after February 1, 2021) beginning with the later of—  
(aa) the next payment due on the covered loan after the deferment period; or  
(bb) the first month after the payments under clause (i) are complete.

(C) With respect to a covered loan made during the period beginning on March 27, 2020, and ending on the date that is 6 months after March 27, 2020, for the 6-month period beginning with the first payment due on the covered loan.

(D) With respect to a covered loan approved during the period beginning on February 1, 2021, and ending on September 30, 2021, for the 6-month period beginning with the first payment due on the covered loan.

**(2) Timing of payment**

The Administrator shall begin making payments under paragraph (1) on a covered loan not later than 30 days after the date on which the first such payment is due.

**(3) Application of payment**

Any payment made by the Administrator under paragraph (1) shall be applied to the covered loan such that the borrower is relieved of the obligation to pay that amount.

**(4) Limitation**

**(A) In general**

No single monthly payment of principal, interest, and associated fees made by the Administrator under subparagraph (A)(ii), (B)(ii), or (D) of paragraph (1) with respect to a covered loan may be in a total amount that is more than \$9,000.

**(B) Treatment of additional amounts owed**

If, for a month, the total amount of principal, interest, and associated fees that are owed on a covered loan for which the Administration makes payments under paragraph (1) is more than \$9,000 the Administrator may require the lender with respect to the covered loan to add the amount by which those costs exceed \$9,000 for that month as interest to be paid by the borrower with respect to the covered loan at the end of the loan period.

**(5) Additional provisions for new loans**

With respect to a loan described in paragraph (1)(C)—

(A) the Administrator may further extend the period described in paragraph (1)(C) if there are sufficient funds to continue those payments; and

(B) during the underwriting process, a lender of such a loan may consider the payments under this section as part of a comprehensive review to determine the ability to repay over the entire period of maturity of the loan.

**(6) Eligibility**

Eligibility for a covered loan to receive such payments of principal, interest, and any associated fees under this subsection shall be based on the date on which the covered loan is approved by the Administration.

**(7) Authority to revise extensions**

**(A) In general**

The Administrator shall monitor whether amounts made available to make payments under this subsection are sufficient to make the payments for the periods described in paragraph (1).

**(B) Plan**

If the Administrator determines under subparagraph (A) that the amounts made available to

make payments under this subsection are insufficient, the Administrator shall—

(i) develop a plan to proportionally reduce the number of months provided for each period described in paragraph (1), while ensuring all amounts made available to make payments under this subsection are fully expended; and

(ii) before taking action under the plan developed under clause (i), submit to Congress a report regarding the plan, which shall include the data that informs the plan.

**(8) Additional requirements**

With respect to the payments made under this subsection—

(A) no lender may charge a late fee to a borrower with respect to a covered loan during any period in which the Administrator makes payments with respect to the covered loan under paragraph (1); and

(B) the Administrator shall, with respect to a covered loan, make all payments with respect to the covered loan under paragraph (1) not later than the 15th day of the applicable month.

**(9) Rule of construction**

Except as provided in paragraph (4), nothing in this subsection may be construed to preclude a borrower from receiving full payments of principal, interest, and any associated fees authorized under this subsection with respect to a covered loan.

**(d) Other requirements**

The Administrator shall—

(1) communicate and coordinate with the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and State bank regulators to encourage those entities to not require lenders to increase their reserves on account of receiving payments made by the Administrator under subsection (c);

(2) waive statutory limits on maximum loan maturities for any covered loan durations where the lender provides a deferral and extends the maturity of covered loans during the 1-year period following March 27, 2020; and

(3) when necessary to provide more time because of the potential of higher volumes, travel restrictions, and the inability to access some properties during the COVID–19 pandemic, extend lender site visit requirements to—

(A) not more than 60 days (which may be extended at the discretion of the Administration) after the occurrence of an adverse event, other than a payment default, causing a loan to be classified as in liquidation; and

(B) not more than 90 days after a payment default.

**(e) Rule of construction**

Nothing in this section may be construed to limit the authority of the Administrator to make payments pursuant to subsection (c) with respect to a covered loan solely because the covered loan has been sold in the secondary market.

**(f) Eligibility for new loans**

For each individual lending program under this section, the Administrator may establish a minimum loan maturity period, taking into consideration the normal underwriting requirements for each such program, with the goal of preventing abuse under the program.

**(g) Limitation on assistance**

A borrower may not receive assistance under subsection (c) for more than 1 covered loan of the borrower described in paragraph (1)(C) of that subsection.

**(h) Reporting and outreach**

**(1) Updated information**

**(A) In general**

Not later than 14 days after the date of enactment of the Economic Aid to Hard-Hit Small

Businesses, Nonprofits, and Venues Act, the Administrator shall make publicly available information regarding the modifications to the assistance provided under this section under the amendments made by such Act.

**(B) Guidance**

Not later than 21 days after the date of enactment of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act the Administrator shall issue guidance on implementing the modifications to the assistance provided under this section under the amendments made by such Act.

**(2) Publication of list**

Not later than March 1, 2021, the Administrator shall transmit to each lender of a covered loan a list of each borrower of a covered loan that includes the North American Industry Classification System code assigned to the borrower, based on the records of the Administration, to assist the lenders in identifying which borrowers qualify for an extension of payments under subsection (c).

**(3) Education and outreach**

The Administrator shall provide education, outreach, and communication to lenders, borrowers, district offices, and resource partners of the Administration in order to ensure full and proper compliance with this section, encourage broad participation with respect to covered loans that have not yet been approved by the Administrator, and help lenders transition borrowers from subsidy payments under this section directly to a deferral when suitable for the borrower.

**(4) Notification**

Not later than 30 days after the date of enactment of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act, the Administrator shall mail a letter to each borrower of a covered loan that includes—

- (A) an overview of assistance provided under this section;
- (B) the rights of the borrower to receive that assistance;
- (C) how to seek recourse with the Administrator or the lender of the covered loan if the borrower has not received that assistance; and
- (D) the rights of the borrower to request a loan deferral from a lender, and guidance on how to do <sup>1</sup> successfully transition directly to a loan deferral once subsidy payments under this section are concluded.

**(5) Monthly reporting**

Not later than the 15th of each month beginning after the date of enactment of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act, the Administrator shall submit to Congress a report on assistance provided under this section, which shall include—

- (A) monthly and cumulative data on payments made under this section as of the date of the report, including a breakdown by—
  - (i) the number of participating borrowers;
  - (ii) the volume of payments made for each type of covered loan; and
  - (iii) the volume of payments made for covered loans made before March 27, 2020, and loans made after March 27, 2020;
- (B) the names of any lenders of covered loans that have not submitted information on the covered loans to the Administrator during the preceding month; and
- (C) an update on the education and outreach activities of the Administration carried out under paragraph (3).

**(i) Authorization of appropriations**

There is authorized to be appropriated to the Administrator \$17,000,000,000 to carry out this section.

(Pub. L. 116–136, div. A, title I, §1112, Mar. 27, 2020, 134 Stat. 309; Pub. L. 116–260, div. N, title

III, §325(a), Dec. 27, 2020, 134 Stat. 2032.)

## EDITORIAL NOTES

### REFERENCES IN TEXT

Section 1102, referred to in subsec. (a)(1)(A)(ii), means section 1102 of Pub. L. 116–136.

The Small Business Investment Act of 1958, referred to in subsec. (a)(1)(B), is Pub. L. 85–699, Aug. 21, 1958, 72 Stat. 689. Title V of the Act is classified generally to subchapter V (§695 et seq.) of chapter 14B of this title. For complete classification of this Act to the Code, see Short Title note set out under section 661 of this title and Tables.

This Act, referred to in subsec. (b)(3), is div. A of Pub. L. 116–136, Mar. 27, 2020, 134 Stat. 286. For complete classification of this Act to the Code, see Tables.

The National Emergencies Act, referred to in subsec. (b)(3), is Pub. L. 94–412, Sept. 14, 1976, 90 Stat. 1255, which is classified principally to chapter 34 (§1601 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 50 and Tables.

The date of enactment of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act, referred to in subsec. (h)(1), (4), (5), is the date of enactment of title III of div. N of Pub. L. 116–260, which was approved Dec. 27, 2020.

Such Act, referred to in subsec. (h)(1), means the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act, which is title III of div. N of Pub. L. 116–260, Dec. 27, 2020, 134 Stat. 1993. For complete classification of this Act to the Code, see Short Title of 2020 Amendment note set out under section 9001 of this title and Tables.

### AMENDMENTS

**2020**—Subsec. (c)(1). Pub. L. 116–260, §325(a)(1)(A), added par. (1) and struck out former par. (1). Prior to amendment, text read as follows: "The Administrator shall pay the principal, interest, and any associated fees that are owed on a covered loan in a regular servicing status—

"(A) with respect to a covered loan made before March 27, 2020, and not on deferment, for the 6-month period beginning with the next payment due on the covered loan;

"(B) with respect to a covered loan made before March 27, 2020, and on deferment, for the 6-month period beginning with the next payment due on the covered loan after the deferment period; and

"(C) with respect to a covered loan made during the period beginning on March 27, 2020, and ending on the date that is 6 months after March 27, 2020, for the 6-month period beginning with the first payment due on the covered loan."

Subsec. (c)(4) to (9). Pub. L. 116–260, §325(a)(1)(B), added pars. (4) to (9).

Subsecs. (f) to (i). Pub. L. 116–260, §325(a)(2), (3), added subsecs. (f) to (h) and redesignated former subsec. (f) as (i).

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### EFFECTIVE DATE OF 2020 AMENDMENT

Pub. L. 116–260, div. N, title III, §325(b), Dec. 27, 2020, 134 Stat. 2036, provided that: "The amendments made by subsection (a) [amending this section] shall be effective as if included in the CARES Act (Public Law 116–136; 134 Stat. 281)."

### CLARIFICATION OF TAX TREATMENT OF CERTAIN LOAN FORGIVENESS AND OTHER BUSINESS FINANCIAL ASSISTANCE

Payment described in subsec. (c) of this section not included in gross income of person on whose behalf such payment was made, see section 278 of div. N of Pub. L. 116–260, set out as a note under section 9008 of this title.

<sup>1</sup> *So in original. The word "do" probably should not appear.*

## §9012. Emergency rulemaking authority

Not later than 15 days after March 27, 2020, the Administrator shall issue regulations to carry out this title <sup>1</sup> and the amendments made by this title <sup>1</sup> without regard to the notice requirements under section 553(b) of title 5.

(Pub. L. 116–136, div. A, title I, §1114, Mar. 27, 2020, 134 Stat. 312.)

## EDITORIAL NOTES

### REFERENCES IN TEXT

This title, referred to in text, is title I of div. A of Pub. L. 116–136, Mar. 27, 2020, 134 Stat. 286, which enacted this subchapter and amended, and enacted provisions set out as notes under, section 636 of this title and several sections in Title 11, Bankruptcy. For complete classification of title I to the Code, see Tables.

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### EMERGENCY RULEMAKING AUTHORITY IN PUBLIC LAW 116–260

Pub. L. 116–260, div. N, title III, §303, Dec. 27, 2020, 134 Stat. 1993, provided that: "Not later than 10 days after the date of enactment of this Act [Dec. 27, 2020], the Administrator [of the Small Business Administration] shall issue regulations to carry out this Act [probably means "this title", title III of div. N of Pub. L. 116–260, see Tables for classification] and the amendments made by this Act without regard to the notice requirements under section 553(b) of title 5, United States Code."

<sup>1</sup> [\*See References in Text note below.\*](#)

## §9013. Community Navigator pilot program

### (a) Definitions

In this section:

#### (1) Administration

The term "Administration" means the Small Business Administration.

#### (2) Administrator

The term "Administrator" means the Administrator of the Small Business Administration.

#### (3) Community navigator services

The term "community navigator services" means the outreach, education, and technical assistance provided by community navigators that target eligible businesses to increase awareness of, and participation in, programs of the Small Business Administration.

#### (4) Community navigator

The term "community navigator" means a community organization, community financial institution as defined in section 636(a)(36)(A) of this title, or other private nonprofit organization engaged in the delivery of community navigator services.

#### (5) Eligible business

The term "eligible business" means any small business concern, with priority for small business concerns owned and controlled by women (as defined in section 632(n) of this title), small business concerns owned and controlled by veterans (as defined in section 632(q) of this title), and socially and economically disadvantaged small business concerns (as defined in section 637(a)(4)(A) of this title).

#### (6) Private nonprofit organization

The term "private nonprofit organization" means an entity that is described in section 501(c) of title 26 and exempt from tax under section 501(a) of such title.

**(7) Resource partner**

The term "resource partner" means—

- (A) a small business development center (as defined in section 632 of this title);
- (B) a women's business center (as described in section 656 of this title); and
- (C) a chapter of the Service Corps of Retired Executives (as defined in section 637(b)(1)(B) of this title).

**(8) Small business concern**

The term "small business concern" has the meaning given under section 632 of this title.

**(9) State**

The term "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, and Guam, or an agency, instrumentality, or fiscal agent thereof.

**(10) Unit of general local government**

The term "unit of general local government" means a county, city, town, village, or other general purpose political subdivision of a State.

**(b) Community Navigator pilot program**

**(1) In general**

The Administrator of the Small Business Administration shall establish a Community Navigator pilot program to make grants to, or enter into contracts or cooperative agreements with, private nonprofit organizations, resource partners, States, Tribes, and units of local government to ensure the delivery of free community navigator services to current or prospective owners of eligible businesses in order to improve access to assistance programs and resources made available because of the COVID-19 pandemic by Federal, State, Tribal, and local entities.

**(2) Appropriations**

In addition to amounts otherwise available, there is appropriated to the Administrator for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, \$100,000,000, to remain available until September 30, 2022, for carrying out this subsection.

**(c) Outreach and education**

**(1) Promotion**

The Administrator shall develop and implement a program to promote community navigator services to current or prospective owners of eligible businesses.

**(2) Call center**

The Administrator shall establish a telephone hotline to offer information about Federal programs to assist eligible businesses and offer referral services to resource partners, community navigators, potential lenders, and other persons that the Administrator determines appropriate for current or prospective owners of eligible businesses.

**(3) Outreach**

The Administrator shall—

- (A) conduct outreach and education, in the 10 most commonly spoken languages in the United States, to current or prospective owners of eligible businesses on community navigator services and other Federal programs to assist eligible businesses;
- (B) improve the website of the Administration to describe such community navigator services and other Federal programs; and
- (C) implement an education campaign by advertising in media targeted to current or prospective owners of eligible businesses.

**(4) Appropriations**

In addition to amounts otherwise available, there is appropriated to the Administrator for fiscal



year 2021, out of any money in the Treasury not otherwise appropriated, \$75,000,000, to remain available until September 30, 2022, for carrying out this subsection.

**(d) Sunset**

The authority of the Administrator to make grants under this section shall terminate on December 31, 2025.

(Pub. L. 117–2, title V, §5004, Mar. 11, 2021, 135 Stat. 90.)

**EDITORIAL NOTES**

**CODIFICATION**

Section was enacted as part of the American Rescue Plan Act of 2021, and not as part of the CARES Act which in part comprises this chapter.

**SUBCHAPTER II—UNEMPLOYMENT INSURANCE PROVISIONS**

**§9021. Pandemic unemployment assistance**

**(a) Definitions**

In this section:

**(1) COVID–19**

The term "COVID–19" means the 2019 Novel Coronavirus or 2019-nCoV.

**(2) COVID–19 public health emergency**

The term "COVID–19 public health emergency" means the public health emergency declared by the Secretary of Health and Human Services on January 27, 2020, with respect to the 2019 Novel Coronavirus.

**(3) Covered individual**

The term "covered individual"—

(A) means an individual who—

(i) is not eligible for regular compensation or extended benefits under State or Federal law or pandemic emergency unemployment compensation under section 9025 of this title, including an individual who has exhausted all rights to regular unemployment or extended benefits under State or Federal law or pandemic emergency unemployment compensation under section 9025 of this title;

(ii) provides self-certification that the individual—

(I) is otherwise able to work and available for work within the meaning of applicable State law, except the individual is unemployed, partially unemployed, or unable or unavailable to work because—

(aa) the individual has been diagnosed with COVID–19 or is experiencing symptoms of COVID–19 and seeking a medical diagnosis;

(bb) a member of the individual's household has been diagnosed with COVID–19;

(cc) the individual is providing care for a family member or a member of the individual's household who has been diagnosed with COVID–19;

(dd) a child or other person in the household for which the individual has primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of the COVID–19 public health emergency and such school or facility care is required for the individual to work;

(ee) the individual is unable to reach the place of employment because of a quarantine imposed as a direct result of the COVID–19 public health emergency;

(ff) the individual is unable to reach the place of employment because the individual has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;

(gg) the individual was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of the COVID-19 public health emergency;

(hh) the individual has become the breadwinner or major support for a household because the head of the household has died as a direct result of COVID-19;

(ii) the individual has to quit his or her job as a direct result of COVID-19;

(jj) the individual's place of employment is closed as a direct result of the COVID-19 public health emergency; or

(kk) the individual meets any additional criteria established by the Secretary for unemployment assistance under this section; or

(II) is self-employed, is seeking part-time employment, does not have sufficient work history, or otherwise would not qualify for regular unemployment or extended benefits under State or Federal law or pandemic emergency unemployment compensation under section 9025 of this title, and meets the requirements of subclause (I); and

(iii) provides documentation to substantiate employment or self-employment or the planned commencement of employment or self-employment not later than 21 days after the later of the date on which the individual submits an application for pandemic unemployment assistance under this section or the date on which an individual is directed by the State Agency to submit such documentation in accordance with section 625.6(e) of title 20, Code of Federal Regulations, or any successor thereto, except that such deadline may be extended if the individual has shown good cause under applicable State law for failing to submit such documentation; and

(B) does not include—

(i) an individual who has the ability to telework with pay; or

(ii) an individual who is receiving paid sick leave or other paid leave benefits, regardless of whether the individual meets a qualification described in items (aa) through (kk) of subparagraph (A)(i)(I).

#### **(4) Secretary**

The term "Secretary" means the Secretary of Labor.

#### **(5) State**

The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.

#### **(b) Assistance for unemployment as a result of COVID-19**

Subject to subsection (c), the Secretary shall provide to any covered individual unemployment benefit assistance while such individual is unemployed, partially unemployed, or unable to work for the weeks of such unemployment with respect to which the individual is not entitled to any other unemployment compensation (as that term is defined in section 85(b) of title 26) or waiting period credit.

#### **(c) Applicability**

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

Except as provided in paragraph (2), the assistance authorized under subsection (b) shall be available to a covered individual—

(A) for weeks of unemployment, partial unemployment, or inability to work caused by

COVID-19—

- (i) beginning on or after January 27, 2020; and
- (ii) ending on or before September 6, 2021; and

(B) subject to subparagraph (A)(ii), as long as the covered individual's unemployment, partial unemployment, or inability to work caused by COVID-19 continues.

**(2) Limitation on duration of assistance**

The total number of weeks for which a covered individual may receive assistance under this section shall not exceed 79 weeks and such total shall include any week for which the covered individual received regular compensation or extended benefits under any Federal or State law, except that if after March 27, 2020, the duration of extended benefits is extended, the 79-week period described in this paragraph shall be extended by the number of weeks that is equal to the number of weeks by which the extended benefits were extended.

**(3) Assistance for unemployment before March 27, 2020**

The Secretary shall establish a process for making assistance under this section available for weeks beginning on or after January 27, 2020, and before March 27, 2020.

**(4) Redesignated (3)**

**(5) Appeals by an individual**

**(A) In general**

An individual may appeal any determination or redetermination regarding the rights to pandemic unemployment assistance under this section made by the State agency of any of the States.

**(B) Procedure**

All levels of appeal filed under this paragraph in the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands—

- (i) shall be carried out by the applicable State that made the determination or redetermination; and
- (ii) shall be conducted in the same manner and to the same extent as the applicable State would conduct appeals of determinations or redeterminations regarding rights to regular compensation under State law.

**(C) Procedure for certain territories**

With respect to any appeal filed in Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, Republic of the Marshall Islands, and the Republic of Palau—

- (i) lower level appeals shall be carried out by the applicable entity within the State;
- (ii) if a higher level appeal is allowed by the State, the higher level appeal shall be carried out by the applicability entity within the State; and
- (iii) appeals described in clauses (i) and (ii) shall be conducted in the same manner and to the same extent as appeals of regular unemployment compensation are conducted under the unemployment compensation law of Hawaii.

**(6) Continued eligibility for assistance**

As a condition of continued eligibility for assistance under this section, a covered individual shall submit a recertification to the State for each week after the individual's 1st week of eligibility that certifies that the individual remains an individual described in subsection (a)(3)(A)(ii) for such week.

**(d) Amount of assistance**

**(1) In general**

The assistance authorized under subsection (b) for a week of unemployment, partial

unemployment, or inability to work shall be—

(A)(i) the weekly benefit amount authorized under the unemployment compensation law of the State where the covered individual was employed, except that the amount may not be less than the minimum weekly benefit amount described in section 625.6 of title 20, Code of Federal Regulations, or any successor thereto; and

(ii) the amount of Federal Pandemic Unemployment Compensation under section 9023 of this title; and

(B) in the case of an increase of the weekly benefit amount after March 27, 2020, increased in an amount equal to such increase.

## **(2) Calculations of amounts for certain covered individuals**

In the case of a covered individual who is self-employed, who lives in a territory described in subsection (c) or (d) of section 625.6 of title 20, Code of Federal Regulations, or who would not otherwise qualify for unemployment compensation under State law, the assistance authorized under subsection (b) for a week of unemployment shall be calculated in accordance with section 625.6 of title 20, Code of Federal Regulations, or any successor thereto, and shall be increased by the amount of Federal Pandemic Unemployment Compensation under section 9023 of this title.

## **(3) Allowable methods of payment**

Any assistance provided for in accordance with paragraph (1)(A)(ii) shall be payable either—

(A) as an amount which is paid at the same time and in the same manner as the assistance provided for in paragraph (1)(A)(i) is payable for the week involved; or

(B) at the option of the State, by payments which are made separately from, but on the same weekly basis as, any assistance provided for in paragraph (1)(A)(i).

## **(4) Waiver authority**

In the case of individuals who have received amounts of pandemic unemployment assistance to which they were not entitled, the State shall require such individuals to repay the amounts of such pandemic unemployment assistance to the State agency, except that the State agency may waive such repayment if it determines that—

(A) the payment of such pandemic unemployment assistance was without fault on the part of any such individual; and

(B) such repayment would be contrary to equity and good conscience.

## **(e) Waiver of State requirement**

Notwithstanding State law, for purposes of assistance authorized under this section, compensation under this Act shall be made to an individual otherwise eligible for such compensation without any waiting period.

## **(f) Agreements with States**

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

The Secretary shall provide the assistance authorized under subsection (b) through agreements with States which, in the judgment of the Secretary, have an adequate system for administering such assistance through existing State agencies, including procedures for identity verification or validation and for timely payment, to the extent reasonable and practicable.

### **(2) Payments to States**

There shall be paid to each State which has entered into an agreement under this subsection an amount equal to 100 percent of—

(A) the total amount of assistance provided by the State pursuant to such agreement; and

(B) any additional administrative expenses incurred by the State by reason of such agreement (as determined by the Secretary), including any administrative expenses necessary to facilitate processing of applications for assistance under this section online or by telephone rather than in-person and expenses related to identity verification or validation and timely and accurate payment.

### **(3) Terms of payments**

Sums payable to any State by reason of such State's having an agreement under this subsection shall be payable, either in advance or by way of reimbursement (as determined by the Secretary), in such amounts as the Secretary estimates the State will be entitled to receive under this subsection for each calendar month, reduced or increased, as the case may be, by any amount by which the Secretary finds that his estimates for any prior calendar month were greater or less than the amounts which should have been paid to the State. Such estimates may be made on the basis of such statistical, sampling, or other method as may be agreed upon by the Secretary and the State agency of the State involved.

### **(g) Funding**

#### **(1) Assistance**

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

Funds in the extended unemployment compensation account (as established by section 1105(a) of title 42) of the Unemployment Trust Fund (as established by section 1104(a) of title 42) shall be used to make payments to States pursuant to subsection (f)(2)(A).

##### **(B) Transfer of funds**

Notwithstanding any other provision of law, the Secretary of the Treasury shall transfer from the general fund of the Treasury (from funds not otherwise appropriated) to the extended unemployment compensation account such sums as the Secretary of Labor estimates to be necessary to make payments described in subparagraph (A). There are appropriated from the general fund of the Treasury, without fiscal year limitation, the sums referred to in the preceding sentence and such sums shall not be required to be repaid.

#### **(2) Administrative expenses**

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

Funds in the employment security administration account (as established by section 1101(a) of title 42) of the Unemployment Trust Fund (as established by section 1104(a) of title 42) shall be used to make payments to States pursuant to subsection (f)(2)(B).

##### **(B) Transfer of funds**

Notwithstanding any other provision of law, the Secretary of the Treasury shall transfer from the general fund of the Treasury (from funds not otherwise appropriated) to the employment security administration account such sums as the Secretary of Labor estimates to be necessary to make payments described in subparagraph (A). There are appropriated from the general fund of the Treasury, without fiscal year limitation, the sums referred to in the preceding sentence and such sums shall not be required to be repaid.

#### **(3) Certifications**

The Secretary of Labor shall from time to time certify to the Secretary of the Treasury for payment to each State the sums payable to such State under paragraphs (1) and (2).

### **(h) Relationship between pandemic unemployment assistance and disaster unemployment assistance**

Except as otherwise provided in this section or to the extent there is a conflict between this section and part 625 of title 20, Code of Federal Regulations, such part 625 shall apply to this section as if—

(1) the term "COVID-19 public health emergency" were substituted for the term "major disaster" each place it appears in such part 625; and

(2) the term "pandemic" were substituted for the term "disaster" each place it appears in such part 625.

(Pub. L. 116-136, div. A, title II, §2102, Mar. 27, 2020, 134 Stat. 313; Pub. L. 116-260, div. N, title II, §§201(a)–(c)(1), (d), 209(a), 241(a), 242(a), 263(a), Dec. 27, 2020, 134 Stat. 1950—1952, 1956, 1959, 1960, 1963; Pub. L. 117-2, title IX, §9011(a), (b), Mar. 11, 2021, 135 Stat. 118.)

## EDITORIAL NOTES

### REFERENCES IN TEXT

This Act, referred to in subsec. (e), is div. A of Pub. L. 116–136, Mar. 27, 2020, 134 Stat. 286. For complete classification of this Act to the Code, see Tables.

### AMENDMENTS

**2021**—Subsec. (c)(1). Pub. L. 117–2, §9011(a)(1)(A), substituted "paragraph (2)" for "paragraphs (2) and (3)" in introductory provisions.

Subsec. (c)(1)(A)(ii). Pub. L. 117–2, §9011(a)(1)(B), substituted "September 6, 2021" for "March 14, 2021".

Subsec. (c)(2). Pub. L. 117–2, §9011(b), substituted "79 weeks" for "50 weeks" and "79-week period" for "50-week period".

Subsec. (c)(3), (4). Pub. L. 117–2, §9011(a)(2), redesignated par. (4) as (3) and struck out former par. (3) which related to a transition rule for individuals remaining entitled to pandemic unemployment assistance as of Mar. 14, 2021.

**2020**—Subsec. (a)(3)(A)(iii). Pub. L. 116–260, §241(a), added cl. (iii).

Subsec. (c)(1). Pub. L. 116–260, §201(a)(1)(A), substituted "paragraphs (2) and (3)" for "paragraph (2)" in introductory provisions.

Subsec. (c)(1)(A)(ii). Pub. L. 116–260, §201(a)(1)(B), substituted "March 14, 2021" for "December 31, 2020".

Subsec. (c)(2). Pub. L. 116–260, §201(b), substituted "50 weeks" for "39 weeks" and "50-week period" for "39-week period".

Subsec. (c)(3), (4). Pub. L. 116–260, §201(a)(2), (3), added par. (3) and redesignated former par. (3) as (4).

Subsec. (c)(5). Pub. L. 116–260, §201(c)(1), added par. (5).

Subsec. (c)(6). Pub. L. 116–260, §263(a), added par. (6).

Subsec. (d)(4). Pub. L. 116–260, §201(d), added par. (4).

Subsec. (f)(1). Pub. L. 116–260, §242(a)(1), inserted ", including procedures for identity verification or validation and for timely payment, to the extent reasonable and practicable" before period at end.

Subsec. (f)(2)(B). Pub. L. 116–260, §242(a)(2), inserted "and expenses related to identity verification or validation and timely and accurate payment" before period at end.

Subsec. (h). Pub. L. 116–260, §209(a), substituted "part 625" for "section 625" wherever appearing.

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### EFFECTIVE DATE OF 2021 AMENDMENT

Pub. L. 117–2, title IX, §9011(d), Mar. 11, 2021, 135 Stat. 118, provided that: "The amendments made by subsections (a) and (b) [amending this section] shall apply as if included in the enactment of the CARES Act (Public Law 116–136), except that no amount shall be payable by virtue of such amendments with respect to any week of unemployment ending on or before March 14, 2021."

### EFFECTIVE DATE OF 2020 AMENDMENT

Pub. L. 116–260, div. N, title II, §201(c)(2), Dec. 27, 2020, 134 Stat. 1952, provided that: "The amendment made by paragraph (1) [amending this section] shall take effect as if enacted as part of division A of the CARES Act (Public Law 116–136), except that any decision issued on appeal or review before the date of enactment of this Act [Dec. 27, 2020] shall not be affected by the amendment made by paragraph (1)."

Pub. L. 116–260, div. N, title II, §201(g), Dec. 27, 2020, 134 Stat. 1952, provided that: "The amendments made by subsections (a), (b), (c), and (d) [amending this section] shall apply as if included in the enactment of the CARES Act (Public Law 116–136), except that no amount shall be payable by virtue of such amendments with respect to any week of unemployment commencing before the date of the enactment of this Act [Dec. 27, 2020]."

Pub. L. 116–260, div. N, title II, §209(b), Dec. 27, 2020, 134 Stat. 1956, provided that: "The amendment made by this section [amending this section] shall take effect as if included in section 2102 of the CARES Act (Public Law 116–136) [enacting this section]."

Pub. L. 116–260, div. N, title II, §241(b), Dec. 27, 2020, 134 Stat. 1960, provided that:

"(1) IN GENERAL.—Subject to paragraphs (2) and (3), the amendments made by subsection (a) [amending

this section] shall apply to any individual who files a new application for pandemic unemployment assistance or claims pandemic unemployment assistance for any week of unemployment under section 2102 of the CARES Act (15 U.S.C. 9021) on or after January 31, 2021.

"(2) SPECIAL RULE.—An individual who received pandemic unemployment assistance under section 2102 of the CARES Act (15 U.S.C. 9021) for any week ending before the date of enactment of this Act [Dec. 27, 2020] shall not be considered ineligible for such assistance for such week solely by reason of failure to submit documentation described in clause (iii) of subsection (a)(3)(A) of such section 2102, as added by subsection (a).

"(3) PRIOR APPLICANTS.—With respect to an individual who applied for pandemic unemployment assistance under section 2102 of the CARES Act (15 U.S.C. 9021) before January 31, 2021, and receives such assistance on or after the date of enactment of this Act, clause (iii) of subsection (a)(3)(A) of such section shall be applied by substituting '90 days' for '21 days'."

Pub. L. 116–260, div. N, title II, §242(b), Dec. 27, 2020, 134 Stat. 1960, provided that: "The requirements imposed by the amendments made by this section [amending this section] shall apply, with respect to agreements made under section 2102 of the CARES Act [Pub. L. 116–136, enacting this section], beginning on the date that is 30 days after the date of enactment of this Act [Dec. 27, 2020]."

Pub. L. 116–260, div. N, title II, §263(b), Dec. 27, 2020, 134 Stat. 1963, provided that:

"(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply with respect to weeks beginning on or after the date that is 30 days after the date of enactment of this section [Dec. 27, 2020].

"(2) SPECIAL RULE.—In the case of any State that made a good faith effort to implement section 2102 of division A of the CARES Act (15 U.S.C. 9021) in accordance with rules similar to those provided in section 625.6 of title 20, Code of Federal Regulations, for weeks ending before the effective date specified in paragraph (1), an individual who received pandemic unemployment assistance from such State for any such week shall not be considered ineligible for such assistance for such week solely by reason of failure to submit a recertification described in subsection (c)(5) of such section 2102."

#### **HOLD HARMLESS FOR PROPER ADMINISTRATION OF AMENDMENT**

Pub. L. 117–2, title IX, §9011(c), Mar. 11, 2021, 135 Stat. 118, provided that: "In the case of an individual who is eligible to receive pandemic unemployment assistance under section 2102 of the CARES Act (15 U.S.C. 9021) as of the day before the date of enactment of this Act [Mar. 11, 2021] and on the date of enactment of this Act becomes eligible for pandemic emergency unemployment compensation under section 2107 of the CARES Act (15 U.S.C. 9025) by reason of the amendments made by section 9016(b) of this title [amending section 9025 of this title], any payment of pandemic unemployment assistance under such section 2102 made after the date of enactment of this Act to such individual during an appropriate period of time, as determined by the Secretary of Labor, that should have been made under such section 2107 shall not be considered to be an overpayment of assistance under such section 2102, except that an individual may not receive payment for assistance under section 2102 and a payment for assistance under section 2107 for the same week of unemployment."

Pub. L. 116–260, div. N, title II, §201(e), Dec. 27, 2020, 134 Stat. 1952, provided that: "In the case of an individual who is eligible to receive pandemic unemployment assistance under section 2102 [of] the CARES Act (15 U.S.C. 9021) as of the day before the date of enactment of this Act [Dec. 27, 2020] and on the date of enactment of this Act becomes eligible for pandemic emergency unemployment compensation under section 2107 of the CARES Act (15 U.S.C. 9025) by reason of the amendments made by section 206(b) of this subtitle [amending section 9025 of this title], any payment of pandemic unemployment assistance under such section 2102 made after the date of enactment of this Act to such individual during an appropriate period of time, as determined by the Secretary of Labor, that should have been made under such section 2107 shall not be considered to be an overpayment of assistance under such section 2102, except that an individual may not receive payment for assistance under section 2102 and a payment for assistance under section 2107 for the same week of unemployment."

#### **FIRST APPLICATION LIMITATION**

Pub. L. 116–260, div. N, title II, §201(f), Dec. 27, 2020, 134 Stat. 1952, provided that: "In the case of a covered individual whose first application for pandemic unemployment assistance under section 2102 of the CARES Act (15 U.S.C. 9021) is filed after the date of enactment of this Act [Dec. 27, 2020], subsection (c)(1)(A)(i) of such section 2102 shall be applied by substituting 'December 1, 2020' for 'January 27, 2020'."

#### **TECHNICAL CORRECTION FOR THE COMMONWEALTH OF NORTHERN MARIANA ISLANDS**

Pub. L. 116–260, div. N, title II, §265, Dec. 27, 2020, 134 Stat. 1964, provided that: "A Commonwealth Only Transitional Worker (as defined in section 6(i)(2) of the Joint Resolution entitled 'A Joint Resolution to approve the "Covenant To Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America", and for other purposes' (48 U.S.C. 1806)) shall be considered a qualified alien under section 431 of Public Law 104–193 (8 U.S.C. 1641) for purposes of eligibility for a benefit under section 2102 or 2104 of the CARES Act [15 U.S.C. 9021, 9023]."

## **§9022. Flexibility in paying reimbursement**

The Secretary of Labor may issue clarifying guidance to allow States to interpret their State unemployment compensation laws in a manner that would provide maximum flexibility to reimbursing employers as it relates to timely payment and assessment of penalties and interest pursuant to such State laws.

(Pub. L. 116–136, div. A, title II, §2103(a), Mar. 27, 2020, 134 Stat. 317.)

## **§9023. Emergency increase in unemployment compensation benefits**

### **(a) Federal-State agreements**

Any State which desires to do so may enter into and participate in an agreement under this section with the Secretary of Labor (in this section referred to as the "Secretary"). Any State which is a party to an agreement under this section may, upon providing 30 days' written notice to the Secretary, terminate such agreement.

### **(b) Provisions of agreement**

#### **(1) Federal Pandemic Unemployment Compensation**

Any agreement under this section shall provide that the State agency of the State will make payments of regular compensation to individuals in amounts and to the extent that they would be determined if the State law of the State were applied, with respect to any week for which the individual is (disregarding this section) otherwise entitled under the State law to receive regular compensation, as if such State law had been modified in a manner such that the amount of regular compensation (including dependents' allowances) payable for any week shall be equal to—

(A) the amount determined under the State law (before the application of this paragraph), plus

(B) an additional amount equal to the amount specified in paragraph (3) (in this section referred to as "Federal Pandemic Unemployment Compensation"), plus

(C) an additional amount of \$100 (in this section referred to as "Mixed Earner Unemployment Compensation") in any case in which the individual received at least \$5,000 of self-employment income (as defined in section 1402(b) of title 26) in the most recent taxable year ending prior to the individual's application for regular compensation.

#### **(2) Allowable methods of payment**

Any Federal Pandemic Unemployment Compensation or Mixed Earner Unemployment Compensation provided for in accordance with paragraph (1) shall be payable either—

(A) as an amount which is paid at the same time and in the same manner as any regular compensation otherwise payable for the week involved; or

(B) at the option of the State, by payments which are made separately from, but on the same weekly basis as, any regular compensation otherwise payable.

#### **(3) Amount of Federal Pandemic Unemployment Compensation**

##### **(A) <sup>1</sup> In general**

The amount specified in this paragraph is the following amount:

(i) For weeks of unemployment beginning after the date on which an agreement is entered



into under this section and ending on or before July 31, 2020, \$600.

(ii) For weeks of unemployment beginning after December 26, 2020 (or, if later, the date on which such agreement is entered into), and ending on or before September 6, 2021, \$300.

**(4) Certain documentation required**

An agreement under this section shall include a requirement, similar to the requirement under section 9021(a)(3)(A)(iii) of this title, for the substantiation of self-employment income with respect to each applicant for Mixed Earner Unemployment Compensation under paragraph (1)(C).

**(c) Nonreduction rule**

**(1) In general**

An agreement under this section shall not apply (or shall cease to apply) with respect to a State upon a determination by the Secretary that the method governing the computation of regular compensation under the State law of that State has been modified in a manner such that the number of weeks (the maximum benefit entitlement), or the average weekly benefit amount, of regular compensation which will be payable during the period of the agreement (determined disregarding any Federal Pandemic Unemployment Compensation or Mixed Earner Unemployment Compensation) will be less than the number of weeks, or the average weekly benefit amount, of the average weekly benefit amount of regular compensation which would otherwise have been payable during such period under the State law, as in effect on January 1, 2020.

**(2) Maximum benefit entitlement**

In paragraph (1), the term "maximum benefit entitlement" means the amount of regular unemployment compensation payable to an individual with respect to the individual's benefit year.

**(d) Payments to States**

**(1) In general**

**(A) Full reimbursement**

There shall be paid to each State which has entered into an agreement under this section an amount equal to 100 percent of—

(i) the total amount of Federal Pandemic Unemployment Compensation and Mixed Earner Unemployment Compensation paid to individuals by the State pursuant to such agreement; and

(ii) any additional administrative expenses incurred by the State by reason of such agreement (as determined by the Secretary).

**(B) Terms of payments**

Sums payable to any State by reason of such State's having an agreement under this section shall be payable, either in advance or by way of reimbursement (as determined by the Secretary), in such amounts as the Secretary estimates the State will be entitled to receive under this section for each calendar month, reduced or increased, as the case may be, by any amount by which the Secretary finds that his estimates for any prior calendar month were greater or less than the amounts which should have been paid to the State. Such estimates may be made on the basis of such statistical, sampling, or other method as may be agreed upon by the Secretary and the State agency of the State involved.

**(2) Certifications**

The Secretary shall from time to time certify to the Secretary of the Treasury for payment to each State the sums payable to such State under this section.

**(3) Appropriation**

There are appropriated from the general fund of the Treasury, without fiscal year limitation, such sums as may be necessary for purposes of this subsection.

**(e) Applicability**

An agreement entered into under this section shall apply—

(1) to weeks of unemployment beginning after the date on which such agreement is entered into and ending on or before July 31, 2020; and

(2) to weeks of unemployment beginning after December 26, 2020 (or, if later, the date on which such agreement is entered into), and ending on or before September 6, 2021.

**(f) Fraud and overpayments**

**(1) In general**

If an individual knowingly has made, or caused to be made by another, a false statement or representation of a material fact, or knowingly has failed, or caused another to fail, to disclose a material fact, and as a result of such false statement or representation or of such nondisclosure such individual has received an amount of Federal Pandemic Unemployment Compensation or Mixed Earner Unemployment Compensation to which such individual was not entitled, such individual—

(A) shall be ineligible for further Federal Pandemic Unemployment Compensation or Mixed Earner Unemployment Compensation in accordance with the provisions of the applicable State unemployment compensation law relating to fraud in connection with a claim for unemployment compensation; and

(B) shall be subject to prosecution under section 1001 of title 18.

**(2) Repayment**

In the case of individuals who have received amounts of Federal Pandemic Unemployment Compensation or Mixed Earner Unemployment Compensation to which they were not entitled, the State shall require such individuals to repay the amounts of such Federal Pandemic Unemployment Compensation or Mixed Earner Unemployment Compensation to the State agency, except that the State agency may waive such repayment if it determines that—

(A) the payment of such Federal Pandemic Unemployment Compensation or Mixed Earner Unemployment Compensation was without fault on the part of any such individual; and

(B) such repayment would be contrary to equity and good conscience.

**(3) Recovery by State agency**

**(A) In general**

The State agency shall recover the amount to be repaid, or any part thereof, by deductions from any Federal Pandemic Unemployment Compensation or Mixed Earner Unemployment Compensation payable to such individual or from any unemployment compensation payable to such individual under any State or Federal unemployment compensation law administered by the State agency or under any other State or Federal law administered by the State agency which provides for the payment of any assistance or allowance with respect to any week of unemployment, during the 3-year period after the date such individuals received the payment of the Federal Pandemic Unemployment Compensation or Mixed Earner Unemployment Compensation to which they were not entitled, in accordance with the same procedures as apply to the recovery of overpayments of regular unemployment benefits paid by the State.

**(B) Opportunity for hearing**

No repayment shall be required, and no deduction shall be made, until a determination has been made, notice thereof and an opportunity for a fair hearing has been given to the individual, and the determination has become final.

**(4) Review**

Any determination by a State agency under this section shall be subject to review in the same manner and to the same extent as determinations under the State unemployment compensation law, and only in that manner and to that extent.

**(g) Application to other unemployment benefits**

Each agreement under this section shall include provisions to provide that—

(1) the purposes of the preceding provisions of this section, as such provisions apply with respect to Federal Pandemic Unemployment Compensation, shall be applied with respect to unemployment benefits described in subsection (i)(2) to the same extent and in the same manner as if those benefits were regular compensation; and

(2) the purposes of the preceding provisions of this section, as such provisions apply with respect to Mixed Earner Unemployment Compensation, shall be applied with respect to unemployment benefits described in subparagraph (A), (B), (D), or (E) of subsection (i)(2) to the same extent and in the same manner as if those benefits were regular compensation.

**(h) Disregard of additional compensation for purposes of Medicaid and CHIP**

The monthly equivalent of any Federal pandemic unemployment compensation paid to an individual under this section shall be disregarded when determining income for any purpose under the programs established under titles XIX and title XXI <sup>2</sup> of the Social Security Act (42 U.S.C. 1396 et seq., 1397aa et seq.).

**(i) Definitions**

For purposes of this section—

(1) the terms "compensation", "regular compensation", "benefit year", "State", "State agency", "State law", and "week" have the respective meanings given such terms under section 205 of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note); and

(2) any reference to unemployment benefits described in this paragraph shall be considered to refer to—

(A) extended compensation (as defined by section 205 of the Federal-State Extended Unemployment Compensation Act of 1970);

(B) regular compensation (as defined by section 85(b) of title 26) provided under any program administered by a State under an agreement with the Secretary;

(C) pandemic unemployment assistance under section 9021 of this title;

(D) pandemic emergency unemployment compensation under section 9025 of this title; and

(E) short-time compensation under a short-time compensation program (as defined in section 3306(v) of title 26).

(Pub. L. 116–136, div. A, title II, §2104, Mar. 27, 2020, 134 Stat. 318; Pub. L. 116–260, div. N, title II, §§203, 261(a), (b)(1), Dec. 27, 2020, 134 Stat. 1953, 1961; Pub. L. 117–2, title IX, §9013, Mar. 11, 2021, 135 Stat. 119.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

The Social Security Act, referred to in subsec. (h), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Titles XIX and XXI of the Act are classified generally to subchapters XIX (§1396 et seq.) and XXI (§1397aa et seq.), respectively, of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Section 205 of the Federal-State Extended Unemployment Compensation Act of 1970, referred to in subsec. (i)(1), (2)(A), is section 205 of Pub. L. 91–373, which is set out in a note under section 3304 of Title 26, Internal Revenue Code.

**AMENDMENTS**

**2021**—Subsec. (b)(3)(A)(ii). Pub. L. 117–2, §9013(b), substituted "September 6, 2021" for "March 14, 2021".

Subsec. (e)(2). Pub. L. 117–2, §9013(a), substituted "September 6, 2021" for "March 14, 2021".

**2020**—Subsec. (b)(1)(B). Pub. L. 116–260, §261(a)(1)(A), substituted ", plus" for period at end.

Pub. L. 116–260, §203(b)(1)(A), substituted "amount equal to the amount specified in paragraph (3)" for "amount of \$600".

Subsec. (b)(1)(C). Pub. L. 116–260, §261(a)(1)(B), added subpar. (C).

Subsec. (b)(2). Pub. L. 116–260, §261(b)(1)(A), inserted "or Mixed Earner Unemployment Compensation"

after "Federal Pandemic Unemployment Compensation" in introductory provisions.

Subsec. (b)(3). Pub. L. 116–260, §203(b)(1)(B), added par. (3).

Subsec. (b)(4). Pub. L. 116–260, §261(a)(2), added par. (4).

Subsec. (c)(1). Pub. L. 116–260, §261(b)(1)(A), inserted "or Mixed Earner Unemployment Compensation" after "Federal Pandemic Unemployment Compensation".

Subsec. (d)(1)(A)(i). Pub. L. 116–260, §261(b)(1)(B), inserted "and Mixed Earner Unemployment Compensation" after "Federal Pandemic Unemployment Compensation".

Subsec. (e). Pub. L. 116–260, §203(a), amended subsec. (e) generally. Prior to amendment, text read as follows: "An agreement entered into under this section shall apply to weeks of unemployment—

"(1) beginning after the date on which such agreement is entered into; and

"(2) ending on or before July 31, 2020."

Subsec. (f). Pub. L. 116–260, §261(b)(1)(A), inserted "or Mixed Earner Unemployment Compensation" after "Federal Pandemic Unemployment Compensation" wherever appearing.

Subsec. (g). Pub. L. 116–260, §261(b)(1)(C), substituted "provide that—" and pars. (1) and (2) for "provide that the purposes of the preceding provisions of this section shall be applied with respect to unemployment benefits described in subsection (i)(2) to the same extent and in the same manner as if those benefits were regular compensation."

Subsec. (i)(2)(E). Pub. L. 116–260, §203(b)(2), added subpar. (E).

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### STATE'S RIGHT OF NON-PARTICIPATION

Pub. L. 116–260, div. N, title II, §261(c), Dec. 27, 2020, 134 Stat. 1962, provided that: "Any State participating in an agreement under section 2104 of the CARES Act [15 U.S.C. 9023] may elect to continue paying Federal Pandemic Unemployment Compensation under such agreement without providing Mixed Earner Unemployment Compensation pursuant to the amendments made by this section [amending this section and section 9025 of this title]. Such amendments shall apply with respect to such a State only if the State so elects, in which case such amendments shall apply with respect to weeks of unemployment beginning on or after the later of the date of such election or the date of enactment of this section [Dec. 27, 2020]."

### TECHNICAL CORRECTION FOR THE COMMONWEALTH OF NORTHERN MARIANA ISLANDS

Commonwealth Only Transitional Workers to be considered qualified aliens under section 1641 of Title 8, Aliens and Nationality, for purposes of eligibility for a benefit under this section, see section 265 of div. N of Pub. L. 116–260, set out as a note under section 9021 of this title.

<sup>1</sup> *So in original. No subpar. (B) has been enacted.*

<sup>2</sup> *So in original.*

## §9024. Temporary full Federal funding of the first week of compensable regular unemployment for States with no waiting week

### (a) Federal-State agreements

Any State which desires to do so may enter into and participate in an agreement under this section with the Secretary of Labor (in this section referred to as the "Secretary"). Any State which is a party to an agreement under this section may, upon providing 30 days' written notice to the Secretary, terminate such agreement.

### (b) Requirement that State law does not apply a waiting week

A State is eligible to enter into an agreement under this section if the State law (including a waiver of State law) provides that compensation is paid to individuals for their first week of regular unemployment without a waiting week. An agreement under this section shall not apply (or shall cease to apply) with respect to a State upon a determination by the Secretary that the State law no longer meets the requirement under the preceding sentence.

**(c) Payments to States**

**(1) Full reimbursement**

Except as provided in paragraph (3), there shall be paid to each State which has entered into an agreement under this section an amount equal to 100 percent of—

(A) the total amount of regular compensation paid to individuals by the State for their first week of regular unemployment; and

(B) any additional administrative expenses incurred by the State by reason of such agreement (as determined by the Secretary).

**(2) Terms of payments**

Sums payable to any State by reason of such State's having an agreement under this section shall be payable, either in advance or by way of reimbursement (as determined by the Secretary), in such amounts as the Secretary estimates the State will be entitled to receive under this section for each calendar month, reduced or increased, as the case may be, by any amount by which the Secretary finds that his estimates for any prior calendar month were greater or less than the amounts which should have been paid to the State. Such estimates may be made on the basis of such statistical, sampling, or other method as may be agreed upon by the Secretary and the State agency of the State involved.

**(d) Funding**

**(1) Compensation**

**(A) In general**

Funds in the Federal unemployment account (as established by section 905(g)) <sup>1</sup> of the Unemployment Trust Fund (as established by section 904(a)) <sup>1</sup> shall be used to make payments under subsection (c)(1)(A).

**(B) Transfer of funds**

Notwithstanding any other provision of law, the Secretary of the Treasury shall transfer from the general fund of the Treasury (from funds not otherwise appropriated) to the Federal unemployment account such sums as the Secretary of Labor estimates to be necessary to make payments described in subparagraph (A). There are appropriated from the general fund of the Treasury, without fiscal year limitation, the sums referred to in the preceding sentence and such sums shall not be required to be repaid.

**(2) Administrative expenses**

**(A) In general**

Funds in the employment security administration account (as established by section 1101(a) of title 42) of the Unemployment Trust Fund (as established by section 1104(a) of title 42) shall be used to make payments to States pursuant to subsection (c)(1)(B).

**(B) Transfer of funds**

Notwithstanding any other provision of law, the Secretary of the Treasury shall transfer from the general fund of the Treasury (from funds not otherwise appropriated) to the employment security administration account such sums as the Secretary of Labor estimates to be necessary to make payments described in subparagraph (A). There are appropriated from the general fund of the Treasury, without fiscal year limitation, the sums referred to in the preceding sentence and such sums shall not be required to be repaid.

**(3) Certifications**

The Secretary shall from time to time certify to the Secretary of the Treasury for payment to each State the sums payable to such State under this section.

**(e) Applicability**

An agreement entered into under this section shall apply to weeks of unemployment—

- (1) beginning after the date on which such agreement is entered into; and
- (2) ending on or before September 6, 2021.

**(f) Fraud and overpayments**

The provisions of section 9025(e) of this title shall apply with respect to compensation paid under an agreement under this section to the same extent and in the same manner as in the case of pandemic emergency unemployment compensation under such section.

**(g) Definitions**

For purposes of this section, the terms "regular compensation", "State", "State agency", "State law", and "week" have the respective meanings given such terms under section 205 of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note).

(Pub. L. 116–136, div. A, title II, §2105, Mar. 27, 2020, 134 Stat. 321; Pub. L. 116–260, div. N, title II, §204, Dec. 27, 2020, 134 Stat. 1953; Pub. L. 117–2, title IX, §9014, Mar. 11, 2021, 135 Stat. 119.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

Section 905(g) and section 904(a), referred to in subsec. (d)(1)(A), probably mean sections 905(g) and 904(a) of the Social Security Act. However, section 905(g) probably should be a reference to section 904(g) as there is no subsec. (g) in section 905 of the Act, and section 904(g) establishes the Federal unemployment account. Section 904(a) and (g) is classified to section 1104(a) and (g), respectively, of Title 42, The Public Health and Welfare.

Section 205 of the Federal-State Extended Unemployment Compensation Act of 1970, referred to in subsec. (g), is section 205 of Pub. L. 91–373, which is set out in a note under section 3304 of Title 26, Internal Revenue Code.

**AMENDMENTS**

**2021**—Subsec. (c)(3). Pub. L. 117–2, §9014(b), struck out par. (3). Text read as follows: "With respect to compensation paid to individuals for weeks of unemployment ending after December 31, 2020, paragraph (1) shall be applied by substituting '50 percent' for '100 percent'."

Subsec. (e)(2). Pub. L. 117–2, §9014(a), substituted "September 6, 2021" for "March 14, 2021".

**2020**—Subsec. (c)(1). Pub. L. 116–260, §204(1)(A), substituted "Except as provided in paragraph (3), there shall be paid" for "There shall be paid" in introductory provisions.

Subsec. (c)(3). Pub. L. 116–260, §204(1)(B), added par. (3).

Subsec. (e)(2). Pub. L. 116–260, §204(2), substituted "March 14, 2021" for "December 31, 2020".

**STATUTORY NOTES AND RELATED SUBSIDIARIES**

**FULL REIMBURSEMENT**

Pub. L. 117–2, title IX, §9014(b), Mar. 11, 2021, 135 Stat. 119, provided that: "Paragraph (3) of section 2105(c) of such Act (15 U.S.C. 9024(c)) is repealed and such section shall be applied to weeks of unemployment to which an agreement under section 2105 of such Act applies as if such paragraph had not been enacted. In implementing the preceding sentence, a State may, if necessary, reenter the agreement with the Secretary under section 2105 of such Act, and retroactively pay for the first week of regular compensation without a waiting week consistent with State law (including a waiver of State law) and receive full reimbursement for weeks of unemployment that ended after December 31, 2020."

<sup>1</sup> *So in original. See References in Text note below.*

**§9025. Pandemic emergency unemployment compensation**

**(a) Federal-State agreements**



**(1) In general**

Any State which desires to do so may enter into and participate in an agreement under this section with the Secretary of Labor (in this section referred to as the "Secretary"). Any State which is a party to an agreement under this section may, upon providing 30 days' written notice to the Secretary, terminate such agreement.

**(2) Provisions of agreement**

Any agreement under paragraph (1) shall provide that the State agency of the State will make payments of pandemic emergency unemployment compensation to individuals who—

(A) have exhausted all rights to regular compensation under the State law or under Federal law with respect to a benefit year (excluding any benefit year that ended before July 1, 2019);

(B) have no rights to regular compensation with respect to a week under such law or any other State unemployment compensation law or to compensation under any other Federal law;

(C) are not receiving compensation with respect to such week under the unemployment compensation law of Canada; and

(D) are able to work, available to work, and actively seeking work.

**(3) Exhaustion of benefits**

For purposes of paragraph (2)(A), an individual shall be deemed to have exhausted such individual's rights to regular compensation under a State law when—

(A) no payments of regular compensation can be made under such law because such individual has received all regular compensation available to such individual based on employment or wages during such individual's base period; or

(B) such individual's rights to such compensation have been terminated by reason of the expiration of the benefit year with respect to which such rights existed.

**(4) Weekly benefit amount, etc.**

For purposes of any agreement under this section—

(A) the amount of pandemic emergency unemployment compensation which shall be payable to any individual for any week of total unemployment shall be equal to—

(i) the amount of the regular compensation (including dependents' allowances) payable to such individual during such individual's benefit year under the State law for a week of total unemployment;

(ii) the amount of Federal Pandemic Unemployment Compensation under section 9023(b)(1)(B) of this title; and

(iii) the amount (if any) of Mixed Earner Unemployment Compensation under section 9023(b)(1)(C) of this title;

(B) the terms and conditions of the State law which apply to claims for regular compensation and to the payment thereof (including terms and conditions relating to availability for work, active search for work, and refusal to accept work) shall apply to claims for pandemic emergency unemployment compensation and the payment thereof, except where otherwise inconsistent with the provisions of this section or with the regulations or operating instructions of the Secretary promulgated to carry out this section;

(C) the maximum amount of pandemic emergency unemployment compensation payable to any individual for whom an <sup>1</sup> pandemic emergency unemployment compensation account is established under subsection (b) shall not exceed the amount established in such account for such individual; and

(D) the allowable methods of payment under section 9023(b)(2) of this title shall apply to payments of amounts described in subparagraph (A)(ii).

**(5) Coordination rules**

**(A) In general**

Subject to subparagraph (B), an agreement under this section shall apply with respect to a

State only upon a determination by the Secretary that, under the State law or other applicable rules of such State, the payment of extended compensation for which an individual is otherwise eligible must be deferred until after the payment of any pandemic emergency unemployment compensation under subsection (b) for which the individual is concurrently eligible.

**(B) Special rule**

In the case of an individual who is receiving extended compensation under the State law for the week that includes December 27, 2020 (without regard to the amendments made by subsections (a) and (b) of section 206 of the Continued Assistance for Unemployed Workers Act of 2020) or for the week that includes March 11, 2021 (without regard to the amendments made by subsections (a) and (b) of section 9016 of the American Rescue Plan Act of 2021), such individual shall not be eligible to receive pandemic emergency unemployment compensation by reason of such amendments until such individual has exhausted all rights to such extended benefits.

**(6) Nonreduction rule**

**(A) In general**

An agreement under this section shall not apply (or shall cease to apply) with respect to a State upon a determination by the Secretary that the method governing the computation of regular compensation under the State law of that State has been modified in a manner such that the number of weeks (the maximum benefit entitlement), or the average weekly benefit amount, of regular compensation which will be payable during the period of the agreement will be less than the number of weeks, or the average weekly benefit amount, of the average weekly benefit amount of regular compensation which would otherwise have been payable during such period under the State law, as in effect on January 1, 2020.

**(B) Maximum benefit entitlement**

In subparagraph (A), the term "maximum benefit entitlement" means the amount of regular unemployment compensation payable to an individual with respect to the individual's benefit year.

**(7) Actively seeking work**

**(A) In general**

Subject to subparagraph (C),<sup>2</sup> for purposes of paragraph (2)(D), the term "actively seeking work" means, with respect to any individual, that such individual—

- (i) is registered for employment services in such a manner and to such extent as prescribed by the State agency;
- (ii) has engaged in an active search for employment that is appropriate in light of the employment available in the labor market, the individual's skills and capabilities, and includes a number of employer contacts that is consistent with the standards communicated to the individual by the State;
- (iii) has maintained a record of such work search, including employers contacted, method of contact, and date contacted; and
- (iv) when requested, has provided such work search record to the State agency.

**(B) Flexibility**

Notwithstanding the requirements under subparagraph (A) and paragraph (2)(D), a State shall provide flexibility in meeting such requirements in case of individuals unable to search for work because of COVID-19, including because of illness, quarantine, or movement restriction.

**(8) Special rule for extended compensation**

At the option of a State, for any weeks of unemployment beginning after December 27, 2020, and before September 6, 2021, an individual's eligibility period (as described in section 203(c) of



the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note)) shall, for purposes of any determination of eligibility for extended compensation under the State law of such State, be considered to include any week which begins—

(A) after the date as of which such individual exhausts all rights to pandemic emergency unemployment compensation; and

(B) during an extended benefit period that began on or before the date described in subparagraph (A).

**(b) Pandemic emergency unemployment compensation account**

**(1) In general**

Any agreement under this section shall provide that the State will establish, for each eligible individual who files an application for pandemic emergency unemployment compensation, an <sup>1</sup> pandemic emergency unemployment compensation account with respect to such individual's benefit year.

**(2) Amount in account**

The amount established in an account under subsection (a) shall be equal to 53 times the individual's average weekly benefit amount, which includes the amount of Federal Pandemic Unemployment Compensation under section 9023 of this title, for the benefit year.

**(3) Weekly benefit amount**

For purposes of this subsection, an individual's weekly benefit amount for any week is the amount of regular compensation (including dependents' allowances) under the State law payable to such individual for such week for total unemployment plus the amount of Federal Pandemic Unemployment Compensation under section 9023 of this title.

**(4) Coordination of pandemic emergency unemployment compensation with regular compensation**

**(A) In general**

If—

(i) an individual has been determined to be entitled to pandemic emergency unemployment compensation with respect to a benefit year;

(ii) that benefit year has expired;

(iii) that individual has remaining entitlement to pandemic emergency unemployment compensation with respect to that benefit year; and

(iv) that individual would qualify for a new benefit year in which the weekly benefit amount of regular compensation is at least \$25 less than the individual's weekly benefit amount in the benefit year referred to in clause (i),

then the State shall determine eligibility for compensation as provided in subparagraph (B).

**(B) Determination of eligibility**

For individuals described in subparagraph (A), the State shall determine whether the individual is to be paid pandemic emergency unemployment compensation or regular compensation for a week of unemployment using one of the following methods:

(i) The State shall, if permitted by State law, establish a new benefit year, but defer the payment of regular compensation with respect to that new benefit year until exhaustion of all pandemic emergency unemployment compensation payable with respect to the benefit year referred to in subparagraph (A)(i).

(ii) The State shall, if permitted by State law, defer the establishment of a new benefit year (which uses all the wages and employment which would have been used to establish a benefit year but for the application of this subparagraph), until exhaustion of all pandemic emergency unemployment compensation payable with respect to the benefit year referred to in subparagraph (A)(i).

(iii) The State shall pay, if permitted by State law—

(I) regular compensation equal to the weekly benefit amount established under the new benefit year; and

(II) pandemic emergency unemployment compensation equal to the difference between that weekly benefit amount and the weekly benefit amount for the expired benefit year.

(iv) The State shall determine rights to pandemic emergency unemployment compensation without regard to any rights to regular compensation if the individual elects to not file a claim for regular compensation under the new benefit year.

**(c) Payments to States having agreements for the payment of pandemic emergency unemployment compensation**

**(1) In general**

There shall be paid to each State that has entered into an agreement under this section an amount equal to 100 percent of the pandemic emergency unemployment compensation paid to individuals by the State pursuant to such agreement.

**(2) Treatment of reimbursable compensation**

No payment shall be made to any State under this section in respect of any compensation to the extent the State is entitled to reimbursement in respect of such compensation under the provisions of any Federal law other than this section or chapter 85 of title 5. A State shall not be entitled to any reimbursement under such chapter 85 in respect of any compensation to the extent the State is entitled to reimbursement under this section in respect of such compensation.

**(3) Determination of amount**

Sums payable to any State by reason of such State having an agreement under this section shall be payable, either in advance or by way of reimbursement (as may be determined by the Secretary), in such amounts as the Secretary estimates the State will be entitled to receive under this section for each calendar month, reduced or increased, as the case may be, by any amount by which the Secretary finds that the Secretary's estimates for any prior calendar month were greater or less than the amounts which should have been paid to the State. Such estimates may be made on the basis of such statistical, sampling, or other method as may be agreed upon by the Secretary and the State agency of the State involved.

**(d) Financing provisions**

**(1) Compensation**

**(A) In general**

Funds in the extended unemployment compensation account (as established by section 905(a) of the Social Security Act (42 U.S.C. 1105(a)) of the Unemployment Trust Fund (as established by section 904(a) of such Act (42 U.S.C. 1104(a))) shall be used for the making of payments to States having agreements entered into under this section.

**(B) Transfer of funds**

Notwithstanding any other provision of law, the Secretary of the Treasury shall transfer from the general fund of the Treasury (from funds not otherwise appropriated) to the extended unemployment compensation account such sums as the Secretary of Labor estimates to be necessary to make payments described in subparagraph (A). There are appropriated from the general fund of the Treasury, without fiscal year limitation, the sums referred to in the preceding sentence and such sums shall not be required to be repaid.

**(2) Administration**

**(A) In general**

There are appropriated out of the employment security administration account (as established by section 901(a) of the Social Security Act (42 U.S.C. 1101(a)) <sup>3</sup> of the Unemployment Trust

Fund, without fiscal year limitation, such funds as may be necessary for purposes of assisting States (as provided in title III of the Social Security Act (42 U.S.C. 501 et seq.)) in meeting the costs of administration of agreements under this section.

**(B) Transfer of funds**

Notwithstanding any other provision of law, the Secretary of the Treasury shall transfer from the general fund of the Treasury (from funds not otherwise appropriated) to the employment security administration account such sums as the Secretary of Labor estimates to be necessary to make payments described in subparagraph (A). There are appropriated from the general fund of the Treasury, without fiscal year limitation, the sums referred to in the preceding sentence and such sums shall not be required to be repaid.

**(3) Certification**

The Secretary shall from time to time certify to the Secretary of the Treasury for payment to each State the sums payable to such State under this subsection. The Secretary of the Treasury, prior to audit or settlement by the Government Accountability Office, shall make payments to the State in accordance with such certification, by transfers from the extended unemployment compensation account (as so established) to the account of such State in the Unemployment Trust Fund (as so established).

**(e) Fraud and overpayments**

**(1) In general**

If an individual knowingly has made, or caused to be made by another, a false statement or representation of a material fact, or knowingly has failed, or caused another to fail, to disclose a material fact, and as a result of such false statement or representation or of such nondisclosure such individual has received an amount of pandemic emergency unemployment compensation under this section to which such individual was not entitled, such individual—

(A) shall be ineligible for further pandemic emergency unemployment compensation under this section in accordance with the provisions of the applicable State unemployment compensation law relating to fraud in connection with a claim for unemployment compensation; and

(B) shall be subject to prosecution under section 1001 of title 18.

**(2) Repayment**

In the case of individuals who have received amounts of pandemic emergency unemployment compensation under this section to which they were not entitled, the State shall require such individuals to repay the amounts of such pandemic emergency unemployment compensation to the State agency, except that the State agency may waive such repayment if it determines that—

(A) the payment of such pandemic emergency unemployment compensation was without fault on the part of any such individual; and

(B) such repayment would be contrary to equity and good conscience.

**(3) Recovery by State agency**

**(A) In general**

The State agency shall recover the amount to be repaid, or any part thereof, by deductions from any pandemic emergency unemployment compensation payable to such individual under this section or from any unemployment compensation payable to such individual under any State or Federal unemployment compensation law administered by the State agency or under any other State or Federal law administered by the State agency which provides for the payment of any assistance or allowance with respect to any week of unemployment, during the 3-year period after the date such individuals received the payment of the pandemic emergency unemployment compensation to which they were not entitled, in accordance with the same procedures as apply to the recovery of overpayments of regular unemployment benefits paid by the State.

**(B) Opportunity for hearing**

No repayment shall be required, and no deduction shall be made, until a determination has been made, notice thereof and an opportunity for a fair hearing has been given to the individual, and the determination has become final.

**(4) Review**

Any determination by a State agency under this section shall be subject to review in the same manner and to the same extent as determinations under the State unemployment compensation law, and only in that manner and to that extent.

**(f) Definitions**

In this section, the terms "compensation", "regular compensation", "extended compensation", "benefit year", "base period", "State", "State agency", "State law", and "week" have the respective meanings given such terms under section 205 of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note).

**(g) Applicability**

An agreement entered into under this section shall apply to weeks of unemployment—

- (1) beginning after the date on which such agreement is entered into; and
- (2) ending on or before September 6, 2021.

(Pub. L. 116–136, div. A, title II, §2107, Mar. 27, 2020, 134 Stat. 323; Pub. L. 116–260, div. N, title II, §§206(a)–(c), 261(b)(2), Dec. 27, 2020, 134 Stat. 1954, 1962; Pub. L. 117–2, title IX, §9016(a)–(d), Mar. 11, 2021, 135 Stat. 119, 120.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

The amendments made by subsections (a) and (b) of section 206 of the Continued Assistance for Unemployed Workers Act of 2020, referred to in subsec. (a)(5)(B), are the amendments made by subsecs. (a) and (b) of section 206 of chapter 1 of subtitle A of title II of div. N of Pub. L. 116–260, which amended this section.

The amendments made by subsections (a) and (b) of section 9016 of the American Rescue Plan Act of 2021, referred to in subsec. (a)(5)(B), are the amendments made by subsecs. (a) and (b) of section 9016 of Pub. L. 117–2, which amended this section.

Sections 203(c) and 205 of the Federal-State Extended Unemployment Compensation Act of 1970, referred to in subsecs. (a)(8) and (f), respectively, are sections 203(c) and 205 of Pub. L. 91–373, which are set out in a note under section 3304 of Title 26, Internal Revenue Code.

The Social Security Act, referred to in subsec. (d)(2)(A), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Title III of the Act is classified generally to subchapter III (§501 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

**AMENDMENTS**

**2021**—Subsec. (a)(5)(B). Pub. L. 117–2, §9016(c), inserted "or for the week that includes March 11, 2021 (without regard to the amendments made by subsections (a) and (b) of section 9016 of American Rescue Plan Act of 2021)" after "2020".

Subsec. (a)(8). Pub. L. 117–2, §9016(d), substituted "September 6, 2021" for "April 12, 2021" in introductory provisions.

Subsec. (b)(2). Pub. L. 117–2, §9016(b), substituted "53 times" for "24 times".

Subsec. (g). Pub. L. 117–2, §9016(a), amended subsec. (g) generally. Prior to amendment, subsec. (g) related to applicability, transition rule, and termination date.

**2020**—Subsec. (a)(4)(A). Pub. L. 116–260, §261(b)(2), struck out "and" at end of cl. (i), substituted "section 9023(b)(1)(B) of this title; and" for "section 9023 of this title;" in cl. (ii), and added cl. (iii).

Subsec. (a)(5). Pub. L. 116–260, §206(c)(2)(A), substituted "rules" for "rule" in heading, designated existing provisions as subpar. (A), inserted subpar. heading, substituted "Subject to subparagraph (B), an agreement" for "An agreement", and added subpar. (B).

Subsec. (a)(8). Pub. L. 116–260, §206(c)(2)(B), added par. (8).

Subsec. (b)(2). Pub. L. 116–260, §206(b), substituted "24 times" for "13 times".

Subsec. (b)(4). Pub. L. 116–260, §206(c)(1), added par. (4).

Subsec. (g). Pub. L. 116–260, §206(a), amended subsec. (g) generally. Prior to amendment, text read as follows: "An agreement entered into under this section shall apply to weeks of unemployment—

"(1) beginning after the date on which such agreement is entered into; and

"(2) ending on or before December 31, 2020."

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### EFFECTIVE DATE OF 2021 AMENDMENT

Pub. L. 117–2, title IX, §9016(e), Mar. 11, 2021, 135 Stat. 120, provided that: "The amendments made by this section [amending this section] shall apply as if included in the enactment of the CARES Act (Public Law 116–136), except that no amount shall be payable by virtue of such amendments with respect to any week of unemployment ending on or before March 14, 2021."

### EFFECTIVE DATE OF 2020 AMENDMENT

Pub. L. 116–260, div. N, title II, §206(d), Dec. 27, 2020, 134 Stat. 1956, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply as if included in the enactment of the CARES Act (Public Law 116–136), except that no amount shall be payable by virtue of such amendments with respect to any week of unemployment commencing before the date of the enactment of this Act [Dec. 27, 2020].

"(2) COORDINATION RULES.—The amendments made by subsection (c)(1) shall apply to individuals whose benefit years, as described in section 2107(b)(4)(A)(ii) of the CARES Act [15 U.S.C. 9025(b)(4)(A)(ii)], expire after the date of enactment of this Act."

<sup>1</sup> *So in original. Probably should be "a".*

<sup>2</sup> *So in original.*

<sup>3</sup> *So in original. A third closing parenthesis probably should appear.*

## §9026. Temporary financing of short-time compensation payments in States with programs in law

### (a) Payments to States

#### (1) In general

Subject to paragraph (3), there shall be paid to a State an amount equal to 100 percent of the amount of short-time compensation paid under a short-time compensation program (as defined in section 3306(v) of title 26) under the provisions of the State law.

#### (2) Terms of payments

Payments made to a State under paragraph (1) shall be payable by way of reimbursement in such amounts as the Secretary estimates the State will be entitled to receive under this section for each calendar month, reduced or increased, as the case may be, by any amount by which the Secretary finds that the Secretary's estimates for any prior calendar month were greater or less than the amounts which should have been paid to the State. Such estimates may be made on the basis of such statistical, sampling, or other method as may be agreed upon by the Secretary and the State agency of the State involved.

#### (3) Limitations on payments

##### (A) General payment limitations

No payments shall be made to a State under this section for short-time compensation paid to an individual by the State during a benefit year in excess of 26 times the amount of regular

compensation (including dependents' allowances) under the State law payable to such individual for a week of total unemployment.

**(B) Employer limitations**

No payments shall be made to a State under this section for benefits paid to an individual by the State under a short-time compensation program if such individual is employed by the participating employer on a seasonal, temporary, or intermittent basis.

**(b) Applicability**

Payments to a State under subsection (a) shall be available for weeks of unemployment—

- (1) beginning on or after March 27, 2020; and
- (2) ending on or before September 6, 2021.

**(c) New programs**

Subject to subsection (b)(2), if at any point after March 27, 2020, the State enacts a State law providing for the payment of short-time compensation under a short-time compensation program that meets the definition of such a program under section 3306(v) of title 26, the State shall be eligible for payments under this section after the effective date of such enactment.

**(d) Funding and certifications**

**(1) Funding**

There are appropriated, out of moneys in the Treasury not otherwise appropriated, such sums as may be necessary for purposes of carrying out this section.

**(2) Certifications**

The Secretary shall from time to time certify to the Secretary of the Treasury for payment to each State the sums payable to such State under this section.

**(e) Definitions**

In this section:

**(1) Secretary**

The term "Secretary" means the Secretary of Labor.

**(2) State; State agency; State law**

The terms "State", "State agency", and "State law" have the meanings given those terms in section 205 of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note).

(Pub. L. 116–136, div. A, title II, §2108, Mar. 27, 2020, 134 Stat. 328; Pub. L. 116–260, div. N, title II, §207, Dec. 27, 2020, 134 Stat. 1956; Pub. L. 117–2, title IX, §9017, Mar. 11, 2021, 135 Stat. 120.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

Section 205 of the Federal-State Extended Unemployment Compensation Act of 1970, referred to in subsec. (e)(2), is section 205 of Pub. L. 91–373, which is set out in a note under section 3304 of Title 26, Internal Revenue Code.

**CODIFICATION**

Section is comprised of section 2108 of Pub. L. 116–136. Subsec. (f) of section 2108 of Pub. L. 116–136 amended section 3306 of Title 26, Internal Revenue Code.

**AMENDMENTS**

**2021**—Subsec. (b)(2). Pub. L. 117–2 substituted "September 6, 2021" for "March 14, 2021".

**2020**—Subsec. (b)(2). Pub. L. 116–260 substituted "March 14, 2021" for "December 31, 2020".

## **§9027. Temporary financing of short-time compensation agreements**

### **(a) Federal-State agreements**

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

Any State which desires to do so may enter into, and participate in, an agreement under this section with the Secretary provided that such State's law does not provide for the payment of short-time compensation under a short-time compensation program (as defined in section 3306(v) of title 26).

#### **(2) Ability to terminate**

Any State which is a party to an agreement under this section may, upon providing 30 days' written notice to the Secretary, terminate such agreement.

### **(b) Provisions of Federal-State agreement**

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

Any agreement under this section shall provide that the State agency of the State will make payments of short-time compensation under a plan approved by the State. Such plan shall provide that payments are made in accordance with the requirements under section 3306(v) of title 26.

#### **(2) Limitations on plans**

##### **(A) General payment limitations**

A short-time compensation plan approved by a State shall not permit the payment of short-time compensation to an individual by the State during a benefit year in excess of 26 times the amount of regular compensation (including dependents' allowances) under the State law payable to such individual for a week of total unemployment.

##### **(B) Employer limitations**

A short-time compensation plan approved by a State shall not provide payments to an individual if such individual is employed by the participating employer on a seasonal, temporary, or intermittent basis.

#### **(3) Employer payment of costs**

Any short-time compensation plan entered into by an employer must provide that the employer will pay the State an amount equal to one-half of the amount of short-time compensation paid under such plan. Such amount shall be deposited in the State's unemployment fund and shall not be used for purposes of calculating an employer's contribution rate under section 3303(a)(1) of title 26.

### **(c) Payments to States**

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

There shall be paid to each State with an agreement under this section an amount equal to—

(A) one-half of the amount of short-time compensation paid to individuals by the State pursuant to such agreement; and

(B) any additional administrative expenses incurred by the State by reason of such agreement (as determined by the Secretary).

#### **(2) Terms of payments**

Payments made to a State under paragraph (1) shall be payable by way of reimbursement in such amounts as the Secretary estimates the State will be entitled to receive under this section for each calendar month, reduced or increased, as the case may be, by any amount by which the Secretary finds that the Secretary's estimates for any prior calendar month were greater or less than the amounts which should have been paid to the State. Such estimates may be made on the basis of such statistical, sampling, or other method as may be agreed upon by the Secretary and the State agency of the State involved.

### **(3) Funding**

There are appropriated, out of moneys in the Treasury not otherwise appropriated, such sums as may be necessary for purposes of carrying out this section.

### **(4) Certifications**

The Secretary shall from time to time certify to the Secretary of the Treasury for payment to each State the sums payable to such State under this section.

### **(d) Applicability**

An agreement entered into under this section shall apply to weeks of unemployment—

- (1) beginning on or after the date on which such agreement is entered into; and
- (2) ending on or before September 6, 2021.

### **(e) Special rule**

If a State has entered into an agreement under this section and subsequently enacts a State law providing for the payment of short-time compensation under a short-time compensation program that meets the definition of such a program under section 3306(v) of title 26, the State—

- (1) shall not be eligible for payments under this section for weeks of unemployment beginning after the effective date of such State law; and
- (2) subject to section 9026(b)(2) of this title, shall be eligible to receive payments under section 9026 of this title after the effective date of such State law.

### **(f) Definitions**

In this section:

#### **(1) Secretary**

The term "Secretary" means the Secretary of Labor.

#### **(2) State; State agency; State law**

The terms "State", "State agency", and "State law" have the meanings given those terms in section 205 of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note).

(Pub. L. 116–136, div. A, title II, §2109, Mar. 27, 2020, 134 Stat. 329; Pub. L. 116–260, div. N, title II, §208, Dec. 27, 2020, 134 Stat. 1956; Pub. L. 117–2, title IX, §9018, Mar. 11, 2021, 135 Stat. 120.)

## **EDITORIAL NOTES**

### **REFERENCES IN TEXT**

Section 205 of the Federal-State Extended Unemployment Compensation Act of 1970, referred to in subsec. (f)(2), is section 205 of Pub. L. 91–373, which is set out in a note under section 3304 of Title 26, Internal Revenue Code.

### **AMENDMENTS**

**2021**—Subsec. (d)(2). Pub. L. 117–2 substituted "September 6, 2021" for "March 14, 2021".

**2020**—Subsec. (d)(2). Pub. L. 116–260 substituted "March 14, 2021" for "December 31, 2020".

## **§9028. Grants for short-time compensation programs**

### **(a) Grants**

#### **(1) For implementation or improved administration**

The Secretary shall award grants to States that enact short-time compensation programs (as defined in subsection (i)(2)) for the purpose of implementation or improved administration of such programs.



## **(2) For promotion and enrollment**

The Secretary shall award grants to States that are eligible and submit plans for a grant under paragraph (1) for such States to promote and enroll employers in short-time compensation programs (as so defined).

## **(3) Eligibility**

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

The Secretary shall determine eligibility criteria for the grants under paragraphs (1) and (2).

### **(B) Clarification**

A State administering a short-time compensation program that does not meet the definition of a short-time compensation program under section 3306(v) of title 26, and a State with an agreement under section 9027 of this title, shall not be eligible to receive a grant under this section until such time as the State law of the State provides for payments under a short-time compensation program that meets such definition and such law.

## **(b) Amount of grants**

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

The maximum amount available for making grants to a State under paragraphs (1) and (2) shall be equal to the amount obtained by multiplying \$100,000,000 (less the amount used by the Secretary under subsection (e)) by the same ratio as would apply under subsection (a)(2)(B) of section 1103 of title 42 for purposes of determining such State's share of any excess amount (as described in subsection (a)(1) of such section) that would have been subject to transfer to State accounts, as of October 1, 2019, under the provisions of subsection (a) of such section.

### **(2) Amount available for different grants**

Of the maximum incentive payment determined under paragraph (1) with respect to a State—

(A) one-third shall be available for a grant under subsection (a)(1); and

(B) two-thirds shall be available for a grant under subsection (a)(2).

## **(c) Grant application and disbursal**

### **(1) Application**

Any State seeking a grant under paragraph (1) or (2) of subsection (a) shall submit an application to the Secretary at such time, in such manner, and complete with such information as the Secretary may require. In no case may the Secretary award a grant under this section with respect to an application that is submitted after December 31, 2023.

### **(2) Notice**

The Secretary shall, within 30 days after receiving a complete application, notify the State agency of the State of the Secretary's findings with respect to the requirements for a grant under paragraph (1) or (2) (or both) of subsection (a).

### **(3) Certification**

If the Secretary finds that the State law provisions meet the requirements for a grant under subsection (a), the Secretary shall thereupon make a certification to that effect to the Secretary of the Treasury, together with a certification as to the amount of the grant payment to be transferred to the State account in the Unemployment Trust Fund (as established in section 1104(a) of title 42) pursuant to that finding. The Secretary of the Treasury shall make the appropriate transfer to the State account within 7 days after receiving such certification.

### **(4) Requirement**

No certification of compliance with the requirements for a grant under paragraph (1) or (2) of subsection (a) may be made with respect to any State whose—

(A) State law is not otherwise eligible for certification under section 503 of title 42 or approvable under section 3304 of title 26; or

(B) short-time compensation program is subject to discontinuation or is not scheduled to take effect within 12 months of the certification.

**(d) Use of funds**

The amount of any grant awarded under this section shall be used for the implementation of short-time compensation programs and the overall administration of such programs and the promotion and enrollment efforts associated with such programs, such as through—

- (1) the creation or support of rapid response teams to advise employers about alternatives to layoffs;
- (2) the provision of education or assistance to employers to enable them to assess the feasibility of participating in short-time compensation programs; and
- (3) the development or enhancement of systems to automate—
  - (A) the submission and approval of plans; and
  - (B) the filing and approval of new and ongoing short-time compensation claims.

**(e) Administration**

The Secretary is authorized to use 0.25 percent of the funds available under subsection (g) to provide for outreach and to share best practices with respect to this section and short-time compensation programs.

**(f) Recoupment**

The Secretary shall establish a process under which the Secretary shall recoup the amount of any grant awarded under paragraph (1) or (2) of subsection (a) if the Secretary determines that, during the 5-year period beginning on the first date that any such grant is awarded to the State, the State—

- (1) terminated the State's short-time compensation program; or
- (2) failed to meet appropriate requirements with respect to such program (as established by the Secretary).

**(g) Funding**

There are appropriated, out of moneys in the Treasury not otherwise appropriated, to the Secretary, \$100,000,000 to carry out this section, to remain available without fiscal year limitation.

**(h) Reporting**

The Secretary may establish reporting requirements for States receiving a grant under this section in order to provide oversight of grant funds.

**(i) Definitions**

In this section:

**(1) Secretary**

The term "Secretary" means the Secretary of Labor.

**(2) Short-time compensation program**

The term "short-time compensation program" has the meaning given such term in section 3306(v) of title 26.

**(3) State; State agency; State law**

The terms "State", "State agency", and "State law" have the meanings given those terms in section 205 of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note).

(Pub. L. 116–136, div. A, title II, §2110, Mar. 27, 2020, 134 Stat. 331.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

Section 205 of the Federal-State Extended Unemployment Compensation Act of 1970, referred to in subsec. (i)(3), is section 205 of Pub. L. 91–373, which is set out in a note under section 3304 of Title 26, Internal

Revenue Code.

## **§9029. Assistance and guidance in implementing programs**

### **(a) In general**

In order to assist States in establishing, qualifying, and implementing short-time compensation programs (as defined in section 3306(v) of title 26), the Secretary of Labor (in this section referred to as the "Secretary") shall—

- (1) develop model legislative language, or disseminate existing model legislative language, which may be used by States in developing and enacting such programs, and periodically review and revise such model legislative language;
- (2) provide technical assistance and guidance in developing, enacting, and implementing such programs; and
- (3) establish reporting requirements for States, including reporting on—
  - (A) the number of estimated averted layoffs;
  - (B) the number of participating employers and workers; and
  - (C) such other items as the Secretary of Labor determines are appropriate.

### **(b) Model language and guidance**

The model language and guidance developed under subsection (a) shall allow sufficient flexibility by States and participating employers while ensuring accountability and program integrity.

### **(c) Consultation**

In developing the model legislative language and guidance under subsection (a), and in order to meet the requirements of subsection (b), the Secretary shall consult with employers, labor organizations, State workforce agencies, and other program experts. Existing model legislative language that has been developed through such a consultative process shall be deemed to meet the consultation requirement of this subsection.

(Pub. L. 116–136, div. A, title II, §2111, Mar. 27, 2020, 134 Stat. 333.)

## **EDITORIAL NOTES**

### **CODIFICATION**

Section is comprised of section 2111 of Pub. L. 116–136. Subsec. (d) of section 2111 of Pub. L. 116–136 repealed provisions formerly set out as a note under section 3306 of Title 26, Internal Revenue Code.

## **§9030. Waiver of the 7-day waiting period for benefits under the Railroad Unemployment Insurance Act**

### **(a) No waiting week**

With respect to any registration period beginning after March 27, 2020, and ending on or before September 6, 2021, subparagraphs (A)(ii) and (B)(ii) of section 2(a)(1) of the Railroad Unemployment Insurance Act (45 U.S.C. 352(a)(1)) shall not apply.

### **(b) Operating instructions and regulations**

The Railroad Retirement Board may prescribe any operating instructions or regulations necessary to carry out this section.

### **(c) Funding**

Out of any funds in the Treasury not otherwise appropriated, there are appropriated \$50,000,000 to cover the costs of additional benefits payable due to the application of subsection (a). Upon the exhaustion of the funds appropriated under this subsection, subsection (a) shall no longer apply with respect to any registration period beginning after the date of exhaustion of funds.

**(d) Definition of registration period**

For purposes of this section, the term "registration period" has the meaning given such term under section 1 of the Railroad Unemployment Insurance Act (45 U.S.C. 351).

(Pub. L. 116–136, div. A, title II, §2112, Mar. 27, 2020, 134 Stat. 333; Pub. L. 116–260, div. N, title II, §234(a), Dec. 27, 2020, 134 Stat. 1959; Pub. L. 117–2, title II, §2903(a), Mar. 11, 2021, 135 Stat. 50.)

**EDITORIAL NOTES**

**AMENDMENTS**

**2021**—Subsec. (a). Pub. L. 117–2 substituted "September 6, 2021" for "March 14, 2021".

**2020**—Subsec. (a). Pub. L. 116–260 substituted "March 14, 2021" for "December 31, 2020".

**STATUTORY NOTES AND RELATED SUBSIDIARIES**

**REGULATIONS**

Pub. L. 116–260, div. N, title II, §234(b), Dec. 27, 2020, 134 Stat. 1959, provided that: "The Railroad Retirement Board may prescribe any operating instructions or regulations necessary to carry out this section [amending this section and enacting provisions set out as a note under this section]."

**CLARIFICATION ON AUTHORITY TO USE FUNDS**

Pub. L. 117–2, title II, §2903(b), Mar. 11, 2021, 135 Stat. 50, provided that: "Funds appropriated under section 2112(c) of the CARES Act (15 U.S.C. 9030(c)) shall be available to cover the cost of additional benefits payable due to section 2112(a) of such Act by reason of the amendments made by subsection (a) [amending this section] as well as to cover the cost of such benefits payable due to such section 2112(a) as in effect on the day before the date of enactment of this Act [Mar. 11, 2021]."

Pub. L. 116–260, div. N, title II, §234(c), Dec. 27, 2020, 134 Stat. 1959, provided that: "Funds appropriated under section 2112(c) of the CARES Act (15 U.S.C. 9030(c)) shall be available to cover the cost of additional benefits payable due to section 2112(a) of such Act [15 U.S.C. 9030(a)] by reason of the amendments made by subsection (a) [amending this section] as well as to cover the cost of such benefits payable due to such section 2112(a) as in effect on the day before the date of enactment of this Act [Dec. 27, 2020]."

**§9031. Funding for the DOL Office of Inspector General for oversight of unemployment provisions**

There are appropriated, out of moneys in the Treasury not otherwise appropriated, to the Office of the Inspector General of the Department of Labor, \$25,000,000 to carry out audits, investigations, and other oversight activities authorized under the Inspector General Act of 1978 (5 U.S.C. App.) <sup>1</sup> that are related to the provisions of, and amendments made by, this subtitle, to remain available without fiscal year limitation.

(Pub. L. 116–136, div. A, title II, §2115, Mar. 27, 2020, 134 Stat. 334.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

The Inspector General Act of 1978, referred to in text, is Pub. L. 95–452, Oct. 12, 1978, 92 Stat. 1101, which was set out in the Appendix to Title 5, Government Organization and Employees, and was substantially repealed and restated in chapter 4 (§401 et seq.) of Title 5 by Pub. L. 117–286, §§3(b), 7, Dec. 27, 2022, 136 Stat. 4206, 4361. For disposition of sections of the Act into chapter 4 of Title 5, see Disposition Table preceding section 101 of Title 5.

This subtitle, referred to in text, is subtitle A (§2101 et seq.) of title II of div. A of Pub. L. 116–136, Mar. 27, 2020, 134 Stat. 313, known as the Relief for Workers Affected by Coronavirus Act. For complete classification of subtitle A to the Code, see Short Title note set out under section 9001 of this title and Tables.

[<sup>1</sup> See References in Text note below.](#)

## **§9032. Implementation**

### **(a) Non-application of the Paperwork Reduction Act**

Chapter 35 of title 44 (commonly referred to as the "Paperwork Reduction Act of 1995"),<sup>1</sup> shall not apply to the provisions of, and the amendments made by, this subtitle.

### **(b) Operating instructions or other guidance**

Notwithstanding any other provision of law, the Secretary of Labor may issue any operating instructions or other guidance necessary to carry out the provisions of, or the amendments made by, this subtitle.

(Pub. L. 116–136, div. A, title II, §2116, Mar. 27, 2020, 134 Stat. 335.)

## **EDITORIAL NOTES**

### **REFERENCES IN TEXT**

This subtitle, referred to in text, is subtitle A (§2101 et seq.) of title II of div. A of Pub. L. 116–136, Mar. 27, 2020, 134 Stat. 313, known as the Relief for Workers Affected by Coronavirus Act. For complete classification of subtitle A to the Code, see Short Title note set out under section 9001 of this title and Tables.

[<sup>1</sup> So in original.](#)

## **§9033. Return to work reporting**

Each State participating in an agreement under any of the preceding sections of this subtitle shall have in effect a method to address any circumstances in which, during any period during which such agreement is in effect, claimants of unemployment compensation refuse to return to work or to accept an offer of suitable work without good cause. Such method shall include the following:

(1) A reporting method for employers, such as through a phone line, email, or online portal, to notify the State agency when an individual refuses an offer of employment.

(2) A plain-language notice provided to such claimants about State return to work laws, rights to refuse to return to work or to refuse suitable work, including what constitutes suitable work, and a claimant's right to refuse work that poses a risk to the claimant's health or safety, and information on contesting the denial of a claim that has been denied due to a report by an employer that the claimant refused to return to work or refused suitable work.

(Pub. L. 116–136, div. A, title II, §2117, as added Pub. L. 116–260, div. N, title II, §251(a), Dec. 27, 2020, 134 Stat. 1961.)

## **EDITORIAL NOTES**

### **REFERENCES IN TEXT**

This subtitle, referred to in text, is subtitle A (§2101 et seq.) of title II of div. A of Pub. L. 116–136, Mar. 27, 2020, 134 Stat. 313, known as the Relief for Workers Affected by Coronavirus Act. For complete classification of subtitle A to the Code, see Short Title note set out under section 9001 of this title and Tables.

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **EFFECTIVE DATE**

Pub. L. 116–260, div. N, title II, §251(b), Dec. 27, 2020, 134 Stat. 1961, provided that: "The requirements

imposed by this section [enacting this section] shall take effect 30 days from the date of enactment of this Act [Dec. 27, 2020]."

### **§9034. Funding for fraud prevention, equitable access, and timely payment to eligible workers**

#### **(a) In general**

In addition to amounts otherwise available, there is appropriated to the Secretary of Labor for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, \$2,000,000,000, to remain available until expended, to detect and prevent fraud, promote equitable access, and ensure the timely payment of benefits with respect to unemployment compensation programs, including programs extended under subtitle A of title IX of the American Rescue Plan Act of 2021.

#### **(b) Use of funds**

Amounts made available under subsection (a) may be used—

- (1) for Federal administrative costs related to the purposes described in subsection (a);
- (2) for systemwide infrastructure investment and development related to such purposes; and
- (3) to make grants to States or territories administering unemployment compensation programs described in subsection (a) (including territories administering the Pandemic Unemployment Assistance program under section 9021 of this title) for such purposes, including the establishment of procedures or the building of infrastructure to verify or validate identity, implement Federal guidance regarding fraud detection and prevention, and accelerate claims processing or process claims backlogs due to the pandemic.

#### **(c) Restrictions on grants to States and territories**

As a condition of receiving a grant under subsection (b)(3), the Secretary may require that a State or territory receiving such a grant shall—

- (1) use such program integrity tools as the Secretary may specify; and
- (2) as directed by the Secretary, conduct user accessibility testing on any new system developed by the Secretary pursuant to subsection (b)(2).

(Pub. L. 116–136, div. A, title II, §2118, as added Pub. L. 117–2, title IX, §9032, Mar. 11, 2021, 135 Stat. 121.)

### **EDITORIAL NOTES**

#### **REFERENCES IN TEXT**

Subtitle A of title IX of the American Rescue Plan Act of 2021, referred to in subsec. (a), is subtitle A (§§9011–9042) of title IX of Pub. L. 117–2, Mar. 11, 2021, 135 Stat. 118. For complete classification of subtitle A to the Code, see Tables.

## **SUBCHAPTER III—ECONOMIC STABILIZATION AND ASSISTANCE TO SEVERELY DISTRESSED SECTORS OF THE UNITED STATES ECONOMY**

### **PART A—CORONAVIRUS ECONOMIC STABILIZATION**

#### **§9041. Definitions**

In this part:

**(1) Air carrier**

The term "air carrier" has the meaning such term has under section 40102 of title 49.

**(2) Coronavirus**

The term "coronavirus" means SARS-CoV-2 or another coronavirus with pandemic potential.

**(3) Covered loss**

The term "covered loss" includes losses incurred directly or indirectly as a result of coronavirus, as determined by the Secretary.

**(4) Eligible business**

The term "eligible business" means—

(A) an air carrier; or

(B) a United States business that has not otherwise received adequate economic relief in the form of loans or loan guarantees provided under this Act.

**(5) Employee**

Except where the context otherwise requires, the term "employee"—

(A) has the meaning given the term in section 152 of title 29; and

(B) includes any individual employed by an employer subject to the Railway Labor Act (45 U.S.C. 151 et seq.).

**(6) Equity security; exchange**

The terms "equity security" and "exchange" have the meanings given the terms in section 78c(a) of this title.

**(7) Municipality**

The term "municipality" includes—

(A) a political subdivision of a State, and

(B) an instrumentality of a municipality, a State, or a political subdivision of a State.

**(8) National securities exchange**

The term "national securities exchange" means an exchange registered as a national securities exchange under section 78f of this title.

**(9) Secretary**

The term "Secretary" means the Secretary of the Treasury, or the designee of the Secretary of the Treasury.

**(10) State**

The term "State" means—

(A) any of the several States;

(B) the District of Columbia;

(C) any of the territories and possessions of the United States;

(D) any bi-State or multi-State entity; and

(E) any Indian Tribe.

**(11) Aerospace-related businesses critical to maintaining national security**

The term "businesses critical to maintaining national security" means those businesses that manufacture or produce aerospace-related products, civil or defense, including those that design, integrate, assemble, supply, maintain, and repair such products, and other businesses involved in aerospace-related manufacturing or production as further defined by the Secretary, in consultation with the Secretary of Defense and the Secretary of Transportation. For purposes of the preceding sentence, aerospace-related products include, but are not limited to, components, parts, or systems of aircraft, aircraft engines, or appliances for inclusion in an aircraft, aircraft engine, or appliance.

(Pub. L. 116–136, div. A, title IV, §4002, Mar. 27, 2020, 134 Stat. 469; Pub. L. 116–260, div. N, title IV, §412(c), Dec. 27, 2020, 134 Stat. 2061.)

## EDITORIAL NOTES

### REFERENCES IN TEXT

This part, referred to in text, was in the original "this subtitle", meaning subtitle A (§§4001–4029) of title IV of div. A of Pub. L. 116–136, known as the Coronavirus Economic Stabilization Act of 2020, which is classified principally to this part. For complete classification of subtitle A to the Code, see section 4001 of Pub. L. 116–136, set out as a Short Title note under section 9001 of this title, and Tables.

This Act, referred to in par. (4)(B), probably means subtitle A (§§4001–4029) of title IV of div. A of Pub. L. 116–136, known as the Coronavirus Economic Stabilization Act of 2020, which is classified principally to this part. For complete classification of this Act to the Code, see section 4001 of Pub. L. 116–136, set out as a Short Title note under section 9001 of this title, and Tables.

The Railway Labor Act, referred to in par. (5)(B), is act May 20, 1926, ch. 347, 44 Stat. 577, which is classified principally to chapter 8 (§151 et seq.) of Title 45, Railroads. For complete classification of this Act to the Code, see section 151 of Title 45 and Tables.

### AMENDMENTS

**2020**—Par. (11). Pub. L. 116–260 added par. (11).

## §9042. Emergency relief and taxpayer protections

### (a) In general

Notwithstanding any other provision of law, to provide liquidity to eligible businesses, States, and municipalities related to losses incurred as a result of coronavirus, the Secretary is authorized to make loans, loan guarantees, and other investments in support of eligible businesses, States, and municipalities that do not, in the aggregate, exceed \$0 and provide the subsidy amounts necessary for such loans, loan guarantees, and other investments in accordance with the provisions of the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.).

### (b) Loans, loan guarantees, and other investments

Loans, loan guarantees, and other investments made pursuant to subsection (a) shall be made available as follows:

(1) Not more than \$0 shall be available to make loans and loan guarantees for passenger air carriers, eligible businesses that are certified under part 145 of title 14, Code of Federal Regulations, and approved to perform inspection, repair, replace, or overhaul services, and ticket agents (as defined in section 40102 of title 49).

(2) Not more than 0 <sup>1</sup>/<sub>1</sub> shall be available to make loans and loan guarantees for cargo air carriers.

(3) Not more than 0 <sup>1</sup>/<sub>1</sub> shall be available to make loans and loan guarantees for businesses critical to maintaining national security.

(4) Not more than the sum of \$0 and any amounts available under paragraphs (1), (2), and (3) that are not used as provided under those paragraphs shall be available to make loans and loan guarantees to, and other investments in, programs or facilities established by the Board of Governors of the Federal Reserve System for the purpose of providing liquidity to the financial system that supports lending to eligible businesses, States, or municipalities by—

(A) purchasing obligations or other interests directly from issuers of such obligations or other interests;

(B) purchasing obligations or other interests in secondary markets or otherwise; or

(C) making loans, including loans or other advances secured by collateral.

### (c) Terms and conditions

#### (1) In general



**(A) Forms; terms and conditions**

A loan, loan guarantee, or other investment by the Secretary shall be made under this section in such form and on such terms and conditions and contain such covenants, representations, warranties, and requirements (including requirements for audits) as the Secretary determines appropriate. Any loans made by the Secretary under this section shall be at a rate determined by the Secretary based on the risk and the current average yield on outstanding marketable obligations of the United States of comparable maturity.

**(B) Procedures**

As soon as practicable, but in no case later than 10 days after March 27, 2020, the Secretary shall publish procedures for application and minimum requirements, which may be supplemented by the Secretary in the Secretary's discretion, for making loans, loan guarantees, or other investments under paragraphs (1), (2) and (3) of subsection (b) .

**(2) Loans and loan guarantees**

The Secretary may enter into agreements to make loans or loan guarantees to 1 or more eligible businesses under paragraphs (1), (2) and (3) of subsection (b) if the Secretary determines that, in the Secretary's discretion—

(A) the applicant is an eligible business for which credit is not reasonably available at the time of the transaction;

(B) the intended obligation by the applicant is prudently incurred;

(C) the loan or loan guarantee is sufficiently secured or is made at a rate that—

(i) reflects the risk of the loan or loan guarantee; and

(ii) is to the extent practicable, not less than an interest rate based on market conditions for comparable obligations prevalent prior to the outbreak of the coronavirus disease 2019 (COVID-19);

(D) the duration of the loan or loan guarantee is as short as practicable and in any case not longer than 5 years;

(E) the agreement provides that, until the date 12 months after the date the loan or loan guarantee is no longer outstanding, neither the eligible business nor any affiliate of the eligible business may purchase an equity security that is listed on a national securities exchange of the eligible business or any parent company of the eligible business, except to the extent required under a contractual obligation in effect as of March 27, 2020;

(F) the agreement provides that, until the date 12 months after the date the loan or loan guarantee is no longer outstanding, the eligible business shall not pay dividends or make other capital distributions with respect to the common stock of the eligible business;

(G) the agreement provides that, until September 30, 2020, the eligible business shall maintain its employment levels as of March 24, 2020, to the extent practicable, and in any case shall not reduce its employment levels by more than 10 percent from the levels on such date;

(H) the agreement includes a certification by the eligible business that it is created or organized in the United States or under the laws of the United States and has significant operations in and a majority of its employees based in the United States; and

(I) for purposes of a loan or loan guarantee under paragraphs (1), (2), and (3) of subsection (b), the eligible business must have incurred or is expected to incur covered losses such that the continued operations of the business are jeopardized, as determined by the Secretary.

**(3) Federal reserve programs or facilities**

**(A) Terms and conditions**

**(i) Definition**

In this paragraph, the term "direct loan" means a loan under a bilateral loan agreement that is —

(I) entered into directly with an eligible business as borrower; and

(II) not part of a syndicated loan, a loan originated by a financial institution in the ordinary course of business, or a securities or capital markets transaction.

**(ii) Restrictions**

The Secretary may make a loan, loan guarantee, or other investment under subsection (b)(4) as part of a program or facility that provides direct loans only if the applicable eligible businesses agree—

(I) until the date 12 months after the date on which the direct loan is no longer outstanding, not to repurchase an equity security that is listed on a national securities exchange of the eligible business or any parent company of the eligible business while the direct loan is outstanding, except to the extent required under a contractual obligation that is in effect as of March 27, 2020;

(II) until the date 12 months after the date on which the direct loan is no longer outstanding, not to pay dividends or make other capital distributions with respect to the common stock of the eligible business; and

(III) to comply with the limitations on compensation set forth in section 9043 of this title.

**(iii) Waiver**

The Secretary may waive the requirement under clause (ii) with respect to any program or facility upon a determination that such waiver is necessary to protect the interests of the Federal Government. If the Secretary exercises a waiver under this clause, the Secretary shall make himself available to testify before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives regarding the reasons for the waiver.

**(B) Federal Reserve Act taxpayer protections and other requirements apply**

For the avoidance of doubt, any applicable requirements under section 13(3) of the Federal Reserve Act (12 U.S.C. 343(3)), including requirements relating to loan collateralization, taxpayer protection, and borrower solvency, shall apply with respect to any program or facility described in subsection (b)(4).

**(C) United States businesses**

A program or facility in which the Secretary makes a loan, loan guarantee, or other investment under subsection (b)(4) shall only purchase obligations or other interests (other than securities that are based on an index or that are based on a diversified pool of securities) from, or make loans or other advances to, businesses that are created or organized in the United States or under the laws of the United States and that have significant operations in and a majority of its employees based in the United States.

**(D) Assistance for mid-sized businesses**

**(i) In general**

Without limiting the terms and conditions of the programs and facilities that the Secretary may otherwise provide financial assistance to under subsection (b)(4), the Secretary shall endeavor to seek the implementation of a program or facility described in subsection (b)(4) that provides financing to banks and other lenders that make direct loans to eligible businesses including, to the extent practicable, nonprofit organizations, with between 500 and 10,000 employees, with such direct loans being subject to an annualized interest rate that is not higher than 2 percent per annum. For the first 6 months after any such direct loan is made, or for such longer period as the Secretary may determine in his discretion, no principal or interest shall be due and payable. Any eligible borrower applying for a direct loan under this program shall make a good-faith certification that—

(I) the uncertainty of economic conditions as of the date of the application makes necessary the loan request to support the ongoing operations of the recipient;

(II) the funds it receives will be used to retain at least 90 percent of the recipient's

workforce, at full compensation and benefits, until September 30, 2020;

(III) the recipient intends to restore not less than 90 percent of the workforce of the recipient that existed as of February 1, 2020, and to restore all compensation and benefits to the workers of the recipient no later than 4 months after the termination date of the public health emergency declared by the Secretary of Health and Human Services on January 31, 2020, under section 247d of title 42 in response to COVID-19;

(IV) the recipient is an entity or business that is domiciled in the United States with significant operations and employees located in the United States;

(V) the recipient is not a debtor in a bankruptcy proceeding;

(VI) the recipient is created or organized in the United States or under the laws of the United States and has significant operations in and a majority of its employees based in the United States;

(VII) the recipient will not pay dividends with respect to the common stock of the eligible business, or repurchase an equity security that is listed on a national securities exchange of the recipient or any parent company of the recipient while the direct loan is outstanding, except to the extent required under a contractual obligation that is in effect as of March 27, 2020;

(VIII) the recipient will not outsource or offshore jobs for the term of the loan and 2 years after completing repayment of the loan;

(IX) the recipient will not abrogate existing collective bargaining agreements for the term of the loan and 2 years after completing repayment of the loan; and

(X) that the recipient will remain neutral in any union organizing effort for the term of the loan.

**(ii) Main street lending program**

Nothing in this subparagraph shall limit the discretion of the Board of Governors of the Federal Reserve System to establish a Main Street Lending Program or other similar program or facility that supports lending to small and mid-sized businesses on such terms and conditions as the Board may set consistent with section 13(3) of the Federal Reserve Act (12 U.S.C. 343(3)), including any such program in which the Secretary makes a loan, loan guarantee, or other investment under subsection (b)(4).

**(E) Government participants**

The Secretary shall endeavor to seek the implementation of a program or facility in accordance with subsection (b)(4) that provides liquidity to the financial system that supports lending to States and municipalities.

**(d) Financial protection of government**

**(1) Warrant or senior debt instrument**

The Secretary may not issue a loan to, or a loan guarantee for, an eligible business under paragraph (1), (2), or (3) of subsection (b) unless—

(A)(i) the eligible business has issued securities that are traded on a national securities exchange; and

(ii) the Secretary receives a warrant or equity interest in the eligible business; or

(B) in the case of any eligible business other than an eligible business described in subparagraph (A), the Secretary receives, in the discretion of the Secretary—

(i) a warrant or equity interest in the eligible business; or

(ii) a senior debt instrument issued by the eligible business.

**(2) Terms and conditions**

The terms and conditions of any warrant, equity interest, or senior debt instrument received under paragraph (1) shall be set by the Secretary and shall meet the following requirements:

**(A) Purposes**

Such terms and conditions shall be designed to provide for a reasonable participation by the

Secretary, for the benefit of taxpayers, in equity appreciation in the case of a warrant or other equity interest, or a reasonable interest rate premium, in the case of a debt instrument.

**(B) Authority to sell, exercise, or surrender**

For the primary benefit of taxpayers, the Secretary may sell, exercise, or surrender a warrant or any senior debt instrument received under this subsection. The Secretary shall not exercise voting power with respect to any shares of common stock acquired under this section.

**(C) Sufficiency**

If the Secretary determines that the eligible business cannot feasibly issue warrants or other equity interests as required by this subsection, the Secretary may accept a senior debt instrument in an amount and on such terms as the Secretary deems appropriate.

**(3) Prohibition on loan forgiveness**

The principal amount of any obligation issued by an eligible business, State, or municipality under a program described in subsection (b) shall not be reduced through loan forgiveness.

**(e) Deposit of proceeds**

Notwithstanding any other provision of law, amounts collected under subsection (b) shall be deposited in the following order of priority:

(1) Into the financing accounts established under section 505 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661d) to implement this part, up to an amount equal to the sum of—

(A) the amount transferred from the appropriation made under section 9061 of this title to the financing accounts; and

(B) the amount necessary to repay any amount lent from the Treasury to such financing accounts.

(2) After the deposits specified in paragraph (1) of this subsection have been made, into the Federal Old-Age and Survivors Insurance Trust Fund established under section 401(a) of title 42.

**(f) Administrative provisions**

Notwithstanding any other provision of law, the Secretary may use not greater than 61,000,000 <sup>1</sup> of the funds made available under section 9061 of this title to pay costs and administrative expenses associated with the loans, loan guarantees, and other investments authorized under this section. The Secretary is authorized to take such actions as the Secretary deems necessary to carry out the authorities in this part, including, without limitation—

(1) using direct hiring authority to hire employees to administer this part;

(2) entering into contracts, including contracts for services authorized by this part;

(3) establishing vehicles that are authorized, subject to supervision by the Secretary, to purchase, hold, and sell assets and issue obligations; and

(4) issuing such regulations and other guidance as may be necessary or appropriate to carry out the authorities or purposes of this part.

**(g) Financial agents**

The Secretary is authorized to designate financial institutions, including but not limited to, depositories, brokers, dealers, and other institutions, as financial agents of the United States. Such institutions shall—

(1) perform all reasonable duties the Secretary determines necessary to respond to the coronavirus; and

(2) be paid for such duties using appropriations available to the Secretary to reimburse financial institutions in their capacity as financial agents of the United States.

**(h) Loans made by or guaranteed by the Department of the Treasury treated as indebtedness for tax purposes**

**(1) In general**

Any loan made by or guaranteed by the Department of the Treasury under this section shall be treated as indebtedness for purposes of the Internal Revenue Code of 1986, shall be treated as issued for its stated principal amount, and stated interest on such loans shall be treated as qualified stated interest.

## **(2) Regulations or guidance**

The Secretary of the Treasury (or the Secretary's delegate) shall prescribe such regulations or guidance as may be necessary or appropriate to carry out the purposes of this section, including guidance providing that the acquisition of warrants, stock options, common or preferred stock or other equity under this section does not result in an ownership change for purposes of section 382 of the Internal Revenue Code of 1986 [26 U.S.C. 382].

(Pub. L. 116–136, div. A, title IV, §4003, Mar. 27, 2020, 134 Stat. 470; Pub. L. 116–260, div. N, title X, §§1003(b)(1), 1004, Dec. 27, 2020, 134 Stat. 2146; Pub. L. 117–328, div. LL, §102(d)(1)(A), Dec. 29, 2022, 136 Stat. 6103.)

## **EDITORIAL NOTES**

### **REFERENCES IN TEXT**

The Federal Credit Reform Act of 1990, referred to in subsec. (a), is title V of Pub. L. 93–344, as added by Pub. L. 101–508, title XIII, §13201(a), Nov. 5, 1990, 104 Stat. 1388–609, which is classified generally to subchapter III (§661 et seq.) of chapter 17A of Title 2, The Congress. For complete classification of this Act to the Code, see Short Title note set out under section 621 of Title 2 and Tables.

This part, referred to in subsecs. (e)(1) and (f), was in the original "this subtitle", meaning subtitle A (§§4001–4029) of title IV of div. A of Pub. L. 116–136, which is classified principally to this part. For complete classification of subtitle A to the Code, see section 4001 of Pub. L. 116–136, set out as a Short Title note under section 9001 of this title, and Tables.

The Internal Revenue Code of 1986, referred to in subsec. (h)(1), is classified generally to Title 26, Internal Revenue Code.

## **AMENDMENTS**

**2022**—Subsec. (f). Pub. L. 117–328 substituted "61,000,000" for "\$100,000,000" in introductory provisions.

**2020**—Subsec. (a). Pub. L. 116–260, §1003(b)(1)(A), substituted "\$0" for "\$500,000,000,000".

Subsec. (b)(1). Pub. L. 116–260, §1003(b)(1)(B)(i), substituted "0" for "25,000,000,000".

Subsec. (b)(2). Pub. L. 116–260, §1003(b)(1)(B)(ii), substituted "0" for "\$4,000,000,000".

Subsec. (b)(3). Pub. L. 116–260, §1003(b)(1)(B)(iii), substituted "0" for "\$17,000,000,000".

Subsec. (b)(4). Pub. L. 116–260, §1003(b)(1)(B)(iv), substituted "\$0" for "\$454,000,000,000" in introductory provisions.

Subsec. (e). Pub. L. 116–260, §1004, substituted "Notwithstanding any other provision of law, amounts" for "Amounts" in introductory provisions.

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **EFFECTIVE DATE OF 2022 AMENDMENT**

Amendment by Pub. L. 117–328 effective upon issuance of guidance or the promulgation of a rule by the Secretary of the Treasury, in consultation with the Secretary of Transportation, see section 102(c) of Pub. L. 117–328, set out as a note under section 802 of Title 42, The Public Health and Welfare.

### **EFFECTIVE DATE OF 2020 AMENDMENT**

Pub. L. 116–260, div. N, title X, §1003(b)(1), Dec. 27, 2020, 134 Stat. 2146, provided in part that the amendment made by section 1003(b)(1) is effective Jan. 9, 2021.

### **CONSTRUCTION OF 2020 AMENDMENT**

Pub. L. 116–260, div. N, title X, §1003(b)(2), Dec. 27, 2020, 134 Stat. 2146, provided that: "The amendments made under paragraph (1) [amending this section] shall not be construed to affect obligations incurred by the Department of the Treasury before January 1, 2021."

<sup>1</sup> So in original. Probably should be preceded by a dollar sign.

### **§9043. Limitation on certain employee compensation**

#### **(a) In general**

The Secretary may only enter into an agreement with an eligible business to make a loan or loan guarantee under paragraph (1), (2) or (3) of section 9042(b) of this title if such agreement provides that, during the period beginning on the date on which the agreement is executed and ending on the date that is 1 year after the date on which the loan or loan guarantee is no longer outstanding—

(1) no officer or employee of the eligible business whose total compensation exceeded \$425,000 in calendar year 2019 (other than an employee whose compensation is determined through an existing collective bargaining agreement entered into prior to March 1, 2020)—

(A) will receive from the eligible business total compensation which exceeds, during any 12 consecutive months of such period, the total compensation received by the officer or employee from the eligible business in calendar year 2019; or

(B) will receive from the eligible business severance pay or other benefits upon termination of employment with the eligible business which exceeds twice the maximum total compensation received by the officer or employee from the eligible business in calendar year 2019; and

(2) no officer or employee of the eligible business whose total compensation exceeded \$3,000,000 in calendar year 2019 may receive during any 12 consecutive months of such period total compensation in excess of the sum of—

(A) \$3,000,000; and

(B) 50 percent of the excess over \$3,000,000 of the total compensation received by the officer or employee from the eligible business in calendar year 2019.

#### **(b) Total compensation defined**

In this section, the term "total compensation" includes salary, bonuses, awards of stock, and other financial benefits provided by an eligible business to an officer or employee of the eligible business.

(Pub. L. 116–136, div. A, title IV, §4004, Mar. 27, 2020, 134 Stat. 476.)

### **§9044. Continuation of certain air service**

The Secretary of Transportation is authorized to require, to the extent reasonable and practicable, an air carrier receiving loans and loan guarantees under section 9042 of this title to maintain scheduled air transportation service as the Secretary of Transportation deems necessary to ensure services to any point served by that carrier before March 1, 2020. When considering whether to exercise the authority granted by this section, the Secretary of Transportation shall take into consideration the air transportation needs of small and remote communities and the need to maintain well-functioning health care and pharmaceutical supply chains, including for medical devices and supplies. The authority under this section, including any requirement issued by the Secretary under this section, shall terminate on March 1, 2022.

(Pub. L. 116–136, div. A, title IV, §4005, Mar. 27, 2020, 134 Stat. 477.)

### **§9045. Coordination with Secretary of Transportation**

In implementing this part with respect to air carriers, the Secretary shall coordinate with the Secretary of Transportation.

(Pub. L. 116–136, div. A, title IV, §4006, Mar. 27, 2020, 134 Stat. 477.)

## EDITORIAL NOTES

### REFERENCES IN TEXT

This part, referred to in text, was in the original "this subtitle", meaning subtitle A (§§4001–4029) of title IV of div. A of Pub. L. 116–136, which is classified principally to this part. For complete classification of subtitle A to the Code, see section 4001 of Pub. L. 116–136, set out as a Short Title note under section 9001 of this title, and Tables.

## **§9046. Suspension of certain aviation excise taxes**

### **(a) Transportation by air**

In the case of any amount paid for transportation by air (including any amount treated as paid for transportation by air by reason of section 4261(e)(3) of title 26) during the excise tax holiday period, no tax shall be imposed under section 4261 or 4271 of title 26. The preceding sentence shall not apply to amounts paid on or before March 27, 2020.

### **(b) Use of Kerosene in commercial aviation**

In the case of kerosene used in commercial aviation (as defined in section 4083 of title 26) during the excise tax holiday period—

(1) no tax shall be imposed on such kerosene under—

(A) section 4041(c) of title 26, or

(B) section 4081 of title 26 (other than at the rate provided in subsection (a)(2)(B) thereof),  
and

(2) section 6427(l) of title 26 shall be applied—

(A) by treating such use as a nontaxable use, and

(B) without regard to paragraph (4)(A)(ii) thereof.

### **(c) Excise tax holiday period**

For purposes of this section, the term "excise tax holiday period" means the period beginning after March 27, 2020, and ending before January 1, 2021.

(Pub. L. 116–136, div. A, title IV, §4007, Mar. 27, 2020, 134 Stat. 477.)

## **§9047. Federal credit union transaction account guarantees**

Notwithstanding any other provision of law and in coordination with the Federal Deposit Insurance Corporation, the National Credit Union Administration Board may by a vote of the Board increase to unlimited, or such lower amount as the Board approves, the share insurance coverage provided by the National Credit Union Share Insurance Fund on any noninterest-bearing transaction account in any federally insured credit union without exception, provided that any such increase shall terminate not later than December 31, 2020.

(Pub. L. 116–136, div. A, title IV, §4008(b), Mar. 27, 2020, 134 Stat. 478.)

## **§9048. Temporary Government in the Sunshine Act relief**

### **(a) In general**

Except as provided in subsection (b), notwithstanding any other provision of law, if the Chairman of the Board of Governors of the Federal Reserve System determines, in writing, that unusual and exigent circumstances exist, the Board may conduct meetings without regard to the requirements of section 552b of title 5 during the period beginning on March 27, 2020, and ending on the earlier of—

(1) the date on which the national emergency concerning the novel coronavirus disease (COVID–19) outbreak declared by the President on March 13, 2020 under the National

Emergencies Act (50 U.S.C. 1601 et seq.) terminates; or  
(2) December 31, 2020.

**(b) Records**

The Board of Governors of the Federal Reserve System shall keep a record of all Board votes and the reasons for such votes during the period described in subsection (a).

(Pub. L. 116–136, div. A, title IV, §4009, Mar. 27, 2020, 134 Stat. 478.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

The National Emergencies Act, referred to in subsec. (a)(1), is Pub. L. 94–412, Sept. 14, 1976, 90 Stat. 1255, which is classified principally to chapter 34 (§1601 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 50 and Tables.

**§9049. Temporary hiring flexibility**

**(a) Definition**

In this section, the term "covered period" means the period beginning on March 27, 2020, and ending on the sooner of—

- (1) the termination date of the national emergency concerning the novel coronavirus disease (COVID–19) outbreak declared by the President on March 13, 2020 under the National Emergencies Act (50 U.S.C. 1601 et seq.); or
- (2) December 31, 2020.

**(b) Authority**

During the covered period, the Secretary of Housing and Urban Development, the Securities and Exchange Commission, and the Commodity Futures Trading Commission may, without regard to sections 3309 through 3318 of title 5, recruit and appoint candidates to fill temporary and term appointments within their respective agencies upon a determination that those expedited procedures are necessary and appropriate to enable the respective agencies to prevent, prepare for, or respond to COVID–19.

(Pub. L. 116–136, div. A, title IV, §4010, Mar. 27, 2020, 134 Stat. 478.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

The National Emergencies Act, referred to in subsec. (a)(1), is Pub. L. 94–412, Sept. 14, 1976, 90 Stat. 1255, which is classified principally to chapter 34 (§1601 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 50 and Tables.

**§9050. Temporary relief for community banks**

**(a) Definitions**

In this section—

- (1) the term "appropriate Federal banking agency" has the meaning given the term in section 2 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (12 U.S.C. 5365 note); and
- (2) the terms "Community Bank Leverage Ratio" and "qualifying community bank" have the meanings given the terms in section 201(a) of the Economic Growth, Regulatory Relief, and



Consumer Protection Act (12 U.S.C. 5371 note).

**(b) Interim rule**

**(1) In general**

Notwithstanding any other provision of law or regulation, the appropriate Federal banking agencies shall issue an interim final rule that provides that, for the purposes of section 201 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (12 U.S.C. 5371 note)—

(A) the Community Bank Leverage Ratio shall be 8 percent; and

(B) a qualifying community bank that falls below the Community Bank Leverage Ratio established under subparagraph (A) shall have a reasonable grace period to satisfy the Community Bank Leverage Ratio.

**(2) Effective period**

The interim rule issued under paragraph (1) shall be effective during the period beginning on the date on which the appropriate Federal banking agencies issue the rule and ending on the sooner of—

(A) the termination date of the national emergency concerning the novel coronavirus disease (COVID–19) outbreak declared by the President on March 13, 2020 under the National

Emergencies Act (50 U.S.C. 1601 et seq.); or

(B) December 31, 2020.

**(c) Grace period**

During a grace period described in subsection (b)(1)(B), a qualifying community bank to which the grace period applies may continue to be treated as a qualifying community bank and shall be presumed to satisfy the capital and leverage requirements described in section 201(c) of the Economic Growth, Regulatory Relief, and Consumer Protection Act (12 U.S.C. 5371 note).

(Pub. L. 116–136, div. A, title IV, §4012, Mar. 27, 2020, 134 Stat. 479.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

Section 2 of the Economic Growth, Regulatory Relief, and Consumer Protection Act, referred to in subsec. (a)(1), is section 2 of Pub. L. 115–174, May 24, 2018, 132 Stat. 1297, which is set out as a note under section 5365 of Title 12, Banks and Banking.

Section 201 of the Economic Growth, Regulatory Relief, and Consumer Protection Act, referred to in subsecs. (a)(2), (b)(1), and (c), is section 201 of Pub. L. 115–174, May 24, 2018, 132 Stat. 1306, which is set out as a note under section 5371 of Title 12, Banks and Banking.

The National Emergencies Act, referred to in subsec. (b)(2)(A), is Pub. L. 94–412, Sept. 14, 1976, 90 Stat. 1255, which is classified principally to chapter 34 (§1601 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 50 and Tables.

**§9051. Temporary relief from troubled debt restructurings**

**(a) Definitions**

In this section:

**(1) Applicable period**

The term "applicable period" means the period beginning on March 1, 2020 and ending on the earlier of January 1, 2022, or the date that is 60 days after the date on which the national emergency concerning the novel coronavirus disease (COVID–19) outbreak declared by the President on March 13, 2020 under the National Emergencies Act (50 U.S.C. 1601 et seq.) terminates.

**(2) Appropriate federal banking agency**

The term "appropriate Federal banking agency"—

- (A) has the meaning given the term in section 1813 of title 12; and
- (B) includes the National Credit Union Administration.

**(b) Suspension**

**(1) In general**

During the applicable period, a financial institution, including an insurance company, may elect to—

(A) suspend the requirements under United States generally accepted accounting principles for loan modifications related to the coronavirus disease 2019 (COVID–19) pandemic that would otherwise be categorized as a troubled debt restructuring; and

(B) suspend any determination of a loan modified as a result of the effects of the coronavirus disease 2019 (COVID–19) pandemic as being a troubled debt restructuring, including impairment for accounting purposes under United States Generally Accepted Accounting Principles.

**(2) Applicability**

Any suspension under paragraph (1)—

(A) shall be applicable for the term of the loan modification, but solely with respect to any modification, including a forbearance arrangement, an interest rate modification, a repayment plan, and any other similar arrangement that defers or delays the payment of principal or interest, that occurs during the applicable period for a loan that was not more than 30 days past due as of December 31, 2019; and

(B) shall not apply to any adverse impact on the credit of a borrower that is not related to the coronavirus disease 2019 (COVID–19) pandemic.

**(c) Deference**

The appropriate Federal banking agency of the financial institution, including an insurance company, shall defer to the determination of the financial institution, including an insurance company, to make a suspension under this section.

**(d) Records**

For modified loans for which suspensions under subsection (a) apply—

(1) financial institutions, including insurance companies, should continue to maintain records of the volume of loans involved; and

(2) the appropriate Federal banking agencies may collect data about such loans for supervisory purposes.

(Pub. L. 116–136, div. A, title IV, §4013, Mar. 27, 2020, 134 Stat. 480; Pub. L. 116–260, div. N, title V, §541, Dec. 27, 2020, 134 Stat. 2090.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

The National Emergencies Act, referred to in subsec. (a)(1), is Pub. L. 94–412, Sept. 14, 1976, 90 Stat. 1255, which is classified principally to chapter 34 (§1601 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 50 and Tables.

**AMENDMENTS**

**2020**—Subsec. (a)(1). Pub. L. 116–260, §541(2), substituted "January 1, 2022" for "December 31, 2020".

Subsec. (b)(1). Pub. L. 116–260, §541(1), inserted ", including an insurance company," after "financial institution" in introductory provisions.

Subsec. (b)(1)(B). Pub. L. 116–260, §541(3), inserted "under United States Generally Accepted Accounting Principles" after "accounting purposes".

Subsec. (c). Pub. L. 116–260, §541(1), inserted ", including an insurance company," after "financial institution" in two places.

Subsec. (d)(1). Pub. L. 116–260, §541(4), inserted ", including insurance companies," after "financial institutions".

## **§9052. Optional temporary relief from current expected credit losses**

### **(a) Definitions**

In this section:

#### **(1) Appropriate Federal banking agency**

The term "appropriate Federal banking agency"—

(A) has the meaning given the term in section 1813 of title 12; and

(B) includes the National Credit Union Administration.

#### **(2) Insured depository institution**

The term "insured depository institution"—

(A) has the meaning given the term in section 1813 of title 12; and

(B) includes a credit union.

### **(b) Temporary relief from CECL standards**

Notwithstanding any other provision of law, no insured depository institution, bank holding company, or any affiliate thereof shall be required to comply with the Financial Accounting Standards Board Accounting Standards Update No. 2016–13 ("Measurement of Credit Losses on Financial Instruments"), including the current expected credit losses methodology for estimating allowances for credit losses, during the period beginning on March 27, 2020, and ending on the earlier of—

(1) the first day of the fiscal year of the insured depository institution, bank holding company, or any affiliate thereof that begins after the date on which the national emergency concerning the novel coronavirus disease (COVID–19) outbreak declared by the President on March 13, 2020 under the National Emergencies Act (50 U.S.C. 1601 et seq.) terminates; or

(2) January 1, 2022.

(Pub. L. 116–136, div. A, title IV, §4014, Mar. 27, 2020, 134 Stat. 480; Pub. L. 116–260, div. N, title V, §540(a)(1), Dec. 27, 2020, 134 Stat. 2090.)

## **EDITORIAL NOTES**

### **REFERENCES IN TEXT**

The National Emergencies Act, referred to in subsec. (b)(1), is Pub. L. 94–412, Sept. 14, 1976, 90 Stat. 1255, which is classified principally to chapter 34 (§1601 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 50 and Tables.

### **AMENDMENTS**

**2020**—Subsec. (b)(1). Pub. L. 116–260, §540(a)(1)(A), inserted "the first day of the fiscal year of the insured depository institution, bank holding company, or any affiliate thereof that begins after" before "the date".

Subsec. (b)(2). Pub. L. 116–260, §540(a)(1)(B), substituted "January 1, 2022" for "December 31, 2020".

## **§9053. Special Inspector General for Pandemic Recovery**

### **(a) Office of Inspector General**

There is hereby established within the Department of the Treasury the Office of the Special

Inspector General for Pandemic Recovery.

**(b) Appointment of Inspector General; removal**

**(1) In general**

The head of the Office of the Special Inspector General for Pandemic Recovery shall be the Special Inspector General for Pandemic Recovery (referred to in this section as the "Special Inspector General"), who shall be appointed by the President, by and with the advice and consent of the Senate.

**(2) Nomination**

The nomination of the Special Inspector General shall be made on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations. The nomination of an individual as Special Inspector General shall be made as soon as practicable after any loan, loan guarantee, or other investment is made under section 9042 of this title.

**(3) Removal**

The Special Inspector General shall be removable from office in accordance with the provisions of section 3(b) of the Inspector General Act of 1978 (5 U.S.C. App.).<sup>1</sup>

**(4) Political activity**

For purposes of section 7324 of title 5, the Special Inspector General shall not be considered an employee who determines policies to be pursued by the United States in the nationwide administration of Federal law.

**(5) Basic pay**

The annual rate of basic pay of the Special Inspector General shall be the annual rate of basic pay for an Inspector General under section 3(e) of the Inspector General Act of 1978 (5 U.S.C. App.).<sup>1</sup>

**(c) Duties**

**(1) In general**

It shall be the duty of the Special Inspector General to, in accordance with section 4(b)(1) of the Inspector General Act of 1978 (5 U.S.C. App.),<sup>1</sup> conduct, supervise, and coordinate audits and investigations of the making, purchase, management, and sale of loans, loan guarantees, and other investments made by the Secretary of the Treasury under any program established by the Secretary under this Act, and the management by the Secretary of any program established under this Act, including by collecting and summarizing the following information:

(A) A description of the categories of the loans, loan guarantees, and other investments made by the Secretary.

(B) A listing of the eligible businesses receiving loan, loan guarantees, and other investments made under each category described in subparagraph (A).

(C) An explanation of the reasons the Secretary determined it to be appropriate to make each loan or loan guarantee under this Act, including a justification of the price paid for, and other financial terms associated with, the applicable transaction.

(D) A listing of, and detailed biographical information with respect to, each person hired to manage or service each loan, loan guarantee, or other investment made under section 9042 of this title.

(E) A current, as of the date on which the information is collected, estimate of the total amount of each loan, loan guarantee, and other investment made under this Act that is outstanding, the amount of interest and fees accrued and received with respect to each loan or loan guarantee, the total amount of matured loans, the type and amount of collateral, if any, and any losses or gains, if any, recorded or accrued for each loan, loan guarantee, or other investment.

**(2) Maintenance of systems**

The Special Inspector General shall establish, maintain, and oversee such systems, procedures, and controls as the Special Inspector General considers appropriate to discharge the duties of the Special Inspector General under paragraph (1).

**(3) Additional duties and responsibilities**

In addition to the duties described in paragraphs (1) and (2), the Special Inspector General shall also have the duties and responsibilities of inspectors general under the Inspector General Act of 1978 (5 U.S.C. App.).<sup>1</sup>

**(d) Powers and authorities**

**(1) In general**

In carrying out the duties of the Special Inspector General under subsection (c), the Special Inspector General shall have the authorities provided in section 6 of the Inspector General Act of 1978 (5 U.S.C. App.).<sup>1</sup>

**(2) Treatment of Office**

The Office of the Special Inspector General for Pandemic Recovery shall be considered to be an office described in section 6(f)(3) of the Inspector General Act of 1978 (5 U.S.C. App.)<sup>1</sup> and shall be exempt from an initial determination by the Attorney General under section 6(f)(2) of that Act.

**(e) Personnel, facilities, and other resources**

**(1) Appointment of officers and employees**

The Special Inspector General may select, appoint, and employ such officers and employees as may be necessary for carrying out the duties of the Special Inspector General, subject to the provisions of title 5 governing appointments in the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of that title, relating to classification and General Schedule pay rates.

**(2) Experts and consultants**

The Special Inspector General may obtain services as authorized under section 3109 of title 5 at daily rates not to exceed the equivalent rate prescribed for grade GS-15 of the General Schedule by section 5332 of that title.

**(3) Contracts**

The Special Inspector General may enter into contracts and other arrangements for audits, studies, analyses, and other services with public agencies and with private persons, and make such payments as may be necessary to carry out the duties of the Inspector General.

**(4) Requests for information**

**(A) In general**

Upon request of the Special Inspector General for information or assistance from any department, agency, or other entity of the Federal Government, the head of that department, agency, or entity shall, to the extent practicable and not in contravention of any existing law, furnish that information or assistance to the Special Inspector General, or an authorized designee.

**(B) Refusal to provide requested information**

Whenever information or assistance requested by the Special Inspector General is, in the judgment of the Special Inspector General, unreasonably refused or not provided, the Special Inspector General shall report the circumstances to the appropriate committees of Congress without delay.

**(f) Reports**

**(1) Quarterly reports**

**(A) In general**

Not later than 60 days after the date on which the Special Inspector General is confirmed, and once every calendar quarter thereafter, the Special Inspector General shall submit to the appropriate committees of Congress a report summarizing the activities of the Special Inspector General during the 3-month period ending on the date on which the Special Inspector General submits the report.

**(B) Contents**

Each report submitted under subparagraph (A) shall include, for the period covered by the report, a detailed statement of all loans, loan guarantees, other transactions, obligations, expenditures, and revenues associated with any program established by the Secretary under section 9042 of this title, as well as the information collected under subsection (c)(1).

**(2) Rule of construction**

Nothing in this subsection may be construed to authorize the public disclosure of information that is—

(A) specifically prohibited from disclosure by any other provision of law;

(B) specifically required by Executive order to be protected from disclosure in the interest of national defense or national security or in the conduct of foreign affairs; or

(C) a part of an ongoing criminal investigation.

**(g) Funding**

**(1) In general**

Of the amounts made available to the Secretary under section 9061 of this title, \$25,000,000 shall be made available to the Special Inspector General to carry out this section.

**(2) Availability**

The amounts made available to the Special Inspector General under paragraph (1) shall remain available until expended.

**(h) Termination**

The Office of the Special Inspector General shall terminate on the date 5 years after March 27, 2020.

**(i) Council of the Inspectors General on integrity and efficiency**

The Special Inspector General shall be a member of the Council of the Inspectors General on Integrity and Efficiency established under section 11 of the Inspector General Act of 1978 (5 U.S.C. App.) <sup>1</sup> until the date of termination of the Office of the Special Inspector General.

**(j) Corrective responses to audit problems**

The Secretary shall—

(1) take action to address deficiencies identified by a report or investigation of the Special Inspector General; or

(2) with respect to a deficiency identified under paragraph (1), certify to the Committee on Banking, Housing, and Urban Affairs of the Senate, the Committee on Finance of the Senate, the Committee on Financial Services of the House of Representatives, and the Committee on Ways and Means of the House of Representatives that no action is necessary or appropriate.

(Pub. L. 116–136, div. A, title IV, §4018, Mar. 27, 2020, 134 Stat. 482.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

The Inspector General Act of 1978, referred to in subsecs. (b) to (d) and (i), is Pub. L. 95–452, Oct. 12, 1978, 92 Stat. 1101, which was set out in the Appendix to Title 5, Government Organization and Employees, and was substantially repealed and restated in chapter 4 (§401 et seq.) of Title 5 by Pub. L. 117–286, §§3(b),

7, Dec. 27, 2022, 136 Stat. 4206, 4361. Sections 3, 4, 6, and 11 of the Act were repealed and restated as sections 403, 404, 406, and 424, respectively, of Title 5. For disposition of sections of the Act into chapter 4 of Title 5, see Disposition Table preceding section 101 of Title 5.

This Act, referred to in subsec. (c)(1), probably means subtitle A (§§4001–4029) of title IV of div. A of Pub. L. 116–136, known as the Coronavirus Economic Stabilization Act of 2020, which is classified principally to this part. For complete classification of this Act to the Code, see section 4001 of Pub. L. 116–136, set out as a Short Title note under section 9001 of this title, and Tables.

<sup>1</sup> [See References in Text note below.](#)

## **§9054. Conflicts of interest**

### **(a) Definitions**

In this section:

#### **(1) Controlling interest**

The term "controlling interest" means owning, controlling, or holding not less than 20 percent, by vote or value, of the outstanding amount of any class of equity interest in an entity.

#### **(2) Covered entity**

The term "covered entity" means an entity in which a covered individual directly or indirectly holds a controlling interest. For the purpose of determining whether an entity is a covered entity, the securities owned, controlled, or held by 2 or more individuals who are related as described in paragraph (3)(B) shall be aggregated.

#### **(3) Covered individual**

The term "covered individual" means—

(A) the President, the Vice President, the head of an Executive department, or a Member of Congress; and

(B) the spouse, child, son-in-law, or daughter-in-law, as determined under applicable common law, of an individual described in subparagraph (A).

#### **(4) Executive department**

The term "Executive department" has the meaning given the term in section 101 of title 5.

#### **(5) Member of Congress**

The term "member of Congress" means a member of the Senate or House of Representatives, a Delegate to the House of Representatives, and the Resident Commissioner from Puerto Rico.

#### **(6) Equity interest**

The term "equity interest" means—

(A) a share in an entity, without regard to whether the share is—

(i) transferable; or

(ii) classified as stock or anything similar;

(B) a capital or profit interest in a limited liability company or partnership; or

(C) a warrant or right, other than a right to convert, to purchase, sell, or subscribe to a share or interest described in subparagraph (A) or (B), respectively.

### **(b) Prohibition**

Notwithstanding any other provision of this part, no covered entity may be eligible for any transaction described in section 9042 of this title.

### **(c) Requirement**

The principal executive officer and the principal financial officer, or individuals performing similar functions, of an entity seeking to enter a transaction under section 9042 of this title shall,

before that transaction is approved, certify to the Secretary and the Board of Governors of the Federal Reserve System that the entity is eligible to engage in that transaction, including that the entity is not a covered entity.

(Pub. L. 116–136, div. A, title IV, §4019, Mar. 27, 2020, 134 Stat. 485.)

## **EDITORIAL NOTES**

### **REFERENCES IN TEXT**

This part, referred to in subsec. (b), was in the original "this subtitle", meaning subtitle A (§§4001–4029) of title IV of div. A of Pub. L. 116–136, known as the Coronavirus Economic Stabilization Act of 2020, which is classified principally to this part. For complete classification of subtitle A to the Code, see section 4001 of Pub. L. 116–136, set out as a Short Title note under section 9001 of this title, and Tables.

## **§9055. Congressional Oversight Commission**

### **(a) Establishment**

There is hereby established the Congressional Oversight Commission (hereafter in this section referred to as the "Oversight Commission") as an establishment in the legislative branch.

### **(b) Duties**

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

The Oversight Commission shall—

- (A) conduct oversight of the implementation of this part by the Department of the Treasury and the Board of Governors of the Federal Reserve System, including efforts of the Department and the Board to provide economic stability as a result of the coronavirus disease 2019 (COVID–19) pandemic of 2020;
- (B) submit to Congress reports under paragraph (2); and
- (C) review the implementation of this part by the Federal Government.

#### **(2) Regular reports**

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

Reports of the Oversight Commission shall include the following:

- (i) The use by the Secretary and the Board of Governors of the Federal Reserve System of authority under this part, including with respect to the use of contracting authority and administration of the provisions of this part.
- (ii) The impact of loans, loan guarantees, and investments made under this part on the financial well-being of the people of the United States and the United States economy, financial markets, and financial institutions.
- (iii) The extent to which the information made available on transactions under this part has contributed to market transparency.
- (iv) The effectiveness of loans, loan guarantees, and investments made under this part of minimizing long-term costs to the taxpayers and maximizing the benefits for taxpayers.

##### **(B) Timing**

The reports required under this paragraph shall be submitted not later than 30 days after the first exercise by the Secretary and the Board of Governors of the Federal Reserve System of the authority under this part and every 30 days thereafter.

### **(c) Membership**

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

The Oversight Commission shall consist of 5 members as follows:

- (A) 1 member appointed by the Speaker of the House of Representatives.
- (B) 1 member appointed by the minority leader of the House of Representatives.



(C) 1 member appointed by the majority leader of the Senate.

(D) 1 member appointed by the minority leader of the Senate.

(E) 1 member appointed as Chairperson by the Speaker of the House of Representatives and the majority leader of the Senate, after consultation with the minority leader of the Senate and the minority leader of the House of Representatives <sup>1</sup>

**(2) Pay**

Each member of the Oversight Commission shall be paid at a rate equal to the daily equivalent of the annual rate of basic pay for level I of the Executive Schedule for each day (including travel time) during which such member is engaged in the actual performance of duties vested in the Oversight Commission.

**(3) Prohibition of compensation of Federal employees**

Members of the Oversight Commission who are full-time officers or employees of the United States may not receive additional pay, allowances, or benefits by reason of their service on the Oversight Commission.

**(4) Travel expenses**

Each member shall receive travel expenses, including per diem in lieu of subsistence, in accordance with applicable provisions under subchapter I of chapter 57 of title 5.

**(5) Quorum**

Four members of the Oversight Commission shall constitute a quorum but a lesser number may hold hearings.

**(6) Vacancies**

A vacancy on the Oversight Commission shall be filled in the manner in which the original appointment was made.

**(7) Meetings**

The Oversight Commission shall meet at the call of the Chairperson or a majority of its members.

**(d) Staff**

**(1) In general**

The Oversight Commission may appoint and fix the pay of any personnel as the Oversight Commission considers appropriate.

**(2) Experts and consultants**

The Oversight Commission may procure temporary and intermittent services under section 3109(b) of title 5.

**(3) Staff of agencies**

Upon request of the Oversight Commission, the head of any Federal department or agency may detail, on a reimbursable basis, any of the personnel of that department or agency to the Oversight Commission to assist it in carrying out its duties under the this <sup>2</sup> part.

**(e) Powers**

**(1) Hearings and evidence**

The Oversight Commission, or any subcommittee or member thereof, may, for the purpose of carrying out this section hold hearings, sit and act at times and places, take testimony, and receive evidence as the Oversight Commission considers appropriate and may administer oaths or affirmations to witnesses appearing before it.

**(2) Contracting**

The Oversight Commission may, to such extent and in such amounts as are provided in

appropriation Acts, enter into contracts to enable the Oversight Commission to discharge its duties under this section.

**(3) Powers of members and agents**

Any member or agent of the Oversight Commission may, if authorized by the Oversight Commission, take any action which the Oversight Commission is authorized to take by this section.

**(4) Obtaining official data**

The Oversight Commission may secure directly from any department or agency of the United States information necessary to enable it to carry out this section. Upon request of the Chairperson of the Oversight Commission, the head of that department or agency shall furnish that information to the Oversight Commission.

**(5) Reports**

The Oversight Commission shall receive and consider all reports required to be submitted to the Oversight Commission under this part.

**(f) Termination**

The Oversight Commission shall terminate on June 30, 2023.

**(g) Funding for expenses**

**(1) Authorization of appropriations**

There is authorized to be appropriated to the Oversight Commission such sums as may be necessary for any fiscal year, half of which shall be derived from the applicable account of the House of Representatives, and half of which shall be derived from the contingent fund of the Senate.

**(2) Reimbursement of amounts**

An amount equal to the expenses of the Oversight Commission shall be promptly transferred by the Secretary and the Board of Governors of the Federal Reserve System, from time to time upon the presentment of a statement of such expenses by the Chairperson of the Oversight Commission, from funds made available to the Secretary under this part to the applicable fund of the House of Representatives and the contingent fund of the Senate, as appropriate, as reimbursement for amounts expended from such account and fund under paragraph (1).

(Pub. L. 116–136, div. A, title IV, §4020, Mar. 27, 2020, 134 Stat. 486; Pub. L. 117–328, div. AA, title VIII, §801, Dec. 29, 2022, 136 Stat. 5551.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

This part, referred to in subsecs. (b), (d)(3), (e)(5), and (g)(2), was in the original "this subtitle", meaning subtitle A (§§4001–4029) of title IV of div. A of Pub. L. 116–136, known as the Coronavirus Economic Stabilization Act of 2020, which is classified principally to this part. For complete classification of subtitle A to the Code, see section 4001 of Pub. L. 116–136, set out as a Short Title note under section 9001 of this title, and Tables.

Level I of the Executive Schedule, referred to in subsec. (c)(2), is set out in section 5312 of Title 5, Government Organization and Employees.

**AMENDMENTS**

**2022**—Subsec. (f). Pub. L. 117–328 substituted "June 30, 2023" for "September 30, 2025".

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

<sup>2</sup> *So in original.*

## **§9056. Foreclosure moratorium and consumer right to request forbearance**

### **(a) Definitions**

In this section:

#### **(1) COVID–19 emergency**

The term "COVID–19 emergency" means the national emergency concerning the novel coronavirus disease (COVID–19) outbreak declared by the President on March 13, 2020 under the National Emergencies Act (50 U.S.C. 1601 et seq.).

#### **(2) Federally backed mortgage loan**

The term "Federally backed mortgage loan" includes any loan which is secured by a first or subordinate lien on residential real property (including individual units of condominiums and cooperatives) designed principally for the occupancy of from 1- to 4- families that is—

(A) insured by the Federal Housing Administration under title II of the National Housing Act (12 U.S.C. 1707 et seq.);

(B) insured under section 255 of the National Housing Act (12 U.S.C. 1715z–20);

(C) guaranteed under section 1715z–13a or 1715z–13b of title 12;

(D) guaranteed or insured by the Department of Veterans Affairs;

(E) guaranteed or insured by the Department of Agriculture;

(F) made by the Department of Agriculture; or

(G) purchased or securitized by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.

### **(b) Forbearance**

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

During the covered period, a borrower with a Federally backed mortgage loan experiencing a financial hardship due, directly or indirectly, to the COVID–19 emergency may request forbearance on the Federally backed mortgage loan, regardless of delinquency status, by—

(A) submitting a request to the borrower's servicer; and

(B) affirming that the borrower is experiencing a financial hardship during the COVID–19 emergency.

#### **(2) Duration of forbearance**

Upon a request by a borrower for forbearance under paragraph (1), such forbearance shall be granted for up to 180 days, and shall be extended for an additional period of up to 180 days at the request of the borrower, provided that, at the borrower's request, either the initial or extended period of forbearance may be shortened.

#### **(3) Accrual of interest or fees**

During a period of forbearance described in this subsection, no fees, penalties, or interest beyond the amounts scheduled or calculated as if the borrower made all contractual payments on time and in full under the terms of the mortgage contract, shall accrue on the borrower's account.

### **(c) Requirements for servicers**

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

Upon receiving a request for forbearance from a borrower under subsection (b), the servicer shall with no additional documentation required other than the borrower's attestation to a financial hardship caused by the COVID–19 emergency and with no fees, penalties, or interest (beyond the amounts scheduled or calculated as if the borrower made all contractual payments on time and in full under the terms of the mortgage contract) charged to the borrower in connection with the forbearance, provide the forbearance for up to 180 days, which may be extended for an additional

period of up to 180 days at the request of the borrower, provided that, the borrower's request for an extension is made during the covered period, and, at the borrower's request, either the initial or extended period of forbearance may be shortened.

## **(2) Foreclosure moratorium**

Except with respect to a vacant or abandoned property, a servicer of a Federally backed mortgage loan may not initiate any judicial or non-judicial foreclosure process, move for a foreclosure judgment or order of sale, or execute a foreclosure-related eviction or foreclosure sale for not less than the 60-day period beginning on March 18, 2020.

(Pub. L. 116–136, div. A, title IV, §4022, Mar. 27, 2020, 134 Stat. 490.)

## **EDITORIAL NOTES**

### **REFERENCES IN TEXT**

The National Emergencies Act, referred to in subsec. (a)(1), is Pub. L. 94–412, Sept. 14, 1976, 90 Stat. 1255, which is classified principally to chapter 34 (§1601 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 50 and Tables.

The National Housing Act, referred to in subsec. (a)(2)(A), is act June 27, 1934, ch. 847, 48 Stat. 1246. Title II of the Act is classified generally to subchapter II (§1707 et seq.) of chapter 13 of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1701 of Title 12 and Tables.

## **EXECUTIVE DOCUMENTS**

### **EX. ORD. NO. 13945. FIGHTING THE SPREAD OF COVID–19 BY PROVIDING ASSISTANCE TO RENTERS AND HOMEOWNERS**

Ex. Ord. No. 13945, Aug. 8, 2020, 85 F.R. 49935, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

**SECTION 1. *Purpose.*** The 2019 novel coronavirus (COVID–19) pandemic, which originated in the People's Republic of China, continues to pose a significant threat to the health of Americans throughout the United States. As we have since January 2020, with the proactive decision to limit travel from China and the passage of three massive economic relief packages, my Administration will take whatever steps are necessary to reduce the spread of COVID–19 and maintain economic prosperity.

The Centers for Disease Control and Prevention (CDC) of the Department of Health and Human Services have concluded that "growing and disproportionate unemployment rates for some racial and ethnic minority groups during the COVID–19 pandemic may lead to greater risk of eviction and homelessness or sharing of housing."

This trend is concerning for many reasons, including that homeless shelters have proven to be particularly susceptible to outbreaks of COVID–19. CDC has observed that "[h]omelessness poses multiple challenges that can exacerbate and amplify the spread of COVID–19. Homeless shelters are often crowded, making social distancing difficult. Many persons experiencing homelessness are older or have underlying medical conditions, placing them at higher risk for severe COVID–19-associated illness." Increased shared housing is also potentially problematic to the extent it results in increased in-person interactions between older, higher-risk individuals and their younger relatives or friends.

My Administration has taken bold steps to help renters and homeowners have safe and secure places to call home during the COVID–19 crisis. Prior to passage of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (Public Law 116–136), the Secretary of Housing and Urban Development implemented a foreclosure and eviction moratorium for all single-family mortgages insured by the Federal Housing Administration. Furthermore, prior to passage of the CARES Act, the Federal Housing Finance Agency (FHFA) announced that it had instructed the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation (the Enterprises) to suspend foreclosures for at least 60 days. FHFA has since announced that the Enterprises will extend the foreclosure suspension until at least August 31, 2020.

The CARES Act imposed a temporary moratorium on evictions of certain renters subject to certain conditions. That moratorium has now expired, and there is a significant risk that this will set off an abnormally large wave of evictions. With the failure of the Congress to act, my Administration must do all that it can to

help vulnerable populations stay in their homes in the midst of this pandemic. Those who are dislocated from their homes may be unable to shelter in place and may have more difficulty maintaining a routine of social distancing. They will have to find alternative living arrangements, which may include a homeless shelter or a crowded family home and may also require traveling to other States.

In addition, evictions tend to disproportionately affect minorities, particularly African Americans and Latinos. Unlike the Congress, I cannot sit idly and refuse to assist vulnerable Americans in need. Under my Administration, minorities achieved the lowest unemployment rates on record, and we will not let COVID-19 erase these gains by causing short-term dislocations that could well have long-term consequences.

Accordingly, my Administration, to the extent reasonably necessary to prevent the further spread of COVID-19, will take all lawful measures to prevent residential evictions and foreclosures resulting from financial hardships caused by COVID-19.

SEC. 2. *Policy.* It is the policy of the United States to minimize, to the greatest extent possible, residential evictions and foreclosures during the ongoing COVID-19 national emergency.

SEC. 3. *Response to Public Health Risks of Evictions and Foreclosures.* (a) The Secretary of Health and Human Services and the Director of CDC shall consider whether any measures temporarily halting residential evictions of any tenants for failure to pay rent are reasonably necessary to prevent the further spread of COVID-19 from one State or possession into any other State or possession.

(b) The Secretary of the Treasury and the Secretary of Housing and Urban Development shall identify any and all available Federal funds to provide temporary financial assistance to renters and homeowners who, as a result of the financial hardships caused by COVID-19, are struggling to meet their monthly rental or mortgage obligations.

(c) The Secretary of Housing and Urban Development shall take action, as appropriate and consistent with applicable law, to promote the ability of renters and homeowners to avoid eviction or foreclosure resulting from financial hardships caused by COVID-19. Such action may include encouraging and providing assistance to public housing authorities, affordable housing owners, landlords, and recipients of Federal grant funds in minimizing evictions and foreclosures.

(d) In consultation with the Secretary of the Treasury, the Director of FHFA shall review all existing authorities and resources that may be used to prevent evictions and foreclosures for renters and homeowners resulting from hardships caused by COVID-19.

SEC. 4. *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.

DONALD J. TRUMP.

## **§9057. Forbearance of residential mortgage loan payments for multifamily properties with Federally backed loans**

### **(a) In general**

During the covered period, a multifamily borrower with a Federally backed multifamily mortgage loan experiencing a financial hardship due, directly or indirectly, to the COVID-19 emergency may request a forbearance under the terms set forth in this section.

### **(b) Request for relief**

A multifamily borrower with a Federally backed multifamily mortgage loan that was current on its payments as of February 1, 2020, may submit an oral or written request for forbearance under subsection (a) to the borrower's servicer affirming that the multifamily borrower is experiencing a financial hardship during the COVID-19 emergency.

### **(c) Forbearance period**

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

Upon receipt of an oral or written request for forbearance from a multifamily borrower, a servicer shall—

(A) document the financial hardship;

(B) provide the forbearance for up to 30 days; and

(C) extend the forbearance for up to 2 additional 30 day periods upon the request of the borrower provided that, the borrower's request for an extension is made during the covered period, and, at least 15 days prior to the end of the forbearance period described under subparagraph (B).

**(2) Right to discontinue**

A multifamily borrower shall have the option to discontinue the forbearance at any time.

**(d) Renter protections during forbearance period**

A multifamily borrower that receives a forbearance under this section may not, for the duration of the forbearance—

(1) evict or initiate the eviction of a tenant from a dwelling unit located in or on the applicable property solely for nonpayment of rent or other fees or charges; or

(2) charge any late fees, penalties, or other charges to a tenant described in paragraph (1) for late payment of rent.

**(e) Notice**

A multifamily borrower that receives a forbearance under this section—

(1) may not require a tenant to vacate a dwelling unit located in or on the applicable property before the date that is 30 days after the date on which the borrower provides the tenant with a notice to vacate; and

(2) may not issue a notice to vacate under paragraph (1) until after the expiration of the forbearance.

**(f) Definitions**

In this section:

**(1) Applicable property**

The term "applicable property", with respect to a Federally backed multifamily mortgage loan, means the residential multifamily property against which the mortgage loan is secured by a lien.

**(2) Federally backed multifamily mortgage loan**

The term "Federally backed multifamily mortgage loan" includes any loan (other than temporary financing such as a construction loan) that—

(A) is secured by a first or subordinate lien on residential multifamily real property designed principally for the occupancy of 5 or more families, including any such secured loan, the proceeds of which are used to prepay or pay off an existing loan secured by the same property; and

(B) is made in whole or in part, or insured, guaranteed, supplemented, or assisted in any way, by any officer or agency of the Federal Government or under or in connection with a housing or urban development program administered by the Secretary of Housing and Urban Development or a housing or related program administered by any other such officer or agency, or is purchased or securitized by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.

**(3) Multifamily borrower**

the term "multifamily borrower" means a borrower of a residential mortgage loan that is secured by a lien against a property comprising 5 or more dwelling units.

**(4) COVID-19 emergency**

The term "COVID-19 emergency" means the national emergency concerning the novel coronavirus disease (COVID-19) outbreak declared by the President on March 13, 2020 under the

National Emergencies Act (50 U.S.C. 1601 et seq.).

**(5) Covered period**

The term "covered period" means the period beginning on March 27, 2020, and ending on the sooner of—

(A) the termination date of the national emergency concerning the novel coronavirus disease (COVID–19) outbreak declared by the President on March 13, 2020 under the National

Emergencies Act (50 U.S.C. 1601 et seq.); or

(B) December 31, 2020.

(Pub. L. 116–136, div. A, title IV, §4023, Mar. 27, 2020, 134 Stat. 491.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

The National Emergencies Act, referred to in subsec. (f)(4), (5)(A), is Pub. L. 94–412, Sept. 14, 1976, 90 Stat. 1255, which is classified principally to chapter 34 (§1601 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 50 and Tables.

**§9058. Temporary moratorium on eviction filings**

**(a) Definitions**

In this section:

**(1) Covered dwelling**

The term "covered dwelling" means a dwelling that—

(A) is occupied by a tenant—

(i) pursuant to a residential lease; or

(ii) without a lease or with a lease terminable under State law; and

(B) is on or in a covered property.

**(2) Covered property**

The term "covered property" means any property that—

(A) participates in—

(i) a covered housing program (as defined in section 12491(a) of title 34); or

(ii) the rural housing voucher program under section 1490r of title 42; or

(B) has a—

(i) Federally backed mortgage loan; or

(ii) Federally backed multifamily mortgage loan.

**(3) Dwelling**

The term "dwelling"—

(A) has the meaning given the term in section 3602 of title 42; and

(B) includes houses and dwellings described in section 3603(b) of title 42.

**(4) Federally backed mortgage loan**

The term "Federally backed mortgage loan" includes any loan (other than temporary financing such as a construction loan) that—

(A) is secured by a first or subordinate lien on residential real property (including individual units of condominiums and cooperatives) designed principally for the occupancy of from 1 to 4 families, including any such secured loan, the proceeds of which are used to prepay or pay off an existing loan secured by the same property; and

(B) is made in whole or in part, or insured, guaranteed, supplemented, or assisted in any way, by any officer or agency of the Federal Government or under or in connection with a housing or urban development program administered by the Secretary of Housing and Urban Development or a housing or related program administered by any other such officer or agency, or is purchased or securitized by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.

**(5) Federally backed multifamily mortgage loan**

The term "Federally backed multifamily mortgage loan" includes any loan (other than temporary financing such as a construction loan) that—

(A) is secured by a first or subordinate lien on residential multifamily real property designed principally for the occupancy of 5 or more families, including any such secured loan, the proceeds of which are used to prepay or pay off an existing loan secured by the same property; and

(B) is made in whole or in part, or insured, guaranteed, supplemented, or assisted in any way, by any officer or agency of the Federal Government or under or in connection with a housing or urban development program administered by the Secretary of Housing and Urban Development or a housing or related program administered by any other such officer or agency, or is purchased or securitized by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.

**(b) Moratorium**

During the 120-day period beginning on March 27, 2020, the lessor of a covered dwelling may not—

(1) make, or cause to be made, any filing with the court of jurisdiction to initiate a legal action to recover possession of the covered dwelling from the tenant for nonpayment of rent or other fees or charges; or

(2) charge fees, penalties, or other charges to the tenant related to such nonpayment of rent.

**(c) Notice**

The lessor of a covered dwelling unit—

(1) may not require the tenant to vacate the covered dwelling unit before the date that is 30 days after the date on which the lessor provides the tenant with a notice to vacate; and

(2) may not issue a notice to vacate under paragraph (1) until after the expiration of the period described in subsection (b).

(Pub. L. 116–136, div. A, title IV, §4024, Mar. 27, 2020, 134 Stat. 492.)

**§9058a. Emergency rental assistance**

**(a) Appropriation**

**(1) In general**

Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated for making payments to eligible grantees under this section, \$25,000,000,000 for fiscal year 2021.

**(2) Reservation of funds for the territories and tribal communities**

Of the amount appropriated under paragraph (1), the Secretary shall reserve—

(A) \$400,000,000 of such amount for making payments under this section to the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa; and

(B) \$800,000,000 of such amount for making payments under this section to eligible grantees described in subparagraphs (C) and (D) of subsection (k)(2); and

(C) \$15,000,000 for administrative expenses of the Secretary described in subsection (h).



**(b) Payments for rental assistance**

**(1) Allocation and payments to states and units of local government**

**(A) In general**

The amount appropriated under paragraph (1) of subsection (a) that remains after the application of paragraph (2) of such subsection shall be allocated and paid to eligible grantees described in subparagraph (B) in the same manner as the amount appropriated under subsection (a)(1) of section 801 of title 42 is allocated and paid to States and units of local government under subsections (b) and (c) of such section, and shall be subject to the same requirements, except that—

(i) the deadline for payments under section 801(b)(1) of such title shall, for purposes of payments under this section, be deemed to be not later than 30 days after December 27, 2020;

(ii) the amount referred to in paragraph (3) of section 801(c) of such title shall be deemed to be the amount appropriated under paragraph (1) of subsection (a) of this Act <sup>1</sup> that remains after the application of paragraph (2) of such subsection;

(iii) section 801(c) of title 42 shall be applied—

(I) by substituting "1 of the 50 States or the District of Columbia" for "1 of the 50 States" each place it appears;

(II) in paragraph (2)(A), by substituting "\$200,000,000" for "\$1,250,000,000";

(III) in paragraph (2)(B), by substituting "each of the 50 States and District of Columbia" for "each of the 50 States";

(IV) in paragraph (4), by substituting "excluding the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa" for "excluding the District of Columbia and territories specified in subsection (a)(2)(A)"; and

(V) without regard to paragraph (6);

(iv) section 801(d) of such title shall not apply to such payments; and

(v) section 801(e) of such title <sup>2</sup> shall be applied—

(I) by substituting "under section 9058a of title 15" for "under this section"; and

(II) by substituting "local government elects to receive funds from the Secretary under section 9058a of title 15 and will use the funds in a manner consistent with such section" for "local government's proposed uses of the funds are consistent with subsection (d)".

**(B) Eligible grantees described**

The eligible grantees described in this subparagraph are the following:

(i) A State that is 1 of the 50 States or the District of Columbia.

(ii) A unit of local government located in a State described in clause (i).

**(2) Allocation and payments to tribal communities**

**(A) In general**

From the amount reserved under subsection (a)(2)(B), the Secretary shall—

(i) pay the amount equal to 0.3 percent of such amount to the Department of Hawaiian Home Lands; and

(ii) subject to subparagraph (B), from the remainder of such amount, allocate and pay to each Indian tribe (or, if applicable, the tribally designated housing entity of an Indian tribe) that was eligible for a grant under title I of the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) (25 U.S.C. 4111 et seq.) for fiscal year 2020 an amount that bears the same proportion to the such remainder as the amount each such Indian tribe (or entity) was eligible to receive for such fiscal year from the amount appropriated under paragraph (1) under the heading "native american programs" under the heading "Public and Indian Housing" of title II of division H of the Further Consolidated Appropriations Act, 2020 (Public Law 116–94) to carry out the Native American Housing

Block Grants program bears to the amount appropriated under such paragraph for such fiscal year, provided the Secretary shall be authorized to allocate, in an equitable manner as determined by the Secretary, and pay any Indian tribe that opted out of receiving a grant allocation under the Native American Housing Block Grants program formula in fiscal year 2020, including by establishing a minimum amount of payments to such Indian tribe, provided such Indian tribe notifies the Secretary not later than 30 days after December 27, 2020, that it intends to receive allocations and payments under this section.

**(B) Pro rata adjustment; distribution of declined funds**

**(i) Pro rata adjustments**

The Secretary shall make pro rata reductions in the amounts of the allocations determined under clause (ii) of subparagraph (A) for entities described in such clause as necessary to ensure that the total amount of payments made pursuant to such clause does not exceed the remainder amount described in such clause.

**(ii) Distribution of declined funds**

If the Secretary determines as of 30 days after December 27, 2020, that an entity described in clause (ii) of subparagraph (A) has declined to receive its full allocation under such clause then, not later than 15 days after such date, the Secretary shall redistribute, on a pro rata basis, such allocation among the other entities described in such clause that have not declined to receive their allocations.

**(3) Allocations and payments to territories**

**(A) In general**

From the amount reserved under subsection (a)(2)(A), subject to subparagraph (B), the Secretary shall allocate and pay to each eligible grantee described in subparagraph (C) an amount equal to the product of—

- (i) the amount so reserved; and
- (ii) each such eligible grantee's share of the combined total population of all such eligible grantees, as determined by the Secretary.

**(B) Allocation adjustment**

**(i) Requirement**

The sum of the amounts allocated under subparagraph (A) to all of the eligible grantees described in clause (ii) of subparagraph (C) shall not be less than the amount equal to 0.3 percent of the amount appropriated under subsection (a)(1).

**(ii) Reduction**

The Secretary shall reduce the amount of the allocation determined under subparagraph (A) for the eligible grantee described in clause (i) of subparagraph (C) as necessary to meet the requirement of clause (i).

**(C) Eligible grantees described**

The eligible grantees described in this subparagraph are—

- (i) the Commonwealth of Puerto Rico; and
- (ii) the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa.

**(c) Use of funds**

**(1) In general**

An eligible grantee shall only use the funds provided from a payment made under this section to provide financial assistance and housing stability services to eligible households.

**(2) Financial assistance**

**(A) In general**

Not less than 90 percent of the funds received by an eligible grantee from a payment made under this section shall be used to provide financial assistance to eligible households, including the payment of

- (i) rent;
- (ii) rental arrears;
- (iii) utilities and home energy costs;
- (iv) utilities and home energy costs arrears; and
- (v) other expenses related to housing incurred due, directly or indirectly, to the novel coronavirus disease (COVID–19) outbreak, as defined by the Secretary.

Such assistance shall be provided for a period not to exceed 12 months except that grantees may provide assistance for an additional 3 months only if necessary to ensure housing stability for a household subject to the availability of funds.

#### **(B) Limitation on assistance for prospective rent payments**

##### **(i) In general**

Subject to the exception in clause (ii), an eligible grantee shall not provide an eligible household with financial assistance for prospective rent payments for more than 3 months based on any application by or on behalf of the household.

##### **(ii) Exception**

For any eligible household described in clause (i), such household may receive financial assistance for prospective rent payments for additional months:

- (I) subject to the availability of remaining funds currently allocated to the eligible grantee, and
- (II) based on a subsequent application for additional financial assistance provided that the total months of financial assistance provided to the household do not exceed the total months of assistance allowed under subparagraph (A).

##### **(iii) Further limitation**

To the extent that applicants have rental arrears, grantees may not make commitments for prospective rent payments unless they have also provided assistance to reduce an eligible household's rental arrears.

#### **(C) Distribution of financial assistance**

##### **(i) Payments**

###### **(I) In general**

With respect to financial assistance for rent and rental arrears and utilities and home energy costs and utility and home energy costs arrears provided to an eligible household from a payment made under this section, an eligible grantee shall make payments to a lessor or utility provider on behalf of the eligible household, except that, if the lessor or utility provider does not agree to accept such payment from the grantee after outreach to the lessor or utility provider by the grantee, the grantee may make such payments directly to the eligible household for the purpose of making payments to the lessor or utility provider.

###### **(II) Rule of construction**

Nothing in this section shall be construed to invalidate any otherwise legitimate grounds for eviction.

##### **(ii) Documentation**

For any payments made by an eligible grantee to a lessor or utility provider on behalf of an eligible household, the eligible grantee shall provide documentation of such payments to such household.

#### **(3) Housing stability services**

Not more than 10 percent of funds received by an eligible grantee from a payment made under this section may be used to provide eligible households with case management and other services related to the novel coronavirus disease (COVID–19) outbreak, as defined by the Secretary, intended to help keep households stably housed.

**(4) Prioritization of assistance**

(A) In reviewing applications for financial assistance and housing stability services to eligible households from a payment made under this section, an eligible grantee shall prioritize consideration of the applications of an eligible household that satisfies any of the following conditions:

- (i) The income of the household does not exceed 50 percent of the area median income for the household.
- (ii) 1 or more individuals within the household are unemployed as of the date of the application for assistance and have not been employed for the 90-day period preceding such date.

(B) Nothing in this section shall be construed to prohibit an eligible grantee from providing a process for the further prioritizing of applications for financial assistance and housing stability services from a payment made under this section, including to eligible households in which 1 or more individuals within the household were unable to reach their place of employment or their place of employment was closed because of a public health order imposed as a direct result of the COVID–19 public health emergency.

**(5) Administrative costs**

**(A) In general**

Not more than 10 percent of the amount paid to an eligible grantee under this section may be used for administrative costs attributable to providing financial assistance and housing stability services under paragraphs (2) and (3), respectively, including for data collection and reporting requirements related to such funds.

**(B) No other administrative costs**

Amounts paid under this section shall not be used for any administrative costs other than to the extent allowed under subparagraph (A).

**(d) Reallocation of unused funds**

Beginning on September 30, 2021, the Secretary shall recapture excess funds, as determined by the Secretary, not obligated by a grantee for the purposes described under subsection (c) and the Secretary shall reallocate and repay such amounts to eligible grantees who, at the time of such reallocation, have obligated at least 65 percent of the amount originally allocated and paid to such grantee under subsection (b)(1), only for the allowable uses described under subsection (c). The amount of any such reallocation shall be determined based on demonstrated need within a grantee's jurisdiction, as determined by the Secretary.

**(e) Availability**

**(1) In general**

Funds provided to an eligible grantee under a payment made under this section shall remain available through September 30, 2022.

**(2) Extension for funds provided pursuant to a reallocation of unused funds**

For funds reallocated to an eligible grantee pursuant to subsection (d), an eligible grantee may request, subject to the approval of the Secretary, a 90-day extension of the deadline established in paragraph (1).

**(f) Application for assistance by landlords and owners**

**(1) In general**

Subject to paragraph (2), nothing in this section shall preclude a landlord or owner of a residential dwelling from—

- (A) assisting a renter of such dwelling in applying for assistance from a payment made under this section; or
- (B) applying for such assistance on behalf of a renter of such dwelling.

**(2) Requirements for applications submitted on behalf of tenants**

If a landlord or owner of a residential dwelling submits an application for assistance from a payment made under this section on behalf of a renter of such dwelling—

- (A) the landlord must obtain the signature of the tenant on such application, which may be documented electronically;
- (B) documentation of such application shall be provided to the tenant by the landlord; and
- (C) any payments received by the landlord from a payment made under this section shall be used to satisfy the tenant's rental obligations to the owner.

**(g) Reporting requirements**

**(1) In general**

The Secretary, in consultation with the Secretary of Housing and Urban Development, shall provide public reports not less frequently than quarterly regarding the use of funds made available under this section, which shall include, with respect to each eligible grantee under this section, both for the past quarter and over the period for which such funds are available—

- (A) the number of eligible households that receive assistance from such payments;
- (B) the acceptance rate of applicants for assistance;
- (C) the type or types of assistance provided to each eligible household;
- (D) the average amount of funding provided per eligible household receiving assistance;
- (E) household income level, with such information disaggregated for households with income that—
  - (i) does not exceed 30 percent of the area median income for the household;
  - (ii) exceeds 30 percent but does not exceed 50 percent of the area median income for the household; and
  - (iii) exceeds 50 percent but does not exceed 80 percent of area median income for the household; and
- (F) the average number of monthly rental or utility payments that were covered by the funding amount that a household received, as applicable.

**(2) Disaggregation**

Each report under this subsection shall disaggregate the information relating to households provided under subparagraphs (A) through (F) of paragraph (1) by the gender, race, and ethnicity of the primary applicant for assistance in such households.

**(3) Alternative reporting requirements for certain grantees**

The Secretary may establish alternative reporting requirements for grantees described in subsection (b)(2).

**(4) Privacy requirements**

**(A) In general**

Each eligible grantee that receives a payment under this section shall establish data privacy and security requirements for the information described in paragraph (1) that—

- (i) include appropriate measures to ensure that the privacy of the individuals and households is protected;
- (ii) provide that the information, including any personally identifiable information, is collected and used only for the purpose of submitting reports under paragraph (1); and
- (iii) provide confidentiality protections for data collected about any individuals who are

survivors of intimate partner violence, sexual assault, or stalking.

**(B) Statistical research**

**(i) In general**

The Secretary—

(I) may provide full and unredacted information provided under subparagraphs (A) through (F) of paragraph (1), including personally identifiable information, for statistical research purposes in accordance with existing law; and

(II) may collect and make available for statistical research, at the census tract level, information collected under subparagraph (A).

**(ii) Application of privacy requirements**

A recipient of information under clause (i) shall establish for such information the data privacy and security requirements described in subparagraph (A).

**(5) Nonapplication of the Paperwork Reduction Act**

Subchapter I of chapter 35 of title 44 shall not apply to the collection of information for the reporting or research requirements specified in this subsection.

**(h) Administrative expenses of the Secretary**

Of the funds appropriated pursuant to subsection (a), not more than \$15,000,000 may be used for administrative expenses of the Secretary in administering this section, including technical assistance to grantees in order to facilitate effective use of funds provided under this section.

**(i) Inspector General Oversight; Recoupment**

**(1) Oversight authority**

The Inspector General of the Department of the Treasury shall conduct monitoring and oversight of the receipt, disbursement, and use of funds made available under this section.

**(2) Recoupment**

If the Inspector General of the Department of the Treasury determines that a State, Tribal government, or unit of local government has failed to comply with subsection (c), the amount equal to the amount of funds used in violation of such subsection shall be booked as a debt of such entity owed to the Federal Government. Amounts recovered under this subsection shall be deposited into the general fund of the Treasury.

**(3) Appropriation**

Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated to the Office of the Inspector General of the Department of the Treasury, \$6,500,000 to carry out oversight and recoupment activities under this subsection. Amounts appropriated under the preceding sentence shall remain available until expended.

**(4) Authority of Inspector General**

Nothing in this subsection shall be construed to diminish the authority of any Inspector General, including such authority as provided in the Inspector General Act of 1978 (5 U.S.C. App.) [3](#)

**(j) Treatment of assistance**

Assistance provided to a household from a payment made under this section shall not be regarded as income and shall not be regarded as a resource for purposes of determining the eligibility of the household or any member of the household for benefits or assistance, or the amount or extent of benefits or assistance, under any Federal program or under any State or local program financed in whole or in part with Federal funds.

**(k) Definitions**

In this section:

**(1) Area median income**

The term "area median income" means, with respect to a household, the median income for the area in which the household is located, as determined by the Secretary of Housing and Urban Development.

## **(2) Eligible grantee**

The term "eligible grantee" means any of the following:

(A) A State (as defined in section 801(g)(4) of title 42.

(B) A unit of local government (as defined in paragraph (5)).

(C) An Indian tribe or its tribally designated housing entity (as such terms are defined in section 4 of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4103)) that was eligible to receive a grant under title I of such Act (25 U.S.C. 4111 et seq.) for fiscal year 2020 from the amount appropriated under paragraph (1) under the heading "native american programs" under the heading "Public and Indian Housing" of title II of division H of the Further Consolidated Appropriations Act, 2020 (Public Law 116-94) to carry out the Native American Housing Block Grants program. For the avoidance of doubt, the term Indian tribe shall include Alaska native corporations established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).

(D) The Department of Hawaiian Homelands.

## **(3) Eligible household**

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

The term "eligible household" means a household of 1 or more individuals who are obligated to pay rent on a residential dwelling and with respect to which the eligible grantee involved determines—

(i) that 1 or more individuals within the household has [4](#)

(I) qualified for unemployment benefits or

(II) experienced a reduction in household income, incurred significant costs, or experienced other financial hardship due, directly or indirectly, to the novel coronavirus disease (COVID-19) outbreak, which the applicant shall attest in writing;

(ii) that 1 or more individuals within the household can demonstrate a risk of experiencing homelessness or housing instability, which may include—

(I) a past due utility or rent notice or eviction notice;

(II) unsafe or unhealthy living conditions; or

(III) any other evidence of such risk, as determined by the eligible grantee involved; and

(iii) the household has a household income that is not more than 80 percent of the area median income for the household.

### **(B) Exception**

To the extent feasible, an eligible grantee shall ensure that any rental assistance provided to an eligible household pursuant to funds made available under this section is not duplicative of any other Federally funded rental assistance provided to such household.

### **(C) Income determination**

(i) In determining the income of a household for purposes of determining such household's eligibility for assistance from a payment made under this section (including for purposes of subsection (c)(4)), the eligible grantee involved shall consider either

(I) the household's total income for calendar year 2020, or

(II) subject to clause (ii), sufficient confirmation, as determined by the Secretary, of the household's monthly income at the time of application for such assistance.

(ii) In the case of income determined under subclause (II), the eligible grantee shall be required to re-determine the eligibility of a household's income after each such period of 3

months for which the household receives assistance from a payment made under this section.

**(4) Inspector General**

The term "Inspector General" means the Inspector General of the Department of the Treasury.

**(5) Secretary**

The term "Secretary" means the Secretary of the Treasury.

**(6) Unit of local government**

The term "unit of local government" has the meaning given such term in paragraph (2) of section 801(g) of title 42, except that, in applying such term for purposes of this section, such paragraph shall be applied by substituting "200,000" for "500,000".

**(l) Termination of program**

The authority of an eligible grantee to make new obligations to provide payments under subsection (c) shall terminate on the date established in subsection (e) for that eligible grantee. Amounts not expended in accordance with this section shall revert to the Department of the Treasury.

(Pub. L. 116–260, div. N, title V, §501, Dec. 27, 2020, 134 Stat. 2069; Pub. L. 117–2, title III, §3201(h), Mar. 11, 2021, 135 Stat. 58.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

The Native American Housing Assistance and Self-Determination Act of 1996, referred to in subsecs. (b)(2)(A)(ii) and (k)(2)(C), is Pub. L. 104–330, Oct. 26, 1996, 110 Stat. 4016. Title I of the Act is classified generally to subchapter I (§4111 et seq.) of chapter 43 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of Title 25 and Tables.

The Further Consolidated Appropriations Act, 2020, referred to in subsecs. (b)(2)(A)(ii) and (k)(2)(C), is Pub. L. 116–94, Dec. 20, 2019, 133 Stat. 2534. Provisions under the heading "native american programs" under the heading "Public and Indian Housing" of title II of division H of the Act [133 Stat. 2985] are not classified to the Code. For complete classification of this Act to the Code, see Tables.

The Inspector General Act of 1978, referred to in subsec. (i)(4), is Pub. L. 95–452, Oct. 12, 1978, 92 Stat. 1101, which was set out in the Appendix to Title 5, Government Organization and Employees, and was substantially repealed and restated in chapter 4 (§401 et seq.) of Title 5 by Pub. L. 117–286, §§3(b), 7, Dec. 27, 2022, 136 Stat. 4206, 4361. For disposition of sections of the Act into chapter 4 of Title 5, see Disposition Table preceding section 101 of Title 5.

The Alaska Native Claims Settlement Act, referred to in subsec. (k)(2)(C), is Pub. L. 92–203, Dec. 18, 1971, 85 Stat. 688, which is classified generally to chapter 33 (§1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

**CODIFICATION**

In subsec. (b)(1)(A)(v), "section 801(e) of such title" was in the original "section 601(e)", and was translated as meaning "section 601(e) of such Act", meaning section 601(e) of the Social Security Act, to reflect the probable intent of Congress.

Section was enacted as part of the Consolidated Appropriations Act, 2021, and not as part of the CARES Act which in part comprises this chapter.

**AMENDMENTS**

**2021**—Subsec. (e)(1). Pub. L. 117–2 substituted "September 30, 2022" for "December 31, 2021".

<sup>1</sup> *So in original. Probably should be "this section".*

<sup>2</sup> *See Codification note below.*

<sup>3</sup> *So in original. Probably should be followed by a period. See References in Text note below.*



<sup>4</sup> So in original. Probably should be followed by a dash.

## **§9058b. Funding for water assistance program**

### **(a) In general**

In addition to amounts otherwise available, there is appropriated to the Secretary of Health and Human Services (in this section referred to as the "Secretary") for fiscal year 2021, out of any amounts in the Treasury not otherwise appropriated, \$500,000,000, to remain available until expended, for grants to States and Indian Tribes to assist low-income households, particularly those with the lowest incomes, that pay a high proportion of household income for drinking water and wastewater services, by providing funds to owners or operators of public water systems or treatment works to reduce arrearages of and rates charged to such households for such services.

### **(b) Allotment**

The Secretary shall—

(1) allot amounts appropriated in this section to a State or Indian Tribe based on—

(A) the percentage of households in the State, or under the jurisdiction of the Indian Tribe, with income equal or less than 150 percent of the Federal poverty line; and

(B) the percentage of households in the State, or under the jurisdiction of the Indian Tribe, that spend more than 30 percent of monthly income on housing; and

(2) reserve up to 3 percent of the amount appropriated in this section for Indian Tribes and tribal organizations.

### **(c) Definition**

In this section, the term "State" means each of the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

(Pub. L. 117–2, title II, §2912, Mar. 11, 2021, 135 Stat. 51.)

## **EDITORIAL NOTES**

### **CODIFICATION**

Section was enacted as part of the American Rescue Plan Act of 2021, and not as part of the CARES Act which in part comprises this chapter.

## **§9058c. Emergency rental assistance**

### **(a) Funding**

#### **(1) Appropriation**

In addition to amounts otherwise available, there is appropriated to the Secretary of the Treasury for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, \$21,550,000,000, to remain available until September 30, 2027, for making payments to eligible grantees under this section—

#### **(2) Reservation of funds**

Of the amount appropriated under paragraph (1), the Secretary shall reserve—

(A) \$305,000,000 for making payments under this section to the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa;

(B) \$30,000,000 for costs of the Secretary for the administration of emergency rental

assistance programs and technical assistance to recipients of any grants made by the Secretary to provide financial and other assistance to renters;

(C) \$3,000,000 for administrative expenses of the Inspector General relating to oversight of funds provided in this section; and

(D) \$2,500,000,000 for payments to high-need grantees as provided in this section.

**(b) Allocation of funds to eligible grantees**

**(1) Allocation for States and units of local government**

**(A) In general**

The amount appropriated under paragraph (1) of subsection (a) that remains after the application of paragraph (2) of such subsection shall be allocated to eligible grantees described in subparagraphs (A) and (B) of subsection (f)(1) in the same manner as the amount appropriated under section 9058a of this title is allocated to States and units of local government under subsection (b)(1) of such section, except that section 9058a(b) of this title shall be applied—

(i) without regard to clause (i) of paragraph (1)(A);

(ii) by deeming the amount appropriated under paragraph (1) of subsection (a) of this Act <sup>1</sup> that remains after the application of paragraph (2) of such subsection to be the amount deemed to apply for purposes of applying clause (ii) of section 9058a(b)(1)(A) of this title;

(iii) by substituting "\$152,000,000" for "\$200,000,000" each place such term appears;

(iv) in subclause (I) of such section 9058a(b)(1)(A)(v) of this title, by substituting "under section 9058c of title 15" for "under section 9058a of title 15"; and

(v) in subclause (II) of such section 9058a(b)(1)(A)(v) of this title, by substituting "local government elects to receive funds from the Secretary under section 9058c of title 15 and will use the funds in a manner consistent with such section" for "local government elects to receive funds from the Secretary under section 9058a of title 15 and will use the funds in a manner consistent with such section".

**(B) Pro rata adjustment**

The Secretary shall make pro rata adjustments in the amounts of the allocations determined under subparagraph (A) of this paragraph for entities described in such subparagraph as necessary to ensure that the total amount of allocations made pursuant to such subparagraph does not exceed the remainder appropriated amount described in such subparagraph.

**(2) Allocations for territories**

The amount reserved under subsection (a)(2)(A) shall be allocated to eligible grantees described in subsection (f)(1)(C) in the same manner as the amount appropriated under section 9058a(a)(2)(A) of this title is allocated under section 9058a(b)(3) of this title to eligible grantees described under subparagraph (C) of such section 9058a(b)(3) of this title, except that section 9058a(b)(3) of this title shall be applied—

(A) in subparagraph (A), by inserting "of section 9058c of this title" after "the amount reserved under subsection (a)(2)(A)"; and

(B) in clause (i) of subparagraph (B), by substituting "the amount equal to 0.3 percent of the amount appropriated under subsection (a)(1)" with "the amount equal to 0.3 percent of the amount appropriated under subsection (a)(1) of section 9058c of this title".

**(3) High-need grantees**

The Secretary shall allocate funds reserved under subsection (a)(2)(D) to eligible grantees with a high need for assistance under this section, with the number of very low-income renter households paying more than 50 percent of income on rent or living in substandard or overcrowded conditions, rental market costs, and change in employment since February 2020 used as the factors for allocating funds.

**(c) Payment schedule**

**(1) In general**

The Secretary shall pay all eligible grantees not less than 40 percent of each such eligible grantee's total allocation provided under subsection (b) within 60 days of March 11, 2021.

**(2) Subsequent payments**

The Secretary shall pay to eligible grantees additional amounts in tranches up to the full amount of each such eligible grantee's total allocation in accordance with a procedure established by the Secretary, provided that any such procedure established by the Secretary shall require that an eligible grantee must have obligated not less than 75 percent of the funds already disbursed by the Secretary pursuant to this section prior to disbursement of additional amounts.

**(d) Use of funds**

**(1) In general**

An eligible grantee shall only use the funds provided from payments made under this section as follows:

**(A) Financial assistance**

**(i) In general**

Subject to clause (ii) of this subparagraph, funds received by an eligible grantee from payments made under this section shall be used to provide financial assistance to eligible households, not to exceed 18 months, including the payment of—

- (I) rent;
- (II) rental arrears;
- (III) utilities and home energy costs;
- (IV) utilities and home energy costs arrears; and
- (V) other expenses related to housing, as defined by the Secretary.

**(ii) Limitation**

The aggregate amount of financial assistance an eligible household may receive under this section, when combined with financial assistance provided under section 9058a of this title, shall not exceed 18 months.

**(B) Housing stability services**

Not more than 10 percent of funds received by an eligible grantee from payments made under this section may be used to provide case management and other services intended to help keep households stably housed.

**(C) Administrative costs**

Not more than 15 percent of the total amount paid to an eligible grantee under this section may be used for administrative costs attributable to providing financial assistance, housing stability services, and other affordable rental housing and eviction prevention activities, including for data collection and reporting requirements related to such funds.

**(D) Other affordable rental housing and eviction prevention activities**

An eligible grantee may use any funds from payments made under this section that are unobligated on October 1, 2022, for purposes in addition to those specified in this paragraph, provided that—

- (i) such other purposes are affordable rental housing and eviction prevention purposes, as defined by the Secretary, serving very low-income families (as such term is defined in section 1437a(b) of title 42); and
- (ii) prior to obligating any funds for such purposes, the eligible grantee has obligated not less than 75 percent of the total funds allocated to such eligible grantee in accordance with this section.

**(2) Distribution of assistance**

Amounts appropriated under subsection (a)(1) of this section shall be subject to the same terms and conditions that apply under paragraph (4) of section 9058a(c) of this title to amounts appropriated under subsection (a)(1) of such section 9058a of this title.

**(e) Reallocation of funds**

**(1) In general**

Beginning March 31, 2022, the Secretary shall reallocate funds allocated to eligible grantees in accordance with subsection (b) but not yet paid in accordance with subsection (c)(2) according to a procedure established by the Secretary.

**(2) Eligibility for reallocated funds**

The Secretary shall require an eligible grantee to have obligated 50 percent of the total amount of funds allocated to such eligible grantee under subsection (b) to be eligible to receive funds reallocated under paragraph (1) of this subsection.

**(3) Payment of reallocated funds by the Secretary**

The Secretary shall pay to each eligible grantee eligible for a payment of reallocated funds described in paragraph (2) of this subsection the amount allocated to such eligible grantee in accordance with the procedure established by the Secretary in accordance with paragraph (1) of this subsection.

**(4) Use of reallocated funds**

Eligible grantees may use any funds received in accordance with this subsection only for purposes specified in paragraph (1) of subsection (d).

**(f) Definitions**

In this section:

**(1) Eligible grantee**

The term "eligible grantee" means any of the following:

- (A) The 50 States of the United States and the District of Columbia.
- (B) A unit of local government (as defined in paragraph (5)).
- (C) The Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa.

**(2) Eligible household**

The term "eligible household" means a household of 1 or more individuals who are obligated to pay rent on a residential dwelling and with respect to which the eligible grantee involved determines that—

- (A) 1 or more individuals within the household has—
  - (i) qualified for unemployment benefits; or
  - (ii) experienced a reduction in household income, incurred significant costs, or experienced other financial hardship during or due, directly or indirectly, to the coronavirus pandemic;

(B) 1 or more individuals within the household can demonstrate a risk of experiencing homelessness or housing instability; and

(C) the household is a low-income family (as such term is defined in section 1437a(b) of title 42.<sup>2</sup>

**(3) Inspector general**

The term "Inspector General" means the Inspector General of the Department of the Treasury.

**(4) Secretary**

The term "Secretary" means the Secretary of the Treasury.

**(5) Unit of local government**

The term "unit of local government" has the meaning given such term in section 9058a of this

title.

**(g) Availability**

Funds provided to an eligible grantee under a payment made under this section shall remain available through September 30, 2025.

(Pub. L. 117–2, title III, §3201, Mar. 11, 2021, 135 Stat. 54.)

**EDITORIAL NOTES**

**CODIFICATION**

Section was enacted as part of the American Rescue Plan Act of 2021, and not as part of the CARES Act which in part comprises this chapter.

Section is comprised of section 3201 of Pub. L. 117–2. Subsec. (h) of section 3201 of Pub. L. 117–2 amended section 9058a of this title.

*<sup>1</sup> So in original. Probably should be "this section".*

*<sup>2</sup> So in original. A closing parenthesis probably should precede the period.*

**§9058d. Homeowner Assistance Fund**

**(a) Appropriation**

In addition to amounts otherwise available, there is appropriated to the Secretary of the Treasury for the Homeowner Assistance Fund established under subsection (c) for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, \$9,961,000,000, to remain available until September 30, 2025, for qualified expenses that meet the purposes specified under subsection (c) and expenses described in subsection (d)(1).

**(b) Definitions**

In this section:

**(1) Conforming loan limit**

The term "conforming loan limit" means the applicable limitation governing the maximum original principal obligation of a mortgage secured by a single-family residence, a mortgage secured by a 2-family residence, a mortgage secured by a 3-family residence, or a mortgage secured by a 4-family residence, as determined and adjusted annually under section 1717(b)(2) of title 12 and section 1454(a)(2) of title 12.

**(2) Dwelling**

The term "dwelling" means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more individuals.

**(3) Eligible entity**

The term "eligible entity" means—

(A) a State; or

(B) any entity eligible for payment under subsection (f).

**(4) Mortgage**

The term "mortgage" means any credit transaction—

(A) that is secured by a mortgage, deed of trust, or other consensual security interest on a principal residence of a borrower that is (i) a 1- to 4-unit dwelling, or (ii) residential real property that includes a 1- to 4-unit dwelling; and

(B) the unpaid principal balance of which was, at the time of origination, not more than the conforming loan limit.

**(5) Fund**

The term "Fund" means the Homeowner Assistance Fund established under subsection (c).

**(6) Secretary**

The term "Secretary" means the Secretary of the Treasury.

**(7) State**

The term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

**(c) Establishment of Fund**

**(1) Establishment; qualified expenses**

There is established in the Department of the Treasury a Homeowner Assistance Fund to mitigate financial hardships associated with the coronavirus pandemic by providing such funds as are appropriated by subsection (a) to eligible entities for the purpose of preventing homeowner mortgage delinquencies, defaults, foreclosures, loss of utilities or home energy services, and displacements of homeowners experiencing financial hardship after January 21, 2020, through qualified expenses related to mortgages and housing, which include—

(A) mortgage payment assistance;

(B) financial assistance to allow a homeowner to reinstate a mortgage or to pay other housing related costs related to a period of forbearance, delinquency, or default;

(C) principal reduction;

(D) facilitating interest rate reductions;

(E) payment assistance for—

(i) utilities, including electric, gas, home energy, and water;

(ii) internet service, including broadband internet access service, as defined in section 8.1(b) of title 47, Code of Federal Regulations (or any successor regulation);

(iii) homeowner's insurance, flood insurance, and mortgage insurance; and

(iv) homeowner's association, condominium association fees, or common charges;

(F) reimbursement of funds expended by a State, local government, or designated entity under subsection (f) during the period beginning on January 21, 2020, and ending on the date that the first funds are disbursed by the eligible entity under the Homeowner Assistance Fund, for the purpose of providing housing or utility payment assistance to homeowners or otherwise providing funds to prevent foreclosure or post-foreclosure eviction of a homeowner or prevent mortgage delinquency or loss of housing or utilities as a response to the coronavirus disease (COVID) pandemic; and

(G) any other assistance to promote housing stability for homeowners, including preventing mortgage delinquency, default, foreclosure, post-foreclosure eviction of a homeowner, or the loss of utility or home energy services, as determined by the Secretary.

**(2) Targeting**

Not less than 60 percent of amounts made to each eligible entity allocated amounts under subsection (d) or (f) shall be used for qualified expenses that assist homeowners having incomes equal to or less than 100 percent of the area median income for their household size or equal to or less than 100 percent of the median income for the United States, as determined by the Secretary of Housing and Urban Development, whichever is greater. The eligible entity shall prioritize remaining funds to socially disadvantaged individuals.

**(d) Allocation of Funds**

**(1) Administration**

Of any amounts made available under this section, the Secretary shall reserve—

(A) to the Department of the Treasury, an amount not to exceed \$40,000,000 to administer

and oversee the Fund, and to provide technical assistance to eligible entities for the creation and implementation of State and tribal programs to administer assistance from the Fund; and

(B) to the Inspector General of the Department of the Treasury, an amount to not exceed \$2,600,000 for oversight of the program under this section.

**(2) For States**

After the application of paragraphs (1), (4), and (5) of this subsection and subject to paragraph (3) of this subsection, the Secretary shall allocate the remaining funds available within the Homeowner Assistance Fund to each State of the United States, the District of Columbia, and the Commonwealth of Puerto Rico based on homeowner need, for such State relative to all States of the United States, the District of Columbia, and the Commonwealth of Puerto Rico, as of March 11, 2021, which is determined by reference to—

(A) the average number of unemployed individuals measured over a period of time not fewer than 3 months and not more than 12 months; and

(B) the total number of mortgagors with—

(i) mortgage payments that are more than 30 days past due; or

(ii) mortgages in foreclosure.

**(3) Small State minimum**

**(A) In general**

Each State of the United States, the District of Columbia, and the Commonwealth of Puerto Rico shall receive no less than \$50,000,000 for the purposes established in (c) <sup>1</sup>.

**(B) Pro rata adjustments**

The Secretary shall adjust on a pro rata basis the amount of the payments for each State of the United States, the District of Columbia, and the Commonwealth of Puerto Rico determined under this subsection without regard to this subparagraph to the extent necessary to comply with the requirements of subparagraph (A).

**(4) Territory set-aside**

Notwithstanding any other provision of this section, of the amounts appropriated under subsection (a), the Secretary shall reserve \$30,000,000 to be disbursed to Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands based on each such territory's share of the combined total population of all such territories, as determined by the Secretary. For the purposes of this paragraph, population shall be determined based on the most recent year for which data are available from the United States Census Bureau.

**(5) Tribal set-aside**

The Secretary shall allocate funds to any eligible entity designated under subsection (f) pursuant to the requirements of that subsection.

**(e) Distribution of funds to States**

**(1) In general**

The Secretary shall make payments, beginning not later than 45 days after March 11, 2021, from amounts allocated under subsection (d) to eligible entities that have notified the Secretary that they request to receive payment from the Fund and that the eligible entity will use such payments in compliance with this section.

(2) If a State does not request allocated funds by the 45th day after March 11, 2021, such State shall not be eligible for a payment from the Secretary pursuant to this section, and the Secretary shall, by the 180th day after March 11, 2021, reallocate any funds that were not requested by such State among the States that have requested funds by the 45th day after March 11, 2021. For any such reallocation of funds, the Secretary shall adhere to the requirements of subsection (d), except for paragraph (1), to the greatest extent possible, provided that the Secretary shall also take into consideration in determining such reallocation a State's remaining need and a State's record of using payments from the Fund to serve homeowners at disproportionate risk of mortgage default,



foreclosure, or displacement, including homeowners having incomes equal to or less than 100 percent of the area median income for their household size or 100 percent of the median income for the United States, as determined by the Secretary of Housing and Urban Development, whichever is greater, and minority homeowners.

**(f) Tribal set-aside**

**(1) Set-aside**

Notwithstanding any other provision of this section, of the amounts appropriated under subsection (a), the Secretary shall use 5 percent to make payments to entities that are eligible for payments under clauses (i) and (ii) of section 9058a(b)(2)(A) of this title for the purposes described in subsection (c).

**(2) Allocation and payment**

The Secretary shall allocate the funds set aside under paragraph (1) using the allocation formulas described in clauses (i) and (ii) of section 9058a(b)(2)(A) of this title, and shall make payments of such amounts beginning no later than 45 days after March 11, 2021, to entities eligible for payment under clauses (i) and (ii) of section 9058a(b)(2)(A) of this title that notify the Secretary that they request to receive payments allocated from the Fund by the Secretary for purposes described under subsection (c) and will use such payments in compliance with this section.

**(3) Adjustment**

Allocations provided under this subsection may be further adjusted as provided by section 9058a(b)(2)(B) of this title.

(Pub. L. 117–2, title III, §3206, Mar. 11, 2021, 135 Stat. 63.)

**EDITORIAL NOTES**

**CODIFICATION**

Section was enacted as part of the American Rescue Plan Act of 2021, and not as part of the CARES Act which in part comprises this chapter.

<sup>1</sup> So in original. Probably should be preceded by "subsection".

**§9059. Protection of collective bargaining agreement**

**(a) In general**

Neither the Secretary, nor any other actor, department, or agency of the Federal Government, shall condition the issuance of a loan or loan guarantee under paragraph (1), (2), or (3) of section 9042(b) of this title on an air carrier's or eligible business's implementation of measures to enter into negotiations with the certified bargaining representative of a craft or class of employees of the air carrier or eligible business under the Railway Labor Act (45 U.S.C. 151 et seq.) or the National Labor Relations Act (29 U.S.C. 151 et seq.), regarding pay or other terms and conditions of employment.

**(b) Period of effect**

With respect to an air carrier or eligible business to which the loan or loan guarantee is provided under this part, this section shall be in effect with respect to the air carrier or eligible business beginning on the date on which the air carrier or eligible business is first issued such loan or loan guarantee and ending on the date that is 1 year after the loan or loan guarantee is no longer outstanding.

(Pub. L. 116–136, div. A, title IV, §4025, Mar. 27, 2020, 134 Stat. 494.)



## EDITORIAL NOTES

### REFERENCES IN TEXT

The Railway Labor Act, referred to in subsec. (a), is act May 20, 1926, ch. 347, 44 Stat. 577, which is classified principally to chapter 8 (§151 et seq.) of Title 45, Railroads. For complete classification of this Act to the Code, see section 151 of Title 45 and Tables.

The National Labor Relations Act, referred to in subsec. (a), is act July 5, 1935, ch. 372, 49 Stat. 449, which is classified generally to subchapter II (§151 et seq.) of chapter 7 of Title 29, Labor. For complete classification of this Act to the Code, see section 167 of Title 29 and Tables.

This part, referred to in subsec. (b), was in the original "this subtitle", meaning subtitle A (§§4001–4029) of title IV of div. A of Pub. L. 116–136, known as the Coronavirus Economic Stabilization Act of 2020, which is classified principally to this part. For complete classification of subtitle A to the Code, see section 4001 of Pub. L. 116–136, set out as a Short Title note under section 9001 of this title, and Tables.

## §9060. Reports

### (a) Disclosure of transactions

Not later than 72 hours after any transaction by the Secretary under paragraph (1), (2), or (3) of section 9042(b) of this title, the Secretary shall publish on the website of the Department of the Treasury—

- (1) a plain-language description of the transaction, including the date of application, date of application approval, and identity of the counterparty;
- (2) the amount of the loan or loan guarantee;
- (3) the interest rate, conditions, and any other material or financial terms associated with the transaction, if applicable; and
- (4) a copy of the relevant and final term sheet, if applicable, and contract or other relevant documentation regarding the transaction.

### (b) Reports

#### (1) To Congress

##### (A) In general

In addition to such reports as are required under section 5302(c) of title 31, not later than 7 days after the Secretary makes any loan or loan guarantee under paragraph (1), (2), or (3) of section 9042(b) of this title, the Secretary shall submit to the Chairmen and Ranking Members of the Committee on Banking, Housing, and Urban Affairs and the Committee on Finance of the Senate and the Chairmen and Ranking Members of the Committee on Financial Services and the Committee on Ways and Means of the House of Representatives a report summarizing—

- (i) an overview of actions taken by the Secretary under paragraph (1), (2) or (3) of section 9042(b) of this title during such period;
- (ii) the actual obligation, expenditure, and disbursements of the funds during such period; and
- (iii) a detailed financial statement with respect to the exercise of authority under paragraph (1), (2) or (3) of section 9042(b) of this title showing—
  - (I) all loans and loan guarantees made, renewed, or restructured;
  - (II) all transactions during such period, including the types of parties involved;
  - (III) the nature of the assets purchased;
  - (IV) a description of the vehicles established to exercise such authority; and
  - (V) any or all repayment activity, delinquencies or defaults on loans and loan guarantees issued under paragraph (1), (2) or (3) of section 9042(b) of this title.

##### (B) Publication

Not later than 7 days after the date on which the Secretary submits a report under

subparagraph (A) to the committees of Congress described in such subparagraph, the Secretary shall publish such report on the website of the Department of the Treasury.

**(C) 30-day reports**

Every 30 days during such time as a loan or loan guarantee under paragraph (1), (2), or (3) of section 9042(b) of this title is outstanding, the Secretary shall publish on the website of the Department of the Treasury a report summarizing the information set forth in subparagraph (A).

**(2) Board of Governors**

**(A) In general**

With respect to any program or facility described in paragraph (4) of section 9042(b) of this title, the Board of Governors of the Federal Reserve System shall provide to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives such reports as are required to be provided under section 343(3) of title 12—

- (i) not later than 7 days after the Board authorizes a new facility or other financial assistance in accordance with section 343(3)(C)(i) of title 12; and
- (ii) once every 30 days with respect to outstanding loans or financial assistance in accordance with section 343(3)(C)(ii) of title 12.

**(B) Publication**

Not later than 7 days after the Board of Governors of the Federal Reserve System submits a report under subparagraph (A) to the committees of Congress described in subparagraph (A), the Board shall publish on its website such report.

**(c) Testimony**

The Secretary and the Chairman of the Board of Governors of the Federal Reserve System shall testify, on a semiannual basis, before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives regarding the obligations of the Department of the Treasury and the Federal Reserve System, and transactions entered into, under this Act. This subsection shall have no force or effect after December 31, 2027.

**(d) Program descriptions**

The Secretary shall post on the website of the Department of the Treasury all criteria, guidelines, eligibility requirements, and application materials for the making of any loan or loan guarantee under paragraph (1), (2), or (3) of section 9042(b) of this title.

**(e) Administrative contracts**

Not later than 24 hours after the Secretary enters into a contract in connection with the administration of any loan or loan guarantee authorized to be made under paragraph (1), (2), or (3) of section 9042(b) of this title, the Secretary shall post on the website of the Department of the Treasury a copy of the contract.

**(f) Government Accountability Office**

**(1) Study**

The Comptroller General of the United States shall conduct a study on the loans, loan guarantees, and other investments provided under section 9042 of this title.

**(2) Report**

Not later than 9 months after March 27, 2020, and annually thereafter through the year succeeding the last year for which loans, loan guarantees, or other investments made under section 9042 of this title are outstanding, the Comptroller General shall submit to the Committee on Financial Services, the Committee on Transportation and Infrastructure, the Committee on Appropriations, and the Committee on the Budget of the House of Representatives and the

Committee on Banking, Housing, and Urban Affairs, the Committee on Commerce, Science, and Transportation, the Committee on Appropriations, and the Committee on the Budget of the Senate a report on the loans, loan guarantees, and other investments made under section 9042 of this title. (Pub. L. 116–136, div. A, title IV, §4026, Mar. 27, 2020, 134 Stat. 494; Pub. L. 117–103, div. HH, title III, §301, Mar. 15, 2022, 136 Stat. 1113.)

## **EDITORIAL NOTES**

### **REFERENCES IN TEXT**

This Act, referred to in subsec. (c), probably means subtitle A (§§4001–4029) of title IV of div. A of Pub. L. 116–136, known as the Coronavirus Economic Stabilization Act of 2020, which is classified principally to this part. For complete classification of this Act to the Code, see section 4001 of Pub. L. 116–136, set out as a Short Title note under section 9001 of this title, and Tables.

### **AMENDMENTS**

**2022**—Subsec. (c). Pub. L. 117–103 substituted "semiannual" for "quarterly" and inserted at end "This subsection shall have no force or effect after December 31, 2027."

## **§9061. Direct appropriation**

### **(a) In general**

Notwithstanding any other provision of law, there is appropriated, out of amounts in the Treasury not otherwise appropriated, to the fund established under section 5302(a)(1) of title 31, \$500,000,000,000 to carry out this part.

### **(b) Omitted**

### **(c) Clarification**

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

On or after January 1, 2021, any remaining funds made available under section 9042(b) of this title may be used only for—

- (A) modifications, restructurings, or other amendments of loans, loan guarantees, or other investments in accordance with section 9063(b)(1) of this title; and
- (B) exercising any options, warrants, or other investments made prior to January 1, 2021; and
- (C) paying costs and administrative expenses as provided in section 9042(f) of this title.

#### **(2) Deficit reduction**

On January 1, 2026, any funds described in paragraph (1) that are remaining shall be transferred to the general fund of the Treasury to be used for deficit reduction.

(Pub. L. 116–136, div. A, title IV, §4027, Mar. 27, 2020, 134 Stat. 496.)

## **EDITORIAL NOTES**

### **REFERENCES IN TEXT**

This part, referred to in subsec. (a), was in the original "this subtitle", meaning subtitle A (§§4001–4029) of title IV of div. A of Pub. L. 116–136, known as the Coronavirus Economic Stabilization Act of 2020, which is classified principally to this part. For complete classification of subtitle A to the Code, see section 4001 of Pub. L. 116–136, set out as a Short Title note under section 9001 of this title, and Tables.

### **CODIFICATION**

Section is comprised of section 4027 of Pub. L. 116–136. Subsec. (b) of section 4027 of Pub. L. 116–136 amended section 5302 of Title 31, Money and Finance.

## **§9062. Rule of construction**

Nothing in this part shall be construed to allow the Secretary to provide relief to eligible businesses, States, and municipalities except in the form of loans, loan guarantees, and other investments as provided in this part and under terms and conditions that are in the interest of the Federal Government.

(Pub. L. 116–136, div. A, title IV, §4028, Mar. 27, 2020, 134 Stat. 497.)

### **EDITORIAL NOTES**

#### **REFERENCES IN TEXT**

This part, referred to in text, was in the original "this subtitle", meaning subtitle A (§§4001–4029) of title IV of div. A of Pub. L. 116–136, known as the Coronavirus Economic Stabilization Act of 2020, which is classified principally to this part. For complete classification of subtitle A to the Code, see section 4001 of Pub. L. 116–136, set out as a Short Title note under section 9001 of this title, and Tables.

## **§9063. Termination of authority**

### **(a) In general**

Except as provided in subsection (b), on December 31, 2020, the authority provided under this part to make loans, loan guarantees, or other investments shall terminate.

### **(b) Outstanding**

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

Except as provided in paragraph (2), any loan or loan guarantee made under paragraph (1), (2), or (3) of section 9042(b) of this title outstanding on the date described in subsection (a)—

(A) may be modified, restructured, or otherwise amended; and

(B) may not be forgiven.

#### **(2) Duration**

The duration of any loan or loan guarantee made under section 9042(b)(1) of this title that is modified, restructured, or otherwise amended under paragraph (1) shall not be extended beyond 5 years from the initial origination date of the loan or loan guarantee.

### **(c) Federal Reserve programs or facilities**

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

After December 31, 2020, the Board of Governors of the Federal Reserve System and the Federal Reserve banks shall not make any loan, purchase any obligation, asset, security, or other interest, or make any extension of credit through any program or facility established under section 343(3) of title 12 in which the Secretary made a loan, loan guarantee, or other investment pursuant to section 9042(b)(4) of this title, other than a loan submitted, on or before December 14, 2020, to the Main Street Lending Program's lender portal for the sale of a participation interest in such loan, provided that the Main Street Lending Program purchases a participation interest in such loan on or before January 8, 2021 and under the terms and conditions of the Main Street Lending Program as in effect on the date the loan was submitted to the Main Street Lending Program's lender portal for the sale of a participation interest in such loan.

#### **(2) No modification**

After December 31, 2020, the Board of Governors of the Federal Reserve System and the Federal Reserve banks—

(A) shall not modify the terms and conditions of any program or facility established under section 343(3) of title 12 in which the Secretary made a loan, loan guarantee, or other investment pursuant to section 9042(b)(4) of this title, including by authorizing transfer of such funds to a new program or facility established under section 343(3) of title 12; and

(B) may modify or restructure a loan, obligation, asset, security, other interest, or extension of credit made or purchased through any such program or facility provided that—

(i) the loan, obligation, asset, security, other interest, or extension of credit is an eligible asset or for an eligible business, including an eligible nonprofit organization, each as defined by such program or facility; and

(ii) the modification or restructuring relates to an eligible asset or single and specific eligible business, including an eligible nonprofit organization, each as defined by such program or facility; and

(iii) the modification or restructuring is necessary to minimize costs to taxpayers that could arise from a default on the loan, obligation, asset, security, other interest, or extension of credit.

### **(3) Use of funds**

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

Except as provided in subparagraph (B), the Secretary is permitted to use the fund established under section 5302 of title 31 for any purpose permitted under that section.

#### **(B) Exception**

The fund established under section 5302 of title 31 shall not be available for any program or facility established under section 343(3) of title 12 that is the same as any such program or facility in which the Secretary made an investment pursuant to section 9042(b)(4) of this title, except the Term Asset-Backed Securities Loan Facility.

(Pub. L. 116–136, div. A, title IV, §4029, Mar. 27, 2020, 134 Stat. 497; Pub. L. 116–260, div. N, title X, §1005, Dec. 27, 2020, 134 Stat. 2146.)

## **EDITORIAL NOTES**

### **REFERENCES IN TEXT**

This part, referred to in subsec. (a), was in the original "this subtitle", meaning subtitle A (§§4001–4029) of title IV of div. A of Pub. L. 116–136, known as the Coronavirus Economic Stabilization Act of 2020, which is classified principally to this part. For complete classification of subtitle A to the Code, see section 4001 of Pub. L. 116–136, set out as a Short Title note under section 9001 of this title, and Tables.

### **AMENDMENTS**

**2020**—Subsec. (a). Pub. L. 116–260, §1005(1), struck out "new" after "make".

Subsec. (b)(1). Pub. L. 116–260, §1005(2), substituted "or loan guarantee made under paragraph (1), (2), or (3) of section 9042(b) of this title" for ", loan guarantee, or other investment" in introductory provisions.

Subsec. (c). Pub. L. 116–260, §1005(3), added subsec. (c).

## **PART B—AIR CARRIER WORKER SUPPORT**

### **§9071. Definitions**

Unless otherwise specified, the terms in section 40102(a) of title 49 shall apply to this part, except that—

(1) the term "airline catering employee" means an employee who performs airline catering services;

(2) the term "airline catering services" means preparation, assembly, or both, of food, beverages, provisions and related supplies for delivery, and the delivery of such items, directly to aircraft or to a location on or near airport property for subsequent delivery to aircraft;

(3) the term "contractor" means—

(A) a person that performs, under contract with a passenger air carrier conducting operations

under part 121 of title 14, Code of Federal Regulations—

(i) catering functions; or

(ii) functions on the property of an airport that are directly related to the air transportation of persons, property, or mail, including but not limited to the loading and unloading of property on aircraft; assistance to passengers under part 382 of title 14, Code of Federal Regulations; security; airport ticketing and check-in functions; ground-handling of aircraft; or aircraft cleaning and sanitization functions and waste removal; or

(B) a subcontractor that performs such functions;

(4) the term "employee" means an individual, other than a corporate officer, who is employed by an air carrier or a contractor;

(5) the term "recall" means the dispatch of a notice by a contractor, via mail, courier, or electronic mail, to an involuntarily furloughed employee notifying the employee that—

(A) the employee must, within a specified period of time that is not less than 14 days, elect either—

(i) to return to employment or bypass return to employment in accordance with an applicable collective bargaining agreement or, in the absence of a collective bargaining agreement, company policy; or

(ii) to permanently separate from employment with the contractor; and

(B) failure to respond within such time period specified will be deemed to be an election under subparagraph (A)(ii); and

(6) the term "Secretary" means the Secretary of the Treasury.

(Pub. L. 116–136, div. A, title IV, §4111, Mar. 27, 2020, 134 Stat. 497; Pub. L. 116–260, div. N, title IV, §412(b), Dec. 27, 2020, 134 Stat. 2061.)

## EDITORIAL NOTES

### AMENDMENTS

**2020**—Pars. (5), (6). Pub. L. 116–260 added par. (5) and redesignated former par. (5) as (6).

## §9072. Pandemic relief for aviation workers

### (a) Financial assistance for employee wages, salaries, and benefits

Notwithstanding any other provision of law, to preserve aviation jobs and compensate air carrier industry workers, the Secretary shall provide financial assistance that shall exclusively be used for the continuation of payment of employee wages, salaries, and benefits to—

(1) passenger air carriers, in an aggregate amount up to \$25,000,000,000;

(2) cargo air carriers, in the aggregate amount up to \$4,000,000,000; and

(3) contractors, in an aggregate amount up to \$3,000,000,000.

### (b) Administrative expenses

Notwithstanding any other provision of law, the Secretary, may use \$67,000,000 of the funds made available under section 9080(a) <sup>1</sup> of this title for costs and administrative expenses associated with providing financial assistance under this part.

(Pub. L. 116–136, div. A, title IV, §4112, Mar. 27, 2020, 134 Stat. 498; Pub. L. 117–328, div. LL, §102(d)(1)(B), Dec. 29, 2022, 136 Stat. 6103.)

## EDITORIAL NOTES

## AMENDMENTS

2022—Subsec. (b). Pub. L. 117–328 substituted "\$67,000,000" for "\$100,000,000".

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### EFFECTIVE DATE OF 2022 AMENDMENT

Amendment by Pub. L. 117–328 effective upon issuance of guidance or the promulgation of a rule by the Secretary of the Treasury, in consultation with the Secretary of Transportation, see section 102(c) of Pub. L. 117–328, set out as a note under section 802 of Title 42, The Public Health and Welfare.

<sup>1</sup> So in original. There is no subsec. (a) in section 9080 of this title.

## §9073. Procedures for providing payroll support

### (a) Awardable amounts

The Secretary shall provide financial assistance under this part—

(1) to an air carrier in an amount equal to the salaries and benefits reported by the air carrier to the Department of Transportation pursuant to part 241 of title 14, Code of Federal Regulations, for the period from April 1, 2019, through September 30, 2019; and

(2) to an air carrier that does not transmit reports under such part 241, in an amount that such air carrier certifies, using sworn financial statements or other appropriate data, as the amount of wages, salaries, benefits, and other compensation that such air carrier paid the employees of such air carrier during the period from April 1, 2019, through September 30, 2019; and

(3) to a contractor, in an amount that the contractor certifies, using sworn financial statements or other appropriate data, as the amount of wages, salaries, benefits, and other compensation that such contractor paid the employees of such contractor during the period from April 1, 2019, through September 30, 2019.

### (b) Deadlines and procedures

#### (1) In general

##### (A) Forms; terms and conditions

Financial assistance provided to an air carrier or contractor under this part shall be in such form, on such terms and conditions (including requirements for audits and the clawback of any financial assistance provided upon failure by a passenger air carrier, cargo air carrier, or contractor to honor the assurances specified in section 9074 of this title), as the Secretary determines appropriate.

##### (B) Procedures

The Secretary shall publish streamlined and expedited procedures not later than 5 days after March 27, 2020, for air carriers and contractors to submit requests for financial assistance under this part.

#### (2) Deadline for immediate payroll assistance

Not later than 10 days after March 27, 2020, the Secretary shall make initial payments to air carriers and contractors that submit requests for financial assistance approved by to the Secretary.

#### (3) Subsequent payments

The Secretary shall determine an appropriate method for timely distribution of payments to air carriers and contractors with approved requests for financial assistance from any funds remaining available after providing initial financial assistance payments under paragraph (2).

### (c) Pro rata authority

The Secretary shall have the authority to reduce, on a pro rata basis, the amounts due to air carriers

and contractors under the applicable paragraph of section 9072 of this title in order to address any shortfall in assistance that would otherwise be provided under such section.

**(d) Audits**

The Inspector General of the Department of the Treasury shall audit certifications made under subsection (a).

(Pub. L. 116–136, div. A, title IV, §4113, Mar. 27, 2020, 134 Stat. 498.)

**§9074. Required assurances**

**(a) In general**

To be eligible for financial assistance under this part, an air carrier or contractor shall enter into an agreement with the Secretary, or otherwise certify in such form and manner as the Secretary shall prescribe, that the air carrier or contractor shall—

(1) refrain from conducting involuntary furloughs or reducing pay rates and benefits until September 30, 2020;

(2) through September 30, 2021, ensure that neither the air carrier or contractor nor any affiliate of the air carrier or contractor may, in any transaction, purchase an equity security of the air carrier or contractor or the parent company of the air carrier or contractor that is listed on a national securities exchange;

(3) through September 30, 2021, ensure that the air carrier or contractor shall not pay dividends, or make other capital distributions, with respect to the common stock (or equivalent interest) of the air carrier or contractor; and

(4) meet the requirements of sections 9075 and 9076 of this title.

**(b) Department of Transportation Authority to condition assistance on continuation of service**

**(1) In general**

The Secretary of Transportation is authorized to require, to the extent reasonable and practicable, an air carrier provided financial assistance under this part to maintain scheduled air transportation service, as the Secretary of Transportation deems necessary, to ensure services to any point served by that carrier before March 1, 2020.

**(2) Required considerations**

When considering whether to exercise the authority provided by this section, the Secretary of Transportation shall take into consideration the air transportation needs of small and remote communities and the need to maintain well-functioning health care supply chains, including medical devices and supplies, and pharmaceutical supply chains.

**(3) Sunset**

The authority provided under this subsection shall terminate on March 1, 2022, and any requirements issued by the Secretary of Transportation under this subsection shall cease to apply after that date.

**(c) Continued application**

**(1) In general**

If, after December 27, 2020, a contractor expends any funds made available pursuant to section 9072 of this title and distributed pursuant to section 9073 of this title, the assurances in paragraphs (1) through (3) of subsection (a) shall continue to apply until the dates included in such paragraphs, or the date on which the contractor fully expends such financial assistance, whichever is later.

**(2) Special rule**

Not later than April 5, 2021, each contractor described in section 9071(3)(A)(i) of this title that has received funds pursuant to such section 9072 of this title shall report to the Secretary on the



amount of such funds that the contractor has expended through March 31, 2021. If the contractor has expended an amount that is less than 100 percent of the total amount of funds the contractor received under such section, the Secretary shall initiate an action to recover any funds that remain unexpended as of April 30, 2021.

**(d) Recall of employees**

**(1) In general**

Subject to paragraph (2), any contractor that has unspent financial assistance provided under this part as of December 27, 2020, and conducted involuntary furloughs or reduced pay rates and benefits, between March 27, 2020, and the date on which the contractor entered into an agreement with the Secretary related to financial assistance under this part, shall recall (as defined in section 9071 of this title) employees who were involuntarily furloughed during such period by not later than January 4, 2021.

**(2) Waiver**

The Secretary of the Treasury shall waive the requirement under paragraph (1) for a contractor to recall employees if the contractor certifies that the contractor has or will have insufficient remaining financial assistance provided under this part to keep recalled employees employed for more than two weeks upon returning to work.

**(3) Audits**

The Inspector General of the Department of the Treasury shall audit certifications made under paragraph (2).

(Pub. L. 116–136, div. A, title IV, §4114, Mar. 27, 2020, 134 Stat. 499; Pub. L. 116–260, div. N, title IV, §412(a), Dec. 27, 2020, 134 Stat. 2060.)

**EDITORIAL NOTES**

**AMENDMENTS**

**2020**—Subsecs. (c), (d). Pub. L. 116–260 added subsecs. (c) and (d).

**§9075. Protection of collective bargaining agreement**

**(a) In general**

Neither the Secretary, nor any other actor, department, or agency of the Federal Government, shall condition the issuance of financial assistance under this part on an air carrier's or contractor's implementation of measures to enter into negotiations with the certified bargaining representative of a craft or class of employees of the air carrier or contractor under the Railway Labor Act (45 U.S.C. 151 et seq.) or the National Labor Relations Act (29 U.S.C. 151 et seq.), regarding pay or other terms and conditions of employment.

**(b) Period of effect**

With respect to an air carrier or contractor to which financial assistance is provided under this part, this section shall be in effect with respect to the air carrier or contractor beginning on the date on which the air carrier or contractor is first issued such financial assistance and ending on September 30, 2020.

(Pub. L. 116–136, div. A, title IV, §4115, Mar. 27, 2020, 134 Stat. 500.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

The Railway Labor Act, referred to in subsec. (a), is act May 20, 1926, ch. 347, 44 Stat. 577, which is classified principally to chapter 8 (§151 et seq.) of Title 45, Railroads. For complete classification of this Act

to the Code, see section 151 of Title 45 and Tables.

The National Labor Relations Act, referred to in subsec. (a), is act July 5, 1935, ch. 372, 49 Stat. 449, which is classified generally to subchapter II (§151 et seq.) of chapter 7 of Title 29, Labor. For complete classification of this Act to the Code, see section 167 of Title 29 and Tables.

## **§9076. Limitation on certain employee compensation**

### **(a) In general**

The Secretary may only provide financial assistance under this part to an air carrier or contractor after such carrier or contractor enters into an agreement with the Secretary which provides that, during the 2-year period beginning March 24, 2020, and ending March 24, 2022, no officer or employee of the air carrier or contractor whose total compensation exceeded \$425,000 in calendar year 2019 (other than an employee whose compensation is determined through an existing collective bargaining agreement entered into prior to March 27, 2020)—

(1) will receive from the air carrier or contractor total compensation which exceeds, during any 12 consecutive months of such 2-year period, the total compensation received by the officer or employee from the air carrier or contractor in calendar year 2019;

(2) will receive from the air carrier or contractor severance pay or other benefits upon termination of employment with the air carrier or contractor which exceeds twice the maximum total compensation received by the officer or employee from the air carrier or contractor in calendar year 2019; and

(3) no officer or employee of the eligible business whose total compensation exceeded \$3,000,000 in calendar year 2019 may receive during any 12 consecutive months of such period total compensation in excess of the sum of—

(A) \$3,000,000; and

(B) 50 percent of the excess over \$3,000,000 of the total compensation received by the officer or employee from the eligible business in calendar year 2019.

### **(b) Total compensation defined**

In this section, the term "total compensation" includes salary, bonuses, awards of stock, and other financial benefits provided by an air carrier or contractor to an officer or employee of the air carrier or contractor.

(Pub. L. 116–136, div. A, title IV, §4116, Mar. 27, 2020, 134 Stat. 500.)

## **§9077. Tax payer protection**

The Secretary may receive warrants, options, preferred stock, debt securities, notes, or other financial instruments issued by recipients of financial assistance under this part which, in the sole determination of the Secretary, provide appropriate compensation to the Federal Government for the provision of the financial assistance.

(Pub. L. 116–136, div. A, title IV, §4117, Mar. 27, 2020, 134 Stat. 500.)

## **§9078. Reports**

### **(a) Report**

Not later than November 1, 2020, the Secretary shall submit to the Committee on Transportation and Infrastructure and the Committee on Financial Services of the House of Representatives and the Committee on Commerce, Science, and Transportation and the Committee on Banking, Housing, and Urban Affairs of the Senate a report on the financial assistance provided to air carriers and contractors under this part, including a description of any financial assistance provided.

### **(b) Update**

Not later than the last day of the 1-year period following March 27, 2020, the Secretary shall update and submit to the Committee on Transportation and the Committee on Financial Services and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation and the Committee on Banking, Housing, and Urban Affairs of the Senate the report described in subsection (a).

(Pub. L. 116–136, div. A, title IV, §4118, Mar. 27, 2020, 134 Stat. 501.)

### **§9079. Coordination**

In implementing this part the Secretary shall coordinate with the Secretary of Transportation.

(Pub. L. 116–136, div. A, title IV, §4119, Mar. 27, 2020, 134 Stat. 501.)

### **§9080. Direct appropriation**

Notwithstanding any other provision of law, there is appropriated, out of amounts in the Treasury not otherwise appropriated, \$32,000,000,000 to carry out this part.

(Pub. L. 116–136, div. A, title IV, §4120, Mar. 27, 2020, 134 Stat. 501.)

## **PART C—AIRLINE WORKER SUPPORT EXTENSION**

### **EDITORIAL NOTES**

#### **CODIFICATION**

Part C was enacted as part of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act, and also as part of the Consolidated Appropriations Act, 2021, and not as part of the CARES Act which in part comprises this chapter.

### **§9091. Definitions**

Unless otherwise specified, the definitions in section 40102(a) of title 49 shall apply to this part, except that in this part—

(1) the term "catering functions" means preparation, assembly, or both, of food, beverages, provisions and related supplies for delivery, and the delivery of such items, directly to aircraft or to a location on or near airport property for subsequent delivery to aircraft;

(2) the term "contractor" means—

(A) a person that performs, under contract with a passenger air carrier conducting operations under part 121 of title 14, Code of Federal Regulations—

(i) catering functions; or

(ii) functions on the property of an airport that are directly related to the air transportation of persons, property, or mail, including, but not limited to, the loading and unloading of property on aircraft, assistance to passengers under part 382 of title 14, Code of Federal Regulations, security, airport ticketing and check-in functions, ground-handling of aircraft, or aircraft cleaning and sanitization functions and waste removal; or

(B) a subcontractor that performs such functions;

(3) the term "employee" means an individual, other than a corporate officer, who is employed by an air carrier or a contractor;

(4) the term "recall" means the dispatch of a notice by a passenger air carrier or a contractor, via

mail, courier, or electronic mail, to an involuntarily furloughed employee notifying the employee that—

(A) the employee must, within a specified period of time, elect either—

(i) to return to employment or bypass return to employment, in accordance with an applicable collective bargaining agreement or, in the absence of a collective bargaining agreement, company policy; or

(ii) to permanently separate from employment with the passenger air carrier or contractor; and

(B) failure to respond within such time period specified shall be considered an election under subparagraph (A)(ii);

(5) the term "returning employee" means an involuntarily furloughed employee who has elected to return to employment pursuant to a recall notice; and

(6) the term "Secretary" means the Secretary of the Treasury.

(Pub. L. 116–260, div. N, title IV, §401, Dec. 27, 2020, 134 Stat. 2052.)

#### **EDITORIAL NOTES**

#### **REFERENCES IN TEXT**

This part, referred to in text, was in the original "this subtitle", meaning subtitle A (§§401–412) of title IV of div. N of Pub. L. 116–260, Dec. 27, 2020, 134 Stat. 2052, which enacted this part and amended sections 9041, 9071, and 9074 of this title. For complete classification of subtitle A to the Code, see Tables.

#### **CODIFICATION**

Section was enacted as part of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act, and also as part of the Consolidated Appropriations Act, 2021, and not as part of the CARES Act which in part comprises this chapter.

### **§9092. Pandemic relief for aviation workers**

#### **(a) Financial assistance for employee wages, salaries, and benefits**

Notwithstanding any other provision of law, to preserve aviation jobs and compensate air carrier industry workers, the Secretary shall provide financial assistance that shall exclusively be used for the continuation of payment of employee wages, salaries, and benefits to—

(1) passenger air carriers, in an aggregate amount up to \$15,000,000,000; and

(2) contractors, in an aggregate amount up to \$1,000,000,000.

#### **(b) Administrative expenses**

Notwithstanding any other provision of law, the Secretary may use funds made available under section 9072(b) of this title for costs and administrative expenses associated with providing financial assistance under this part.

(Pub. L. 116–260, div. N, title IV, §402, Dec. 27, 2020, 134 Stat. 2053.)

#### **EDITORIAL NOTES**

#### **REFERENCES IN TEXT**

This part, referred to in subsec. (b), was in the original "this subtitle", meaning subtitle A (§§401–412) of title IV of div. N of Pub. L. 116–260, Dec. 27, 2020, 134 Stat. 2052, which enacted this part and amended sections 9041, 9071, and 9074 of this title. For complete classification of subtitle A to the Code, see Tables.

#### **CODIFICATION**

Section was enacted as part of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues

Act, and also as part of the Consolidated Appropriations Act, 2021, and not as part of the CARES Act which in part comprises this chapter.

## **§9093. Procedures for providing payroll support**

### **(a) Awardable amounts**

The Secretary shall provide financial assistance under this part—

(1) to a passenger air carrier required to file reports pursuant to part 241 of title 14, Code of Federal Regulations, as of March 27, 2020, in an amount equal to—

(A) the amount such air carrier was approved to receive (without taking into account any pro rata reduction) under section 9073 of this title; or

(B) at the request of such air carrier, or in the event such air carrier did not receive assistance under section 9073 of this title, the amount of the salaries and benefits reported by the air carrier to the Department of Transportation pursuant to such part 241, for the period from October 1, 2019, through March 31, 2020;

(2) to a passenger air carrier that was not required to transmit reports under such part 241, as of March 27, 2020, in an amount equal to—

(A) the amount such air carrier was approved to receive (without taking into account any pro rata reduction) under section 9073 of this title, plus an additional 15 percent of such amount;

(B) at the request of such air carrier, provided such air carrier received assistance under section 9073 of this title, the sum of—

(i) the amount that such air carrier certifies, using sworn financial statements or other appropriate data, as the amount of total salaries and related fringe benefits that such air carrier incurred and would be required to be reported to the Department of Transportation pursuant to such part 241, if such air carrier was required to transmit such information during the period from April 1, 2019, through September 30, 2019; and

(ii) an additional amount equal to the difference between the amount certified under clause (i) and the amount the air carrier received under section 9073 of this title; or

(C) in the event such air carrier did not receive assistance under section 9073 of this title, an amount that such an air carrier certifies, using sworn financial statements or other appropriate data, as the amount of total salaries and related fringe benefits that such air carrier incurred and would be required to be reported to the Department of Transportation pursuant to such part 241, if such air carrier was required to transmit such information during the period from October 1, 2019, through March 31, 2020; and

(3) to a contractor in an amount equal to—

(A) the amount such contractor was approved to receive (without taking into account any pro rata reduction) under section 9073 of this title; or

(B) in the event such contractor did not receive assistance under section 9073 of this title, an amount that the contractor certifies, using sworn financial statements or other appropriate data, as the amount of wages, salaries, benefits, and other compensation that such contractor paid the employees of such contractor during the period from October 1, 2019, through March 31, 2020.

### **(b) Deadlines and procedures**

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

##### **(A) Forms; terms and conditions**

Financial assistance provided to a passenger air carrier or contractor under this part shall—

(i) be, to the maximum extent practicable, in the same form and on the same terms and conditions (including requirements for audits and the clawback of any financial assistance provided upon failure by a passenger air carrier or contractor to honor the assurances

specified in section 9094 of this title), as agreed to by the Secretary and the recipient for assistance received under section 9073 of this title, except if inconsistent with this part; or

(ii) in the event such a passenger air carrier or a contractor did not receive assistance under section 9073 of this title, be, to the maximum extent practicable, in the same form and on the same terms and conditions (including requirements for audits and the clawback of any financial assistance provided upon failure by a passenger air carrier or contractor to honor the assurances specified in section 9094 of this title), as agreed to by the Secretary and similarly situated recipients of assistance under section 9073 of this title.

## **(B) Procedures**

The Secretary shall, to the maximum extent practicable, publish streamlined and expedited procedures not later than 5 days after December 27, 2020, for passenger air carriers and contractors to submit requests for financial assistance under this part.

### **(2) Deadline for immediate payroll assistance**

Not later than 10 days after December 27, 2020, the Secretary shall make initial payments to passenger air carriers and contractors that submit requests for financial assistance approved by the Secretary.

### **(3) Subsequent payments**

The Secretary shall determine an appropriate method for the timely distribution of payments to passenger air carriers and contractors with approved requests for financial assistance from any funds remaining available after providing initial financial assistance payments under paragraph (2).

### **(c) Pro rata reductions**

The Secretary shall have the authority to reduce, on a pro rata basis, the amounts due to passenger air carriers and contractors under subsection (a) in order to address any shortfall in assistance that would otherwise be provided under such subsection.

### **(d) Audits**

The Inspector General of the Department of the Treasury shall audit certifications made under subsection (a).

(Pub. L. 116–260, div. N, title IV, §403, Dec. 27, 2020, 134 Stat. 2053.)

## **EDITORIAL NOTES**

### **REFERENCES IN TEXT**

This part, referred to in subsecs. (a) and (b)(1), was in the original "this subtitle", meaning subtitle A (§§401–412) of title IV of div. N of Pub. L. 116–260, Dec. 27, 2020, 134 Stat. 2052, which enacted this part and amended sections 9041, 9071, and 9074 of this title. For complete classification of subtitle A to the Code, see Tables.

### **CODIFICATION**

Section was enacted as part of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act, and also as part of the Consolidated Appropriations Act, 2021, and not as part of the CARES Act which in part comprises this chapter.

## **§9094. Required assurances**

### **(a) In general**

To be eligible for financial assistance under this part, a passenger air carrier or a contractor shall enter into an agreement with the Secretary, or otherwise certify in such form and manner as the Secretary shall prescribe, that the passenger air carrier or contractor shall—

(1) refrain from conducting involuntary furloughs or reducing pay rates and benefits until—

- (A) with respect to passenger air carriers, March 31, 2021; or
- (B) with respect to contractors, March 31, 2021, or the date on which the contractor expends such financial assistance, whichever is later;

(2) ensure that neither the passenger air carrier or contractor nor any affiliate of the passenger air carrier or contractor may, in any transaction, purchase an equity security of the passenger air carrier or contractor or the parent company of the passenger air carrier or contractor that is listed on a national securities exchange through—

- (A) with respect to passenger air carriers, March 31, 2022; or
- (B) with respect to contractors, March 31, 2022, or the date on which the contractor expends such financial assistance, whichever is later;

(3) ensure that the passenger air carrier or contractor shall not pay dividends, or make other capital distributions, with respect to common stock (or equivalent interest) of the air carrier or contractor through—

- (A) with respect to passenger air carriers, March 31, 2022; or
- (B) with respect to contractors, March 31, 2022, or the date on which the contractor expends such financial assistance, whichever is later; and

(4) meet the requirements of sections 9095 and 9096 of this title.

**(b) Recalls of employees**

An agreement or certification under this section shall require a passenger air carrier or contractor to perform the following actions:

(1) In the case of a passenger air carrier or contractor that received financial assistance under title IV of the CARES Act [15 U.S.C. 9041 et seq., 9071 et seq.] —

(A) recall (as defined in section 9091 of this title), not later than 72 hours after executing such agreement or certification, any employees involuntarily furloughed by such passenger air carrier or contractor between October 1, 2020, and the date such passenger air carrier or contractor enters into an agreement with the Secretary with respect to financial assistance under this part;

(B) compensate returning employees for lost pay and benefits (offset by any amounts received by the employee from a passenger air carrier or contractor as a result of the employee's furlough, including, but not limited to, furlough pay, severance pay, or separation pay) between—

(i) in the case of a passenger air carrier, December 1, 2020, and the date on which such passenger air carrier enters into an agreement with the Secretary with respect to financial assistance under this part; or

(ii) in the case of a contractor, December 27, 2020, and the date on which such contractor enters into an agreement with the Secretary with respect to financial assistance under this part; and

(C) restore the rights and protections for such returning employees as if such employees had not been involuntarily furloughed.

(2) In the case of a passenger air carrier or contractor that did not receive financial assistance under title IV of the CARES Act [15 U.S.C. 9041 et seq., 9071 et seq.] to—

(A) recall (as defined in section 9091 of this title), within 72 hours after executing such agreement or certification, any employees involuntarily furloughed by such passenger air carrier or contractor between March 27, 2020, and the date such passenger air carrier or contractor enters into an agreement with the Secretary for financial assistance under this part;

(B) compensate returning employees under this paragraph for lost pay and benefits (offset by any amounts received by the employee from a passenger air carrier or contractor as a result of the employee's furlough, including, but not limited to, furlough pay, severance pay, or

separation pay) between—

- (i) in the case of a passenger air carrier, December 1, 2020, and the date such passenger air carrier enters into an agreement with the Secretary for financial assistance under this part; or
- (ii) in the case of a contractor, December 27, 2020, and the date on which such contractor enters into an agreement with the Secretary with respect to financial assistance under this part; and

(C) restore the rights and protections for such returning employees as if such employees had not been involuntarily furloughed.

(Pub. L. 116–260, div. N, title IV, §404, Dec. 27, 2020, 134 Stat. 2055.)

## **EDITORIAL NOTES**

### **REFERENCES IN TEXT**

This part, referred to in text, was in the original "this subtitle", meaning subtitle A (§§401–412) of title IV of div. N of Pub. L. 116–260, Dec. 27, 2020, 134 Stat. 2052, which enacted this part and amended sections 9041, 9071, and 9074 of this title. For complete classification of subtitle A to the Code, see Tables.

Title IV of the CARES Act, referred to in subsec. (b), is title IV of div. A of Pub. L. 116–136, Mar. 27, 2020, 134 Stat. 469, which is classified principally to parts A (§9041 et seq.) and B (§9071 et seq.) of this subchapter. For complete classification of title IV to the Code, see Tables.

### **CODIFICATION**

Section was enacted as part of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act, and also as part of the Consolidated Appropriations Act, 2021, and not as part of the CARES Act which in part comprises this chapter.

## **§9095. Protection of collective bargaining agreements**

### **(a) In general**

Neither the Secretary, nor any other actor, department, or agency of the Federal Government, shall condition the issuance of financial assistance under this part on a passenger air carrier's or contractor's implementation of measures to enter into negotiations with the certified bargaining representative of a craft or class of employees of the passenger air carrier or contractor under the Railway Labor Act (45 U.S.C. 151 et seq.) or the National Labor Relations Act (29 U.S.C. 151 et seq.), regarding pay or other terms and conditions of employment.

### **(b) Passenger air carrier period of effect**

With respect to any passenger air carrier to which financial assistance is provided under this part, this section shall be in effect with respect to the passenger air carrier for the period beginning on the date on which the passenger air carrier is first issued such financial assistance and ending on March 31, 2021.

### **(c) Contractor period of effect**

With respect to any contractor to which financial assistance is provided under this part, this section shall be in effect with respect to the contractor beginning on the date on which the contractor is first issued such financial assistance and ending on March 31, 2021, or until the date on which all funds are expended, whichever is later.

(Pub. L. 116–260, div. N, title IV, §405, Dec. 27, 2020, 134 Stat. 2057.)

## **EDITORIAL NOTES**

### **REFERENCES IN TEXT**

This part, referred to in text, was in the original "this subtitle", meaning subtitle A (§§401–412) of title IV



of div. N of Pub. L. 116–260, Dec. 27, 2020, 134 Stat. 2052, which enacted this part and amended sections 9041, 9071, and 9074 of this title. For complete classification of subtitle A to the Code, see Tables.

The Railway Labor Act, referred to in subsec. (a), is act May 20, 1926, ch. 347, 44 Stat. 577, which is classified principally to chapter 8 (§151 et seq.) of Title 45, Railroads. For complete classification of this Act to the Code, see section 151 of Title 45 and Tables.

The National Labor Relations Act, referred to in subsec. (a), is act July 5, 1935, ch. 372, 49 Stat. 449, which is classified generally to subchapter II (§151 et seq.) of chapter 7 of Title 29, Labor. For complete classification of this Act to the Code, see section 167 of Title 29 and Tables.

#### **CODIFICATION**

Section was enacted as part of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act, and also as part of the Consolidated Appropriations Act, 2021, and not as part of the CARES Act which in part comprises this chapter.

### **§9096. Limitation on certain employee compensation**

#### **(a) In general**

The Secretary may only provide financial assistance under this part to a passenger air carrier or contractor after such carrier or contractor enters into an agreement with the Secretary that provides that, during the 2-year period beginning October 1, 2020, and ending October 1, 2022—

(1) no officer or employee of the passenger air carrier or contractor whose total compensation exceeded \$425,000 in calendar year 2019 (other than an employee whose compensation is determined through an existing collective bargaining agreement entered into prior to December 27, 2020) will receive from the passenger air carrier or contractor—

(A) total compensation that exceeds, during any 12 consecutive months of such 2-year period, the total compensation received by the officer or employee from the passenger air carrier or contractor in calendar year 2019; or

(B) severance pay or other benefits upon termination of employment with the passenger air carrier or contractor which exceeds twice the maximum total compensation received by the officer or employee from the passenger air carrier or contractor in calendar year 2019; and

(2) no officer or employee of the passenger air carrier or contractor whose total compensation exceeded \$3,000,000 in calendar year 2019 may receive during any 12 consecutive months of such period total compensation in excess of the sum of—

(A) \$3,000,000; and

(B) 50 percent of the excess over \$3,000,000 of the total compensation received by the officer or employee from the passenger air carrier or contractor in calendar year 2019.

#### **(b) Total compensation defined**

In this section, the term "total compensation" includes salary, bonuses, awards of stock, and other financial benefits provided by a passenger air carrier or contractor to an officer or employee of the passenger air carrier or contractor.

(Pub. L. 116–260, div. N, title IV, §406, Dec. 27, 2020, 134 Stat. 2057.)

#### **EDITORIAL NOTES**

#### **REFERENCES IN TEXT**

This part, referred to in subsec. (a), was in the original "this subtitle", meaning subtitle A (§§401–412) of title IV of div. N of Pub. L. 116–260, Dec. 27, 2020, 134 Stat. 2052, which enacted this part and amended sections 9041, 9071, and 9074 of this title. For complete classification of subtitle A to the Code, see Tables.

#### **CODIFICATION**

Section was enacted as part of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act, and also as part of the Consolidated Appropriations Act, 2021, and not as part of the CARES Act which

in part comprises this chapter.

## **§9097. Minimum air service guarantees**

### **(a) In general**

The Secretary of Transportation is authorized to require, to the extent reasonable and practicable, an air carrier provided financial assistance under this part to maintain scheduled air transportation, as the Secretary of Transportation determines necessary, to ensure services to any point served by that air carrier before March 1, 2020.

### **(b) Required considerations**

When considering whether to exercise the authority provided by this section, the Secretary of Transportation shall take into consideration the air transportation needs of small and remote communities, the need to maintain well-functioning health care supply chains, including medical devices and supplies, and pharmaceutical supply chains.

### **(c) Sunset**

The authority provided under this section shall terminate on March 1, 2022, and any requirements issued by the Secretary of Transportation under this section shall cease to apply after that date.

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

It is the sense of Congress that, when implementing this section, the Secretary of Transportation should take into consideration the following:

(1) A number of airports and communities have lost air service as a result of consolidated operations by covered air carriers, as permitted by the Department of Transportation, including smaller airports that are located near larger airports.

(2) Airports covering common points, as determined by the Department of Transportation, do not align with the grouping commonly used by many air carriers, other Federal agencies, and distribution channels used by consumers to purchase air travel.

(3) The demographic, geographic, economic, and other characteristics of an area and affected communities when determining whether consolidated operations at a single airport effectively serve the needs of the point.

(4) Maintaining a robust air transportation system, including maintaining air service to airports throughout the United States, plays an important role in the effective distribution of a coronavirus vaccine.

(5) The objections from community respondents on whether a specific airport should or should not be included in a consolidated point, including those objections noting the importance of the required considerations set forth in subsection (b).

(Pub. L. 116–260, div. N, title IV, §407, Dec. 27, 2020, 134 Stat. 2058.)

## **EDITORIAL NOTES**

### **REFERENCES IN TEXT**

This part, referred to in subsec. (a), was in the original "this subtitle", meaning subtitle A (§§401–412) of title IV of div. N of Pub. L. 116–260, Dec. 27, 2020, 134 Stat. 2052, which enacted this part and amended sections 9041, 9071, and 9074 of this title. For complete classification of subtitle A to the Code, see Tables.

### **CODIFICATION**

Section was enacted as part of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act, and also as part of the Consolidated Appropriations Act, 2021, and not as part of the CARES Act which in part comprises this chapter.

## **§9098. Taxpayer protection**

**(a) CARES Act assistance recipients**

With respect to a recipient of financial assistance under section 4113 of the CARES Act (15 U.S.C. 9073) that receives financial assistance under this part, the Secretary may receive warrants, options, preferred stock, debt securities, notes, or other financial instruments issued by such recipient that are, to the maximum extent practicable, in the same form and amount, and under the same terms and conditions, as agreed to by the Secretary and such recipient to provide appropriate compensation to the Federal Government for the provision of the financial assistance under this part.

**(b) Other applicants**

With respect to a recipient of financial assistance under this part that did not receive financial assistance under section 4113 of the CARES Act (15 U.S.C. 9073), the Secretary may receive warrants, options, preferred stock, debt securities, notes, or other financial instruments issued by such recipient in a form and amount that are, to the maximum extent practicable, under the same terms and conditions as agreed to by the Secretary and similarly situated recipients of financial assistance under such section to provide appropriate compensation to the Federal Government for the provision of the financial assistance under this part.

(Pub. L. 116–260, div. N, title IV, §408, Dec. 27, 2020, 134 Stat. 2059.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

The CARES Act, referred to in subsec. (a), also known as the Coronavirus Aid, Relief, and Economic Security Act, is Pub. L. 116–136, Mar. 27, 2020, 134 Stat. 281, which enacted this chapter and enacted, amended, and repealed numerous other sections and notes in the Code. For complete classification of this Act to the Code, see Short Title note set out under section 9001 of this title and Tables.

This part, referred to in text, was in the original "this subtitle", meaning subtitle A (§§401–412) of title IV of div. N of Pub. L. 116–260, Dec. 27, 2020, 134 Stat. 2052, which enacted this part and amended sections 9041, 9071, and 9074 of this title. For complete classification of subtitle A to the Code, see Tables.

**CODIFICATION**

Section was enacted as part of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act, and also as part of the Consolidated Appropriations Act, 2021, and not as part of the CARES Act which in part comprises this chapter.

**§9099. Reports**

**(a) Report**

Not later than May 1, 2021, the Secretary shall submit to the Committee on Transportation and Infrastructure and the Committee on Financial Services of the House of Representatives and the Committee on Commerce, Science, and Transportation and the Committee on Banking, Housing, and Urban Affairs of the Senate a report on the financial assistance provided to passenger air carriers and contractors under this part, that includes—

- (1) a description of any financial assistance provided to passenger air carriers under this part;
- (2) any audits of passenger air carriers or contractors receiving financial assistance under this part;
- (3) any reports filed by passenger air carriers or contractors receiving financial assistance under this part;
- (4) any instances of non-compliance by passenger air carriers or contractors receiving financial assistance under this part with the requirements of this part or agreements entered into with the Secretary to receive such financial assistance; and
- (5) information relating to any clawback of any financial assistance provided to passenger air carriers or contractors under this part.

**(b) Internet updates**

The Secretary shall update the website of the Department of the Treasury, at minimum, on a weekly basis as necessary to reflect new or revised distributions of financial assistance under this part with respect to each passenger air carrier or contractor that receives such assistance, the identification of any applicant that applied for financial assistance under this part, and the date of application for such assistance.

**(c) Supplemental update**

Not later than the last day of the 1-year period following December 27, 2020, the Secretary shall update and submit to the Committee on Transportation and Infrastructure and the Committee on Financial Services of the House of Representatives and the Committee on Commerce, Science, and Transportation and the Committee on Banking, Housing, and Urban Affairs of the Senate, the report submitted under subsection (a).

**(d) Protection of certain data**

The Secretary may withhold information that would otherwise be required to be made available under this section only if the Secretary determines to withhold the information in accordance with section 552 of title 5.

(Pub. L. 116–260, div. N, title IV, §409, Dec. 27, 2020, 134 Stat. 2059.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

This part, referred to in subsecs. (a) and (b), was in the original "this subtitle", meaning subtitle A (§§401–412) of title IV of div. N of Pub. L. 116–260, Dec. 27, 2020, 134 Stat. 2052, which enacted this part and amended sections 9041, 9071, and 9074 of this title. For complete classification of subtitle A to the Code, see Tables.

**CODIFICATION**

Section was enacted as part of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act, and also as part of the Consolidated Appropriations Act, 2021, and not as part of the CARES Act which in part comprises this chapter.

**§9100. Coordination**

In implementing this part, the Secretary shall coordinate with the Secretary of Transportation.

(Pub. L. 116–260, div. N, title IV, §410, Dec. 27, 2020, 134 Stat. 2060.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

This part, referred to in text, was in the original "this subtitle", meaning subtitle A (§§401–412) of title IV of div. N of Pub. L. 116–260, Dec. 27, 2020, 134 Stat. 2052, which enacted this part and amended sections 9041, 9071, and 9074 of this title. For complete classification of subtitle A to the Code, see Tables.

**CODIFICATION**

Section was enacted as part of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act, and also as part of the Consolidated Appropriations Act, 2021, and not as part of the CARES Act which in part comprises this chapter.

**§9101. Funding**

There is appropriated, out of amounts in the Treasury not otherwise appropriated, \$16,000,000,000 to carry out this part, to remain available until expended.

(Pub. L. 116–260, div. N, title IV, §411, Dec. 27, 2020, 134 Stat. 2060.)

## **EDITORIAL NOTES**

### **REFERENCES IN TEXT**

This part, referred to in text, was in the original "this subtitle", meaning subtitle A (§§401–412) of title IV of div. N of Pub. L. 116–260, Dec. 27, 2020, 134 Stat. 2052, which enacted this part and amended sections 9041, 9071, and 9074 of this title. For complete classification of subtitle A to the Code, see Tables.

### **CODIFICATION**

Section was enacted as part of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act, and also as part of the Consolidated Appropriations Act, 2021, and not as part of the CARES Act which in part comprises this chapter.

## **PART D—CORONAVIRUS ECONOMIC RELIEF FOR TRANSPORTATION SERVICES ACT**

## **EDITORIAL NOTES**

### **CODIFICATION**

Part D was enacted as part of the Coronavirus Economic Relief for Transportation Services Act and also as part of the Consolidated Appropriations Act, 2021, and not as part of the CARES Act which in part comprises this chapter.

## **§9111. Assistance for providers of transportation services affected by COVID–19**

### **(a) Definitions**

In this section:

#### **(1) Covered period**

The term "covered period", with respect to a provider of transportation services, means the period—

(A) beginning on December 27, 2020; and

(B) ending on the later of—

(i) March 31, 2021; or

(ii) the date on which all funds provided to the provider of transportation services under subsection (c) are expended.

#### **(2) COVID–19**

The term "COVID–19" means the Coronavirus Disease 2019.

#### **(3) Payroll costs**

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

The term "payroll costs" means—

(i) any payment to an employee of compensation in the form of—

(I) salary, wage, commission, or similar compensation;

(II) payment of a cash tip or an equivalent;

(III) payment for vacation, parental, family, medical, or sick leave;

(IV) payment required for the provision of group health care or other group insurance benefits, including insurance premiums;

(V) payment of a retirement benefit;

(VI) payment of a State or local tax assessed on employees with respect to

compensation; or

(VII) paid administrative leave; and

(ii) any payment of compensation to, or income of, a sole proprietor or independent contractor—

(I) that is—

(aa) a wage;

(bb) a commission;

(cc) income;

(dd) net earnings from self-employment; or

(ee) similar compensation; and

(II) in an amount equal to not more than \$100,000 during 1 calendar year, as prorated for the covered period.

#### **(B) Exclusions**

The term "payroll costs" does not include—

(i) any compensation of an individual employee in excess of an annual salary of \$100,000, as prorated for the covered period;

(ii) any tax imposed or withheld under chapter 21, 22, or 24 of title 26 during the covered period;

(iii) any compensation of an employee whose principal place of residence is outside the United States;

(iv) any qualified sick leave wages for which a credit is allowed under section 7001 of the Families First Coronavirus Response Act (26 U.S.C. 3111 note; Public Law 116–127);

(v) any qualified family leave wages for which a credit is allowed under section 7003 of that Act (26 U.S.C. 3111 note; Public Law 116–127); or

(vi) any bonus, raise in excess of inflation, or other form of additional employee compensation.

#### **(4) Provider of transportation services**

The term "provider of transportation services" means an entity that—

(A) is established or organized—

(i) in the United States; or

(ii) pursuant to Federal law;

(B) has significant operations, and a majority of employees based, in the United States;

(C) was in operation on March 1, 2020; and

(D) is the operator of—

(i) a vessel of the United States (as defined in section 116 of title 46) that is—

(I) a passenger vessel (as defined in section 2101 of that title) carrying fewer than 2,400 passengers;

(II) a small passenger vessel (as defined in section 2101 of that title); or

(III) a vessel providing pilotage services and regulated by a State in accordance with chapter 85 of that title;

(ii) a company providing transportation services using a bus characterized by an elevated passenger deck located over a baggage compartment (commonly known as an "over-the-road bus"), including local and intercity fixed-route service, commuter service, and charter or tour service (including tour or excursion service that includes features in addition to bus transportation, such as meals, lodging, admission to points of interest or special attractions, or the services of a guide);

(iii) a company providing transportation services using a school bus (as defined in section 571.3 of title 49, Code of Federal Regulations (or successor regulations)); or

(iv) any other passenger transportation service company subject to regulation by the Department of Transportation as the Secretary, in consultation with the Secretary of Transportation, determines to be appropriate.

**(5) Secretary**

The term "Secretary" means the Secretary of the Treasury.

**(b) Funding**

Out of any funds in the Treasury not otherwise appropriated, there are appropriated to provide grants to eligible providers of transportation services under this section, \$2,000,000,000 for fiscal year 2021, to remain available until expended.

**(c) Provision of assistance**

**(1) In general**

The Secretary, in consultation with the Secretary of Transportation, shall use the amounts made available under subsection (b) to provide grants to eligible providers of transportation services described in paragraph (2) that certify to the Secretary that the providers of transportation services have experienced a revenue loss of 25 percent or more, on an annual basis, as a direct or indirect result of COVID-19.

**(2) Description of eligible providers of transportation services**

**(A) In general**

An eligible provider of transportation services referred to in paragraph (1) is—

(i) a provider of transportation services that, on March 1, 2020—

(I) had 500 or fewer full-time, part-time, or temporary employees; and

(II) was not a subsidiary, parent, or affiliate of any other entity with a combined total workforce of more than 500 full-time, part-time, or temporary employees; or

(ii) a provider of transportation services that—

(I) on March 1, 2020, had more than 500 full-time, part-time, or temporary employees; and

(II) has not received assistance under paragraph (1), (2), or (3) of section 9042(b) of this title, or subtitle B of title IV of division A, <sup>1</sup> of the Coronavirus Aid, Relief, and Economic Security Act (Public Law 116-136; 134 Stat. 281) [15 U.S.C. 9071 et seq.].

**(B) Scope of eligibility for certain companies**

**(i) In general**

A provider of transportation services that has entered into or maintains a contract or agreement described in clause (ii) shall not be determined to be ineligible for assistance under this subsection on the basis of that contract or agreement, subject to clause (iv).

**(ii) Contract or agreement described**

A contract or agreement referred to in clause (i) is a contract or agreement for transportation services that is supported by a public entity using funds received under the Emergency Appropriations for Coronavirus Health Response and Agency Operations (division B of Public Law 116-136; 134 Stat. 505).

**(iii) Adjustment of assistance**

The Secretary may reduce the amount of assistance available under this subsection to a provider of transportation services described in clause (i) based on the amount of funds provided under this section or the Emergency Appropriations for Coronavirus Health Response and Agency Operations (division B of Public Law 116-136; 134 Stat. 505) that have supported a contract or agreement described in clause (ii) to which the provider of transportation services is a party.

**(iv) Notice requirement**

A provider of transportation services that has entered into or maintains a contract or agreement described in clause (ii), and that applies for assistance under this subsection, shall submit to the Secretary a notice describing the contract or agreement, including the amount of funds provided for the contract or agreement under this subsection or the Emergency Appropriations for Coronavirus Health Response and Agency Operations (division B of Public Law 116–136; 134 Stat. 505).

**(3) Amount**

**(A) Factors for consideration**

In determining the amount of assistance to be provided to an eligible provider of transportation services under this subsection, the Secretary shall take into consideration information provided by the provider of transportation services, including—

- (i) the amount of debt owed by the provider of transportation services on major equipment, if any;
- (ii) other sources of Federal assistance provided to the provider of transportation services, if any; and
- (iii) such other information as the Secretary may require.

**(B) Limitations**

**(i) Award**

The Secretary shall ensure that the amount of assistance provided to a provider of transportation services under this subsection, when combined with any other Federal assistance provided in response to COVID–19 under the Coronavirus Aid, Relief, and Economic Security Act (Public Law 116–136; 134 Stat. 281), the Paycheck Protection Program and Health Care Enhancement Act (Public Law 116–139; 134 Stat. 620), or any other provision of law, does not exceed the total amount of revenue earned by the provider of transportation services during calendar year 2019.

**(ii) Certification**

A provider of transportation services seeking assistance under this subsection shall submit to the Secretary—

- (I) documentation describing the total amount of revenue earned by the provider of transportation services during calendar year 2019; and
- (II) a certification that the amount of assistance sought under this subsection, when combined with any other Federal assistance described in clause (i), does not exceed the total amount of revenue earned by the provider of transportation services during calendar year 2019.

**(4) Form of assistance**

The amounts made available under subsection (b) shall be provided to eligible providers of transportation services in the form of grants.

**(5) Equal access**

The Secretary shall ensure equal access to the assistance provided under this section to eligible providers of transportation services that are small, minority-owned, and women-owned businesses.

**(6) Conditions of receipt**

As a condition of receipt of assistance under this subsection, the Secretary shall require that a provider of transportation services shall agree—

- (A) subject to paragraph (7)—
  - (i) to commence using the funds, on a priority basis and to the extent the funds are available, to maintain through the applicable covered period, expenditures on payroll costs for all employees as of December 27, 2020, after making any adjustments required for—
    - (I) retirement; or



(II) voluntary employee separation;

(ii) not to impose, during the covered period—

(I) any involuntary furlough; or

(II) any reduction in pay rates or benefits for nonexecutive employees; and

(iii) to recall or rehire any employees laid off, furloughed, or terminated after March 27, 2020, to the extent warranted by increased service levels;

(B) to return to the Secretary any funds received under this subsection that are not used by the provider of transportation services by the date that is 1 year after the date of receipt of the funds; and

(C) to examine the anticipated expenditure of the funds by the provider of transportation services for the purposes described in subparagraph (A) not less frequently than once every 90 days after the date of receipt of the funds.

#### **(7) Ramp-up period**

The requirement described in paragraph (6)(A)(iii) shall not apply to a provider of transportation services until the later of—

(A) the date that is 30 days after the date of receipt of the funds; and

(B) the date that is 90 days after December 27, 2020.

#### **(8) Additional conditions of certain receipts**

##### **(A) Prioritization of payroll costs**

As a condition of receipt of a grant under this subsection, the Secretary shall require that, except as provided in subparagraph (B), a provider of transportation services shall agree to use an amount equal to not less than 60 percent of the funds on payroll costs of the provider of transportation services.

##### **(B) Exception**

Subparagraph (A) shall not apply to a provider of transportation services if the provider of transportation services certifies to the Secretary that, after making any adjustments required for retirement or voluntary employee separation—

(i) each nonseasonal employee on the payroll of the provider of transportation services on January 1, 2020—

(I) if laid off, furloughed, or terminated by the provider of transportation services as described in paragraph (6)(A)(iii), is rehired, or has been offered rehire, by the provider of transportation services; and

(II) if rehired under clause (i) or subject to a reduction in salary before the date of receipt by the provider of transportation services of assistance under this subsection, receives not less than 100 percent of the previous salary of the employee;

(ii) the provider of transportation services—

(I) is staffed at a level of full-time equivalent, seasonal employees, on a monthly basis, that is greater than or equivalent to the level at which the provider of transportation services was staffed with full-time equivalent, seasonal employees on a monthly basis during calendar year 2019;

(II) is offering priority in rehiring to seasonal employees that were laid off, furloughed, terminated, or not offered rehire in calendar year 2020, as the provider of transportation services achieves staffing at the level described in subclause (I); and

(III) offers any seasonal employee rehired under subclause (II) or subject to a reduction in salary before the date of receipt by the provider of transportation services of assistance under this subsection not less than 100 percent of the previous salary of the employee; and

(iii) the provider of transportation services will fully cover, through the applicable covered period, all payroll costs associated with the staffing requirements described in clauses (i) and (ii).

**(9) Forms; terms and conditions**

A grant provided under this section shall be in such form, subject to such terms and conditions, and contain such covenants, representations, warranties, and requirements (including requirements for audits) as the Secretary determines to be appropriate in accordance with this section.

**(d) Eligible activities**

**(1) In general**

Subject to the priority described in subsection (c)(6)(A), a provider of transportation services shall use assistance provided under subsection (c) only for—

(A) the payment of payroll costs;

(B) the acquisition of services, equipment, including personal protective equipment, and other measures needed to protect workers and customers from COVID-19;

(C) continued operations and maintenance during the applicable covered period of existing capital equipment and facilities—

(i) including rent, leases, insurance, and interest on regularly scheduled debt service; but

(ii) not including any prepayment of, or payment of principal on, a debt obligation, except for any principal on a debt obligation accrued by the provider of transportation services directly to maintain the expenditures of the provider of transportation services on payroll costs throughout the COVID-19 pandemic; or

(D) the compensation of returning employees for lost pay and benefits during the COVID-19 pandemic, subject to subsection (e).

**(2) Eligibility**

The use of assistance provided under subsection (c) for the compensation of returning employees under paragraph (1)(D) shall be counted toward the required amount of grants to be used on payroll costs under subsection (c)(6)(A).

**(e) Compensation of returning employees**

Notwithstanding any other provision of law, any compensation provided to a returning employee under subsection (d)(1)(D)—

(1) shall be offset by—

(A) any amounts received by the employee from the provider of transportation services as a result of the layoff, furlough, or termination of the employee or any failure to hire the employee for seasonal employment during calendar year 2020, including—

(i) furlough pay;

(ii) severance pay; or

(iii) separation pay; and

(B) any amounts the employee received from unemployment insurance; and

(2) shall not—

(A) be considered an overpayment for purposes of any State or Federal unemployment law; or

(B) be subject to any overpayment recovery efforts by a State agency (as defined in section 205 of the Federal-State Extended Unemployment Compensation Act of 1970 (U.S.C. 3304 note <sup>2</sup>)).

**(f) Administrative provisions**

**(1) In general**

The Secretary may take such actions as the Secretary determines to be necessary to carry out this section, including—

- (A) using direct hiring authority to hire employees to administer this section;
- (B) entering into contracts, including contracts for services authorized by this section; and
- (C) issuing such regulations and other guidance as may be necessary or appropriate to carry out the purposes of this section.

**(2) Administrative expenses**

Of the funds made available under this section, not more than \$50,000,000 may be used by the Secretary for administrative expenses to carry out this section.

**(3) Availability for obligation**

The funds made available under this section shall remain available for obligation until the date that is 3 years after December 27, 2020.

(Pub. L. 116–260, div. N, title IV, §421, Dec. 27, 2020, 134 Stat. 2061.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

The Coronavirus Aid, Relief, and Economic Security Act, referred to in subsec. (c)(2)(A)(ii)(II), (3)(B)(i), also known as the CARES Act, is Pub. L. 116–136, Mar. 27, 2020, 134 Stat. 281, which enacted this chapter and enacted, amended, and repealed numerous other sections and notes in the Code. Subtitle B of title IV of division A of the Act is classified generally to part B (§9071 et seq.) of this subchapter. For complete classification of this Act to the Code, see Short Title note set out under section 9001 of this title and Tables.

The Emergency Appropriations for Coronavirus Health Response and Agency Operations, referred to in subsec. (c)(2)(B)(ii) to (iv), is div. B of Pub. L. 116–136, Mar. 27, 2020, 134 Stat. 505. Provisions in the Act relating to funds for transportation services are not classified to the Code.

The Paycheck Protection Program and Health Care Enhancement Act, referred to in subsec. (c)(3)(B)(i), is Pub. L. 116–139, Apr. 24, 2020, 134 Stat. 620, which amended sections 636, 9006, and 9009 of this title. For complete classification of this Act to the Code, see Short Title of 2020 Amendment note set out under section 9001 of this title and Tables.

Section 205 of the Federal-State Extended Unemployment Compensation Act of 1970, referred to in subsec. (e)(2)(B), is section 205 of Pub. L. 91–373, which is set out as a note under section 3304 of Title 26, Internal Revenue Code.

**CODIFICATION**

Section was enacted as part of the Coronavirus Economic Relief for Transportation Services Act and also as part of the Consolidated Appropriations Act, 2021, and not as part of the CARES Act which in part comprises this chapter.

<sup>1</sup> *So in original. The comma probably should not appear.*

<sup>2</sup> *So in original. Probably should be "26 U.S.C. 3304 note".*

**PART E—RELIEF FOR AIRPORTS**

**EDITORIAL NOTES**

**CODIFICATION**

Part E was enacted as part of the American Rescue Plan Act of 2021, and not as part of the CARES Act which in part comprises this chapter.

## **§9121. Relief for airports**

### **(a) In general**

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

In addition to amounts otherwise available, there is appropriated for fiscal year 2021, out of any funds in the Treasury not otherwise appropriated, \$8,000,000,000, to remain available until September 30, 2024, for assistance to sponsors of airports, as such terms are defined in section 47102 of title 49, to be made available to prevent, prepare for, and respond to coronavirus.

#### **(2) Requirements and limitations**

Amounts made available under this section—

(A) may not be used for any purpose not directly related to the airport; and

(B) may not be provided to any airport that was allocated in excess of 4 years of operating funds to prevent, prepare for, and respond to coronavirus in fiscal year 2020.

### **(b) Allocations**

The following terms shall apply to the amounts made available under this section:

#### **(1) Operating expenses and debt service payments**

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

Not more than \$6,492,000,000 shall be made available for primary airports, as such term is defined in section 47102 of title 49, and certain cargo airports, for costs related to operations, personnel, cleaning, sanitization, janitorial services, combating the spread of pathogens at the airport, and debt service payments.

##### **(B) Distribution**

Amounts made available under this paragraph—

(i) shall not be subject to the reduced apportionments under section 47114(f) of title 49;

(ii) shall first be apportioned as set forth in sections 47114(c)(1)(A), 47114(c)(1)(C)(i), <sup>1</sup>47114(c)(1)(C)(ii), <sup>1</sup>47114(c)(2)(A), 47114(c)(2)(B), and 47114(c)(2)(E) <sup>1</sup> of title 49; and

(iii) shall not be subject to a maximum apportionment limit set forth in section 47114(c)(1)(B) of title 49.

##### **(C) Remaining amounts**

Any amount remaining after distribution under subparagraph (B) shall be distributed to the sponsor of each primary airport (as such term is defined in section 47102 of title 49) based on each such primary airport's passenger enplanements compared to the total passenger enplanements of all such primary airports in calendar year 2019.

#### **(2) Federal share for development projects**

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

Not more than \$608,000,000 allocated under subsection (a)(1) shall be available to pay a Federal share of 100 percent of the costs for any grant awarded in fiscal year 2021, or in fiscal year 2020 with less than a 100-percent Federal share, for an airport development project (as such term is defined in section 47102 of title 49).

##### **(B) Remaining amounts**

Any amount remaining under this paragraph shall be distributed as described in paragraph (1)(C).

#### **(3) Nonprimary airports**

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

Not more than \$100,000,000 shall be made available for general aviation and commercial service airports that are not primary airports (as such terms are defined in section 47102 of title 49) for costs related to operations, personnel, cleaning, sanitization, janitorial services,

combating the spread of pathogens at the airport, and debt service payments.

**(B) Distribution**

Amounts made available under this paragraph shall be apportioned to each non-primary airport based on the categories published in the most current National Plan of Integrated Airport Systems, reflecting the percentage of the aggregate published eligible development costs for each such category, and then dividing the allocated funds evenly among the eligible airports in each category, rounding up to the nearest thousand dollars.

**(C) Remaining amounts**

Any amount remaining under this paragraph shall be distributed as described in paragraph (1)(C).

**(4) Airport concessions**

**(A) In general**

Not more than \$800,000,000 shall be made available for sponsors of primary airports to provide relief from rent and minimum annual guarantees to airport concessions, of which at least \$640,000,000 shall be available to provide relief to eligible small airport concessions and of which at least \$160,000,000 shall be available to provide relief to eligible large airport concessions located at primary airports.

**(B) Distribution**

The amounts made available for each set-aside in this paragraph shall be distributed to the sponsor of each primary airport (as such term is defined in section 47102 of title 49) based on each such primary airport's passenger enplanements compared to the total passenger enplanements of all such primary airports in calendar year 2019.

**(C) Conditions**

As a condition of approving a grant under this paragraph—

(i) the sponsor shall provide such relief from March 21, 2021, until the sponsor has provided relief equaling the total grant amount, to the extent practicable and to the extent permissible under State laws, local laws, and applicable trust indentures; and

(ii) for each set-aside, the sponsor shall provide relief from rent and minimum annual guarantee obligations to each eligible airport concession in an amount that reflects each eligible airport concession's proportional share of the total amount of the rent and minimum annual guarantees of those eligible airport concessions at such airport.

**(c) Administration**

**(1) Administrative expenses**

The Administrator of the Federal Aviation Administration may retain up to 0.1 percent of the funds provided under this section to fund the award of, and oversight by the Administrator of, grants made under this section.

**(2) Workforce retention requirements**

**(A) Required retention**

As a condition for receiving funds provided under this section, an airport shall continue to employ, through September 30, 2021, at least 90 percent of the number of individuals employed (after making adjustments for retirements or voluntary employee separations) by the airport as of March 27, 2020.

**(B) Waiver of retention requirement**

The Secretary shall waive the workforce retention requirement if the Secretary determines that—

- (i) the airport is experiencing economic hardship as a direct result of the requirement; or
- (ii) the requirement reduces aviation safety or security.

**(C) Exception**

The workforce retention requirement shall not apply to nonhub airports or nonprimary airports receiving funds under this section.

**(D) Noncompliance**

Any financial assistance provided under this section to an airport that fails to comply with the workforce retention requirement described in subparagraph (A), and does not otherwise qualify for a waiver or exception under this paragraph, shall be subject to clawback by the Secretary.

**(d) Definitions**

In this section:

**(1) Eligible large airport concession**

The term "eligible large airport concession" means a concession (as defined in section 23.3 of title 49, Code of Federal Regulations), that is in-terminal and has maximum gross receipts, averaged over the previous three fiscal years, of more than \$56,420,000.

**(2) Eligible small airport concession**

The term "eligible small airport concession" means a concession (as defined in section 23.3 of title 49, Code of Federal Regulations), that is in-terminal and—

(A) a small business with maximum gross receipts, averaged over the previous 3 fiscal years, of less than \$56,420,000; or

(B) is a joint venture (as defined in section 23.3 of title 49, Code of Federal Regulations).

(Pub. L. 117–2, title VII, §7102, Mar. 11, 2021, 135 Stat. 96.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

Sections 47114(c)(1)(C)(i) and 47114(c)(1)(C)(ii) of title 49, referred to in subsec. (b)(1)(B)(ii), were omitted in the general amendment of subsec. (c)(1) of section 47114 of title 49 by Pub. L. 118–63, title VII, §712(a)(1), May 16, 2024, 138 Stat. 1254. The new subsec. (c)(1)(C) of section 47114 of title 49 does not contain any clauses.

Section 47114(c)(2)(E) of title 49, referred to in subsec. (b)(1)(B)(ii), was redesignated section 47114(c)(2)(D) of title 49 by Pub. L. 118–63, title VII, §712(a)(2)(C), May 16, 2024, 138 Stat. 1255.

**CODIFICATION**

Section was enacted as part of the American Rescue Plan Act of 2021, and not as part of the CARES Act which in part comprises this chapter.

<sup>1</sup> [\*See References in Text note below.\*](#)

**PART F—AVIATION MANUFACTURING JOBS PROTECTION**

**EDITORIAL NOTES**

**CODIFICATION**

Part F was enacted as part of the American Rescue Plan Act of 2021, and not as part of the CARES Act which in part comprises this chapter.

**§9131. Definitions**

In this part:

**(1) Eligible employee group**

The term "eligible employee group" means the portion of an employer's United States workforce that—

- (A) does not exceed 25 percent of the employer's total United States workforce as of April 1, 2020; and
- (B) contains only employees with a total compensation level of \$200,000 or less per year; and
- (C) is engaged in aviation manufacturing activities and services, or maintenance, repair, and overhaul activities and services.

**(2) Aviation manufacturing company**

The term "aviation manufacturing company" means a corporation, firm, or other business entity—

(A) that—

- (i) actively manufactures an aircraft, aircraft engine, propeller, or a component, part, or systems of an aircraft or aircraft engine under a Federal Aviation Administration production approval;
- (ii) holds a certificate issued under part 145 of title 14, Code of Federal Regulations, for maintenance, repair, and overhaul of aircraft, aircraft engines, components, or propellers; or
- (iii) operates a process certified to SAE AS9100 related to the design, development, or provision of an aviation product or service, including a part, component, or assembly;

(B) which—

- (i) is established, created, or organized in the United States or under the laws of the United States; and
- (ii) has significant operations in, and a majority of its employees engaged in aviation manufacturing activities and services, or maintenance, repair, and overhaul activities and services based in the United States;

(C) which has involuntarily furloughed or laid off at least 10 percent of its workforce in 2020 as compared to 2019 or has experienced at least a 15 percent decline in 2020 revenues as compared to 2019;

(D) that, as supported by sworn financial statements or other appropriate data, has identified the eligible employee group and the amount of total compensation level for the eligible employee group;

(E) that agrees to provide private contributions and maintain the total compensation level for the eligible employee group for the duration of an agreement under this part;

(F) that agrees to provide immediate notice and justification to the Secretary of involuntary furloughs or layoffs exceeding 10 percent of the workforce that is not included in an eligible employee group for the duration of an agreement and receipt of public contributions under this part;

(G) that has not conducted involuntary furloughs or reduced pay rates or benefits for the eligible employee group, subject to the employer's right to discipline or terminate an employee in accordance with employer policy, between the date of application and the date on which such a corporation, firm, or other business entity enters into an agreement with the Secretary under this part; and

(H) that—

- (i) in the case of a corporation, firm, or other business entity including any parent company or subsidiary of such a corporation, firm, or other business entity, that holds any type or production certificate or similar authorization issued under section 44704 of title 49, United States Code, with respect to a transport-category airplane covered under part 25 of title 14, Code of Federal Regulations, certificated with a passenger seating capacity of 50 or more, agrees to refrain from conducting involuntary layoffs or furloughs, or reducing pay rates and benefits, for the eligible employee group, subject to the employer's right to discipline or

terminate an employee in accordance with employer policy from the date of agreement until September 30, 2021, or the duration of the agreement and receipt of public contributions under this part, whichever period ends later; or

(ii) in the case of corporation, firm, or other business entity not specified under subparagraph (i), agrees to refrain from conducting involuntary layoffs or furloughs, or reducing pay rates and benefits, for the eligible employee group, subject to the employer's right to discipline or terminate an employee in accordance with employer policy for the duration of the agreement and receipt of public contributions under this part.

**(3) Employee**

The term "employee" has the meaning given that term in section 203 of title 29.

**(4) Employer**

The term "employer" means an aviation manufacturing company that is an employer (as defined in section 203 of title 29).

**(5) Private contribution**

The term "private contribution" means the contribution funded by the employer under this part to maintain 50 percent of the eligible employee group's total compensation level, and combined with the public contribution, is sufficient to maintain the total compensation level for the eligible employee group as of April 1, 2020.

**(6) Public contribution**

The term "public contribution" means the contribution funded by the Federal Government under this part to provide 50 percent of the eligible employees group's total compensation level, and combined with the private contribution, is sufficient to maintain the total compensation level for those in the eligible employee group as of April 1, 2020.

**(7) Secretary**

The term "Secretary" means the Secretary of Transportation.

**(8) Total compensation level**

The term "total compensation level" means the level of total base compensation and benefits being provided to an eligible employee group employee, excluding overtime and premium pay, and excluding any Federal, State, or local payroll taxes paid, as of April 1, 2020.

(Pub. L. 117–2, title VII, §7201, Mar. 11, 2021, 135 Stat. 101.)

**EDITORIAL NOTES**

**CODIFICATION**

Section was enacted as part of the American Rescue Plan Act of 2021, and not as part of the CARES Act which in part comprises this chapter.

**§9132. Payroll support program**

**(a) In General**

The Secretary shall establish a payroll support program and enter into agreements with employers who meet the eligibility criteria specified in subsection (b) and are not ineligible under subsection (c), to provide public contributions to supplement compensation of an eligible employee group. There is appropriated for fiscal year 2021, out of amounts in the Treasury not otherwise appropriated, \$3,000,000,000, to remain available until September 30, 2023, for the Secretary to carry out the payroll support program authorized under the preceding sentence for which 1 percent of the funds may be used for implementation costs and administrative expenses.

**(b) Eligibility**



The Secretary shall enter into an agreement and provide public contributions, for a term no longer than 6 months, solely with an employer that agrees to use the funds received under an agreement exclusively for the continuation of employee wages, salaries, and benefits, to maintain the total compensation level for the eligible employee group as of April 1, 2020 for the duration of the agreement, and to facilitate the retention, rehire, or recall of employees of the employer, except that such funds may not be used for back pay of returning rehired or recalled employees.

**(c) Ineligibility**

The Secretary may not enter into any agreement under this section with an employer who was allowed a credit under section 2301 of the CARES Act (26 U.S.C. 3111 note) for the immediately preceding calendar quarter ending before such agreement is entered into, who received financial assistance under section 9073 of this title, or who is currently expending financial assistance under the paycheck protection program established under section 636(a)(36) of this title, as of the date the employer submits an application under the payroll support program established under subsection (a).

**(d) Reductions**

To address any shortfall in assistance that would otherwise be provided under this part, the Secretary shall reduce, on a pro rata basis, the financial assistance provided under this part.

**(e) Agreement Deadline**

No agreement may be entered into by the Secretary under the payroll support program established under subsection (a) after the last day of the 6 month period that begins on the effective date of the first agreement entered into under such program.

(Pub. L. 117–2, title VII, §7202, Mar. 11, 2021, 135 Stat. 103.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

Section 2301 of the CARES Act, referred to in subsec. (c), is section 2301 of Pub. L. 116–136, which is set out as a note under section 3111 of Title 26, Internal Revenue Code.

**CODIFICATION**

Section was enacted as part of the American Rescue Plan Act of 2021, and not as part of the CARES Act which in part comprises this chapter.

**PART G—AIRLINES**

**EDITORIAL NOTES**

**CODIFICATION**

Part G was enacted as part of the American Rescue Plan Act of 2021, and not as part of the CARES Act which in part comprises this chapter.

**§9141. Air transportation payroll support program extension**

**(a) Definitions**

The definitions in section 40102(a) of title 49 shall apply with respect to terms used in this section, except that—

(1) the term "catering functions" means preparation, assembly, or both, of food, beverages, provisions and related supplies for delivery, and the delivery of such items, directly to aircraft or to a location on or near airport property for subsequent delivery to aircraft;

(2) the term "contractor" means—

(A) a person that performs, under contract with a passenger air carrier conducting operations under part 121 of title 14, Code of Federal Regulations—

(i) catering functions; or

(ii) functions on the property of an airport that are directly related to the air transportation of persons, property, or mail, including the loading and unloading of property on aircraft, assistance to passengers under part 382 of title 14, Code of Federal Regulations, security, airport ticketing and check-in functions, ground-handling of aircraft, or aircraft cleaning and sanitization functions and waste removal; or

(B) a subcontractor that performs such functions;

(3) the term "employee" means an individual, other than a corporate officer, who is employed by an air carrier or a contractor;

(4) the term "eligible air carrier" means an air carrier that—

(A) received financial assistance pursuant <sup>1</sup> section 9092(a)(1) of this title;

(B) provides air transportation as of March 31, 2021;

(C) has not conducted involuntary furloughs or reduced pay rates or benefits between March 31, 2021, and the date on which the air carrier makes a certification to the Secretary pursuant to subparagraph (D); and

(D) certifies to the Secretary that such air carrier will—

(i) refrain from conducting involuntary furloughs or reducing pay rates or benefits until September 30, 2021, or the date on which assistance provided under this section is exhausted, whichever is later;

(ii) refrain from purchasing an equity security of the air carrier or the parent company of the air carrier that is listed on a national securities exchange through September 30, 2022;

(iii) refrain from paying dividends, or making other capital distributions, with respect to common stock (or equivalent interest) of such air carrier through September 30, 2022;

(iv) during the 2-year period beginning April 1, 2021, and ending April 1, 2023, refrain from paying—

(I) any officer or employee of the air carrier whose total compensation exceeded \$425,000 in calendar year 2019 (other than an employee whose compensation is determined through an existing collective bargaining agreement entered into prior to March 11, 2021)—

(aa) total compensation that exceeds, during any 12 consecutive months of such 2-year period, the total compensation received by the officer or employee from the air carrier in calendar year 2019; or

(bb) severance pay or other benefits upon termination of employment with the air carrier which exceeds twice the maximum total compensation received by the officer or employee from the air carrier in calendar year 2019; and

(II) any officer or employee of the air carrier whose total compensation exceeded \$3,000,000 in calendar year 2019 during any 12 consecutive months of such period total compensation in excess of the sum of—

(aa) \$3,000,000; and

(bb) 50 percent of the excess over \$3,000,000 of the total compensation received by the officer or employee from the air carrier in calendar year 2019.<sup>2</sup>

(5) the term "eligible contractor" means a contractor that—

(A) received financial assistance pursuant to section 9092(a)(2) of this title;

(B) performs one or more of the functions described under paragraph (2) as of March 31, 2021;

(C) has not conducted involuntary furloughs or reduced pay rates or benefits between March 31, 2021, and the date on which the contractor makes a certification to the Secretary pursuant to

subparagraph (D); and

(D) certifies to the Secretary that such contractor will—

(i) refrain from conducting involuntary furloughs or reducing pay rates or benefits until September 30, 2021, or the date on which assistance provided under this section is exhausted, whichever is later;

(ii) refrain from purchasing an equity security of the contractor or the parent company of the contractor that is listed on a national securities exchange through September 30, 2022;

(iii) refrain from paying dividends, or making other capital distributions, with respect to common stock (or equivalent interest) of the contractor through September 30, 2022;

(iv) during the 2-year period beginning April 1, 2021, and ending April 1, 2023, refrain from paying—

(I) any officer or employee of the contractor whose total compensation exceeded \$425,000 in calendar year 2019 (other than an employee whose compensation is determined through an existing collective bargaining agreement entered into prior to March 11, 2021)—

(aa) total compensation that exceeds, during any 12 consecutive months of such 2-year period, the total compensation received by the officer or employee from the contractor in calendar year 2019; or

(bb) severance pay or other benefits upon termination of employment with the contractor which exceeds twice the maximum total compensation received by the officer or employee from the contractor in calendar year 2019; and

(II) any officer or employee of the contractor whose total compensation exceeded \$3,000,000 in calendar year 2019 during any 12 consecutive months of such period total compensation in excess of the sum of—

(aa) \$3,000,000; and

(bb) 50 percent of the excess over \$3,000,000 of the total compensation received by the officer or employee from the contractor in calendar year 2019.<sup>3</sup>

(6) the term "Secretary" means the Secretary of the Treasury.

## **(b) Payroll support grants**

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

The Secretary shall make available to eligible air carriers and eligible contractors, financial assistance exclusively for the continuation of payment of employee wages, salaries, and benefits to—

(A) eligible air carriers, in an aggregate amount of \$14,000,000,000; and

(B) eligible contractors, in an aggregate amount of \$1,000,000,000.

### **(2) Apportionments**

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

The Secretary shall apportion funds to eligible air carriers and eligible contractors in accordance with the requirements of this section not later than April 15, 2021.

#### **(B) Eligible air carriers**

The Secretary shall apportion funds made available under paragraph (1)(A) to each eligible air carrier in the ratio that—

(i) the amount received by the air carrier pursuant to section 9093(a) of this title bears to

(ii) \$15,000,000,000.

#### **(C) Eligible contractors**

The Secretary shall apportion, to each eligible contractor, an amount equal to the total amount such contractor received pursuant to section 9093(a) of this title.

### (3) In general

#### (A) Forms; terms and conditions

The Secretary shall provide financial assistance to an eligible air carrier or eligible contractor under this section in the same form and on the same terms and conditions as determined by pursuant to <sup>4</sup> section 9093(b)(1)(A) of this title.

#### (B) Procedures

The Secretary shall publish streamlined and expedited procedures not later than 5 days after March 11, 2021, for eligible air carriers and eligible contractors to submit requests for financial assistance under this section.

#### (C) Deadline for immediate payroll assistance

Not later than 10 days after March 11, 2021, the Secretary shall make initial payments to air carriers and contractors that submit requests for financial assistance approved by the Secretary.

### (4) Taxpayer protection

The Secretary shall receive financial instruments issued by recipients of financial assistance under this section in the same form and amount, and under the same terms and conditions, as determined by the Secretary under section 9098 of this title.

### (5) Administrative expenses

Of the amounts made available under paragraph (1)(A), \$10,000,000 shall be made available to the Secretary for costs and administrative expenses associated with providing financial assistance under this section.

### (c) Funding

In addition to amounts otherwise available, there is appropriated for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, \$15,000,000,000, to remain available until expended, to carry out this section.

(Pub. L. 117–2, title VII, §7301, Mar. 11, 2021, 135 Stat. 104.)

## EDITORIAL NOTES

### CODIFICATION

Section was enacted as part of the American Rescue Plan Act of 2021, and not as part of the CARES Act which in part comprises this chapter.

<sup>1</sup> *So in original. Probably should be followed by "to".*

<sup>2</sup> *So in original. The period probably should be a semicolon.*

<sup>3</sup> *So in original. The period probably should be "; and".*

<sup>4</sup> *So in original.*

## CHAPTER 117—IDENTIFYING OUTPUTS OF GENERATIVE ADVERSARIAL NETWORKS

Sec.	
9201.	Findings.
9202.	NSF support of research on manipulated or synthesized content and information security.
9203.	NIST support for research and standards on generative adversarial networks.

9204. Generative adversarial network defined.

## **§9201. Findings**

Congress finds the following:

(1) Gaps currently exist on the underlying research needed to develop tools that detect videos, audio files, or photos that have manipulated or synthesized content, including those generated by generative adversarial networks. Research on digital forensics is also needed to identify, preserve, recover, and analyze the provenance of digital artifacts.

(2) The National Science Foundation's focus to support research in artificial intelligence through computer and information science and engineering, cognitive science and psychology, economics and game theory, control theory, linguistics, mathematics, and philosophy, is building a better understanding of how new technologies are shaping the society and economy of the United States.

(3) The National Science Foundation has identified the "10 Big Ideas for NSF Future Investment" including "Harnessing the Data Revolution" and the "Future of Work at the Human-Technology Frontier", with artificial intelligence is a critical component.

(4) The outputs generated by generative adversarial networks should be included under the umbrella of research described in paragraph (3) given the grave national security and societal impact potential of such networks.

(5) Generative adversarial networks are not likely to be utilized as the sole technique of artificial intelligence or machine learning capable of creating credible deepfakes. Other techniques may be developed in the future to produce similar outputs.

(Pub. L. 116–258, §2, Dec. 23, 2020, 134 Stat. 1150.)

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **SHORT TITLE**

Pub. L. 116–258, §1, Dec. 23, 2020, 134 Stat. 1150, provided that: "This Act [enacting this chapter] may be cited as the 'Identifying Outputs of Generative Adversarial Networks Act' or the 'IOGAN Act'."

## **§9202. NSF support of research on manipulated or synthesized content and information security**

The Director of the National Science Foundation, in consultation with other relevant Federal agencies, shall support merit-reviewed and competitively awarded research on manipulated or synthesized content and information authenticity, which may include—

(1) fundamental research on digital forensic tools or other technologies for verifying the authenticity of information and detection of manipulated or synthesized content, including content generated by generative adversarial networks;

(2) fundamental research on technical tools for identifying manipulated or synthesized content, such as watermarking systems for generated media;

(3) social and behavioral research related to manipulated or synthesized content, including human engagement with the content;

(4) research on public understanding and awareness of manipulated and synthesized content, including research on best practices for educating the public to discern authenticity of digital content; and

(5) research awards coordinated with other federal agencies and programs, including the Defense Advanced Research Projects Agency and the Intelligence Advanced Research Projects Agency,<sup>1</sup> with coordination enabled by the Networking and Information Technology Research and Development Program.

(Pub. L. 116–258, §3, Dec. 23, 2020, 134 Stat. 1151.)

<sup>1</sup> So in original. Probably should be "Activity."

## **§9203. NIST support for research and standards on generative adversarial networks**

### **(a) In general**

The Director of the National Institute of Standards and Technology shall support research for the development of measurements and standards necessary to accelerate the development of the technological tools to examine the function and outputs of generative adversarial networks or other technologies that synthesize or manipulate content.

### **(b) Outreach**

The Director of the National Institute of Standards and Technology shall conduct outreach—

(1) to receive input from private, public, and academic stakeholders on fundamental measurements and standards research necessary to examine the function and outputs of generative adversarial networks; and

(2) to consider the feasibility of an ongoing public and private sector engagement to develop voluntary standards for the function and outputs of generative adversarial networks or other technologies that synthesize or manipulate content.

(Pub. L. 116–258, §4, Dec. 23, 2020, 134 Stat. 1151.)

## **§9204. Generative adversarial network defined**

In this chapter, the term "generative adversarial network" means, with respect to artificial intelligence, the machine learning process of attempting to cause a generator artificial neural network (referred to in this section as the "generator" <sup>1</sup> and a discriminator artificial neural network (referred to in this section as a "discriminator") to compete against each other to become more accurate in their function and outputs, through which the generator and discriminator create a feedback loop, causing the generator to produce increasingly higher-quality artificial outputs and the discriminator to increasingly improve in detecting such artificial outputs.

(Pub. L. 116–258, §6, Dec. 23, 2020, 134 Stat. 1152.)

### **EDITORIAL NOTES**

#### **REFERENCES IN TEXT**

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 116–258, Dec. 23, 2020, 134 Stat. 1150, known as the Identifying Outputs of Generative Adversarial Networks Act and also as the IOGAN Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 9201 of this title and Tables.

This section, referred to in text, was in the original "this paragraph", and was translated as reading "this section", meaning section 6 of Pub. L. 116–258, to reflect the probable intent of Congress.

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

## **CHAPTER 118—SUSTAINABLE CHEMISTRY**

Sec.

9301. National coordinating entity for sustainable chemistry.

9302. Strategic plan for sustainable chemistry.

- 9303. Agency activities in support of sustainable chemistry.
- 9304. Partnerships in sustainable chemistry.
- 9305. Prioritization.
- 9306. Rule of construction.

## **§9301. National coordinating entity for sustainable chemistry**

### **(a) Establishment**

Not later than 180 days after January 1, 2021, the Director of the Office of Science and Technology Policy shall convene an interagency entity (referred to in this chapter as the "Entity") under the National Science and Technology Council with the responsibility to coordinate Federal programs and activities in support of sustainable chemistry, including those described in sections 9303 and 9304 of this title.

### **(b) Coordination with existing groups**

In convening the Entity, the Director of the Office of Science and Technology Policy shall consider overlap and possible coordination with existing committees, subcommittees, or other groups of the National Science and Technology Council, such as—

- (1) the Committee on Environment;
- (2) the Committee on Technology;
- (3) the Committee on Science; or
- (4) related groups or subcommittees.

### **(c) Co-chairs**

The Entity shall be co-chaired by the Director of the Office of Science and Technology Policy and a representative from the Environmental Protection Agency, the National Institute of Standards and Technology, the National Science Foundation, or the Department of Energy, as selected by the Director of the Office of Science and Technology Policy.

### **(d) Agency participation**

The Entity shall include representatives, including subject matter experts, from the Environmental Protection Agency, the National Institute of Standards and Technology, the National Science Foundation, the Department of Energy, the Department of Agriculture, the Department of Defense, the National Institutes of Health, the Centers for Disease Control and Prevention, the Food and Drug Administration, and other related Federal agencies, as appropriate.

### **(e) Termination**

The Entity shall terminate on the date that is 10 years after January 1, 2021.  
(Pub. L. 116–283, div. A, title II, §261, Jan. 1, 2021, 134 Stat. 3497.)

## **EDITORIAL NOTES**

### **REFERENCES IN TEXT**

This chapter, referred to in subsec. (a), was in the original "this subtitle", meaning subtitle E (§§261–267) of title II of Pub. L. 116–283, div. A, Jan. 1, 2021, 134 Stat. 3497, which is classified principally to this chapter. For complete classification of subtitle E to the Code, see Tables.

## **§9302. Strategic plan for sustainable chemistry**

### **(a) Strategic plan**

Not later than 2 years after January 1, 2021, the Entity shall—

- (1) consult with relevant stakeholders, including representatives from industry, academia, national labs, the Federal Government, and international entities, to develop and update, as

needed, a consensus definition of "sustainable chemistry" to guide the activities under this chapter;

(2) develop a working framework of attributes characterizing, and metrics for assessing, sustainable chemistry, as described in subsection (b);

(3) assess the state of sustainable chemistry in the United States as a key benchmark from which progress under the activities described in this chapter can be measured, including assessing key sectors of the United States economy, key technology platforms, commercial priorities, and barriers to innovation;

(4) coordinate and support Federal research, development, demonstration, technology transfer, commercialization, education, and training efforts in sustainable chemistry, including budget coordination and support for public-private partnerships, as appropriate;

(5) identify any Federal regulatory barriers to, and opportunities for, Federal agencies facilitating the development of incentives for development, consideration, and use of sustainable chemistry processes and products;

(6) identify major scientific challenges, roadblocks, and hurdles to transformational progress in improving the sustainability of the chemical sciences; and

(7) review, identify, and make effort to eliminate duplicative Federal funding and duplicative Federal research in sustainable chemistry.

#### **(b) Characterizing and assessing sustainable chemistry**

The Entity shall develop a working framework of attributes characterizing, and metrics for assessing, sustainable chemistry for the purposes of carrying out this chapter. In developing this framework, the Entity shall—

(1) seek advice and input from stakeholders as described in subsection (c);

(2) consider existing definitions of, or frameworks characterizing and metrics for assessing, sustainable chemistry already in use at Federal agencies;

(3) consider existing definitions of, or frameworks characterizing and metrics for assessing, sustainable chemistry already in use by international organizations of which the United States is a member, such as the Organisation for Economic Co-operation and Development; and

(4) consider any other appropriate existing definitions of, or frameworks characterizing and metrics for assessing, sustainable chemistry.

#### **(c) Consultation**

In carrying out the duties described in subsections (a) and (b), the Entity shall consult with stakeholders qualified to provide advice and information to guide Federal activities related to sustainable chemistry through workshops, requests for information, or other mechanisms as necessary. The stakeholders shall include representatives from—

(1) business and industry, including trade associations and small- and medium-sized enterprises from across the value chain;

(2) the scientific community, including the National Academies of Sciences, Engineering, and Medicine, scientific professional societies, national labs, and academia;

(3) the defense community;

(4) State, tribal, and local governments, including nonregulatory State or regional sustainable chemistry programs, as appropriate;

(5) nongovernmental organizations; and

(6) other appropriate organizations.

#### **(d) Report to Congress**

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

Not later than 2 years after January 1, 2021, the Entity shall submit a report to the Committee on Environment and Public Works, the Committee on Commerce, Science, and Transportation, the Committee on Agriculture, Nutrition, and Forestry, the Committee on Health, Education, Labor, and Pensions, and the Committee on Appropriations of the Senate, and the Committee on Science, Space, and Technology, the Committee on Energy and Commerce, the Committee on Agriculture, the Committee on Education and Labor, and the Committee on Appropriations of the



House of Representatives. In addition to the elements described in subsections (a) and (b), the report shall include—

- (A) a summary of federally funded sustainable chemistry research, development, demonstration, technology transfer, commercialization, education, and training activities;
- (B) a summary of the financial resources allocated to sustainable chemistry initiatives by each participating agency;
- (C) an assessment of the current state of sustainable chemistry in the United States, including the role that Federal agencies are playing in supporting it;
- (D) an analysis of the progress made toward achieving the goals and priorities of this chapter, and recommendations for future program activities;
- (E) an evaluation of steps taken and future strategies to avoid duplication of efforts, streamline interagency coordination, facilitate information sharing, and spread best practices among participating agencies; and
- (F) an evaluation of duplicative Federal funding and duplicative Federal research in sustainable chemistry, efforts undertaken by the Entity to eliminate duplicative funding and research, and recommendations on how to achieve these goals.

## **(2) Submission to GAO**

The Entity shall also submit the report described in paragraph (1) to the Comptroller General of the United States for consideration in future Congressional inquiries.

## **(3) Additional reports**

The Entity shall submit a report to Congress and the Comptroller General of the United States that incorporates the information described in subparagraphs (A), (B), (D), (E), and (F) of paragraph (1) every 3 years, commencing after the initial report is submitted until the Entity terminates.

(Pub. L. 116–283, div. A, title II, §262, Jan. 1, 2021, 134 Stat. 3498.)

## **EDITORIAL NOTES**

### **REFERENCES IN TEXT**

This chapter, referred to in subsecs. (a)(1), (b), and (d)(1)(D), was in the original "this subtitle", meaning subtitle E (§§261–267) of title II of Pub. L. 116–283, div. A, Jan. 1, 2021, 134 Stat. 3497, which is classified principally to this chapter. For complete classification of subtitle E to the Code, see Tables.

This chapter, referred to in subsec. (a)(3), was in the original "this title", which was translated as meaning this subtitle, which is classified principally to this chapter, to reflect the probable intent of Congress.

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **CHANGE OF NAME**

Committee on Education and Labor of House of Representatives changed to Committee on Education and the Workforce of House of Representatives by House Resolution No. 5, One Hundred Eighteenth Congress, Jan. 9, 2023.

## **§9303. Agency activities in support of sustainable chemistry**

### **(a) In general**

The agencies participating in the Entity shall carry out activities in support of sustainable chemistry, as appropriate to the specific mission and programs of each agency.

### **(b) Activities**

The activities described in subsection (a) shall—

- (1) incorporate sustainable chemistry into existing research, development, demonstration, technology transfer, commercialization, education, and training programs, that the agency

determines to be relevant, including consideration of—

(A) merit-based competitive grants to individual investigators and teams of investigators, including, to the extent practicable, early career investigators, for research and development;

(B) grants to fund collaborative research and development partnerships among universities, industry, and nonprofit organizations;

(C) coordination of sustainable chemistry research, development, demonstration, and technology transfer conducted at Federal laboratories and agencies;

(D) incentive prize competitions and challenges in coordination with such existing Federal agency programs; and

(E) grants, loans, and loan guarantees to aid in the technology transfer and commercialization of sustainable chemicals, materials, processes, and products;

(2) collect and disseminate information on sustainable chemistry research, development, technology transfer, and commercialization, including information on accomplishments and best practices;

(3) expand the education and training of students at appropriate levels of education, professional scientists and engineers, and other professionals involved in all aspects of sustainable chemistry and engineering appropriate to that level of education and training, including through—

(A) partnerships with industry as described in section 9304 of this title;

(B) support for the integration of sustainable chemistry principles into chemistry and chemical engineering curriculum and research training, as appropriate to that level of education and training; and

(C) support for integration of sustainable chemistry principles into existing or new professional development opportunities for professionals including teachers, faculty, and individuals involved in laboratory research (product development, materials specification and testing, life cycle analysis, and management);

(4) as relevant to an agency's programs, examine methods by which the Federal agencies, in collaboration and consultation with the National Institute of Standards and Technology, may facilitate the development or recognition of validated, standardized tools for performing sustainability assessments of chemistry processes or products;

(5) through programs identified by an agency, support, including through technical assistance, participation, financial support, communications tools, awards, or other forms of support, outreach and dissemination of sustainable chemistry advances such as non-Federal symposia, forums, conferences, and publications in collaboration with, as appropriate, industry, academia, scientific and professional societies, and other relevant groups;

(6) provide for public input and outreach to be integrated into the activities described in this section by the convening of public discussions, through mechanisms such as public meetings, consensus conferences, and educational events, as appropriate;

(7) within each agency, develop or adapt metrics to track the outputs and outcomes of the programs supported by that agency; and

(8) incentivize or recognize actions that advance sustainable chemistry products, processes, or initiatives, including through the establishment of a nationally recognized awards program through the Environmental Protection Agency to identify, publicize, and celebrate innovations in sustainable chemistry and chemical technologies.

### **(c) Limitations**

Financial support provided under this section shall—

(1) be available only for pre-competitive activities; and

(2) not be used to promote the sale of a specific product, process, or technology, or to disparage a specific product, process, or technology.

(Pub. L. 116–283, div. A, title II, §263, Jan. 1, 2021, 134 Stat. 3500.)

## **§9304. Partnerships in sustainable chemistry**

### **(a) In general**

The agencies participating in the Entity may facilitate and support, through financial, technical, or other assistance, the creation of partnerships between institutions of higher education, nongovernmental organizations, consortia, or companies across the value chain in the chemical industry, including small- and medium-sized enterprises, to—

- (1) create collaborative sustainable chemistry research, development, demonstration, technology transfer, and commercialization programs; and
- (2) train students and retrain professional scientists, engineers, and others involved in materials specification on the use of sustainable chemistry concepts and strategies by methods, including—
  - (A) developing or recognizing curricular materials and courses for undergraduate and graduate levels and for the professional development of scientists, engineers, and others involved in materials specification; and
  - (B) publicizing the availability of professional development courses in sustainable chemistry and recruiting professionals to pursue such courses.

### **(b) Private sector participation**

To be eligible for support under this section, a partnership in sustainable chemistry shall include at least one private sector organization.

### **(c) Selection of partnerships**

In selecting partnerships for support under this section, the agencies participating in the Entity shall also consider the extent to which the applicants are willing and able to demonstrate evidence of support for, and commitment to, the goals outlined in the strategic plan and report described in section 9302 of this title.

### **(d) Prohibited use of funds**

Financial support provided under this section may not be used—

- (1) to support or expand a regulatory chemical management program at an implementing agency under a State law;
- (2) to construct or renovate a building or structure; or
- (3) to promote the sale of a specific product, process, or technology, or to disparage a specific product, process, or technology.

(Pub. L. 116–283, div. A, title II, §264, Jan. 1, 2021, 134 Stat. 3501.)

## **§9305. Prioritization**

In carrying out this chapter, the Entity shall focus its support for sustainable chemistry activities on those that achieve, to the highest extent practicable, the goals outlined in the chapter.

(Pub. L. 116–283, div. A, title II, §265, Jan. 1, 2021, 134 Stat. 3502.)

## **EDITORIAL NOTES**

### **REFERENCES IN TEXT**

This chapter, referred to in text, was in the original "this subtitle", meaning subtitle E (§§261–267) of title II of Pub. L. 116–283, div. A, Jan. 1, 2021, 134 Stat. 3497, which is classified principally to this chapter. For complete classification of subtitle E to the Code, see Tables.

## **§9306. Rule of construction**

Nothing in this chapter shall be construed to alter or amend any State law or action with regard to sustainable chemistry, as defined by the State.

(Pub. L. 116–283, div. A, title II, §266, Jan. 1, 2021, 134 Stat. 3502.)

## EDITORIAL NOTES

### REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this subtitle", meaning subtitle E (§§261–267) of title II of Pub. L. 116–283, div. A, Jan. 1, 2021, 134 Stat. 3497, which is classified principally to this chapter. For complete classification of subtitle E to the Code, see Tables.

## CHAPTER 119—NATIONAL ARTIFICIAL INTELLIGENCE INITIATIVE

Sec.

9401. Definitions.

### SUBCHAPTER I—NATIONAL ARTIFICIAL INTELLIGENCE INITIATIVE

9411. National Artificial Intelligence Initiative.

9412. National Artificial Intelligence Initiative Office.

9413. Coordination by Interagency Committee.

9414. National Artificial Intelligence Advisory Committee.

9415. National AI Research Resource Task Force.

### SUBCHAPTER II—NATIONAL ARTIFICIAL INTELLIGENCE RESEARCH INSTITUTES

9431. National Artificial Intelligence Research Institutes.

### SUBCHAPTER III—DEPARTMENT OF COMMERCE ARTIFICIAL INTELLIGENCE ACTIVITIES

9441. Stakeholder outreach.

9442. National Oceanic and Atmospheric Administration Artificial Intelligence Center.

### SUBCHAPTER IV—NATIONAL SCIENCE FOUNDATION ARTIFICIAL INTELLIGENCE ACTIVITIES

9451. Artificial intelligence research and education.

### SUBCHAPTER V—DEPARTMENT OF ENERGY ARTIFICIAL INTELLIGENCE RESEARCH PROGRAM

9461. Department of Energy artificial intelligence research program.

9462. Veterans' health initiative.

## §9401. Definitions

In this chapter:

### (1) Advisory Committee

The term "Advisory Committee" means the National Artificial Intelligence Advisory Committee established under section 9414(a) of this title.

### (2) Agency head

The term "agency head" means the head of any Executive agency (as defined in section 105 of title 5).

### (3) Artificial intelligence

The term "artificial intelligence" means a machine-based system that can, for a given set of human-defined objectives, make predictions, recommendations or decisions influencing real or virtual environments. Artificial intelligence systems use machine and human-based inputs to—

(A) perceive real and virtual environments;

(B) abstract such perceptions into models through analysis in an automated manner; and

(C) use model inference to formulate options for information or action.

**(4) Community college**

The term "community college" means a public institution of higher education at which the highest degree that is predominantly awarded to students is an associate's degree, including 2-year Tribal Colleges or Universities under section 1059c of title 20 and public 2-year State institutions of higher education.

**(5) Initiative**

The term "Initiative" means the National Artificial Intelligence Initiative established under section 9411(a) of this title.

**(6) Initiative Office**

The term "Initiative Office" means the National Artificial Intelligence Initiative Office established under section 9412(a) of this title.

**(7) Institute**

The term "Institute" means an Artificial Intelligence Research Institute described in section 9431(b)(2) of this title.

**(8) Institution of higher education**

The term "institution of higher education" has the meaning given the term in section 1001 and section 1002(c) of title 20.

**(9) Interagency Committee**

The term "Interagency Committee" means the interagency committee established under section 9413(a) of this title.

**(10) K-12 education**

The term "K-12 education" means elementary school and secondary school education provided by local educational agencies, as such agencies are defined in section 7801 of title 20.

**(11) Machine learning**

The term "machine learning" means an application of artificial intelligence that is characterized by providing systems the ability to automatically learn and improve on the basis of data or experience, without being explicitly programmed.

(Pub. L. 116–283, div. E, §5002, Jan. 1, 2021, 134 Stat. 4523.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

This chapter, referred to in text, was in the original "this division", meaning div. E of Pub. L. 116–283, Jan. 1, 2021, 134 Stat. 4523, which is classified principally to this chapter. For complete classification of div. E to the Code, see Short Title note set out below and Tables.

**STATUTORY NOTES AND RELATED SUBSIDIARIES**

**SHORT TITLE**

Pub. L. 116–283, div. E, §5001, Jan. 1, 2021, 134 Stat. 4523, provided that: "This division [enacting this chapter and section 278h–1 of this title and amending sections 1862i and 1862n–1 of Title 42, The Public Health and Welfare] may be cited as the 'National Artificial Intelligence Initiative Act of 2020'."

**EXECUTIVE DOCUMENTS**

**EX. ORD. NO. 14110. SAFE, SECURE, AND TRUSTWORTHY DEVELOPMENT AND USE OF  
ARTIFICIAL INTELLIGENCE**

Ex. Ord. No. 14110, Oct. 30, 2023, 88 F.R. 75191, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

**SECTION 1. *Purpose.*** Artificial intelligence (AI) holds extraordinary potential for both promise and peril. Responsible AI use has the potential to help solve urgent challenges while making our world more prosperous, productive, innovative, and secure. At the same time, irresponsible use could exacerbate societal harms such as fraud, discrimination, bias, and disinformation; displace and disempower workers; stifle competition; and pose risks to national security. Harnessing AI for good and realizing its myriad benefits requires mitigating its substantial risks. This endeavor demands a society-wide effort that includes government, the private sector, academia, and civil society.

My Administration places the highest urgency on governing the development and use of AI safely and responsibly, and is therefore advancing a coordinated, Federal Government-wide approach to doing so. The rapid speed at which AI capabilities are advancing compels the United States to lead in this moment for the sake of our security, economy, and society.

In the end, AI reflects the principles of the people who build it, the people who use it, and the data upon which it is built. I firmly believe that the power of our ideals; the foundations of our society; and the creativity, diversity, and decency of our people are the reasons that America thrived in past eras of rapid change. They are the reasons we will succeed again in this moment. We are more than capable of harnessing AI for justice, security, and opportunity for all.

**SEC. 2. *Policy and Principles.*** It is the policy of my Administration to advance and govern the development and use of AI in accordance with eight guiding principles and priorities. When undertaking the actions set forth in this order, executive departments and agencies (agencies) shall, as appropriate and consistent with applicable law, adhere to these principles, while, as feasible, taking into account the views of other agencies, industry, members of academia, civil society, labor unions, international allies and partners, and other relevant organizations:

(a) Artificial Intelligence must be safe and secure. Meeting this goal requires robust, reliable, repeatable, and standardized evaluations of AI systems, as well as policies, institutions, and, as appropriate, other mechanisms to test, understand, and mitigate risks from these systems before they are put to use. It also requires addressing AI systems' most pressing security risks—including with respect to biotechnology, cybersecurity, critical infrastructure, and other national security dangers—while navigating AI's opacity and complexity. Testing and evaluations, including post-deployment performance monitoring, will help ensure that AI systems function as intended, are resilient against misuse or dangerous modifications, are ethically developed and operated in a secure manner, and are compliant with applicable Federal laws and policies. Finally, my Administration will help develop effective labeling and content provenance mechanisms, so that Americans are able to determine when content is generated using AI and when it is not. These actions will provide a vital foundation for an approach that addresses AI's risks without unduly reducing its benefits.

(b) Promoting responsible innovation, competition, and collaboration will allow the United States to lead in AI and unlock the technology's potential to solve some of society's most difficult challenges. This effort requires investments in AI-related education, training, development, research, and capacity, while simultaneously tackling novel intellectual property (IP) questions and other problems to protect inventors and creators. Across the Federal Government, my Administration will support programs to provide Americans the skills they need for the age of AI and attract the world's AI talent to our shores—not just to study, but to stay—so that the companies and technologies of the future are made in America. The Federal Government will promote a fair, open, and competitive ecosystem and marketplace for AI and related technologies so that small developers and entrepreneurs can continue to drive innovation. Doing so requires stopping unlawful collusion and addressing risks from dominant firms' use of key assets such as semiconductors, computing power, cloud storage, and data to disadvantage competitors, and it requires supporting a marketplace that harnesses the benefits of AI to provide new opportunities for small businesses, workers, and entrepreneurs.

(c) The responsible development and use of AI require a commitment to supporting American workers. As AI creates new jobs and industries, all workers need a seat at the table, including through collective bargaining, to ensure that they benefit from these opportunities. My Administration will seek to adapt job training and education to support a diverse workforce and help provide access to opportunities that AI creates. In the workplace itself, AI should not be deployed in ways that undermine rights, worsen job quality, encourage undue worker surveillance, lessen market competition, introduce new health and safety risks, or cause harmful labor-force disruptions. The critical next steps in AI development should be built on the views of workers, labor unions, educators, and employers to support responsible uses of AI that improve workers' lives, positively augment human work, and help all people safely enjoy the gains and opportunities from technological innovation.

(d) Artificial Intelligence policies must be consistent with my Administration's dedication to advancing equity and civil rights. My Administration cannot—and will not—tolerate the use of AI to disadvantage those who are already too often denied equal opportunity and justice. From hiring to housing to healthcare, we have seen what happens when AI use deepens discrimination and bias, rather than improving quality of life. Artificial Intelligence systems deployed irresponsibly have reproduced and intensified existing inequities, caused new types of harmful discrimination, and exacerbated online and physical harms. My Administration will build on the important steps that have already been taken—such as issuing the Blueprint for an AI Bill of Rights, the AI Risk Management Framework, and Executive Order 14091 of February 16, 2023 (Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government) [5 U.S.C. 601 note]—in seeking to ensure that AI complies with all Federal laws and to promote robust technical evaluations, careful oversight, engagement with affected communities, and rigorous regulation. It is necessary to hold those developing and deploying AI accountable to standards that protect against unlawful discrimination and abuse, including in the justice system and the Federal Government. Only then can Americans trust AI to advance civil rights, civil liberties, equity, and justice for all.

(e) The interests of Americans who increasingly use, interact with, or purchase AI and AI-enabled products in their daily lives must be protected. Use of new technologies, such as AI, does not excuse organizations from their legal obligations, and hard-won consumer protections are more important than ever in moments of technological change. The Federal Government will enforce existing consumer protection laws and principles and enact appropriate safeguards against fraud, unintended bias, discrimination, infringements on privacy, and other harms from AI. Such protections are especially important in critical fields like healthcare, financial services, education, housing, law, and transportation, where mistakes by or misuse of AI could harm patients, cost consumers or small businesses, or jeopardize safety or rights. At the same time, my Administration will promote responsible uses of AI that protect consumers, raise the quality of goods and services, lower their prices, or expand selection and availability.

(f) Americans' privacy and civil liberties must be protected as AI continues advancing. Artificial Intelligence is making it easier to extract, re-identify, link, infer, and act on sensitive information about people's identities, locations, habits, and desires. Artificial Intelligence's capabilities in these areas can increase the risk that personal data could be exploited and exposed. To combat this risk, the Federal Government will ensure that the collection, use, and retention of data is lawful, is secure, and mitigates privacy and confidentiality risks. Agencies shall use available policy and technical tools, including privacy-enhancing technologies (PETs) where appropriate, to protect privacy and to combat the broader legal and societal risks—including the chilling of First Amendment rights—that result from the improper collection and use of people's data.

(g) It is important to manage the risks from the Federal Government's own use of AI and increase its internal capacity to regulate, govern, and support responsible use of AI to deliver better results for Americans. These efforts start with people, our Nation's greatest asset. My Administration will take steps to attract, retain, and develop public service-oriented AI professionals, including from underserved communities, across disciplines—including technology, policy, managerial, procurement, regulatory, ethical, governance, and legal fields—and ease AI professionals' path into the Federal Government to help harness and govern AI. The Federal Government will work to ensure that all members of its workforce receive adequate training to understand the benefits, risks, and limitations of AI for their job functions, and to modernize Federal Government information technology infrastructure, remove bureaucratic obstacles, and ensure that safe and rights-respecting AI is adopted, deployed, and used.

(h) The Federal Government should lead the way to global societal, economic, and technological progress, as the United States has in previous eras of disruptive innovation and change. This leadership is not measured solely by the technological advancements our country makes. Effective leadership also means pioneering those systems and safeguards needed to deploy technology responsibly—and building and promoting those safeguards with the rest of the world. My Administration will engage with international allies and partners in developing a framework to manage AI's risks, unlock AI's potential for good, and promote common approaches to shared challenges. The Federal Government will seek to promote responsible AI safety and security principles and actions with other nations, including our competitors, while leading key global conversations and collaborations to ensure that AI benefits the whole world, rather than exacerbating inequities, threatening human rights, and causing other harms.

**SEC. 3. Definitions.** For purposes of this order:

(a) The term "agency" means each agency described in 44 U.S.C. 3502(1), except for the independent regulatory agencies described in 44 U.S.C. 3502(5).

(b) The term "artificial intelligence" or "AI" has the meaning set forth in 15 U.S.C. 9401(3) [section 5002(3) of Pub. L. 116–283]: a machine-based system that can, for a given set of human-defined objectives,

make predictions, recommendations, or decisions influencing real or virtual environments. Artificial intelligence systems use machine- and human-based inputs to perceive real and virtual environments; abstract such perceptions into models through analysis in an automated manner; and use model inference to formulate options for information or action.

(c) The term "AI model" means a component of an information system that implements AI technology and uses computational, statistical, or machine-learning techniques to produce outputs from a given set of inputs.

(d) The term "AI red-teaming" means a structured testing effort to find flaws and vulnerabilities in an AI system, often in a controlled environment and in collaboration with developers of AI. Artificial Intelligence red-teaming is most often performed by dedicated "red teams" that adopt adversarial methods to identify flaws and vulnerabilities, such as harmful or discriminatory outputs from an AI system, unforeseen or undesirable system behaviors, limitations, or potential risks associated with the misuse of the system.

(e) The term "AI system" means any data system, software, hardware, application, tool, or utility that operates in whole or in part using AI.

(f) The term "commercially available information" means any information or data about an individual or group of individuals, including an individual's or group of individuals' device or location, that is made available or obtainable and sold, leased, or licensed to the general public or to governmental or non-governmental entities.

(g) The term "crime forecasting" means the use of analytical techniques to attempt to predict future crimes or crime-related information. It can include machine-generated predictions that use algorithms to analyze large volumes of data, as well as other forecasts that are generated without machines and based on statistics, such as historical crime statistics.

(h) The term "critical and emerging technologies" means those technologies listed in the February 2022 Critical and Emerging Technologies List Update issued by the National Science and Technology Council (NSTC), as amended by subsequent updates to the list issued by the NSTC.

(i) The term "critical infrastructure" has the meaning set forth in section 1016(e) of the USA PATRIOT Act of 2001, 42 U.S.C. 5195c(e).

(j) The term "differential-privacy guarantee" means protections that allow information about a group to be shared while provably limiting the improper access, use, or disclosure of personal information about particular entities.

(k) The term "dual-use foundation model" means an AI model that is trained on broad data; generally uses self-supervision; contains at least tens of billions of parameters; is applicable across a wide range of contexts; and that exhibits, or could be easily modified to exhibit, high levels of performance at tasks that pose a serious risk to security, national economic security, national public health or safety, or any combination of those matters, such as by:

(i) substantially lowering the barrier of entry for non-experts to design, synthesize, acquire, or use chemical, biological, radiological, or nuclear (CBRN) weapons;

(ii) enabling powerful offensive cyber operations through automated vulnerability discovery and exploitation against a wide range of potential targets of cyber attacks; or

(iii) permitting the evasion of human control or oversight through means of deception or obfuscation.

Models meet this definition even if they are provided to end users with technical safeguards that attempt to prevent users from taking advantage of the relevant unsafe capabilities.

(l) The term "Federal law enforcement agency" has the meaning set forth in section 21(a) of Executive Order 14074 of May 25, 2022 (Advancing Effective, Accountable Policing and Criminal Justice Practices To Enhance Public Trust and Public Safety) [34 U.S.C. 10101 note prec.].

(m) The term "floating-point operation" means any mathematical operation or assignment involving floating-point numbers, which are a subset of the real numbers typically represented on computers by an integer of fixed precision scaled by an integer exponent of a fixed base.

(n) The term "foreign person" has the meaning set forth in section 5(c) of Executive Order 13984 of January 19, 2021 (Taking Additional Steps To Address the National Emergency With Respect to Significant Malicious Cyber-Enabled Activities) [15 U.S.C. 7421 note].

(o) The terms "foreign reseller" and "foreign reseller of United States Infrastructure as a Service Products" mean a foreign person who has established an Infrastructure as a Service Account to provide Infrastructure as a Service Products subsequently, in whole or in part, to a third party.

(p) The term "generative AI" means the class of AI models that emulate the structure and characteristics of input data in order to generate derived synthetic content. This can include images, videos, audio, text, and other digital content.

(q) The terms "Infrastructure as a Service Product," "United States Infrastructure as a Service Product," "United States Infrastructure as a Service Provider," and "Infrastructure as a Service Account" each have the



respective meanings given to those terms in section 5 of Executive Order 13984.

(r) The term "integer operation" means any mathematical operation or assignment involving only integers, or whole numbers expressed without a decimal point.

(s) The term "Intelligence Community" has the meaning given to that term in section 3.5(h) of Executive Order 12333 of December 4, 1981 (United States Intelligence Activities) [50 U.S.C. 3001 note], as amended.

(t) The term "machine learning" means a set of techniques that can be used to train AI algorithms to improve performance at a task based on data.

(u) The term "model weight" means a numerical parameter within an AI model that helps determine the model's outputs in response to inputs.

(v) The term "national security system" has the meaning set forth in 44 U.S.C. 3552(b)(6).

(w) The term "omics" means biomolecules, including nucleic acids, proteins, and metabolites, that make up a cell or cellular system.

(x) The term "Open RAN" means the Open Radio Access Network approach to telecommunications-network standardization adopted by the O-RAN Alliance, Third Generation Partnership Project, or any similar set of published open standards for multi-vendor network equipment interoperability.

(y) The term "personally identifiable information" has the meaning set forth in Office of Management and Budget (OMB) Circular No. A-130.

(z) The term "privacy-enhancing technology" means any software or hardware solution, technical process, technique, or other technological means of mitigating privacy risks arising from data processing, including by enhancing predictability, manageability, disassociability, storage, security, and confidentiality. These technological means may include secure multiparty computation, homomorphic encryption, zero-knowledge proofs, federated learning, secure enclaves, differential privacy, and synthetic-data-generation tools. This is also sometimes referred to as "privacy-preserving technology."

(aa) The term "privacy impact assessment" has the meaning set forth in OMB Circular No. A-130.

(bb) The term "Sector Risk Management Agency" has the meaning set forth in 6 U.S.C. 650(23) [section 2200(23) of Pub. L. 107-296].

(cc) The term "self-healing network" means a telecommunications network that automatically diagnoses and addresses network issues to permit self-restoration.

(dd) The term "synthetic biology" means a field of science that involves redesigning organisms, or the biomolecules of organisms, at the genetic level to give them new characteristics. Synthetic nucleic acids are a type of biomolecule redesigned through synthetic-biology methods.

(ee) The term "synthetic content" means information, such as images, videos, audio clips, and text, that has been significantly modified or generated by algorithms, including by AI.

(ff) The term "testbed" means a facility or mechanism equipped for conducting rigorous, transparent, and replicable testing of tools and technologies, including AI and PETs, to help evaluate the functionality, usability, and performance of those tools or technologies.

(gg) The term "watermarking" means the act of embedding information, which is typically difficult to remove, into outputs created by AI—including into outputs such as photos, videos, audio clips, or text—for the purposes of verifying the authenticity of the output or the identity or characteristics of its provenance, modifications, or conveyance.

#### SEC. 4. *Ensuring the Safety and Security of AI Technology.*

*4.1. Developing Guidelines, Standards, and Best Practices for AI Safety and Security.* (a) Within 270 days of the date of this order [Oct. 30, 2023], to help ensure the development of safe, secure, and trustworthy AI systems, the Secretary of Commerce, acting through the Director of the National Institute of Standards and Technology (NIST), in coordination with the Secretary of Energy, the Secretary of Homeland Security, and the heads of other relevant agencies as the Secretary of Commerce may deem appropriate, shall:

(i) Establish guidelines and best practices, with the aim of promoting consensus industry standards, for developing and deploying safe, secure, and trustworthy AI systems, including:

(A) developing a companion resource to the AI Risk Management Framework, NIST AI 100-1, for generative AI;

(B) developing a companion resource to the Secure Software Development Framework to incorporate secure development practices for generative AI and for dual-use foundation models; and

(C) launching an initiative to create guidance and benchmarks for evaluating and auditing AI capabilities, with a focus on capabilities through which AI could cause harm, such as in the areas of cybersecurity and biosecurity.

(ii) Establish appropriate guidelines (except for AI used as a component of a national security system), including appropriate procedures and processes, to enable developers of AI, especially of dual-use foundation models, to conduct AI red-teaming tests to enable deployment of safe, secure, and trustworthy systems. These

efforts shall include:

(A) coordinating or developing guidelines related to assessing and managing the safety, security, and trustworthiness of dual-use foundation models; and

(B) in coordination with the Secretary of Energy and the Director of the National Science Foundation (NSF), developing and helping to ensure the availability of testing environments, such as testbeds, to support the development of safe, secure, and trustworthy AI technologies, as well as to support the design, development, and deployment of associated PETs, consistent with section 9(b) of this order.

(b) Within 270 days of the date of this order, to understand and mitigate AI security risks, the Secretary of Energy, in coordination with the heads of other Sector Risk Management Agencies (SRMAs) as the Secretary of Energy may deem appropriate, shall develop and, to the extent permitted by law and available appropriations, implement a plan for developing the Department of Energy's AI model evaluation tools and AI testbeds. The Secretary shall undertake this work using existing solutions where possible, and shall develop these tools and AI testbeds to be capable of assessing near-term extrapolations of AI systems' capabilities. At a minimum, the Secretary shall develop tools to evaluate AI capabilities to generate outputs that may represent nuclear, nonproliferation, biological, chemical, critical infrastructure, and energy-security threats or hazards. The Secretary shall do this work solely for the purposes of guarding against these threats, and shall also develop model guardrails that reduce such risks. The Secretary shall, as appropriate, consult with private AI laboratories, academia, civil society, and third-party evaluators, and shall use existing solutions.

4.2. *Ensuring Safe and Reliable AI.* (a) Within 90 days of the date of this order, to ensure and verify the continuous availability of safe, reliable, and effective AI in accordance with the Defense Production Act [of 1950], as amended, 50 U.S.C. 4501 *et seq.*, including for the national defense and the protection of critical infrastructure, the Secretary of Commerce shall require:

(i) Companies developing or demonstrating an intent to develop potential dual-use foundation models to provide the Federal Government, on an ongoing basis, with information, reports, or records regarding the following:

(A) any ongoing or planned activities related to training, developing, or producing dual-use foundation models, including the physical and cybersecurity protections taken to assure the integrity of that training process against sophisticated threats;

(B) the ownership and possession of the model weights of any dual-use foundation models, and the physical and cybersecurity measures taken to protect those model weights; and

(C) the results of any developed dual-use foundation model's performance in relevant AI red-team testing based on guidance developed by NIST pursuant to subsection 4.1(a)(ii) of this section, and a description of any associated measures the company has taken to meet safety objectives, such as mitigations to improve performance on these red-team tests and strengthen overall model security. Prior to the development of guidance on red-team testing standards by NIST pursuant to subsection 4.1(a)(ii) of this section, this description shall include the results of any red-team testing that the company has conducted relating to lowering the barrier to entry for the development, acquisition, and use of biological weapons by non-state actors; the discovery of software vulnerabilities and development of associated exploits; the use of software or tools to influence real or virtual events; the possibility for self-replication or propagation; and associated measures to meet safety objectives; and

(ii) Companies, individuals, or other organizations or entities that acquire, develop, or possess a potential large-scale computing cluster to report any such acquisition, development, or possession, including the existence and location of these clusters and the amount of total computing power available in each cluster.

(b) The Secretary of Commerce, in consultation with the Secretary of State, the Secretary of Defense, the Secretary of Energy, and the Director of National Intelligence, shall define, and thereafter update as needed on a regular basis, the set of technical conditions for models and computing clusters that would be subject to the reporting requirements of subsection 4.2(a) of this section. Until such technical conditions are defined, the Secretary shall require compliance with these reporting requirements for:

(i) any model that was trained using a quantity of computing power greater than  $10^{26}$  integer or floating-point operations, or using primarily biological sequence data and using a quantity of computing power greater than  $10^{23}$  integer or floating-point operations; and

(ii) any computing cluster that has a set of machines physically co-located in a single datacenter, transitively connected by data center networking of over 100 Gbit/s, and having a theoretical maximum computing capacity of  $10^{20}$  integer or floating-point operations per second for training AI.

(c) Because I find that additional steps must be taken to deal with the national emergency related to significant malicious cyber-enabled activities declared in Executive Order 13694 of April 1, 2015 (Blocking the Property of Certain Persons Engaging in Significant Malicious Cyber-Enabled Activities) [listed in a table under 50 U.S.C. 1701], as amended by Executive Order 13757 of December 28, 2016 (Taking Additional

Steps to Address the National Emergency With Respect to Significant Malicious Cyber-Enabled Activities), and further amended by Executive Order 13984, to address the use of United States Infrastructure as a Service (IaaS) Products by foreign malicious cyber actors, including to impose additional record-keeping obligations with respect to foreign transactions and to assist in the investigation of transactions involving foreign malicious cyber actors, I hereby direct the Secretary of Commerce, within 90 days of the date of this order, to:

(i) Propose regulations that require United States IaaS Providers to submit a report to the Secretary of Commerce when a foreign person transacts with that United States IaaS Provider to train a large AI model with potential capabilities that could be used in malicious cyber-enabled activity (a "training run"). Such reports shall include, at a minimum, the identity of the foreign person and the existence of any training run of an AI model meeting the criteria set forth in this section, or other criteria defined by the Secretary in regulations, as well as any additional information identified by the Secretary.

(ii) Include a requirement in the regulations proposed pursuant to subsection 4.2(c)(i) of this section that United States IaaS Providers prohibit any foreign reseller of their United States IaaS Product from providing those products unless such foreign reseller submits to the United States IaaS Provider a report, which the United States IaaS Provider must provide to the Secretary of Commerce, detailing each instance in which a foreign person transacts with the foreign reseller to use the United States IaaS Product to conduct a training run described in subsection 4.2(c)(i) of this section. Such reports shall include, at a minimum, the information specified in subsection 4.2(c)(i) of this section as well as any additional information identified by the Secretary.

(iii) Determine the set of technical conditions for a large AI model to have potential capabilities that could be used in malicious cyber-enabled activity, and revise that determination as necessary and appropriate. Until the Secretary makes such a determination, a model shall be considered to have potential capabilities that could be used in malicious cyber-enabled activity if it requires a quantity of computing power greater than 10<sup>26</sup> integer or floating-point operations and is trained on a computing cluster that has a set of machines physically co-located in a single datacenter, transitively connected by data center networking of over 100 Gbit/s, and having a theoretical maximum compute capacity of 10<sup>20</sup> integer or floating-point operations per second for training AI.

(d) Within 180 days of the date of this order, pursuant to the finding set forth in subsection 4.2(c) of this section, the Secretary of Commerce shall propose regulations that require United States IaaS Providers to ensure that foreign resellers of United States IaaS Products verify the identity of any foreign person that obtains an IaaS account (account) from the foreign reseller. These regulations shall, at a minimum:

(i) Set forth the minimum standards that a United States IaaS Provider must require of foreign resellers of its United States IaaS Products to verify the identity of a foreign person who opens an account or maintains an existing account with a foreign reseller, including:

(A) the types of documentation and procedures that foreign resellers of United States IaaS Products must require to verify the identity of any foreign person acting as a lessee or sub-lessee of these products or services;

(B) records that foreign resellers of United States IaaS Products must securely maintain regarding a foreign person that obtains an account, including information establishing:

(1) the identity of such foreign person, including name and address;

(2) the means and source of payment (including any associated financial institution and other identifiers such as credit card number, account number, customer identifier, transaction identifiers, or virtual currency wallet or wallet address identifier);

(3) the electronic mail address and telephonic contact information used to verify a foreign person's identity; and

(4) the internet Protocol addresses used for access or administration and the date and time of each such access or administrative action related to ongoing verification of such foreign person's ownership of such an account; and

(C) methods that foreign resellers of United States IaaS Products must implement to limit all third-party access to the information described in this subsection, except insofar as such access is otherwise consistent with this order and allowed under applicable law;

(ii) Take into consideration the types of accounts maintained by foreign resellers of United States IaaS Products, methods of opening an account, and types of identifying information available to accomplish the objectives of identifying foreign malicious cyber actors using any such products and avoiding the imposition of an undue burden on such resellers; and

(iii) Provide that the Secretary of Commerce, in accordance with such standards and procedures as the Secretary may delineate and in consultation with the Secretary of Defense, the Attorney General, the Secretary of Homeland Security, and the Director of National Intelligence, may exempt a United States IaaS Provider

with respect to any specific foreign reseller of their United States IaaS Products, or with respect to any specific type of account or lessee, from the requirements of any regulation issued pursuant to this subsection. Such standards and procedures may include a finding by the Secretary that such foreign reseller, account, or lessee complies with security best practices to otherwise deter abuse of United States IaaS Products.

(e) The Secretary of Commerce is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by the International Emergency Economic Powers Act, 50 U.S.C. 1701 *et seq.*, as may be necessary to carry out the purposes of subsections 4.2(c) and (d) of this section. Such actions may include a requirement that United States IaaS Providers require foreign resellers of United States IaaS Products to provide United States IaaS Providers verifications relative to those subsections.

*4.3. Managing AI in Critical Infrastructure and in Cybersecurity.* (a) To ensure the protection of critical infrastructure, the following actions shall be taken:

(i) Within 90 days of the date of this order, and at least annually thereafter, the head of each agency with relevant regulatory authority over critical infrastructure and the heads of relevant SRMAs, in coordination with the Director of the Cybersecurity and Infrastructure Security Agency within the Department of Homeland Security for consideration of cross-sector risks, shall evaluate and provide to the Secretary of Homeland Security an assessment of potential risks related to the use of AI in critical infrastructure sectors involved, including ways in which deploying AI may make critical infrastructure systems more vulnerable to critical failures, physical attacks, and cyber attacks, and shall consider ways to mitigate these vulnerabilities. Independent regulatory agencies are encouraged, as they deem appropriate, to contribute to sector-specific risk assessments.

(ii) Within 150 days of the date of this order, the Secretary of the Treasury shall issue a public report on best practices for financial institutions to manage AI-specific cybersecurity risks.

(iii) Within 180 days of the date of this order, the Secretary of Homeland Security, in coordination with the Secretary of Commerce and with SRMAs and other regulators as determined by the Secretary of Homeland Security, shall incorporate as appropriate the AI Risk Management Framework, NIST AI 100–1, as well as other appropriate security guidance, into relevant safety and security guidelines for use by critical infrastructure owners and operators.

(iv) Within 240 days of the completion of the guidelines described in subsection 4.3(a)(iii) of this section, the Assistant to the President for National Security Affairs and the Director of OMB, in consultation with the Secretary of Homeland Security, shall coordinate work by the heads of agencies with authority over critical infrastructure to develop and take steps for the Federal Government to mandate such guidelines, or appropriate portions thereof, through regulatory or other appropriate action. Independent regulatory agencies are encouraged, as they deem appropriate, to consider whether to mandate guidance through regulatory action in their areas of authority and responsibility.

(v) The Secretary of Homeland Security shall establish an Artificial Intelligence Safety and Security Board as an advisory committee pursuant to section 871 of the Homeland Security Act of 2002 (Public Law 107–296) [6 U.S.C. 451]. The Advisory Committee shall include AI experts from the private sector, academia, and government, as appropriate, and provide to the Secretary of Homeland Security and the Federal Government's critical infrastructure community advice, information, or recommendations for improving security, resilience, and incident response related to AI usage in critical infrastructure.

(b) To capitalize on AI's potential to improve United States cyber defenses:

(i) The Secretary of Defense shall carry out the actions described in subsections 4.3(b)(ii) and (iii) of this section for national security systems, and the Secretary of Homeland Security shall carry out these actions for non-national security systems. Each shall do so in consultation with the heads of other relevant agencies as the Secretary of Defense and the Secretary of Homeland Security may deem appropriate.

(ii) As set forth in subsection 4.3(b)(i) of this section, within 180 days of the date of this order, the Secretary of Defense and the Secretary of Homeland Security shall, consistent with applicable law, each develop plans for, conduct, and complete an operational pilot project to identify, develop, test, evaluate, and deploy AI capabilities, such as large-language models, to aid in the discovery and remediation of vulnerabilities in critical United States Government software, systems, and networks.

(iii) As set forth in subsection 4.3(b)(i) of this section, within 270 days of the date of this order, the Secretary of Defense and the Secretary of Homeland Security shall each provide a report to the Assistant to the President for National Security Affairs on the results of actions taken pursuant to the plans and operational pilot projects required by subsection 4.3(b)(ii) of this section, including a description of any vulnerabilities found and fixed through the development and deployment of AI capabilities and any lessons learned on how to identify, develop, test, evaluate, and deploy AI capabilities effectively for cyber defense.

*4.4. Reducing Risks at the Intersection of AI and CBRN Threats.* (a) To better understand and mitigate the

risk of AI being misused to assist in the development or use of CBRN threats—with a particular focus on biological weapons—the following actions shall be taken:

(i) Within 180 days of the date of this order, the Secretary of Homeland Security, in consultation with the Secretary of Energy and the Director of the Office of Science and Technology Policy (OSTP), shall evaluate the potential for AI to be misused to enable the development or production of CBRN threats, while also considering the benefits and application of AI to counter these threats, including, as appropriate, the results of work conducted under section 8(b) of this order. The Secretary of Homeland Security shall:

(A) consult with experts in AI and CBRN issues from the Department of Energy, private AI laboratories, academia, and third-party model evaluators, as appropriate, to evaluate AI model capabilities to present CBRN threats—for the sole purpose of guarding against those threats—as well as options for minimizing the risks of AI model misuse to generate or exacerbate those threats; and

(B) submit a report to the President that describes the progress of these efforts, including an assessment of the types of AI models that may present CBRN risks to the United States, and that makes recommendations for regulating or overseeing the training, deployment, publication, or use of these models, including requirements for safety evaluations and guardrails for mitigating potential threats to national security.

(ii) Within 120 days of the date of this order, the Secretary of Defense, in consultation with the Assistant to the President for National Security Affairs and the Director of OSTP, shall enter into a contract with the National Academies of Sciences, Engineering, and Medicine to conduct—and submit to the Secretary of Defense, the Assistant to the President for National Security Affairs, the Director of the Office of Pandemic Preparedness and Response Policy, the Director of OSTP, and the Chair of the Chief Data Officer Council—a study that:

(A) assesses the ways in which AI can increase biosecurity risks, including risks from generative AI models trained on biological data, and makes recommendations on how to mitigate these risks;

(B) considers the national security implications of the use of data and datasets, especially those associated with pathogens and omics studies, that the United States Government hosts, generates, funds the creation of, or otherwise owns, for the training of generative AI models, and makes recommendations on how to mitigate the risks related to the use of these data and datasets;

(C) assesses the ways in which AI applied to biology can be used to reduce biosecurity risks, including recommendations on opportunities to coordinate data and high-performance computing resources; and

(D) considers additional concerns and opportunities at the intersection of AI and synthetic biology that the Secretary of Defense deems appropriate.

(b) To reduce the risk of misuse of synthetic nucleic acids, which could be substantially increased by AI's capabilities in this area, and improve biosecurity measures for the nucleic acid synthesis industry, the following actions shall be taken:

(i) Within 180 days of the date of this order, the Director of OSTP, in consultation with the Secretary of State, the Secretary of Defense, the Attorney General, the Secretary of Commerce, the Secretary of Health and Human Services (HHS), the Secretary of Energy, the Secretary of Homeland Security, the Director of National Intelligence, and the heads of other relevant agencies as the Director of OSTP may deem appropriate, shall establish a framework, incorporating, as appropriate, existing United States Government guidance, to encourage providers of synthetic nucleic acid sequences to implement comprehensive, scalable, and verifiable synthetic nucleic acid procurement screening mechanisms, including standards and recommended incentives. As part of this framework, the Director of OSTP shall:

(A) establish criteria and mechanisms for ongoing identification of biological sequences that could be used in a manner that would pose a risk to the national security of the United States; and

(B) determine standardized methodologies and tools for conducting and verifying the performance of sequence synthesis procurement screening, including customer screening approaches to support due diligence with respect to managing security risks posed by purchasers of biological sequences identified in subsection 4.4(b)(i)(A) of this section, and processes for the reporting of concerning activity to enforcement entities.

(ii) Within 180 days of the date of this order, the Secretary of Commerce, acting through the Director of NIST, in coordination with the Director of OSTP, and in consultation with the Secretary of State, the Secretary of HHS, and the heads of other relevant agencies as the Secretary of Commerce may deem appropriate, shall initiate an effort to engage with industry and relevant stakeholders, informed by the framework developed under subsection 4.4(b)(i) of this section, to develop and refine for possible use by synthetic nucleic acid sequence providers:

(A) specifications for effective nucleic acid synthesis procurement screening;

(B) best practices, including security and access controls, for managing sequence-of-concern databases

to support such screening;

(C) technical implementation guides for effective screening; and

(D) conformity-assessment best practices and mechanisms.

(iii) Within 180 days of the establishment of the framework pursuant to subsection 4.4(b)(i) of this section, all agencies that fund life-sciences research shall, as appropriate and consistent with applicable law, establish that, as a requirement of funding, synthetic nucleic acid procurement is conducted through providers or manufacturers that adhere to the framework, such as through an attestation from the provider or manufacturer. The Assistant to the President for National Security Affairs and the Director of OSTP shall coordinate the process of reviewing such funding requirements to facilitate consistency in implementation of the framework across funding agencies.

(iv) In order to facilitate effective implementation of the measures described in subsections 4.4(b)(i)–(iii) of this section, the Secretary of Homeland Security, in consultation with the heads of other relevant agencies as the Secretary of Homeland Security may deem appropriate, shall:

(A) within 180 days of the establishment of the framework pursuant to subsection 4.4(b)(i) of this section, develop a framework to conduct structured evaluation and stress testing of nucleic acid synthesis procurement screening, including the systems developed in accordance with subsections 4.4(b)(i)–(ii) of this section and implemented by providers of synthetic nucleic acid sequences; and

(B) following development of the framework pursuant to subsection 4.4(b)(iv)(A) of this section, submit an annual report to the Assistant to the President for National Security Affairs, the Director of the Office of Pandemic Preparedness and Response Policy, and the Director of OSTP on any results of the activities conducted pursuant to subsection 4.4(b)(iv)(A) of this section, including recommendations, if any, on how to strengthen nucleic acid synthesis procurement screening, including customer screening systems.

*4.5. Reducing the Risks Posed by Synthetic Content.* To foster capabilities for identifying and labeling synthetic content produced by AI systems, and to establish the authenticity and provenance of digital content, both synthetic and not synthetic, produced by the Federal Government or on its behalf:

(a) Within 240 days of the date of this order, the Secretary of Commerce, in consultation with the heads of other relevant agencies as the Secretary of Commerce may deem appropriate, shall submit a report to the Director of OMB and the Assistant to the President for National Security Affairs identifying the existing standards, tools, methods, and practices, as well as the potential development of further science-backed standards and techniques, for:

(i) authenticating content and tracking its provenance;

(ii) labeling synthetic content, such as using watermarking;

(iii) detecting synthetic content;

(iv) preventing generative AI from producing child sexual abuse material or producing non-consensual intimate imagery of real individuals (to include intimate digital depictions of the body or body parts of an identifiable individual);

(v) testing software used for the above purposes; and

(vi) auditing and maintaining synthetic content.

(b) Within 180 days of submitting the report required under subsection 4.5(a) of this section, and updated periodically thereafter, the Secretary of Commerce, in coordination with the Director of OMB, shall develop guidance regarding the existing tools and practices for digital content authentication and synthetic content detection measures. The guidance shall include measures for the purposes listed in subsection 4.5(a) of this section.

(c) Within 180 days of the development of the guidance required under subsection 4.5(b) of this section, and updated periodically thereafter, the Director of OMB, in consultation with the Secretary of State; the Secretary of Defense; the Attorney General; the Secretary of Commerce, acting through the Director of NIST; the Secretary of Homeland Security; the Director of National Intelligence; and the heads of other agencies that the Director of OMB deems appropriate, shall—for the purpose of strengthening public confidence in the integrity of official United States Government digital content—issue guidance to agencies for labeling and authenticating such content that they produce or publish.

(d) The Federal Acquisition Regulatory Council shall, as appropriate and consistent with applicable law, consider amending the Federal Acquisition Regulation to take into account the guidance established under subsection 4.5 of this section.

*4.6. Soliciting Input on Dual-Use Foundation Models with Widely Available Model Weights.* When the weights for a dual-use foundation model are widely available—such as when they are publicly posted on the internet—there can be substantial benefits to innovation, but also substantial security risks, such as the removal of safeguards within the model. To address the risks and potential benefits of dual-use foundation models with widely available weights, within 270 days of the date of this order, the Secretary of Commerce,

acting through the Assistant Secretary of Commerce for Communications and Information, and in consultation with the Secretary of State, shall:

(a) solicit input from the private sector, academia, civil society, and other stakeholders through a public consultation process on potential risks, benefits, other implications, and appropriate policy and regulatory approaches related to dual-use foundation models for which the model weights are widely available, including:

(i) risks associated with actors fine-tuning dual-use foundation models for which the model weights are widely available or removing those models' safeguards;

(ii) benefits to AI innovation and research, including research into AI safety and risk management, of dual-use foundation models for which the model weights are widely available; and

(iii) potential voluntary, regulatory, and international mechanisms to manage the risks and maximize the benefits of dual-use foundation models for which the model weights are widely available; and

(b) based on input from the process described in subsection 4.6(a) of this section, and in consultation with the heads of other relevant agencies as the Secretary of Commerce deems appropriate, submit a report to the President on the potential benefits, risks, and implications of dual-use foundation models for which the model weights are widely available, as well as policy and regulatory recommendations pertaining to those models.

*4.7. Promoting Safe Release and Preventing the Malicious Use of Federal Data for AI Training.* To improve public data access and manage security risks, and consistent with the objectives of the Open, Public, Electronic, and Necessary Government Data Act (title II of Public Law 115–435) [see Tables for classification] to expand public access to Federal data assets in a machine-readable format while also taking into account security considerations, including the risk that information in an individual data asset in isolation does not pose a security risk but, when combined with other available information, may pose such a risk:

(a) within 270 days of the date of this order, the Chief Data Officer Council, in consultation with the Secretary of Defense, the Secretary of Commerce, the Secretary of Energy, the Secretary of Homeland Security, and the Director of National Intelligence, shall develop initial guidelines for performing security reviews, including reviews to identify and manage the potential security risks of releasing Federal data that could aid in the development of CBRN weapons as well as the development of autonomous offensive cyber capabilities, while also providing public access to Federal Government data in line with the goals stated in the Open, Public, Electronic, and Necessary Government Data Act (title II of Public Law 115–435); and

(b) within 180 days of the development of the initial guidelines required by subsection 4.7(a) of this section, agencies shall conduct a security review of all data assets in the comprehensive data inventory required under 44 U.S.C. 3511(a)(1) and (2)(B) and shall take steps, as appropriate and consistent with applicable law, to address the highest-priority potential security risks that releasing that data could raise with respect to CBRN weapons, such as the ways in which that data could be used to train AI systems.

*4.8. Directing the Development of a National Security Memorandum.* To develop a coordinated executive branch approach to managing AI's security risks, the Assistant to the President for National Security Affairs and the Assistant to the President and Deputy Chief of Staff for Policy shall oversee an interagency process with the purpose of, within 270 days of the date of this order, developing and submitting a proposed National Security Memorandum on AI to the President. The memorandum shall address the governance of AI used as a component of a national security system or for military and intelligence purposes. The memorandum shall take into account current efforts to govern the development and use of AI for national security systems. The memorandum shall outline actions for the Department of Defense, the Department of State, other relevant agencies, and the Intelligence Community to address the national security risks and potential benefits posed by AI. In particular, the memorandum shall:

(a) provide guidance to the Department of Defense, other relevant agencies, and the Intelligence Community on the continued adoption of AI capabilities to advance the United States national security mission, including through directing specific AI assurance and risk-management practices for national security uses of AI that may affect the rights or safety of United States persons and, in appropriate contexts, non-United States persons; and

(b) direct continued actions, as appropriate and consistent with applicable law, to address the potential use of AI systems by adversaries and other foreign actors in ways that threaten the capabilities or objectives of the Department of Defense or the Intelligence Community, or that otherwise pose risks to the security of the United States or its allies and partners.

#### *SEC. 5. Promoting Innovation and Competition.*

*5.1. Attracting AI Talent to the United States.* (a) Within 90 days of the date of this order [Oct. 30, 2023], to attract and retain talent in AI and other critical and emerging technologies in the United States economy, the Secretary of State and the Secretary of Homeland Security shall take appropriate steps to:

(i) streamline processing times of visa petitions and applications, including by ensuring timely availability



of visa appointments, for noncitizens who seek to travel to the United States to work on, study, or conduct research in AI or other critical and emerging technologies; and

(ii) facilitate continued availability of visa appointments in sufficient volume for applicants with expertise in AI or other critical and emerging technologies.

(b) Within 120 days of the date of this order, the Secretary of State shall:

(i) consider initiating a rulemaking to establish new criteria to designate countries and skills on the Department of State's Exchange Visitor Skills List as it relates to the 2-year foreign residence requirement for certain J-1 nonimmigrants, including those skills that are critical to the United States;

(ii) consider publishing updates to the 2009 Revised Exchange Visitor Skills List (74 FR 20108); and

(iii) consider implementing a domestic visa renewal program under 22 CFR 41.111(b) to facilitate the ability of qualified applicants, including highly skilled talent in AI and critical and emerging technologies, to continue their work in the United States without unnecessary interruption.

(c) Within 180 days of the date of this order, the Secretary of State shall:

(i) consider initiating a rulemaking to expand the categories of nonimmigrants who qualify for the domestic visa renewal program covered under 22 CFR 41.111(b) to include academic J-1 research scholars and F-1 students in science, technology, engineering, and mathematics (STEM); and

(ii) establish, to the extent permitted by law and available appropriations, a program to identify and attract top talent in AI and other critical and emerging technologies at universities, research institutions, and the private sector overseas, and to establish and increase connections with that talent to educate them on opportunities and resources for research and employment in the United States, including overseas educational components to inform top STEM talent of nonimmigrant and immigrant visa options and potential expedited adjudication of their visa petitions and applications.

(d) Within 180 days of the date of this order, the Secretary of Homeland Security shall:

(i) review and initiate any policy changes the Secretary determines necessary and appropriate to clarify and modernize immigration pathways for experts in AI and other critical and emerging technologies, including O-1A and EB-1 noncitizens of extraordinary ability; EB-2 advanced-degree holders and noncitizens of exceptional ability; and startup founders in AI and other critical and emerging technologies using the International Entrepreneur Rule; and

(ii) continue its rulemaking process to modernize the H-1B program and enhance its integrity and usage, including by experts in AI and other critical and emerging technologies, and consider initiating a rulemaking to enhance the process for noncitizens, including experts in AI and other critical and emerging technologies and their spouses, dependents, and children, to adjust their status to lawful permanent resident.

(e) Within 45 days of the date of this order, for purposes of considering updates to the "Schedule A" list of occupations, 20 CFR 656.5, the Secretary of Labor shall publish a request for information (RFI) to solicit public input, including from industry and worker-advocate communities, identifying AI and other STEM-related occupations, as well as additional occupations across the economy, for which there is an insufficient number of ready, willing, able, and qualified United States workers.

(f) The Secretary of State and the Secretary of Homeland Security shall, consistent with applicable law and implementing regulations, use their discretionary authorities to support and attract foreign nationals with special skills in AI and other critical and emerging technologies seeking to work, study, or conduct research in the United States.

(g) Within 120 days of the date of this order, the Secretary of Homeland Security, in consultation with the Secretary of State, the Secretary of Commerce, and the Director of OSTP, shall develop and publish informational resources to better attract and retain experts in AI and other critical and emerging technologies, including:

(i) a clear and comprehensive guide for experts in AI and other critical and emerging technologies to understand their options for working in the United States, to be published in multiple relevant languages on AI.gov; and

(ii) a public report with relevant data on applications, petitions, approvals, and other key indicators of how experts in AI and other critical and emerging technologies have utilized the immigration system through the end of Fiscal Year 2023.

**5.2. Promoting Innovation.** (a) To develop and strengthen public-private partnerships for advancing innovation, commercialization, and risk-mitigation methods for AI, and to help promote safe, responsible, fair, privacy-protecting, and trustworthy AI systems, the Director of NSF shall take the following steps:

(i) Within 90 days of the date of this order, in coordination with the heads of agencies that the Director of NSF deems appropriate, launch a pilot program implementing the National AI Research Resource (NAIRR), consistent with past recommendations of the NAIRR Task Force. The program shall pursue the infrastructure, governance mechanisms, and user interfaces to pilot an initial integration of distributed computational, data,



model, and training resources to be made available to the research community in support of AI-related research and development. The Director of NSF shall identify Federal and private sector computational, data, software, and training resources appropriate for inclusion in the NAIRR pilot program. To assist with such work, within 45 days of the date of this order, the heads of agencies whom the Director of NSF identifies for coordination pursuant to this subsection shall each submit to the Director of NSF a report identifying the agency resources that could be developed and integrated into such a pilot program. These reports shall include a description of such resources, including their current status and availability; their format, structure, or technical specifications; associated agency expertise that will be provided; and the benefits and risks associated with their inclusion in the NAIRR pilot program. The heads of independent regulatory agencies are encouraged to take similar steps, as they deem appropriate.

(ii) Within 150 days of the date of this order, fund and launch at least one NSF Regional Innovation Engine that prioritizes AI-related work, such as AI-related research, societal, or workforce needs.

(iii) Within 540 days of the date of this order, establish at least four new National AI Research Institutes, in addition to the 25 currently funded as of the date of this order.

(b) Within 120 days of the date of this order, to support activities involving high-performance and data-intensive computing, the Secretary of Energy, in coordination with the Director of NSF, shall, in a manner consistent with applicable law and available appropriations, establish a pilot program to enhance existing successful training programs for scientists, with the goal of training 500 new researchers by 2025 capable of meeting the rising demand for AI talent.

(c) To promote innovation and clarify issues related to AI and inventorship of patentable subject matter, the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office (USPTO Director) shall:

(i) within 120 days of the date of this order, publish guidance to USPTO patent examiners and applicants addressing inventorship and the use of AI, including generative AI, in the inventive process, including illustrative examples in which AI systems play different roles in inventive processes and how, in each example, inventorship issues ought to be analyzed;

(ii) subsequently, within 270 days of the date of this order, issue additional guidance to USPTO patent examiners and applicants to address other considerations at the intersection of AI and IP, which could include, as the USPTO Director deems necessary, updated guidance on patent eligibility to address innovation in AI and critical and emerging technologies; and

(iii) within 270 days of the date of this order or 180 days after the United States Copyright Office of the Library of Congress publishes its forthcoming AI study that will address copyright issues raised by AI, whichever comes later, consult with the Director of the United States Copyright Office and issue recommendations to the President on potential executive actions relating to copyright and AI. The recommendations shall address any copyright and related issues discussed in the United States Copyright Office's study, including the scope of protection for works produced using AI and the treatment of copyrighted works in AI training.

(d) Within 180 days of the date of this order, to assist developers of AI in combatting AI-related IP risks, the Secretary of Homeland Security, acting through the Director of the National Intellectual Property Rights Coordination Center, and in consultation with the Attorney General, shall develop a training, analysis, and evaluation program to mitigate AI-related IP risks. Such a program shall:

(i) include appropriate personnel dedicated to collecting and analyzing reports of AI-related IP theft, investigating such incidents with implications for national security, and, where appropriate and consistent with applicable law, pursuing related enforcement actions;

(ii) implement a policy of sharing information and coordinating on such work, as appropriate and consistent with applicable law, with the Federal Bureau of Investigation; United States Customs and Border Protection; other agencies; State and local agencies; and appropriate international organizations, including through work-sharing agreements;

(iii) develop guidance and other appropriate resources to assist private sector actors with mitigating the risks of AI-related IP theft;

(iv) share information and best practices with AI developers and law enforcement personnel to identify incidents, inform stakeholders of current legal requirements, and evaluate AI systems for IP law violations, as well as develop mitigation strategies and resources; and

(v) assist the Intellectual Property Enforcement Coordinator in updating the Intellectual Property Enforcement Coordinator Joint Strategic Plan on Intellectual Property Enforcement to address AI-related issues.

(e) To advance responsible AI innovation by a wide range of healthcare technology developers that promotes the welfare of patients and workers in the healthcare sector, the Secretary of HHS shall identify and,

as appropriate and consistent with applicable law and the activities directed in section 8 of this order, prioritize grantmaking and other awards, as well as undertake related efforts, to support responsible AI development and use, including:

(i) collaborating with appropriate private sector actors through HHS programs that may support the advancement of AI-enabled tools that develop personalized immune-response profiles for patients, consistent with section 4 of this order;

(ii) prioritizing the allocation of 2024 Leading Edge Acceleration Project cooperative agreement awards to initiatives that explore ways to improve healthcare-data quality to support the responsible development of AI tools for clinical care, real-world-evidence programs, population health, public health, and related research; and

(iii) accelerating grants awarded through the National Institutes of Health Artificial Intelligence/Machine Learning Consortium to Advance Health Equity and Researcher Diversity (AIM-AHEAD) program and showcasing current AIM-AHEAD activities in underserved communities.

(f) To advance the development of AI systems that improve the quality of veterans' healthcare, and in order to support small businesses' innovative capacity, the Secretary of Veterans Affairs shall:

(i) within 365 days of the date of this order, host two 3-month nationwide AI Tech Sprint competitions; and

(ii) as part of the AI Tech Sprint competitions and in collaboration with appropriate partners, provide participants access to technical assistance, mentorship opportunities, individualized expert feedback on products under development, potential contract opportunities, and other programming and resources.

(g) Within 180 days of the date of this order, to support the goal of strengthening our Nation's resilience against climate change impacts and building an equitable clean energy economy for the future, the Secretary of Energy, in consultation with the Chair of the Federal Energy Regulatory Commission, the Director of OSTP, the Chair of the Council on Environmental Quality, the Assistant to the President and National Climate Advisor, and the heads of other relevant agencies as the Secretary of Energy may deem appropriate, shall:

(i) issue a public report describing the potential for AI to improve planning, permitting, investment, and operations for electric grid infrastructure and to enable the provision of clean, affordable, reliable, resilient, and secure electric power to all Americans;

(ii) develop tools that facilitate building foundation models useful for basic and applied science, including models that streamline permitting and environmental reviews while improving environmental and social outcomes;

(iii) collaborate, as appropriate, with private sector organizations and members of academia to support development of AI tools to mitigate climate change risks;

(iv) take steps to expand partnerships with industry, academia, other agencies, and international allies and partners to utilize the Department of Energy's computing capabilities and AI testbeds to build foundation models that support new applications in science and energy, and for national security, including partnerships that increase community preparedness for climate-related risks, enable clean-energy deployment (including addressing delays in permitting reviews), and enhance grid reliability and resilience; and

(v) establish an office to coordinate development of AI and other critical and emerging technologies across Department of Energy programs and the 17 National Laboratories.

(h) Within 180 days of the date of this order, to understand AI's implications for scientific research, the President's Council of Advisors on Science and Technology shall submit to the President and make publicly available a report on the potential role of AI, especially given recent developments in AI, in research aimed at tackling major societal and global challenges. The report shall include a discussion of issues that may hinder the effective use of AI in research and practices needed to ensure that AI is used responsibly for research.

**5.3. Promoting Competition.** (a) The head of each agency developing policies and regulations related to AI shall use their authorities, as appropriate and consistent with applicable law, to promote competition in AI and related technologies, as well as in other markets. Such actions include addressing risks arising from concentrated control of key inputs, taking steps to stop unlawful collusion and prevent dominant firms from disadvantaging competitors, and working to provide new opportunities for small businesses and entrepreneurs. In particular, the Federal Trade Commission is encouraged to consider, as it deems appropriate, whether to exercise the Commission's existing authorities, including its rulemaking authority under the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*, to ensure fair competition in the AI marketplace and to ensure that consumers and workers are protected from harms that may be enabled by the use of AI.

(b) To promote competition and innovation in the semiconductor industry, recognizing that semiconductors power AI technologies and that their availability is critical to AI competition, the Secretary of Commerce shall, in implementing division A of Public Law 117–167, known as the Creating Helpful Incentives to Produce Semiconductors (CHIPS) Act of 2022 [see Tables for classification], promote competition by:

(i) implementing a flexible membership structure for the National Semiconductor Technology Center that

attracts all parts of the semiconductor and microelectronics ecosystem, including startups and small firms;

(ii) implementing mentorship programs to increase interest and participation in the semiconductor industry, including from workers in underserved communities;

(iii) increasing, where appropriate and to the extent permitted by law, the availability of resources to startups and small businesses, including:

(A) funding for physical assets, such as specialty equipment or facilities, to which startups and small businesses may not otherwise have access;

(B) datasets—potentially including test and performance data—collected, aggregated, or shared by CHIPS research and development programs;

(C) workforce development programs;

(D) design and process technology, as well as IP, as appropriate; and

(E) other resources, including technical and intellectual property assistance, that could accelerate commercialization of new technologies by startups and small businesses, as appropriate; and

(iv) considering the inclusion, to the maximum extent possible, and as consistent with applicable law, of competition-increasing measures in notices of funding availability for commercial research-and-development facilities focused on semiconductors, including measures that increase access to facility capacity for startups or small firms developing semiconductors used to power AI technologies.

(c) To support small businesses innovating and commercializing AI, as well as in responsibly adopting and deploying AI, the Administrator of the Small Business Administration shall:

(i) prioritize the allocation of Regional Innovation Cluster program funding for clusters that support planning activities related to the establishment of one or more Small Business AI Innovation and Commercialization Institutes that provide support, technical assistance, and other resources to small businesses seeking to innovate, commercialize, scale, or otherwise advance the development of AI;

(ii) prioritize the allocation of up to \$2 million in Growth Accelerator Fund Competition bonus prize funds for accelerators that support the incorporation or expansion of AI-related curricula, training, and technical assistance, or other AI-related resources within their programming; and

(iii) assess the extent to which the eligibility criteria of existing programs, including the State Trade Expansion Program, Technical and Business Assistance funding, and capital-access programs—such as the 7(a) loan program, 504 loan program, and Small Business Investment Company (SBIC) program—support appropriate expenses by small businesses related to the adoption of AI and, if feasible and appropriate, revise eligibility criteria to improve support for these expenses.

(d) The Administrator of the Small Business Administration, in coordination with resource partners, shall conduct outreach regarding, and raise awareness of, opportunities for small businesses to use capital-access programs described in subsection 5.3(c) of this section for eligible AI-related purposes, and for eligible investment funds with AI-related expertise—particularly those seeking to serve or with experience serving underserved communities—to apply for an SBIC license.

SEC. 6. *Supporting Workers.* (a) To advance the Government's understanding of AI's implications for workers, the following actions shall be taken within 180 days of the date of this order [Oct. 30, 2023]:

(i) The Chairman of the Council of Economic Advisers shall prepare and submit a report to the President on the labor-market effects of AI.

(ii) To evaluate necessary steps for the Federal Government to address AI-related workforce disruptions, the Secretary of Labor shall submit to the President a report analyzing the abilities of agencies to support workers displaced by the adoption of AI and other technological advancements. The report shall, at a minimum:

(A) assess how current or formerly operational Federal programs designed to assist workers facing job disruptions—including unemployment insurance and programs authorized by the Workforce Innovation and Opportunity Act (Public Law 113–128) [29 U.S.C. 3101 et seq.]—could be used to respond to possible future AI-related disruptions; and

(B) identify options, including potential legislative measures, to strengthen or develop additional Federal support for workers displaced by AI and, in consultation with the Secretary of Commerce and the Secretary of Education, strengthen and expand education and training opportunities that provide individuals pathways to occupations related to AI.

(b) To help ensure that AI deployed in the workplace advances employees' well-being:

(i) The Secretary of Labor shall, within 180 days of the date of this order and in consultation with other agencies and with outside entities, including labor unions and workers, as the Secretary of Labor deems appropriate, develop and publish principles and best practices for employers that could be used to mitigate AI's potential harms to employees' well-being and maximize its potential benefits. The principles and best practices shall include specific steps for employers to take with regard to AI, and shall cover, at a minimum:

(A) job-displacement risks and career opportunities related to AI, including effects on job skills and evaluation of applicants and workers;

(B) labor standards and job quality, including issues related to the equity, protected-activity, compensation, health, and safety implications of AI in the workplace; and

(C) implications for workers of employers' AI-related collection and use of data about them, including transparency, engagement, management, and activity protected under worker-protection laws.

(ii) After principles and best practices are developed pursuant to subsection (b)(i) of this section, the heads of agencies shall consider, in consultation with the Secretary of Labor, encouraging the adoption of these guidelines in their programs to the extent appropriate for each program and consistent with applicable law.

(iii) To support employees whose work is monitored or augmented by AI in being compensated appropriately for all of their work time, the Secretary of Labor shall issue guidance to make clear that employers that deploy AI to monitor or augment employees' work must continue to comply with protections that ensure that workers are compensated for their hours worked, as defined under the Fair Labor Standards Act of 1938, 29 U.S.C. 201 *et seq.*, and other legal requirements.

(c) To foster a diverse AI-ready workforce, the Director of NSF shall prioritize available resources to support AI-related education and AI-related workforce development through existing programs. The Director shall additionally consult with agencies, as appropriate, to identify further opportunities for agencies to allocate resources for those purposes. The actions by the Director shall use appropriate fellowship programs and awards for these purposes.

#### SEC. 7. *Advancing Equity and Civil Rights.*

7.1. *Strengthening AI and Civil Rights in the Criminal Justice System.* (a) To address unlawful discrimination and other harms that may be exacerbated by AI, the Attorney General shall:

(i) consistent with Executive Order 12250 of November 2, 1980 (Leadership and Coordination of [Implementation and Enforcement of] Nondiscrimination Laws) [42 U.S.C. 2000d-1 note], Executive Order 14091, and 28 CFR 0.50-51, coordinate with and support agencies in their implementation and enforcement of existing Federal laws to address civil rights and civil liberties violations and discrimination related to AI;

(ii) direct the Assistant Attorney General in charge of the Civil Rights Division to convene, within 90 days of the date of this order, a meeting of the heads of Federal civil rights offices—for which meeting the heads of civil rights offices within independent regulatory agencies will be encouraged to join—to discuss comprehensive use of their respective authorities and offices to: prevent and address discrimination in the use of automated systems, including algorithmic discrimination; increase coordination between the Department of Justice's Civil Rights Division and Federal civil rights offices concerning issues related to AI and algorithmic discrimination; improve external stakeholder engagement to promote public awareness of potential discriminatory uses and effects of AI; and develop, as appropriate, additional training, technical assistance, guidance, or other resources; and

(iii) consider providing, as appropriate and consistent with applicable law, guidance, technical assistance, and training to State, local, Tribal, and territorial investigators and prosecutors on best practices for investigating and prosecuting civil rights violations and discrimination related to automated systems, including AI.

(b) To promote the equitable treatment of individuals and adhere to the Federal Government's fundamental obligation to ensure fair and impartial justice for all, with respect to the use of AI in the criminal justice system, the Attorney General shall, in consultation with the Secretary of Homeland Security and the Director of OSTP:

(i) within 365 days of the date of this order, submit to the President a report that addresses the use of AI in the criminal justice system, including any use in:

(A) sentencing;

(B) parole, supervised release, and probation;

(C) bail, pretrial release, and pretrial detention;

(D) risk assessments, including pretrial, earned time, and early release or transfer to home-confinement determinations;

(E) police surveillance;

(F) crime forecasting and predictive policing, including the ingestion of historical crime data into AI systems to predict high-density "hot spots";

(G) prison-management tools; and

(H) forensic analysis;

(ii) within the report set forth in subsection 7.1(b)(i) of this section:

(A) identify areas where AI can enhance law enforcement efficiency and accuracy, consistent with protections for privacy, civil rights, and civil liberties; and

(B) recommend best practices for law enforcement agencies, including safeguards and appropriate use limits for AI, to address the concerns set forth in section 13(e)(i) of Executive Order 14074 as well as the best practices and the guidelines set forth in section 13(e)(iii) of Executive Order 14074; and

(iii) supplement the report set forth in subsection 7.1(b)(i) of this section as appropriate with recommendations to the President, including with respect to requests for necessary legislation.

(c) To advance the presence of relevant technical experts and expertise (such as machine-learning engineers, software and infrastructure engineering, data privacy experts, data scientists, and user experience researchers) among law enforcement professionals:

(i) The interagency working group created pursuant to section 3 of Executive Order 14074 shall, within 180 days of the date of this order, identify and share best practices for recruiting and hiring law enforcement professionals who have the technical skills mentioned in subsection 7.1(c) of this section, and for training law enforcement professionals about responsible application of AI.

(ii) Within 270 days of the date of this order, the Attorney General shall, in consultation with the Secretary of Homeland Security, consider those best practices and the guidance developed under section 3(d) of Executive Order 14074 and, if necessary, develop additional general recommendations for State, local, Tribal, and territorial law enforcement agencies and criminal justice agencies seeking to recruit, hire, train, promote, and retain highly qualified and service-oriented officers and staff with relevant technical knowledge. In considering this guidance, the Attorney General shall consult with State, local, Tribal, and territorial law enforcement agencies, as appropriate.

(iii) Within 365 days of the date of this order, the Attorney General shall review the work conducted pursuant to section 2(b) of Executive Order 14074 and, if appropriate, reassess the existing capacity to investigate law enforcement deprivation of rights under color of law resulting from the use of AI, including through improving and increasing training of Federal law enforcement officers, their supervisors, and Federal prosecutors on how to investigate and prosecute cases related to AI involving the deprivation of rights under color of law pursuant to 18 U.S.C. 242.

*7.2. Protecting Civil Rights Related to Government Benefits and Programs.* (a) To advance equity and civil rights, consistent with the directives of Executive Order 14091, and in addition to complying with the guidance on Federal Government use of AI issued pursuant to section 10.1(b) of this order, agencies shall use their respective civil rights and civil liberties offices and authorities—as appropriate and consistent with applicable law—to prevent and address unlawful discrimination and other harms that result from uses of AI in Federal Government programs and benefits administration. This directive does not apply to agencies' civil or criminal enforcement authorities. Agencies shall consider opportunities to ensure that their respective civil rights and civil liberties offices are appropriately consulted on agency decisions regarding the design, development, acquisition, and use of AI in Federal Government programs and benefits administration. To further these objectives, agencies shall also consider opportunities to increase coordination, communication, and engagement about AI as appropriate with community-based organizations; civil-rights and civil-liberties organizations; academic institutions; industry; State, local, Tribal, and territorial governments; and other stakeholders.

(b) To promote equitable administration of public benefits:

(i) The Secretary of HHS shall, within 180 days of the date of this order and in consultation with relevant agencies, publish a plan, informed by the guidance issued pursuant to section 10.1(b) of this order, addressing the use of automated or algorithmic systems in the implementation by States and localities of public benefits and services administered by the Secretary, such as to promote: assessment of access to benefits by qualified recipients; notice to recipients about the presence of such systems; regular evaluation to detect unjust denials; processes to retain appropriate levels of discretion of expert agency staff; processes to appeal denials to human reviewers; and analysis of whether algorithmic systems in use by benefit programs achieve equitable and just outcomes.

(ii) The Secretary of Agriculture shall, within 180 days of the date of this order and as informed by the guidance issued pursuant to section 10.1(b) of this order, issue guidance to State, local, Tribal, and territorial public-benefits administrators on the use of automated or algorithmic systems in implementing benefits or in providing customer support for benefit programs administered by the Secretary, to ensure that programs using those systems:

(A) maximize program access for eligible recipients;

(B) employ automated or algorithmic systems in a manner consistent with any requirements for using merit systems personnel in public-benefits programs;

(C) identify instances in which reliance on automated or algorithmic systems would require notification by the State, local, Tribal, or territorial government to the Secretary;

(D) identify instances when applicants and participants can appeal benefit determinations to a human

reviewer for reconsideration and can receive other customer support from a human being;

(E) enable auditing and, if necessary, remediation of the logic used to arrive at an individual decision or determination to facilitate the evaluation of appeals; and

(F) enable the analysis of whether algorithmic systems in use by benefit programs achieve equitable outcomes.

*7.3. Strengthening AI and Civil Rights in the Broader Economy.* (a) Within 365 days of the date of this order, to prevent unlawful discrimination from AI used for hiring, the Secretary of Labor shall publish guidance for Federal contractors regarding nondiscrimination in hiring involving AI and other technology-based hiring systems.

(b) To address discrimination and biases against protected groups in housing markets and consumer financial markets, the Director of the Federal Housing Finance Agency and the Director of the Consumer Financial Protection Bureau are encouraged to consider using their authorities, as they deem appropriate, to require their respective regulated entities, where possible, to use appropriate methodologies including AI tools to ensure compliance with Federal law and:

(i) evaluate their underwriting models for bias or disparities affecting protected groups; and

(ii) evaluate automated collateral-valuation and appraisal processes in ways that minimize bias.

(c) Within 180 days of the date of this order, to combat unlawful discrimination enabled by automated or algorithmic tools used to make decisions about access to housing and in other real estate-related transactions, the Secretary of Housing and Urban Development shall, and the Director of the Consumer Financial Protection Bureau is encouraged to, issue additional guidance:

(i) addressing the use of tenant screening systems in ways that may violate the Fair Housing Act (Public Law 90–284) [42 U.S.C. 3601 et seq.], the Fair Credit Reporting Act ([title VI of Pub. L. 90–321, as added by] Public Law 91–508) [15 U.S.C. 1681 et seq.], or other relevant Federal laws, including how the use of data, such as criminal records, eviction records, and credit information, can lead to discriminatory outcomes in violation of Federal law; and

(ii) addressing how the Fair Housing Act, the Consumer Financial Protection Act of 2010 (title X of Public Law 111–203) [see Tables for classification], or the Equal Credit Opportunity Act ([title VII of Pub. L. 90–321, as added by] Public Law 93–495) [15 U.S.C. 1691 et seq.] apply to the advertising of housing, credit, and other real estate-related transactions through digital platforms, including those that use algorithms to facilitate advertising delivery, as well as on best practices to avoid violations of Federal law.

(d) To help ensure that people with disabilities benefit from AI's promise while being protected from its risks, including unequal treatment from the use of biometric data like gaze direction, eye tracking, gait analysis, and hand motions, the Architectural and Transportation Barriers Compliance Board is encouraged, as it deems appropriate, to solicit public participation and conduct community engagement; to issue technical assistance and recommendations on the risks and benefits of AI in using biometric data as an input; and to provide people with disabilities access to information and communication technology and transportation services.

*SEC. 8. Protecting Consumers, Patients, Passengers, and Students.* (a) Independent regulatory agencies are encouraged, as they deem appropriate, to consider using their full range of authorities to protect American consumers from fraud, discrimination, and threats to privacy and to address other risks that may arise from the use of AI, including risks to financial stability, and to consider rulemaking, as well as emphasizing or clarifying where existing regulations and guidance apply to AI, including clarifying the responsibility of regulated entities to conduct due diligence on and monitor any third-party AI services they use, and emphasizing or clarifying requirements and expectations related to the transparency of AI models and regulated entities' ability to explain their use of AI models.

(b) To help ensure the safe, responsible deployment and use of AI in the healthcare, public-health, and human-services sectors:

(i) Within 90 days of the date of this order [Oct. 30, 2023], the Secretary of HHS shall, in consultation with the Secretary of Defense and the Secretary of Veterans Affairs, establish an HHS AI Task Force that shall, within 365 days of its creation, develop a strategic plan that includes policies and frameworks—possibly including regulatory action, as appropriate—on responsible deployment and use of AI and AI-enabled technologies in the health and human services sector (including research and discovery, drug and device safety, healthcare delivery and financing, and public health), and identify appropriate guidance and resources to promote that deployment, including in the following areas:

(A) development, maintenance, and use of predictive and generative AI-enabled technologies in healthcare delivery and financing—including quality measurement, performance improvement, program integrity, benefits administration, and patient experience—taking into account considerations such as appropriate human oversight of the application of AI-generated output;

(B) long-term safety and real-world performance monitoring of AI-enabled technologies in the health and human services sector, including clinically relevant or significant modifications and performance across population groups, with a means to communicate product updates to regulators, developers, and users;

(C) incorporation of equity principles in AI-enabled technologies used in the health and human services sector, using disaggregated data on affected populations and representative population data sets when developing new models, monitoring algorithmic performance against discrimination and bias in existing models, and helping to identify and mitigate discrimination and bias in current systems;

(D) incorporation of safety, privacy, and security standards into the software-development lifecycle for protection of personally identifiable information, including measures to address AI-enhanced cybersecurity threats in the health and human services sector;

(E) development, maintenance, and availability of documentation to help users determine appropriate and safe uses of AI in local settings in the health and human services sector;

(F) work to be done with State, local, Tribal, and territorial health and human services agencies to advance positive use cases and best practices for use of AI in local settings; and

(G) identification of uses of AI to promote workplace efficiency and satisfaction in the health and human services sector, including reducing administrative burdens.

(ii) Within 180 days of the date of this order, the Secretary of HHS shall direct HHS components, as the Secretary of HHS deems appropriate, to develop a strategy, in consultation with relevant agencies, to determine whether AI-enabled technologies in the health and human services sector maintain appropriate levels of quality, including, as appropriate, in the areas described in subsection (b)(i) of this section. This work shall include the development of AI assurance policy—to evaluate important aspects of the performance of AI-enabled healthcare tools—and infrastructure needs for enabling pre-market assessment and post-market oversight of AI-enabled healthcare-technology algorithmic system performance against real-world data.

(iii) Within 180 days of the date of this order, the Secretary of HHS shall, in consultation with relevant agencies as the Secretary of HHS deems appropriate, consider appropriate actions to advance the prompt understanding of, and compliance with, Federal nondiscrimination laws by health and human services providers that receive Federal financial assistance, as well as how those laws relate to AI. Such actions may include:

(A) convening and providing technical assistance to health and human services providers and payers about their obligations under Federal nondiscrimination and privacy laws as they relate to AI and the potential consequences of noncompliance; and

(B) issuing guidance, or taking other action as appropriate, in response to any complaints or other reports of noncompliance with Federal nondiscrimination and privacy laws as they relate to AI.

(iv) Within 365 days of the date of this order, the Secretary of HHS shall, in consultation with the Secretary of Defense and the Secretary of Veterans Affairs, establish an AI safety program that, in partnership with voluntary federally listed Patient Safety Organizations:

(A) establishes a common framework for approaches to identifying and capturing clinical errors resulting from AI deployed in healthcare settings as well as specifications for a central tracking repository for associated incidents that cause harm, including through bias or discrimination, to patients, caregivers, or other parties;

(B) analyzes captured data and generated evidence to develop, wherever appropriate, recommendations, best practices, or other informal guidelines aimed at avoiding these harms; and

(C) disseminates those recommendations, best practices, or other informal guidance to appropriate stakeholders, including healthcare providers.

(v) Within 365 days of the date of this order, the Secretary of HHS shall develop a strategy for regulating the use of AI or AI-enabled tools in drug-development processes. The strategy shall, at a minimum:

(A) define the objectives, goals, and high-level principles required for appropriate regulation throughout each phase of drug development;

(B) identify areas where future rulemaking, guidance, or additional statutory authority may be necessary to implement such a regulatory system;

(C) identify the existing budget, resources, personnel, and potential for new public/private partnerships necessary for such a regulatory system; and

(D) consider risks identified by the actions undertaken to implement section 4 of this order.

(c) To promote the safe and responsible development and use of AI in the transportation sector, in consultation with relevant agencies:

(i) Within 30 days of the date of this order, the Secretary of Transportation shall direct the Nontraditional and Emerging Transportation Technology (NETT) Council to assess the need for information, technical assistance, and guidance regarding the use of AI in transportation. The Secretary of Transportation shall

further direct the NETT Council, as part of any such efforts, to:

(A) support existing and future initiatives to pilot transportation-related applications of AI, as they align with policy priorities articulated in the Department of Transportation's (DOT) Innovation Principles, including, as appropriate, through technical assistance and connecting stakeholders;

(B) evaluate the outcomes of such pilot programs in order to assess when DOT, or other Federal or State agencies, have sufficient information to take regulatory actions, as appropriate, and recommend appropriate actions when that information is available; and

(C) establish a new DOT Cross-Modal Executive Working Group, which will consist of members from different divisions of DOT and coordinate applicable work among these divisions, to solicit and use relevant input from appropriate stakeholders.

(ii) Within 90 days of the date of this order, the Secretary of Transportation shall direct appropriate Federal Advisory Committees of the DOT to provide advice on the safe and responsible use of AI in transportation. The committees shall include the Advanced Aviation Advisory Committee, the Transforming Transportation Advisory Committee, and the Intelligent Transportation Systems Program Advisory Committee.

(iii) Within 180 days of the date of this order, the Secretary of Transportation shall direct the Advanced Research Projects Agency-Infrastructure (ARPA-I) to explore the transportation-related opportunities and challenges of AI—including regarding software-defined AI enhancements impacting autonomous mobility ecosystems. The Secretary of Transportation shall further encourage ARPA-I to prioritize the allocation of grants to those opportunities, as appropriate. The work tasked to ARPA-I shall include soliciting input on these topics through a public consultation process, such as an RFI.

(d) To help ensure the responsible development and deployment of AI in the education sector, the Secretary of Education shall, within 365 days of the date of this order, develop resources, policies, and guidance regarding AI. These resources shall address safe, responsible, and nondiscriminatory uses of AI in education, including the impact AI systems have on vulnerable and underserved communities, and shall be developed in consultation with stakeholders as appropriate. They shall also include the development of an "AI toolkit" for education leaders implementing recommendations from the Department of Education's AI and the Future of Teaching and Learning report, including appropriate human review of AI decisions, designing AI systems to enhance trust and safety and align with privacy-related laws and regulations in the educational context, and developing education-specific guardrails.

(e) The Federal Communications Commission is encouraged to consider actions related to how AI will affect communications networks and consumers, including by:

(i) examining the potential for AI to improve spectrum management, increase the efficiency of non-Federal spectrum usage, and expand opportunities for the sharing of non-Federal spectrum;

(ii) coordinating with the National Telecommunications and Information Administration to create opportunities for sharing spectrum between Federal and non-Federal spectrum operations;

(iii) providing support for efforts to improve network security, resiliency, and interoperability using next-generation technologies that incorporate AI, including self-healing networks, 6G, and Open RAN; and

(iv) encouraging, including through rulemaking, efforts to combat unwanted robocalls and robotexts that are facilitated or exacerbated by AI and to deploy AI technologies that better serve consumers by blocking unwanted robocalls and robotexts.

SEC. 9. *Protecting Privacy.* (a) To mitigate privacy risks potentially exacerbated by AI—including by AI's facilitation of the collection or use of information about individuals, or the making of inferences about individuals—the Director of OMB shall:

(i) evaluate and take steps to identify commercially available information (CAI) procured by agencies, particularly CAI that contains personally identifiable information and including CAI procured from data brokers and CAI procured and processed indirectly through vendors, in appropriate agency inventory and reporting processes (other than when it is used for the purposes of national security);

(ii) evaluate, in consultation with the Federal Privacy Council and the Interagency Council on Statistical Policy, agency standards and procedures associated with the collection, processing, maintenance, use, sharing, dissemination, and disposition of CAI that contains personally identifiable information (other than when it is used for the purposes of national security) to inform potential guidance to agencies on ways to mitigate privacy and confidentiality risks from agencies' activities related to CAI;

(iii) within 180 days of the date of this order, in consultation with the Attorney General, the Assistant to the President for Economic Policy, and the Director of OSTP, issue an RFI to inform potential revisions to guidance to agencies on implementing the privacy provisions of the E-Government Act of 2002 (Public Law 107-347) [see Tables for classification]. The RFI shall seek feedback regarding how privacy impact assessments may be more effective at mitigating privacy risks, including those that are further exacerbated by AI; and



(iv) take such steps as are necessary and appropriate, consistent with applicable law, to support and advance the near-term actions and long-term strategy identified through the RFI process, including issuing new or updated guidance or RFIs or consulting other agencies or the Federal Privacy Council.

(b) Within 365 days of the date of this order, to better enable agencies to use PETs to safeguard Americans' privacy from the potential threats exacerbated by AI, the Secretary of Commerce, acting through the Director of NIST, shall create guidelines for agencies to evaluate the efficacy of differential-privacy-guarantee protections, including for AI. The guidelines shall, at a minimum, describe the significant factors that bear on differential-privacy safeguards and common risks to realizing differential privacy in practice.

(c) To advance research, development, and implementation related to PETs:

(i) Within 120 days of the date of this order, the Director of NSF, in collaboration with the Secretary of Energy, shall fund the creation of a Research Coordination Network (RCN) dedicated to advancing privacy research and, in particular, the development, deployment, and scaling of PETs. The RCN shall serve to enable privacy researchers to share information, coordinate and collaborate in research, and develop standards for the privacy-research community.

(ii) Within 240 days of the date of this order, the Director of NSF shall engage with agencies to identify ongoing work and potential opportunities to incorporate PETs into their operations. The Director of NSF shall, where feasible and appropriate, prioritize research—including efforts to translate research discoveries into practical applications—that encourage the adoption of leading-edge PETs solutions for agencies' use, including through research engagement through the RCN described in subsection (c)(i) of this section.

(iii) The Director of NSF shall use the results of the United States-United Kingdom PETs Prize Challenge to inform the approaches taken, and opportunities identified, for PETs research and adoption.

#### SEC. 10. *Advancing Federal Government Use of AI.*

*10.1. Providing Guidance for AI Management.* (a) To coordinate the use of AI across the Federal Government, within 60 days of the date of this order [Oct. 30, 2023] and on an ongoing basis as necessary, the Director of OMB shall convene and chair an interagency council to coordinate the development and use of AI in agencies' programs and operations, other than the use of AI in national security systems. The Director of OSTP shall serve as Vice Chair for the interagency council. The interagency council's membership shall include, at minimum, the heads of the agencies identified in 31 U.S.C. 901(b), the Director of National Intelligence, and other agencies as identified by the Chair. Until agencies designate their permanent Chief AI Officers consistent with the guidance described in subsection 10.1(b) of this section, they shall be represented on the interagency council by an appropriate official at the Assistant Secretary level or equivalent, as determined by the head of each agency.

(b) To provide guidance on Federal Government use of AI, within 150 days of the date of this order and updated periodically thereafter, the Director of OMB, in coordination with the Director of OSTP, and in consultation with the interagency council established in subsection 10.1(a) of this section, shall issue guidance to agencies to strengthen the effective and appropriate use of AI, advance AI innovation, and manage risks from AI in the Federal Government. The Director of OMB's guidance shall specify, to the extent appropriate and consistent with applicable law:

(i) the requirement to designate at each agency within 60 days of the issuance of the guidance a Chief Artificial Intelligence Officer who shall hold primary responsibility in their agency, in coordination with other responsible officials, for coordinating their agency's use of AI, promoting AI innovation in their agency, managing risks from their agency's use of AI, and carrying out the responsibilities described in section 8(c) of Executive Order 13960 of December 3, 2020 (Promoting the Use of Trustworthy Artificial Intelligence in the Federal Government) [40 U.S.C. 11301 note], and section 4(b) of Executive Order 14091;

(ii) the Chief Artificial Intelligence Officers' roles, responsibilities, seniority, position, and reporting structures;

(iii) for the agencies identified in 31 U.S.C. 901(b), the creation of internal Artificial Intelligence Governance Boards, or other appropriate mechanisms, at each agency within 60 days of the issuance of the guidance to coordinate and govern AI issues through relevant senior leaders from across the agency;

(iv) required minimum risk-management practices for Government uses of AI that impact people's rights or safety, including, where appropriate, the following practices derived from OSTP's Blueprint for an AI Bill of Rights and the NIST AI Risk Management Framework: conducting public consultation; assessing data quality; assessing and mitigating disparate impacts and algorithmic discrimination; providing notice of the use of AI; continuously monitoring and evaluating deployed AI; and granting human consideration and remedies for adverse decisions made using AI;

(v) specific Federal Government uses of AI that are presumed by default to impact rights or safety;

(vi) recommendations to agencies to reduce barriers to the responsible use of AI, including barriers related to information technology infrastructure, data, workforce, budgetary restrictions, and cybersecurity processes;

(vii) requirements that agencies identified in 31 U.S.C. 901(b) develop AI strategies and pursue high-impact AI use cases;

(viii) in consultation with the Secretary of Commerce, the Secretary of Homeland Security, and the heads of other appropriate agencies as determined by the Director of OMB, recommendations to agencies regarding:

(A) external testing for AI, including AI red-teaming for generative AI, to be developed in coordination with the Cybersecurity and Infrastructure Security Agency;

(B) testing and safeguards against discriminatory, misleading, inflammatory, unsafe, or deceptive outputs, as well as against producing child sexual abuse material and against producing non-consensual intimate imagery of real individuals (including intimate digital depictions of the body or body parts of an identifiable individual), for generative AI;

(C) reasonable steps to watermark or otherwise label output from generative AI;

(D) application of the mandatory minimum risk-management practices defined under subsection 10.1(b)(iv) of this section to procured AI;

(E) independent evaluation of vendors' claims concerning both the effectiveness and risk mitigation of their AI offerings;

(F) documentation and oversight of procured AI;

(G) maximizing the value to agencies when relying on contractors to use and enrich Federal Government data for the purposes of AI development and operation;

(H) provision of incentives for the continuous improvement of procured AI; and

(I) training on AI in accordance with the principles set out in this order and in other references related to AI listed herein; and

(ix) requirements for public reporting on compliance with this guidance.

(c) To track agencies' AI progress, within 60 days of the issuance of the guidance established in subsection 10.1(b) of this section and updated periodically thereafter, the Director of OMB shall develop a method for agencies to track and assess their ability to adopt AI into their programs and operations, manage its risks, and comply with Federal policy on AI. This method should draw on existing related efforts as appropriate and should address, as appropriate and consistent with applicable law, the practices, processes, and capabilities necessary for responsible AI adoption, training, and governance across, at a minimum, the areas of information technology infrastructure, data, workforce, leadership, and risk management.

(d) To assist agencies in implementing the guidance to be established in subsection 10.1(b) of this section:

(i) within 90 days of the issuance of the guidance, the Secretary of Commerce, acting through the Director of NIST, and in coordination with the Director of OMB and the Director of OSTP, shall develop guidelines, tools, and practices to support implementation of the minimum risk-management practices described in subsection 10.1(b)(iv) of this section; and

(ii) within 180 days of the issuance of the guidance, the Director of OMB shall develop an initial means to ensure that agency contracts for the acquisition of AI systems and services align with the guidance described in subsection 10.1(b) of this section and advance the other aims identified in section 7224(d)(1) of the Advancing American AI Act (Public Law 117–263, div. G, title LXXII, subtitle B) [40 U.S.C. 11301 note].

(e) To improve transparency for agencies' use of AI, the Director of OMB shall, on an annual basis, issue instructions to agencies for the collection, reporting, and publication of agency AI use cases, pursuant to section 7225(a) of the Advancing American AI Act [40 U.S.C. 11301 note]. Through these instructions, the Director shall, as appropriate, expand agencies' reporting on how they are managing risks from their AI use cases and update or replace the guidance originally established in section 5 of Executive Order 13960.

(f) To advance the responsible and secure use of generative AI in the Federal Government:

(i) As generative AI products become widely available and common in online platforms, agencies are discouraged from imposing broad general bans or blocks on agency use of generative AI. Agencies should instead limit access, as necessary, to specific generative AI services based on specific risk assessments; establish guidelines and limitations on the appropriate use of generative AI; and, with appropriate safeguards in place, provide their personnel and programs with access to secure and reliable generative AI capabilities, at least for the purposes of experimentation and routine tasks that carry a low risk of impacting Americans' rights. To protect Federal Government information, agencies are also encouraged to employ risk-management practices, such as training their staff on proper use, protection, dissemination, and disposition of Federal information; negotiating appropriate terms of service with vendors; implementing measures designed to ensure compliance with record-keeping, cybersecurity, confidentiality, privacy, and data protection requirements; and deploying other measures to prevent misuse of Federal Government information in generative AI.

(ii) Within 90 days of the date of this order, the Administrator of General Services, in coordination with the Director of OMB, and in consultation with the Federal Secure Cloud Advisory Committee and other relevant

agencies as the Administrator of General Services may deem appropriate, shall develop and issue a framework for prioritizing critical and emerging technologies offerings in the Federal Risk and Authorization Management Program authorization process, starting with generative AI offerings that have the primary purpose of providing large language model-based chat interfaces, code-generation and debugging tools, and associated application programming interfaces, as well as prompt-based image generators. This framework shall apply for no less than 2 years from the date of its issuance. Agency Chief Information Officers, Chief Information Security Officers, and authorizing officials are also encouraged to prioritize generative AI and other critical and emerging technologies in granting authorities for agency operation of information technology systems and any other applicable release or oversight processes, using continuous authorizations and approvals wherever feasible.

(iii) Within 180 days of the date of this order, the Director of the Office of Personnel Management (OPM), in coordination with the Director of OMB, shall develop guidance on the use of generative AI for work by the Federal workforce.

(g) Within 30 days of the date of this order, to increase agency investment in AI, the Technology Modernization Board shall consider, as it deems appropriate and consistent with applicable law, prioritizing funding for AI projects for the Technology Modernization Fund for a period of at least 1 year. Agencies are encouraged to submit to the Technology Modernization Fund project funding proposals that include AI—and particularly generative AI—in service of mission delivery.

(h) Within 180 days of the date of this order, to facilitate agencies' access to commercial AI capabilities, the Administrator of General Services, in coordination with the Director of OMB, and in collaboration with the Secretary of Defense, the Secretary of Homeland Security, the Director of National Intelligence, the Administrator of the National Aeronautics and Space Administration, and the head of any other agency identified by the Administrator of General Services, shall take steps consistent with applicable law to facilitate access to Federal Government-wide acquisition solutions for specified types of AI services and products, such as through the creation of a resource guide or other tools to assist the acquisition workforce. Specified types of AI capabilities shall include generative AI and specialized computing infrastructure.

(i) The initial means, instructions, and guidance issued pursuant to subsections 10.1(a)–(h) of this section shall not apply to AI when it is used as a component of a national security system, which shall be addressed by the proposed National Security Memorandum described in subsection 4.8 of this order.

*10.2. Increasing AI Talent in Government.* (a) Within 45 days of the date of this order, to plan a national surge in AI talent in the Federal Government, the Director of OSTP and the Director of OMB, in consultation with the Assistant to the President for National Security Affairs, the Assistant to the President for Economic Policy, the Assistant to the President and Domestic Policy Advisor, and the Assistant to the President and Director of the Gender Policy Council, shall identify priority mission areas for increased Federal Government AI talent, the types of talent that are highest priority to recruit and develop to ensure adequate implementation of this order and use of relevant enforcement and regulatory authorities to address AI risks, and accelerated hiring pathways.

(b) Within 45 days of the date of this order, to coordinate rapid advances in the capacity of the Federal AI workforce, the Assistant to the President and Deputy Chief of Staff for Policy, in coordination with the Director of OSTP and the Director of OMB, and in consultation with the National Cyber Director, shall convene an AI and Technology Talent Task Force, which shall include the Director of OPM, the Director of the General Services Administration's Technology Transformation Services, a representative from the Chief Human Capital Officers Council, the Assistant to the President for Presidential Personnel, members of appropriate agency technology talent programs, a representative of the Chief Data Officer Council, and a representative of the interagency council convened under subsection 10.1(a) of this section. The Task Force's purpose shall be to accelerate and track the hiring of AI and AI-enabling talent across the Federal Government, including through the following actions:

(i) within 180 days of the date of this order, tracking and reporting progress to the President on increasing AI capacity across the Federal Government, including submitting to the President a report and recommendations for further increasing capacity;

(ii) identifying and circulating best practices for agencies to attract, hire, retain, train, and empower AI talent, including diversity, inclusion, and accessibility best practices, as well as to plan and budget adequately for AI workforce needs;

(iii) coordinating, in consultation with the Director of OPM, the use of fellowship programs and agency technology-talent programs and human-capital teams to build hiring capabilities, execute hires, and place AI talent to fill staffing gaps; and

(iv) convening a cross-agency forum for ongoing collaboration between AI professionals to share best practices and improve retention.

(c) Within 45 days of the date of this order, to advance existing Federal technology talent programs, the United States Digital Service, Presidential Innovation Fellowship, United States Digital Corps, OPM, and technology talent programs at agencies, with support from the AI and Technology Talent Task Force described in subsection 10.2(b) of this section, as appropriate and permitted by law, shall develop and begin to implement plans to support the rapid recruitment of individuals as part of a Federal Government-wide AI talent surge to accelerate the placement of key AI and AI-enabling talent in high-priority areas and to advance agencies' data and technology strategies.

(d) To meet the critical hiring need for qualified personnel to execute the initiatives in this order, and to improve Federal hiring practices for AI talent, the Director of OPM, in consultation with the Director of OMB, shall:

(i) within 60 days of the date of this order, conduct an evidence-based review on the need for hiring and workplace flexibility, including Federal Government-wide direct-hire authority for AI and related data-science and technical roles, and, where the Director of OPM finds such authority is appropriate, grant it; this review shall include the following job series at all General Schedule (GS) levels: IT Specialist (2210), Computer Scientist (1550), Computer Engineer (0854), and Program Analyst (0343) focused on AI, and any subsequently developed job series derived from these job series;

(ii) within 60 days of the date of this order, consider authorizing the use of excepted service appointments under 5 CFR 213.3102(i)(3) to address the need for hiring additional staff to implement directives of this order;

(iii) within 90 days of the date of this order, coordinate a pooled-hiring action informed by subject-matter experts and using skills-based assessments to support the recruitment of AI talent across agencies;

(iv) within 120 days of the date of this order, as appropriate and permitted by law, issue guidance for agency application of existing pay flexibilities or incentive pay programs for AI, AI-enabling, and other key technical positions to facilitate appropriate use of current pay incentives;

(v) within 180 days of the date of this order, establish guidance and policy on skills-based, Federal Government-wide hiring of AI, data, and technology talent in order to increase access to those with nontraditional academic backgrounds to Federal AI, data, and technology roles;

(vi) within 180 days of the date of this order, establish an interagency working group, staffed with both human-resources professionals and recruiting technical experts, to facilitate Federal Government-wide hiring of people with AI and other technical skills;

(vii) within 180 days of the date of this order, review existing Executive Core Qualifications (ECQs) for Senior Executive Service (SES) positions informed by data and AI literacy competencies and, within 365 days of the date of this order, implement new ECQs as appropriate in the SES assessment process;

(viii) within 180 days of the date of this order, complete a review of competencies for civil engineers (GS-0810 series) and, if applicable, other related occupations, and make recommendations for ensuring that adequate AI expertise and credentials in these occupations in the Federal Government reflect the increased use of AI in critical infrastructure; and

(ix) work with the Security, Suitability, and Credentialing Performance Accountability Council to assess mechanisms to streamline and accelerate personnel-vetting requirements, as appropriate, to support AI and fields related to other critical and emerging technologies.

(e) To expand the use of special authorities for AI hiring and retention, agencies shall use all appropriate hiring authorities, including Schedule A(r) excepted service hiring and direct-hire authority, as applicable and appropriate, to hire AI talent and AI-enabling talent rapidly. In addition to participating in OPM-led pooled hiring actions, agencies shall collaborate, where appropriate, on agency-led pooled hiring under the Competitive Service Act of 2015 (Public Law 114-137) [see Tables for classification] and other shared hiring. Agencies shall also, where applicable, use existing incentives, pay-setting authorities, and other compensation flexibilities, similar to those used for cyber and information technology positions, for AI and data-science professionals, as well as plain-language job titles, to help recruit and retain these highly skilled professionals. Agencies shall ensure that AI and other related talent needs (such as technology governance and privacy) are reflected in strategic workforce planning and budget formulation.

(f) To facilitate the hiring of data scientists, the Chief Data Officer Council shall develop a position-description library for data scientists (job series 1560) and a hiring guide to support agencies in hiring data scientists.

(g) To help train the Federal workforce on AI issues, the head of each agency shall implement—or increase the availability and use of—AI training and familiarization programs for employees, managers, and leadership in technology as well as relevant policy, managerial, procurement, regulatory, ethical, governance, and legal fields. Such training programs should, for example, empower Federal employees, managers, and leaders to develop and maintain an operating knowledge of emerging AI technologies to assess opportunities to use

these technologies to enhance the delivery of services to the public, and to mitigate risks associated with these technologies. Agencies that provide professional-development opportunities, grants, or funds for their staff should take appropriate steps to ensure that employees who do not serve in traditional technical roles, such as policy, managerial, procurement, or legal fields, are nonetheless eligible to receive funding for programs and courses that focus on AI, machine learning, data science, or other related subject areas.

(h) Within 180 days of the date of this order, to address gaps in AI talent for national defense, the Secretary of Defense shall submit a report to the President through the Assistant to the President for National Security Affairs that includes:

- (i) recommendations to address challenges in the Department of Defense's ability to hire certain noncitizens, including at the Science and Technology Reinvention Laboratories;
- (ii) recommendations to clarify and streamline processes for accessing classified information for certain noncitizens through Limited Access Authorization at Department of Defense laboratories;
- (iii) recommendations for the appropriate use of enlistment authority under 10 U.S.C. 504(b)(2) for experts in AI and other critical and emerging technologies; and
- (iv) recommendations for the Department of Defense and the Department of Homeland Security to work together to enhance the use of appropriate authorities for the retention of certain noncitizens of vital importance to national security by the Department of Defense and the Department of Homeland Security.

SEC. 11. *Strengthening American Leadership Abroad.* (a) To strengthen United States leadership of global efforts to unlock AI's potential and meet its challenges, the Secretary of State, in coordination with the Assistant to the President for National Security Affairs, the Assistant to the President for Economic Policy, the Director of OSTP, and the heads of other relevant agencies as appropriate, shall:

(i) lead efforts outside of military and intelligence areas to expand engagements with international allies and partners in relevant bilateral, multilateral, and multi-stakeholder fora to advance those allies' and partners' understanding of existing and planned AI-related guidance and policies of the United States, as well as to enhance international collaboration; and

(ii) lead efforts to establish a strong international framework for managing the risks and harnessing the benefits of AI, including by encouraging international allies and partners to support voluntary commitments similar to those that United States companies have made in pursuit of these objectives and coordinating the activities directed by subsections (b), (c), (d), and (e) of this section, and to develop common regulatory and other accountability principles for foreign nations, including to manage the risk that AI systems pose.

(b) To advance responsible global technical standards for AI development and use outside of military and intelligence areas, the Secretary of Commerce, in coordination with the Secretary of State and the heads of other relevant agencies as appropriate, shall lead preparations for a coordinated effort with key international allies and partners and with standards development organizations, to drive the development and implementation of AI-related consensus standards, cooperation and coordination, and information sharing. In particular, the Secretary of Commerce shall:

(i) within 270 days of the date of this order, establish a plan for global engagement on promoting and developing AI standards, with lines of effort that may include:

- (A) AI nomenclature and terminology;
- (B) best practices regarding data capture, processing, protection, privacy, confidentiality, handling, and analysis;
- (C) trustworthiness, verification, and assurance of AI systems; and
- (D) AI risk management;

(ii) within 180 days of the date the plan is established, submit a report to the President on priority actions taken pursuant to the plan; and

(iii) ensure that such efforts are guided by principles set out in the NIST AI Risk Management Framework and United States Government National Standards Strategy for Critical and Emerging Technology.

(c) Within 365 days of the date of this order, to promote safe, responsible, and rights-affirming development and deployment of AI abroad:

(i) The Secretary of State and the Administrator of the United States Agency for International Development, in coordination with the Secretary of Commerce, acting through the director of NIST, shall publish an AI in Global Development Playbook that incorporates the AI Risk Management Framework's principles, guidelines, and best practices into the social, technical, economic, governance, human rights, and security conditions of contexts beyond United States borders. As part of this work, the Secretary of State and the Administrator of the United States Agency for International Development shall draw on lessons learned from programmatic uses of AI in global development.

(ii) The Secretary of State and the Administrator of the United States Agency for International Development, in collaboration with the Secretary of Energy and the Director of NSF, shall develop a Global

AI Research Agenda to guide the objectives and implementation of AI-related research in contexts beyond United States borders. The Agenda shall:

(A) include principles, guidelines, priorities, and best practices aimed at ensuring the safe, responsible, beneficial, and sustainable global development and adoption of AI; and

(B) address AI's labor-market implications across international contexts, including by recommending risk mitigations.

(d) To address cross-border and global AI risks to critical infrastructure, the Secretary of Homeland Security, in coordination with the Secretary of State, and in consultation with the heads of other relevant agencies as the Secretary of Homeland Security deems appropriate, shall lead efforts with international allies and partners to enhance cooperation to prevent, respond to, and recover from potential critical infrastructure disruptions resulting from incorporation of AI into critical infrastructure systems or malicious use of AI.

(i) Within 270 days of the date of this order, the Secretary of Homeland Security, in coordination with the Secretary of State, shall develop a plan for multilateral engagements to encourage the adoption of the AI safety and security guidelines for use by critical infrastructure owners and operators developed in section 4.3(a) of this order.

(ii) Within 180 days of establishing the plan described in subsection (d)(i) of this section, the Secretary of Homeland Security shall submit a report to the President on priority actions to mitigate cross-border risks to critical United States infrastructure.

SEC. 12. *Implementation.* (a) There is established, within the Executive Office of the President, the White House Artificial Intelligence Council (White House AI Council). The function of the White House AI Council is to coordinate the activities of agencies across the Federal Government to ensure the effective formulation, development, communication, industry engagement related to, and timely implementation of AI-related policies, including policies set forth in this order.

(b) The Assistant to the President and Deputy Chief of Staff for Policy shall serve as Chair of the White House AI Council.

(c) In addition to the Chair, the White House AI Council shall consist of the following members, or their designees:

(i) the Secretary of State;

(ii) the Secretary of the Treasury;

(iii) the Secretary of Defense;

(iv) the Attorney General;

(v) the Secretary of Agriculture;

(vi) the Secretary of Commerce;

(vii) the Secretary of Labor;

(viii) the Secretary of HHS;

(ix) the Secretary of Housing and Urban Development;

(x) the Secretary of Transportation;

(xi) the Secretary of Energy;

(xii) the Secretary of Education;

(xiii) the Secretary of Veterans Affairs;

(xiv) the Secretary of Homeland Security;

(xv) the Administrator of the Small Business Administration;

(xvi) the Administrator of the United States Agency for International Development;

(xvii) the Director of National Intelligence;

(xviii) the Director of NSF;

(xix) the Director of OMB;

(xx) the Director of OSTP;

(xxi) the Assistant to the President for National Security Affairs;

(xxii) the Assistant to the President for Economic Policy;

(xxiii) the Assistant to the President and Domestic Policy Advisor;

(xxiv) the Assistant to the President and Chief of Staff to the Vice President;

(xxv) the Assistant to the President and Director of the Gender Policy Council;

(xxvi) the Chairman of the Council of Economic Advisers;

(xxvii) the National Cyber Director;

(xxviii) the Chairman of the Joint Chiefs of Staff; and

(xxix) the heads of such other agencies, independent regulatory agencies, and executive offices as the Chair may from time to time designate or invite to participate.

(d) The Chair may create and coordinate subgroups consisting of White House AI Council members or their

designees, as appropriate.

SEC. 13. *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.

## SUBCHAPTER I—NATIONAL ARTIFICIAL INTELLIGENCE INITIATIVE

### §9411. National Artificial Intelligence Initiative

#### (a) Establishment; purposes

The President shall establish and implement an initiative to be known as the "National Artificial Intelligence Initiative". The purposes of the Initiative shall be to—

(1) ensure continued United States leadership in artificial intelligence research and development;

(2) lead the world in the development and use of trustworthy artificial intelligence systems in the public and private sectors;

(3) prepare the present and future United States workforce for the integration of artificial intelligence systems across all sectors of the economy and society; and

(4) coordinate ongoing artificial intelligence research, development, and demonstration activities among the civilian agencies, the Department of Defense and the Intelligence Community to ensure that each informs the work of the others.

#### (b) Initiative activities

In carrying out the Initiative, the President, acting through the Initiative Office, the Interagency Committee, and agency heads as the President considers appropriate, shall carry out activities that include the following:

(1) Sustained and consistent support for artificial intelligence research and development through grants, cooperative agreements, testbeds, and access to data and computing resources.

(2) Support for K-12 education and postsecondary educational programs, including workforce training and career and technical education programs, and informal education programs to prepare the American workforce and the general public to be able to create, use, and interact with artificial intelligence systems.

(3) Support for interdisciplinary research, education, and workforce training programs for students and researchers that promote learning in the methods and systems used in artificial intelligence and foster interdisciplinary perspectives and collaborations among subject matter experts in relevant fields, including computer science, mathematics, statistics, engineering, social sciences, health, psychology, behavioral science, ethics, security, legal scholarship, and other disciplines that will be necessary to advance artificial intelligence research and development responsibly.

(4) Interagency planning and coordination of Federal artificial intelligence research, development, demonstration, standards engagement, and other activities under the Initiative, as appropriate.

(5) Outreach to diverse stakeholders, including citizen groups, industry, and civil rights and disability rights organizations, to ensure public input is taken into account in the activities of the Initiative.

(6) Leveraging existing Federal investments to advance objectives of the Initiative.

(7) Support for a network of interdisciplinary artificial intelligence research institutes, as described in section 9431(b)(7)(B) of this title.

(8) Support opportunities for international cooperation with strategic allies, as appropriate, on the research and development, assessment, and resources for trustworthy artificial intelligence systems.

**(c) Limitation**

The Initiative shall not impact sources and methods, as determined by the Director of National Intelligence.

**(d) Rules of construction**

Nothing in this chapter shall be construed as—

(1) modifying any authority or responsibility, including any operational authority or responsibility of any head of a Federal department or agency, with respect to intelligence or the intelligence community, as those terms are defined in 50 U.S.C. 3003; <sup>1</sup>

(2) authorizing the Initiative, or anyone associated with its derivative efforts to approve, interfere with, direct or to conduct an intelligence activity, resource, or operation; or

(3) authorizing the Initiative, or anyone associated with its derivative efforts to modify the classification of intelligence information.

**(e) Sunset**

The Initiative established in this chapter shall terminate on the date that is 10 years after January 1, 2021.

(Pub. L. 116–283, div. E, title LI, §5101, Jan. 1, 2021, 134 Stat. 4524.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

This chapter, referred to in subsecs. (d) and (e), was in the original "this division", meaning div. E of Pub. L. 116–283, Jan. 1, 2021, 134 Stat. 4523, which is classified principally to this chapter. For complete classification of div. E to the Code, see Short Title note set out under section 9401 of this title and Tables.

50 U.S.C. 3003, referred to in subsec. (d)(1), was so in the original, but probably should have been a reference to section 3 of the National Security Act of 1947, act July 26, 1947, ch. 343, which is classified to section 3003 of Title 50, War and National Defense.

<sup>1</sup> [\*See References in Text note below.\*](#)

**§9412. National Artificial Intelligence Initiative Office**

**(a) In general**

The Director of the Office of Science and Technology Policy shall establish or designate, and appoint a director of, an office to be known as the "National Artificial Intelligence Initiative Office" to carry out the responsibilities described in subsection (b) with respect to the Initiative. The Initiative Office shall have sufficient staff to carry out such responsibilities, including staff detailed from the Federal departments and agencies described in section 9413(c) of this title, as appropriate.

**(b) Responsibilities**

The Director of the Initiative Office shall—

(1) provide technical and administrative support to the Interagency Committee and the Advisory Committee;

(2) serve as the point of contact on Federal artificial intelligence activities for Federal departments and agencies, industry, academia, nonprofit organizations, professional societies,



State governments, and such other persons as the Initiative Office considers appropriate to exchange technical and programmatic information;

(3) conduct regular public outreach to diverse stakeholders, including civil rights and disability rights organizations; and

(4) promote access to the technologies, innovations, best practices, and expertise derived from Initiative activities to agency missions and systems across the Federal Government.

**(c) Funding estimate**

The Director of the Office of Science and Technology Policy, in coordination with each participating Federal department and agency, as appropriate, shall develop and annually update an estimate of the funds necessary to carry out the activities of the Initiative Coordination Office and submit such estimate with an agreed summary of contributions from each agency to Congress as part of the President's annual budget request to Congress.

(Pub. L. 116–283, div. E, title LI, §5102, Jan. 1, 2021, 134 Stat. 4526.)

## **§9413. Coordination by Interagency Committee**

**(a) Interagency Committee**

The Director of the Office of Science and Technology Policy, acting through the National Science and Technology Council, shall establish or designate an Interagency Committee to coordinate Federal programs and activities in support of the Initiative.

**(b) Co-chairs**

The Interagency Committee shall be co-chaired by the Director of the Office of Science and Technology Policy and, on an annual rotating basis, a representative from the Department of Commerce, the National Science Foundation, or the Department of Energy, as selected by the Director of the Office of Science and Technology Policy.

**(c) Agency participation**

The Committee shall include representatives from Federal agencies as considered appropriate by determination and agreement of the Director of the Office of Science and Technology Policy and the head of the affected agency.

**(d) Responsibilities**

The Interagency Committee shall—

(1) provide for interagency coordination of Federal artificial intelligence research, development, and demonstration activities and education and workforce training activities and programs of Federal departments and agencies undertaken pursuant to the Initiative;

(2) not later than 2 years after January 1, 2021, develop a strategic plan for artificial intelligence (to be updated not less than every 3 years) that establishes goals, priorities, and metrics for guiding and evaluating how the agencies carrying out the Initiative will—

(A) determine and prioritize areas of artificial intelligence research, development, and demonstration requiring Federal Government leadership and investment;

(B) support long-term funding for interdisciplinary artificial intelligence research, development, demonstration, and education;

(C) support research and other activities on ethical, legal, environmental, safety, security, bias, and other appropriate societal issues related to artificial intelligence;

(D) provide or facilitate the availability of curated, standardized, secure, representative, aggregate, and privacy-protected data sets for artificial intelligence research and development;

(E) provide or facilitate the necessary computing, networking, and data facilities for artificial intelligence research and development;

(F) support and coordinate Federal education and workforce training activities related to artificial intelligence; and

(G) support and coordinate the network of artificial intelligence research institutes described

in section 9431(b)(7)(B) of this title;

(3) as part of the President's annual budget request to Congress, propose an annually coordinated interagency budget for the Initiative to the Office of Management and Budget that is intended to ensure that the balance of funding across the Initiative is sufficient to meet the goals and priorities established for the Initiative; and

(4) in carrying out this section, take into consideration the recommendations of the Advisory Committee, existing reports on related topics, and the views of academic, State, industry, and other appropriate groups.

**(e) Annual report**

For each fiscal year beginning with fiscal year 2022, not later than 90 days after submission of the President's annual budget request for such fiscal year, the Interagency Committee shall prepare and submit to the Committee on Science, Space, and Technology, the Committee on Energy and Commerce, the Committee on Transportation and Infrastructure, the Committee on Armed Services, the House Permanent Select Committee on Intelligence, the Committee on the Judiciary, and the Committee on Appropriations of the House of Representatives and the Committee on Commerce, Science, and Transportation, the Committee on Health, Education, Labor, and Pensions, the Committee on Energy and Natural Resources, the Committee on Homeland Security and Governmental Affairs, the Committee on Armed Services, the Senate Select Committee on Intelligence, the Committee on the Judiciary, and the Committee on Appropriations of the Senate a report that includes a summarized budget in support of the Initiative for such fiscal year and the preceding fiscal year, including a disaggregation of spending and a description of any Institutes established under section 9431 of this title for the Department of Commerce, the Department of Defense, the Department of Energy, the Department of Agriculture, the Department of Health and Human Services, and the National Science Foundation.

(Pub. L. 116–283, div. E, title LI, §5103, Jan. 1, 2021, 134 Stat. 4526.)

## **§9414. National Artificial Intelligence Advisory Committee**

**(a) In general**

The Secretary of Commerce shall, in consultation with the Director of the Office of Science and Technology Policy, the Secretary of Defense, the Secretary of Energy, the Secretary of State, the Attorney General, and the Director of National Intelligence establish an advisory committee to be known as the "National Artificial Intelligence Advisory Committee".

**(b) Qualifications**

The Advisory Committee shall consist of members, appointed by the Secretary of Commerce, who are representing broad and interdisciplinary expertise and perspectives, including from academic institutions, companies across diverse sectors, nonprofit and civil society entities, including civil rights and disability rights organizations, and Federal laboratories, who are representing geographic diversity, and who are qualified to provide advice and information on science and technology research, development, ethics, standards, education, technology transfer, commercial application, security, and economic competitiveness related to artificial intelligence.

**(c) Membership consideration**

In selecting the members of the Advisory Committee, the Secretary of Commerce shall seek and give consideration to recommendations from Congress, industry, nonprofit organizations, the scientific community (including the National Academies of Sciences, Engineering, and Medicine, scientific professional societies, and academic institutions), the defense and law enforcement communities, and other appropriate organizations.

**(d) Duties**

The Advisory Committee shall advise the President and the Initiative Office on matters related to

the Initiative, including recommendations related to—

(1) the current state of United States competitiveness and leadership in artificial intelligence, including the scope and scale of United States investments in artificial intelligence research and development in the international context;

(2) the progress made in implementing the Initiative, including a review of the degree to which the Initiative has achieved the goals according to the metrics established by the Interagency Committee under section 9413(d)(2) of this title;

(3) the state of the science around artificial intelligence, including progress toward artificial general intelligence;

(4) issues related to artificial intelligence and the United States workforce, including matters relating to the potential for using artificial intelligence for workforce training, the possible consequences of technological displacement, and supporting workforce training opportunities for occupations that lead to economic self-sufficiency for individuals with barriers to employment and historically underrepresented populations, including minorities, Indians (as defined in 25 U.S.C. 5304<sup>1</sup>), low-income populations, and persons with disabilities.

(5) how to leverage the resources of the initiative to streamline and enhance operations in various areas of government operations, including health care, cybersecurity, infrastructure, and disaster recovery;

(6) the need to update the Initiative;

(7) the balance of activities and funding across the Initiative;

(8) whether the strategic plan developed or updated by the Interagency Committee established under section 9413(d)(2) of this title is helping to maintain United States leadership in artificial intelligence;

(9) the management, coordination, and activities of the Initiative;

(10) whether ethical, legal, safety, security, and other appropriate societal issues are adequately addressed by the Initiative;

(11) opportunities for international cooperation with strategic allies on artificial intelligence research activities, standards development, and the compatibility of international regulations;

(12) accountability and legal rights, including matters relating to oversight of artificial intelligence systems using regulatory and nonregulatory approaches, the responsibility for any violations of existing laws by an artificial intelligence system, and ways to balance advancing innovation while protecting individual rights; and

(13) how artificial intelligence can enhance opportunities for diverse geographic regions of the United States, including urban, Tribal, and rural communities.

#### **(e) Subcommittee on artificial intelligence and law enforcement**

##### **(1) Establishment**

The chairperson of the Advisory Committee shall establish a subcommittee on matters relating to the development of artificial intelligence relating to law enforcement matters.

##### **(2) Advice**

The subcommittee shall provide advice to the President on matters relating to the development of artificial intelligence relating to law enforcement, including advice on the following:

(A) Bias, including whether the use of facial recognition by government authorities, including law enforcement agencies, is taking into account ethical considerations and addressing whether such use should be subject to additional oversight, controls, and limitations.

(B) Security of data, including law enforcement's access to data and the security parameters for that data.

(C) Adoptability, including methods to allow the United States Government and industry to take advantage of artificial intelligence systems for security or law enforcement purposes while at the same time ensuring the potential abuse of such technologies is sufficiently mitigated.

(D) Legal standards, including those designed to ensure the use of artificial intelligence systems are consistent with the privacy rights, civil rights and civil liberties, and disability

rights issues raised by the use of these technologies.

**(f) Reports**

Not later than 1 year after January 1, 2021, and not less frequently than once every 3 years thereafter, the Advisory Committee shall submit to the President, the Committee on Science, Space, and Technology, the Committee on Energy and Commerce, the House Permanent Select Committee on Intelligence, the Committee on the Judiciary, and the Committee on Armed Services of the House of Representatives, and the Committee on Commerce, Science, and Transportation, the Senate Select Committee on Intelligence, the Committee on Homeland Security and Governmental Affairs, the Committee on the Judiciary, and the Committee on Armed Services of the Senate, a report on the Advisory Committee's findings and recommendations under subsection (d) and subsection (e).

**(g) Travel expenses of non-Federal members**

Non-Federal members of the Advisory Committee, while attending meetings of the Advisory Committee or while otherwise serving at the request of the head of the Advisory Committee away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 for individuals in the Government serving without pay. Nothing in this subsection shall be construed to prohibit members of the Advisory Committee who are officers or employees of the United States from being allowed travel expenses, including per diem in lieu of subsistence, in accordance with existing law.

**(h) FACA exemption**

The Secretary of Commerce shall charter the Advisory Committee in accordance with the Federal Advisory Committee Act (5 U.S.C. App.),<sup>1</sup> except that the Advisory Committee shall be exempt from section 14 of such Act.

(Pub. L. 116–283, div. E, title LI, §5104, Jan. 1, 2021, 134 Stat. 4528.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

25 U.S.C. 5304, referred to in subsec. (d)(4), was so in the original, but probably should have been a reference to section 4 of the Indian Self-Determination and Education Assistance Act, Pub. L. 93–638, which is classified to section 5304 of Title 25, Indians.

The Federal Advisory Committee Act, referred to in subsec. (h), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, which was set out in the Appendix to Title 5, Government Organization and Employees, and was substantially repealed and restated in chapter 10 (§1001 et seq.) of Title 5 by Pub. L. 117–286, §§3(a), 7, Dec. 27, 2022, 136 Stat. 4197, 4361. Section 14 of the Act was repealed and restated as section 1013 of Title 5. For disposition of sections of the Act into chapter 10 of Title 5, see Disposition Table preceding section 101 of Title 5.

<sup>1</sup> [\*See References in Text note below.\*](#)

**§9415. National AI Research Resource Task Force**

**(a) Establishment of Task Force**

**(1) Establishment**

**(A) In general**

The Director of the National Science Foundation, in coordination with the Office of Science and Technology Policy, shall establish a task force—

- (i) to investigate the feasibility and advisability of establishing and sustaining a National Artificial Intelligence Research Resource; and
- (ii) to propose a roadmap detailing how such resource should be established and sustained.

**(B) Designation**

The task force established by subparagraph (A) shall be known as the "National Artificial Intelligence Research Resource Task Force" (in this section referred to as the "Task Force").

**(2) Membership**

**(A) Composition**

The Task Force shall be composed of 12 members selected by the co-chairpersons of the Task Force from among technical experts in artificial intelligence or related subjects, of whom—

- (i) 4 shall be representatives from the Interagency Committee established in section 9413 of this title, including the co-chairpersons of the Task Force;
- (ii) 4 shall be representatives from institutions of higher education; and
- (iii) 4 shall be representatives from private organizations.

**(B) Appointment**

Not later than 120 days after enactment of this Act, the co-chairpersons of the Task Force shall appoint members to the Task Force pursuant to subparagraph (A).

**(C) Term of appointment**

Members of the Task Force shall be appointed for the life of the Task Force.

**(D) Vacancy**

Any vacancy occurring in the membership of the Task Force shall be filled in the same manner in which the original appointment was made.

**(E) Co-chairpersons**

The Director of the Office of Science and Technology Policy and the Director of the National Sciences Foundation,<sup>1</sup> or their designees, shall be the co-chairpersons of the Task Force. If the role of the Director of the National Science Foundation is vacant, the Chair of the National Science Board shall act as a co-chairperson of the Task Force.

**(F) Expenses for non-Federal Members**

- (i) Except as provided in clause (ii), non-Federal Members of the Task Force shall not receive compensation for their participation on the Task Force.
- (ii) Non-Federal Members of the Task Force shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees under subchapter I of chapter 57 of title 5, while away from their homes or regular places of business in the performance of services for the Task Force.

**(b) Roadmap and implementation plan**

**(1) In general**

The Task Force shall develop a coordinated roadmap and implementation plan for creating and sustaining a National Artificial Intelligence Research Resource.

**(2) Contents**

The roadmap and plan required by paragraph (1) shall include the following:

(A) Goals for establishment and sustainment of a National Artificial Intelligence Research Resource and metrics for success.

(B) A plan for ownership and administration of the National Artificial Intelligence Research Resource, including—

- (i) an appropriate agency or organization responsible for the implementation, deployment, and administration of the Resource; and
- (ii) a governance structure for the Resource, including oversight and decision-making authorities.

(C) A model for governance and oversight to establish strategic direction, make programmatic decisions, and manage the allocation of resources; <sup>2</sup>

(D) Capabilities required to create and maintain a shared computing infrastructure to facilitate access to computing resources for researchers across the country, including scalability, secured access control, resident data engineering and curation expertise, provision of curated data sets, compute resources, educational tools and services, and a user interface portal.

(E) An assessment of, and recommended solutions to, barriers to the dissemination and use of high-quality government data sets as part of the National Artificial Intelligence Research Resource.

(F) An assessment of security requirements associated with the National Artificial Intelligence Research Resource and its research and a recommendation for a framework for the management of access controls.

(G) An assessment of privacy and civil rights and civil liberties requirements associated with the National Artificial Intelligence Research Resource and its research.

(H) A plan for sustaining the Resource, including through Federal funding and partnerships with the private sector.

(I) Parameters for the establishment and sustainment of the National Artificial Intelligence Research Resource, including agency roles and responsibilities and milestones to implement the Resource.

### **(c) Consultations**

In conducting its duties required under subsection (b), the Task Force shall consult with the following:

- (1) The National Science Foundation.
- (2) The Office of Science and Technology Policy.
- (3) The National Academies of Sciences, Engineering, and Medicine.
- (4) The National Institute of Standards and Technology.
- (5) The Director of National Intelligence.
- (6) The Department of Energy.
- (7) The Department of Defense.
- (8) The General Services Administration.
- (9) The Department of Justice.
- (10) The Department of Homeland Security.
- (11) The Department of Health and Human Services.
- (12) Private industry.
- (13) Institutions of higher education.
- (14) Civil and disabilities rights organizations.
- (15) Such other persons as the Task Force considers appropriate.

### **(d) Staff**

Staff of the Task Force shall comprise detailees with expertise in artificial intelligence, or related fields from the Office of Science and Technology Policy, the National Science Foundation, or any other agency the co-chairs deem appropriate, with the consent of the head of the agency.

### **(e) Task Force reports**

#### **(1) Initial report**

Not later than 12 months after the date on which all of the appointments have been made under subsection (a)(2)(B), the Task Force shall submit to Congress and the President an interim report containing the findings, conclusions, and recommendations of the Task Force. The report shall include specific recommendations regarding steps the Task Force believes necessary for the establishment and sustainment of a National Artificial Intelligence Research Resource.

#### **(2) Final report**

Not later than 6 months after the submittal of the interim report under paragraph (1), the Task

Force shall submit to Congress and the President a final report containing the findings, conclusions, and recommendations of the Task Force, including the specific recommendations required by subsection (b).

**(f) Termination**

**(1) In general**

The Task Force shall terminate 90 days after the date on which it submits the final report under subsection (e)(2).

**(2) Records**

Upon termination of the Task Force, all of its records shall become the records of the National Archives and Records Administration.

**(g) Definitions**

In this section:

**(1) National Artificial Intelligence Research Resource and Resource**

The terms "National Artificial Intelligence Research Resource" and "Resource" mean a system that provides researchers and students across scientific fields and disciplines with access to compute resources, co-located with publicly-available, artificial intelligence-ready government and non-government data sets and a research environment with appropriate educational tools and user support.

**(2) Ownership**

The term "ownership" means responsibility and accountability for the implementation, deployment, and ongoing development of the National Artificial Intelligence Research Resource, and for providing staff support to that effort.

(Pub. L. 116–283, div. E, title LI, §5106, Jan. 1, 2021, 134 Stat. 4531.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

Enactment of this Act, referred to in subsec. (a)(2)(B), means the enactment of Pub. L. 116–283, which was approved Jan. 1, 2021.

<sup>1</sup> *So in original. Probably should be "National Science Foundation."*

<sup>2</sup> *So in original. The semicolon probably should be a period.*

**SUBCHAPTER II—NATIONAL ARTIFICIAL INTELLIGENCE RESEARCH  
INSTITUTES**

**§9431. National Artificial Intelligence Research Institutes**

**(a) In general**

Subject to the availability of funds appropriated for this purpose, the Director of the National Science Foundation shall establish a program to award financial assistance for the planning, establishment, and support of a network of Institutes (as described in subsection (b)(2)) in accordance with this section.

**(b) Financial assistance to establish and support National Artificial Intelligence Research  
Institutes**



**(1) In general**

Subject to the availability of funds appropriated for this purpose, the Secretary of Energy, the Secretary of Commerce, the Director of the National Science Foundation, and every other agency head may award financial assistance to an eligible entity, or consortia thereof, as determined by an agency head, to establish and support an Institute.

**(2) Artificial intelligence institutes**

An Institute described in this subsection is an artificial intelligence research institute that—

(A) is focused on—

(i) a particular economic or social sector, including health, education, manufacturing, agriculture, security, energy, and environment, and includes a component that addresses the ethical, societal, safety, and security implications relevant to the application of artificial intelligence in that sector; or

(ii) a cross-cutting challenge for artificial intelligence systems, including trustworthiness, or foundational science;

(B) requires partnership among public and private organizations, including, as appropriate, Federal agencies, institutions of higher education, including community colleges, nonprofit research organizations, Federal laboratories, State, local, and Tribal governments, industry, including startup companies, and civil society organizations, including civil rights and disability rights organizations (or consortia thereof);

(C) has the potential to create an innovation ecosystem, or enhance existing ecosystems, to translate Institute research into applications and products, as appropriate to the topic of each Institute;

(D) supports interdisciplinary research and development across multiple institutions of higher education and organizations;

(E) supports interdisciplinary education activities, including curriculum development, research experiences, and faculty professional development across undergraduate, graduate, and professional academic programs; and

(F) supports workforce development in artificial intelligence related disciplines in the United States, including increasing participation of historically underrepresented communities.

**(3) Use of funds**

Financial assistance awarded under paragraph (1) may be used by an Institute for—

(A) managing and making available to researchers accessible, curated, standardized, secure, and privacy protected data sets from the public and private sectors for the purposes of training and testing artificial intelligence systems and for research using artificial intelligence systems, pursuant to subsections (c), (e), and (f) of section 278h–1 of this title (as added by section 5301 of this division);

(B) developing and managing testbeds for artificial intelligence systems, including sector-specific test beds, designed to enable users to evaluate artificial intelligence systems prior to deployment;

(C) conducting research and education activities involving artificial intelligence systems to solve challenges with social, economic, health, scientific, and national security implications;

(D) providing or brokering access to computing resources, networking, and data facilities for artificial intelligence research and development relevant to the Institute's research goals;

(E) providing technical assistance to users, including software engineering support, for artificial intelligence research and development relevant to the Institute's research goals;

(F) engaging in outreach and engagement to broaden participation in artificial intelligence research and the artificial intelligence workforce; and

(G) such other activities that an agency head, whose agency's missions contribute to or are affected by artificial intelligence, considers consistent with the purposes described in section 9411(a) of this title.



**(4) Duration**

**(A) Initial periods**

An award of financial assistance under paragraph (1) shall be awarded for an initial period of 5 years.

**(B) Extension**

An established Institute may apply for, and the agency head may grant, extended funding for periods of 5 years on a merit-reviewed basis using the merit review criteria of the sponsoring agency.

**(5) Application for financial assistance**

A person seeking financial assistance under paragraph (1) shall submit to an agency head an application at such time, in such manner, and containing such information as the agency head may require.

**(6) Competitive, merit review**

In awarding financial assistance under paragraph (1), the agency head shall—

(A) use a competitive, merit review process that includes peer review by a diverse group of individuals with relevant expertise from both the private and public sectors; and

(B) ensure the focus areas of the Institute do not substantially and unnecessarily duplicate the efforts of any other Institute.

**(7) Collaboration**

**(A) In general**

In awarding financial assistance under paragraph (1), an agency head may collaborate with Federal departments and agencies whose missions contribute to or are affected by artificial intelligence systems.

**(B) Coordinating network**

The Director of the National Science Foundation shall establish a network of Institutes receiving financial assistance under this subsection, to be known as the "Artificial Intelligence Leadership Network", to coordinate cross-cutting research and other activities carried out by the Institutes.

**(8) Limitation**

No funds authorized in this subchapter shall be awarded to Institutes outside of the United States. All awardees and subawardees for such Institute shall be based in the United States, in addition to any other eligibility criteria as established by each agency head.

(Pub. L. 116–283, div. E, title LII, §5201, Jan. 1, 2021, 134 Stat. 4534.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

Section 5301 of this division, referred to in subsec. (b)(3)(A), means section 5301 of div. E of Pub. L. 116–283, Jan. 1, 2021, 134 Stat. 4536.

**SUBCHAPTER III—DEPARTMENT OF COMMERCE ARTIFICIAL INTELLIGENCE ACTIVITIES**

**§9441. Stakeholder outreach**

In carrying out the activities under section 278h–1 of this title as amended by title III of this Act,<sup>1</sup> the Director shall—

(1) solicit input from university researchers, private sector experts, relevant Federal agencies, Federal laboratories, State, Tribal, and local governments, civil society groups, and other relevant stakeholders;

(2) solicit input from experts in relevant fields of social science, technology ethics, and law; and

(3) provide opportunity for public comment on guidelines and best practices developed as part of the Initiative, as appropriate.

(Pub. L. 116–283, div. E, title LIII, §5302, Jan. 1, 2021, 134 Stat. 4539.)

## EDITORIAL NOTES

### REFERENCES IN TEXT

Section 278h–1 of this title as amended by title III of this Act, referred to in text, probably means section 278h–1 of this title as added by title LIII of Pub. L. 116–283, div. E, Jan. 1, 2021, 134 Stat. 4536.

<sup>1</sup> [\*See References in Text note below.\*](#)

## **§9442. National Oceanic and Atmospheric Administration Artificial Intelligence Center**

### **(a) In general**

The Administrator of the National Oceanic and Atmospheric Administration (hereafter referred to as "the Administrator") shall establish,<sup>1</sup> a Center for Artificial Intelligence (hereafter referred to as "the Center").

### **(b) Center goals**

The goals of the Center shall be to—

(1) coordinate and facilitate the scientific and technological efforts related to artificial intelligence across the National Oceanic and Atmospheric Administration; and

(2) expand external partnerships, and build workforce proficiency to effectively transition artificial intelligence research and applications to operations.

### **(c) Comprehensive program**

Through the Center, the Administrator shall implement a comprehensive program to improve the use of artificial intelligence systems across the agency in support of the mission of the National Oceanic and Atmospheric Administration.

### **(d) Center priorities**

The priorities of the Center shall be to—

(1) coordinate and facilitate artificial intelligence research and innovation, tools, systems, and capabilities across the National Oceanic and Atmospheric Administration;

(2) establish data standards and develop and maintain a central repository for agency-wide artificial intelligence applications;

(3) accelerate the transition of artificial intelligence research to applications in support of the mission of the National Oceanic and Atmospheric Administration;

(4) develop and conduct training for the workforce of the National Oceanic and Atmospheric Administration related to artificial intelligence research and application of artificial intelligence for such agency;

(5) facilitate partnerships between the National Oceanic and Atmospheric Administration and other public sector organizations, private sector organizations, and institutions of higher education for research, personnel exchange, and workforce development with respect to artificial intelligence

systems; and

(6) make data of the National Oceanic and Atmospheric Administration accessible, available, and ready for artificial intelligence applications.

**(e) Stakeholder engagement**

In carrying out the activities authorized in this section, the Administrator shall—

(1) collaborate with a diverse set of stakeholders including private sector entities and institutions of higher education;

(2) leverage the collective body of research on artificial intelligence and machine learning; and

(3) engage with relevant Federal agencies, research communities, and potential users of data and methods made available through the Center.

**(f) Authorization of appropriations**

There are authorized to be appropriated to the Administrator to carry out this section \$10,000,000 for fiscal year 2021.

**(g) Protection of national security interests**

**(1) In general**

Notwithstanding any other provision of this section, the Administrator, in consultation with the Secretary of Defense as appropriate, may withhold models or data used by the Center if the Administrator determines doing so to be necessary to protect the national security interests of the United States.

**(2) Rule of construction**

Nothing in this section shall be construed to supersede any other provision of law governing the protection of the national security interests of the United States.

(Pub. L. 116–283, div. E, title LIII, §5303, Jan. 1, 2021, 134 Stat. 4539.)

<sup>1</sup> *So in original. The comma probably should not appear.*

## **SUBCHAPTER IV—NATIONAL SCIENCE FOUNDATION ARTIFICIAL INTELLIGENCE ACTIVITIES**

### **§9451. Artificial intelligence research and education**

**(a) In general**

the <sup>1</sup> Director of the National Science Foundation shall fund research and education activities in artificial intelligence systems and related fields, including competitive awards or grants to institutions of higher education or eligible nonprofit organizations (or consortia thereof).

**(b) Uses of funds**

In carrying out the activities under subsection (a), the Director of the National Science Foundation shall—

(1) support research, including interdisciplinary research, on artificial intelligence systems and related areas, including fields and research areas that will contribute to the development and deployment of trustworthy artificial intelligence systems, and fields and research areas that address the application of artificial intelligence systems to scientific discovery and societal challenges;

(2) use the existing programs of the National Science Foundation, in collaboration with other Federal departments and agencies, as appropriate to—

(A) improve the teaching and learning of topics related to artificial intelligence systems in

K-12 education and postsecondary educational programs, including workforce training and career and technical education programs, undergraduate and graduate education programs, and in informal settings; and

(B) increase participation in artificial intelligence related fields, including by individuals identified in sections 1885a and 1885b of title 42;

(3) support partnerships among institutions of higher education, Federal laboratories, nonprofit organizations, State, local, and Tribal governments, industry, and potential users of artificial intelligence systems that facilitate collaborative research, personnel exchanges, and workforce development and identify emerging research needs with respect to artificial intelligence systems;

(4) ensure adequate access to research and education infrastructure with respect to artificial intelligence systems, which may include the development of new computing resources and partnership with the private sector for the provision of cloud-based computing services;

(5) conduct prize competitions, as appropriate, pursuant to section 3719 of this title;

(6) coordinate research efforts funded through existing programs across the directorates of the National Science Foundation;

(7) provide guidance on data sharing by grantees to public and private sector organizations consistent with the standards and guidelines developed under section 278h–1(e) of this title (as added by section 5301 of this division); and

(8) evaluate opportunities for international collaboration with strategic allies on artificial intelligence research and development.

### **(c) Engineering support**

In general, the Director shall permit applicants to include in their proposed budgets funding for software engineering support to assist with the proposed research.

### **(d) Ethics**

#### **(1) Sense of Congress**

It is the sense of Congress that—

(A) a number of emerging areas of research, including artificial intelligence, have potential ethical, social, safety, and security risks that might be apparent as early as the basic research stage;

(B) the incorporation of ethical, social, safety, and security considerations into the research design and review process for Federal awards may help mitigate potential harms before they happen;

(C) the National Science Foundation's agreement with the National Academies of Sciences, Engineering, and Medicine to conduct a study and make recommendations with respect to governance of research in computing and computing technologies is a positive step toward accomplishing this goal; and

(D) the National Science Foundation should continue to work with stakeholders to understand and adopt policies that promote best practices for governance of research in emerging technologies at every stage of research.

#### **(2) Report on ethics statements**

No later than 6 months after publication of the study described in paragraph (1)(C), the Director shall report to Congress on options for requiring an ethics or risk statement as part of all or a subset of applications for research funding to the National Science Foundation.

### **(e) Education**

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

The Director of the National Science Foundation shall award grants for artificial intelligence education research, development and related activities to support K-12 and postsecondary

education programs and activities, including workforce training and career and technical education programs and activities, undergraduate, graduate, and postdoctoral education, and informal education programs and activities that—

(A) support the development of a diverse workforce pipeline for science and technology with respect to artificial intelligence systems;

(B) increase awareness of potential ethical, social, safety, and security risks of artificial intelligence systems;

(C) promote curriculum development for teaching topics related to artificial intelligence, including in the field of technology ethics;

(D) support efforts to achieve equitable access to K-12 artificial intelligence education in diverse geographic areas and for populations historically underrepresented in science, engineering, and artificial intelligence fields; and

(E) promote the widespread understanding of artificial intelligence principles and methods to create an educated workforce and general public able to use products enabled by artificial intelligence systems and adapt to future societal and economic changes caused by artificial intelligence systems.

## **(2) Artificial intelligence faculty fellowships**

### **(A) Faculty recruitment fellowships**

#### **(i) In general**

The Director of the National Science Foundation shall establish a program to award grants to eligible institutions of higher education to recruit and retain tenure-track or tenured faculty in artificial intelligence and related fields.

#### **(ii) Use of funds**

An institution of higher education shall use grant funds provided under clause (i) for the purposes of—

(I) recruiting new tenure-track or tenured faculty members that conduct research and teaching in artificial intelligence and related fields and research areas, including technology ethics; and

(II) paying salary and benefits for the academic year of newly recruited tenure-track or tenured faculty members for a duration of up to three years.

#### **(iii) Eligible institutions of higher education**

For purposes of this subparagraph, an eligible institution of higher education is—

(I) a Historically Black College and University (within the meaning of the term "part B institution" under section 1061 of title 20), Tribal College or University, or other minority-serving institution, as defined in section 1067q(a) of title 20;

(II) an institution classified under the Carnegie Classification of Institutions of Higher Education as a doctorate-granting university with a high level of research activity; or

(III) an institution located in a State jurisdiction eligible to participate in the National Science Foundation's Established Program to Stimulate Competitive Research.

### **(B) Faculty technology ethics fellowships**

#### **(i) In general**

The Director of the National Science Foundation shall establish a program to award fellowships to tenure-track and tenured faculty in social and behavioral sciences, ethics, law, and related fields to develop new research projects and partnerships in technology ethics.

#### **(ii) Purposes**

The purposes of such fellowships are to enable researchers in social and behavioral sciences, ethics, law, and related fields to establish new research and education partnerships

with researchers in artificial intelligence and related fields; learn new techniques and acquire systematic knowledge in artificial intelligence and related fields; and mentor and advise graduate students and postdocs pursuing research in technology ethics.

**(iii) Uses of funds**

A fellowship may include salary and benefits for up to one academic year, expenses to support coursework or equivalent training in artificial intelligence systems, and additional such expenses that the Director deems appropriate.

**(C) Omitted**

**(3) Update to advanced technological education program**

**(A) Omitted**

**(B) Artificial intelligence centers of excellence**

The Director of the National Science Foundation shall establish national centers of scientific and technical education to advance education and workforce development in areas related to artificial intelligence pursuant to section 1862i of title 42. Activities of such centers may include—

(i) the development, dissemination, and evaluation of curriculum and other educational tools and methods in artificial intelligence related fields and research areas, including technology ethics;

(ii) the development and evaluation of artificial intelligence related certifications for 2-year programs; and

(iii) interdisciplinary science and engineering research in employment-based adult learning and career retraining related to artificial intelligence fields.

**(f) National Science Foundation pilot program of grants for research in rapidly evolving, high priority topics**

**(1) Pilot program required**

The Director of the National Science Foundation shall establish a pilot program to assess the feasibility and advisability of awarding grants for the conduct of research in rapidly evolving, high priority topics using funding mechanisms that require brief project descriptions and internal merit review, and that may include accelerated external review.

**(2) Duration**

**(A) In general**

The Director shall carry out the pilot program required by paragraph (1) during the 5-year period beginning on January 1, 2021.

**(B) Assessment and continuation authority**

After the period set forth in paragraph (2)(A)—

(i) the Director shall assess the pilot program; and

(ii) if the Director determines that it is both feasible and advisable to do so, the Director may continue the pilot program.

**(3) Grants**

In carrying out the pilot program, the Director shall award grants for the conduct of research in topics selected by the Director in accordance with paragraph (4).

**(4) Topic selection**

The Director shall select topics for research under the pilot program in accordance with the following:

(A) The Director shall select artificial intelligence as the initial topic for the pilot program.

(B) The Director may select additional topics that the Director determines are—

(i) rapidly evolving; and

(ii) of high importance to the economy and security of the United States.

**(g) Authorization of appropriations**

There are authorized to be appropriated to the National Science Foundation to carry out this section—

- (1) \$868,000,000 for fiscal year 2021;
- (2) \$911,400,000 for fiscal year 2022;
- (3) \$956,970,000 for fiscal year 2023;
- (4) \$1,004,820,000 for fiscal year 2024; and
- (5) \$1,055,060,000 for fiscal year 2025.

(Pub. L. 116–283, div. E, title LIV, §5401, Jan. 1, 2021, 134 Stat. 4540.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

Sections 1885a and 1885b of title 42, referred to in subsec. (b)(2)(B), were in the original sections 33 and 34 of the Science and Engineering Equal Opportunity Act and were translated as meaning sections 33 and 34 of the Science and Engineering Equal Opportunities Act to reflect the probable intent of Congress.

Section 5301 of this division, referred to in subsec. (b)(7), means section 5301 of div. E of Pub. L. 116–283, Jan. 1, 2021, 134 Stat. 4536.

**CODIFICATION**

Section is comprised of section 5401 of Pub. L. 116–283. Subsec. (e)(2)(C) of section 5401 of Pub. L. 116–283 amended section 1862n–1 of Title 42, The Public Health and Welfare. Subsec. (e)(3)(A) of section 5401 of Pub. L. 116–283 amended section 1862i of Title 42.

<sup>1</sup> *So in original.*

**SUBCHAPTER V—DEPARTMENT OF ENERGY ARTIFICIAL INTELLIGENCE RESEARCH PROGRAM**

**§9461. Department of Energy artificial intelligence research program**

**(a) In general**

The Secretary shall carry out a cross-cutting research and development program to advance artificial intelligence tools, systems, capabilities, and workforce needs and to improve the reliability of artificial intelligence methods and solutions relevant to the mission of the Department. In carrying out this program, the Secretary shall coordinate across all relevant offices and programs at the Department, including the Office of Science, the Office of Energy Efficiency and Renewable Energy, the Office of Nuclear Energy, the Office of Fossil Energy, the Office of Electricity, the Office of Cybersecurity, Energy Security, and Emergency Response, the Advanced Research Projects Agency-Energy, and any other relevant office determined by the Secretary.

**(b) Research areas**

In carrying out the program under subsection (a), the Secretary shall award financial assistance to eligible entities to carry out research projects on topics including—

- (1) the application of artificial intelligence systems to improve large-scale simulations of natural and other phenomena;
- (2) the study of applied mathematics, computer science, and statistics, including foundations of methods and systems of artificial intelligence, causal and statistical inference, and the development of algorithms for artificial intelligence systems;

(3) the analysis of existing large-scale datasets from science and engineering experiments and simulations, including energy simulations and other priorities at the Department as determined by the Secretary using artificial intelligence tools and techniques;

(4) the development of operation and control systems that enhance automated, intelligent decisionmaking capabilities;

(5) the development of advanced computing hardware and computer architecture tailored to artificial intelligence systems, including the codesign of networks and computational hardware;

(6) the development of standardized datasets for emerging artificial intelligence research fields and applications, including methods for addressing data scarcity; and

(7) the development of trustworthy artificial intelligence systems, including—

(A) algorithmic explainability;

(B) analytical methods for identifying and mitigating bias in artificial intelligence systems; and

(C) safety and robustness, including assurance, verification, validation, security, and control.

**(c) Technology transfer**

In carrying out the program under subsection (a), the Secretary shall support technology transfer of artificial intelligence systems for the benefit of society and United States economic competitiveness.

**(d) Facility use and upgrades**

In carrying out the program under subsection (a), the Secretary shall—

(1) make available high-performance computing infrastructure at national laboratories;

(2) make any upgrades necessary to enhance the use of existing computing facilities for artificial intelligence systems, including upgrades to hardware;

(3) establish new computing capabilities necessary to manage data and conduct high performance computing that enables the use of artificial intelligence systems; and

(4) maintain and improve, as needed, networking infrastructure, data input and output mechanisms, and data analysis, storage, and service capabilities.

**(e) Report on ethics statements**

Not later than 6 months after publication of the study described in section 9451(d)(1)(C) of this title, the Secretary shall report to Congress on options for requiring an ethics or risk statement as part of all or a subset of applications for research activities funded by the Department of Energy and performed at Department of Energy national laboratories and user facilities.

**(f) Risk management**

The Secretary shall review agency policies for risk management in artificial intelligence related projects and issue as necessary policies and principles that are consistent with the framework developed under section 278h–1(c) of this title (as added by section 5301 of this division).

**(g) Data privacy and sharing**

The Secretary shall review agency policies for data sharing with other public and private sector organizations and issue as necessary policies and principles that are consistent with the standards and guidelines submitted under section 278h–1(e) of this title (as added by section 5301 of this division). In addition, the Secretary shall establish a streamlined mechanism for approving research projects or partnerships that require sharing sensitive public or private data with the Department.

**(h) Partnerships with other Federal agencies**

The Secretary may request, accept, and provide funds from other Federal departments and agencies, State, United States territory, local, or Tribal government agencies, private sector for-profit entities, and nonprofit entities, to be available to the extent provided by appropriations Acts, to support a research project or partnership carried out under this section. The Secretary may not give any special consideration to any agency or entity in return for a donation.

**(i) Stakeholder engagement**



In carrying out the activities authorized in this section, the Secretary shall—

- (1) collaborate with a range of stakeholders including small businesses, institutes of higher education, industry, and the National Laboratories;
- (2) leverage the collective body of knowledge from existing artificial intelligence and machine learning research; and
- (3) engage with other Federal agencies, research communities, and potential users of information produced under this section.

**(j) Definitions**

In this section:

**(1) Secretary**

The term "Secretary" means the Secretary of Energy.

**(2) Department**

The term "Department" means the Department of Energy.

**(3) National laboratory**

The term "national laboratory" has the meaning given such term in section 15801 of title 42.

**(4) Eligible entities**

The term "eligible entities" means—

- (A) an institution of higher education;
- (B) a National Laboratory;
- (C) a Federal research agency;
- (D) a State research agency;
- (E) a nonprofit research organization;
- (F) a private sector entity; or
- (G) a consortium of 2 or more entities described in subparagraphs (A) through (F).

**(k) Authorization of appropriations**

There are authorized to be appropriated to the Department to carry out this section—

- (1) \$200,000,000 for fiscal year 2021;
- (2) \$214,000,000 for fiscal year 2022;
- (3) \$228,980,000 for fiscal year 2023;
- (4) \$245,000,000 for fiscal year 2024; and
- (5) \$262,160,000 for fiscal year 2025.

(Pub. L. 116–283, div. E, title LV, §5501, Jan. 1, 2021, 134 Stat. 4545.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

Section 5301 of this division, referred to in subsecs. (f) and (g), means section 5301 of div. E of Pub. L. 116–283, Jan. 1, 2021, 134 Stat. 4536.

**§9462. Veterans' health initiative**

**(a) Purposes**

The purposes of this section are to advance Department of Energy expertise in artificial intelligence and high-performance computing in order to improve health outcomes for veteran populations by—

- (1) supporting basic research through the application of artificial intelligence, high-performance computing, modeling and simulation, machine learning, and large-scale data analytics to identify and solve outcome-defined challenges in the health sciences;

(2) maximizing the impact of the Department of Veterans Affairs' health and genomics data housed at the National Laboratories, as well as data from other sources, on science, innovation, and health care outcomes through the use and advancement of artificial intelligence and high-performance computing capabilities of the Department;

(3) promoting collaborative research through the establishment of partnerships to improve data sharing between Federal agencies, National Laboratories, institutions of higher education, and nonprofit institutions;

(4) establishing multiple scientific computing user facilities to house and provision available data to foster transformational outcomes; and

(5) driving the development of technology to improve artificial intelligence, high-performance computing, and networking relevant to mission applications of the Department, including modeling, simulation, machine learning, and advanced data analytics.

## **(b) Veterans health research and development**

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

The Secretary of Energy (in this section referred to as the "Secretary") shall establish and carry out a research program in artificial intelligence and high-performance computing, focused on the development of tools to solve large-scale data analytics and management challenges associated with veteran's healthcare, and to support the efforts of the Department of Veterans Affairs to identify potential health risks and challenges utilizing data on long-term healthcare, health risks, and genomic data collected from veteran populations. The Secretary shall carry out this program through a competitive, merit-reviewed process, and consider applications from National Laboratories, institutions of higher education, multi-institutional collaborations, and other appropriate entities.

### **(2) Program components**

In carrying out the program established under paragraph (1), the Secretary may—

(A) conduct basic research in modeling and simulation, machine learning, large-scale data analytics, and predictive analysis in order to develop novel or optimized algorithms for prediction of disease treatment and recovery;

(B) develop methods to accommodate large data sets with variable quality and scale, and to provide insight and models for complex systems;

(C) develop new approaches and maximize the use of algorithms developed through artificial intelligence, machine learning, data analytics, natural language processing, modeling and simulation, and develop new algorithms suitable for high-performance computing systems and large biomedical data sets;

(D) advance existing and construct new data enclaves capable of securely storing data sets provided by the Department of Veterans Affairs, Department of Defense, and other sources; and

(E) promote collaboration and data sharing between National Laboratories, research entities, and user facilities of the Department by providing the necessary access and secure data transfer capabilities.

### **(3) Coordination**

In carrying out the program established under paragraph (1), the Secretary is authorized—

(A) to enter into memoranda of understanding in order to carry out reimbursable agreements with the Department of Veterans Affairs and other entities in order to maximize the effectiveness of Department research and development to improve veterans' healthcare;

(B) to consult with the Department of Veterans Affairs and other Federal agencies as appropriate; and

(C) to ensure that data storage meets all privacy and security requirements established by the Department of Veterans Affairs, and that access to data is provided in accordance with relevant Department of Veterans Affairs data access policies, including informed consent.

### **(4) Report**

Not later than 2 years after December 27, 2020, the Secretary shall submit to the Committee on Energy and Natural Resources and the Committee on Veterans' Affairs of the Senate, and the Committee on Science, Space, and Technology and the Committee on Veterans' Affairs of the House of Representatives, a report detailing the effectiveness of—

- (A) the interagency coordination between each Federal agency involved in the research program carried out under this subsection;
- (B) collaborative research achievements of the program; and
- (C) potential opportunities to expand the technical capabilities of the Department.

### **(5) Funding**

There is authorized to be appropriated to the Secretary of Veterans Affairs to carry out this subsection \$27,000,000 for fiscal year 2021.

## **(c) Interagency collaboration**

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

The Secretary is authorized to carry out research, development, and demonstration activities to develop tools to apply to big data that enable Federal agencies, institutions of higher education, nonprofit research organizations, and industry to better leverage the capabilities of the Department to solve complex, big data challenges. The Secretary shall carry out these activities through a competitive, merit-reviewed process, and consider applications from National Laboratories, institutions of higher education, multi-institutional collaborations, and other appropriate entities.

### **(2) Activities**

In carrying out the research, development, and demonstration activities authorized under paragraph (1), the Secretary may—

- (A) utilize all available mechanisms to prevent duplication and coordinate research efforts across the Department;
- (B) establish multiple user facilities to serve as data enclaves capable of securely storing data sets created by Federal agencies, institutions of higher education, nonprofit organizations, or industry at National Laboratories; and
- (C) promote collaboration and data sharing between National Laboratories, research entities, and user facilities of the Department by providing the necessary access and secure data transfer capabilities.

### **(3) Report**

Not later than 2 years after December 27, 2020, the Secretary shall submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Science, Space, and Technology of the House of Representatives a report evaluating the effectiveness of the activities authorized under paragraph (1).

### **(4) Funding**

There are authorized to be appropriated to the Secretary to carry out this subsection \$15,000,000 for each of fiscal years 2021 through 2025.

## **(d) Definition**

In this section, the term "National Laboratory" has the meaning given such term in section 15801(3) of title 42.

(Pub. L. 116–260, div. Z, title IX, §9008, Dec. 27, 2020, 134 Stat. 2600.)

## **EDITORIAL NOTES**

### **CODIFICATION**

Section was formerly classified to section 5544 of this title.

Section was enacted as part of the Energy Act of 2020, and not as part of the National Artificial Intelligence Initiative Act of 2020 which comprises this chapter.

## **CHAPTER 120—MINORITY BUSINESS DEVELOPMENT**

Sec.

9501. Definitions.

9502. Minority Business Development Agency.

### **SUBCHAPTER I—EXISTING INITIATIVES**

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#### **SUBCHAPTER VII—ADMINISTRATIVE POWERS OF THE AGENCY; MISCELLANEOUS PROVISIONS**

9591. Administrative powers.

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9598. Authorization of appropriations.

### **§9501. Definitions**

In this chapter:

**(1) Agency**

The term "Agency" means the Minority Business Development Agency of the Department of Commerce.

**(2) Community-based organization**

The term "community-based organization" has the meaning given the term in section 7801 of title 20.

**(3) Eligible entity**

Except as otherwise expressly provided, the term "eligible entity"—

(A) means—

- (i) a private sector entity;
- (ii) a public sector entity; or
- (iii) a Native entity; and

(B) includes an institution of higher education.

**(4) Federal agency**

The term "Federal agency" has the meaning given the term "agency" in section 551 of title 5.

**(5) Federally recognized area of economic distress**

The term "federally recognized area of economic distress" means—

(A) a HUBZone, as that term is defined in section 657a(b) of this title;

(B) an area that—

(i) has been designated as—

(I) an empowerment zone under section 1391 of title 26; or

(II) a Promise Zone by the Secretary of Housing and Urban Development; or

(ii) is a low or moderate income area, as determined by the Department of Housing and Urban Development;

(C) a qualified opportunity zone, as that term is defined in section 1400Z-1 of title 26; or

(D) any other political subdivision or unincorporated area of a State determined by the Under Secretary to be an area of economic distress.

**(6) Institution of higher education**

The term "institution of higher education" has the meaning given the term in section 1001 of title 20.

**(7) MBDA Business Center**

The term "MBDA Business Center" means a business center that—

(A) is established by the Agency; and

(B) provides technical business assistance to minority business enterprises consistent with the requirements of this chapter.

**(8) MBDA Business Center agreement**

The term "MBDA Business Center agreement" means a legal instrument—

(A) reflecting a relationship between the Agency and the recipient of a Federal assistance award that is the subject of the instrument; and

(B) that establishes the terms by which the recipient described in subparagraph (A) shall operate an MBDA Business Center.

**(9) Minority business enterprise**

**(A) In general**

The term "minority business enterprise" means a business enterprise—

- (i) that is not less than 51 percent-owned by 1 or more socially or economically disadvantaged individuals; and
- (ii) the management and daily business operations of which are controlled by 1 or more socially or economically disadvantaged individuals.

**(B) Rule of construction**

Nothing in subparagraph (A) may be construed to exclude a business enterprise from qualifying as a "minority business enterprise" under that subparagraph because of—

- (i) the status of the business enterprise as a for-profit or not-for-profit enterprise; or
- (ii) the annual revenue of the business enterprise.

**(10) Native entity**

The term "Native entity" means—

- (A) a Tribal Government;
- (B) an Alaska Native village or Regional or Village Corporation, as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.);
- (C) a Native Hawaiian organization, as that term is defined in section 7517 of title 20;
- (D) the Department of Hawaiian Home Lands; and
- (E) the Office of Hawaiian Affairs.

**(11) Private sector entity**

The term "private sector entity"—

- (A) means an entity that is not a public sector entity; and
- (B) does not include—
  - (i) the Federal Government;
  - (ii) any Federal agency; or
  - (iii) any instrumentality of the Federal Government.

**(12) Public sector entity**

The term "public sector entity" means—

- (A) a State;
- (B) an agency of a State;
- (C) a political subdivision of a State;
- (D) an agency of a political subdivision of a State; or
- (E) a Native entity.

**(13) Secretary**

The term "Secretary" means the Secretary of Commerce.

**(14) Socially or economically disadvantaged business concern**

The term "socially or economically disadvantaged business concern" means a for-profit business enterprise—

- (A)(i) that is not less than 51 percent owned by 1 or more socially or economically disadvantaged individuals; or
- (ii) that is socially or economically disadvantaged; or
- (B) the management and daily business operations of which are controlled by 1 or more socially or economically disadvantaged individuals.

**(15) Socially or economically disadvantaged individual**

**(A) In general**

The term "socially or economically disadvantaged individual" means an individual who has been subjected to racial or ethnic prejudice or cultural bias (or the ability of whom to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities, as compared to others in the same line of business and competitive market area) because of the identity of the individual as a member of a group, without regard to any individual quality of the individual that is unrelated to that identity.

**(B) Presumption**

In carrying out this chapter, the Under Secretary shall presume that the term "socially or economically disadvantaged individual" includes any individual who is—

- (i) Black or African American;
- (ii) Hispanic or Latino;
- (iii) American Indian or Alaska Native;
- (iv) Asian;
- (v) Native Hawaiian or other Pacific Islander; or
- (vi) a member of a group that the Agency determines under part 1400 of title 15, Code of Federal Regulations, as in effect on November 23, 1984, is a socially disadvantaged group eligible to receive assistance.

**(16) Specialty center**

The term "specialty center" means an MBDA Business Center that provides specialty services focusing on specific business needs, including assistance relating to—

- (A) capital access;
- (B) Federal procurement;
- (C) entrepreneurship;
- (D) technology transfer; or
- (E) any other area determined necessary or appropriate based on the priorities of the Agency.

**(17) State**

The term "State" means—

- (A) each of the States of the United States;
- (B) the District of Columbia;
- (C) the Commonwealth of Puerto Rico;
- (D) the United States Virgin Islands;
- (E) Guam;
- (F) American Samoa;
- (G) the Commonwealth of the Northern Mariana Islands; and
- (H) each Tribal Government.

**(18) Tribal Government**

The term "Tribal Government" means the recognized governing body of any Indian or Alaska Native tribe, band, nation, pueblo, village, community, component band, or component reservation, individually identified (including parenthetically) in the list published most recently as of November 15, 2021, pursuant to section 5131 of title 25.

**(19) Under Secretary**

The term "Under Secretary" means the Under Secretary of Commerce for Minority Business Development, who is appointed as described in section \_\_\_\_\_3(b) <sup>1</sup> to administer this chapter. (Pub. L. 117–58, div. K, §100002, Nov. 15, 2021, 135 Stat. 1445.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

This chapter, referred to in text, was in the original "this division", meaning div. K of Pub. L. 117–58, Nov. 15, 2021, 135 Stat. 1445, which is classified principally to this chapter. For complete classification of division K to the Code, see Short Title note set out below and Tables.

The Alaska Native Claims Settlement Act, referred to in par. (10)(B), is Pub. L. 92–203, Dec. 18, 1971, 85 Stat. 688, which is classified generally to chapter 33 (§1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

Section \_\_\_\_\_3(b), referred to in par. (19), probably means subsec. (b) of section 100003 of Pub. L. 117–58, which is classified to section 9502 of this title.

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### SHORT TITLE

Pub. L. 117–58, div. K, §100001, Nov. 15, 2021, 135 Stat. 1445, provided that: "This division [enacting this chapter and amending section 5314 of Title 5, Government Organization and Employees] may be cited as the 'Minority Business Development Act of 2021'."

<sup>1</sup> *So in original. See References in Text note below.*

## **§9502. Minority Business Development Agency**

### **(a) In general**

There is within the Department of Commerce the Minority Business Development Agency.

### **(b) Under Secretary**

#### **(1) Appointment and duties**

The Agency shall be headed by the Under Secretary of Commerce for Minority Business Development, who shall—

- (A) be appointed by the President, by and with the advice and consent of the Senate;
- (B) except as otherwise expressly provided, be responsible for the administration of this chapter; and
- (C) report directly to the Secretary.

#### **(2) Compensation**

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

The Under Secretary shall be compensated at an annual rate of basic pay prescribed for level III of the Executive Schedule under section 5314 of title 5.

##### **(B) Omitted**

#### **(3) References**

Any reference in a law, map, regulation, document, paper, or other record of the United States to the Director of the Agency shall be deemed to be a reference to the Under Secretary.

### **(c) Report to Congress**

Not later than 120 days after November 15, 2021, the Secretary shall submit to Congress a report that describes—

- (1) the organizational structure of the Agency;
- (2) the organizational position of the Agency within the Department of Commerce; and
- (3) a description of how the Agency shall function in relation to the operations carried out by each other component of the Department of Commerce.

### **(d) Office of Business Centers**

#### **(1) Establishment**

There is established within the Agency the Office of Business Centers.

#### **(2) Director**

The Office of Business Centers shall be administered by a Director, who shall be appointed by the Under Secretary.

### **(e) Offices of the Agency**

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

In addition to the regional offices that the Under Secretary is required to establish under paragraph (2), the Under Secretary shall establish such other offices within the Agency as are



necessary to carry out this chapter.

## **(2) Regional offices**

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

In order to carry out this chapter, the Under Secretary shall establish a regional office of the Agency for each of the regions of the United States, as determined by the Under Secretary.

### **(B) Duties**

Each regional office established under subparagraph (A) shall expand the reach of the Agency and enable the Federal Government to better serve the needs of minority business enterprises in the region served by the office, including by—

- (i) understanding and participating in the business environment of that region;
- (ii) working with—
  - (I) MBDA Business Centers that are located in that region;
  - (II) resource and lending partners of other appropriate Federal agencies that are located in that region; and
  - (III) Federal, State, and local procurement offices that are located in that region;

(iii) being aware of business retention or expansion programs that are specific to that region;

(iv) seeking out opportunities to collaborate with regional public and private programs that focus on minority business enterprises; and

(v) promoting business continuity and preparedness.

(Pub. L. 117–58, div. K, §100003, Nov. 15, 2021, 135 Stat. 1448.)

## **EDITORIAL NOTES**

### **REFERENCES IN TEXT**

This chapter, referred to in subsecs. (b)(1)(B) and (e)(1), (2)(A), was in the original "this division", meaning div. K of Pub. L. 117–58, Nov. 15, 2021, 135 Stat. 1445, which is classified principally to this chapter. For complete classification of division K to the Code, see Short Title note set out under section 9501 of this title and Tables.

### **CODIFICATION**

Section is comprised of section 100003 of Pub. L. 117–58. Subsec. (b)(2)(B) of section 100003 amended section 5314 of Title 5, Government Organization and Employees.

## **SUBCHAPTER I—EXISTING INITIATIVES**

## **PART A—MARKET DEVELOPMENT, RESEARCH, AND INFORMATION**

### **§9511. Private sector development**

The Under Secretary shall, whenever the Under Secretary determines such action is necessary or appropriate—

(1) provide Federal assistance to minority business enterprises operating in domestic and foreign markets by making available to those business enterprises, either directly or in cooperation with private sector entities, including community-based organizations and national nonprofit organizations—

(A) resources relating to management;

- (B) technological and technical assistance;
- (C) financial, legal, and marketing services; and
- (D) services relating to workforce development;

(2) encourage minority business enterprises to establish joint ventures and projects—

(A) with other minority business enterprises; or

(B) in cooperation with public sector entities or private sector entities, including community-based organizations and national nonprofit organizations, to increase the share of any market activity being performed by minority business enterprises; and

(3) facilitate the efforts of private sector entities and Federal agencies to advance the growth of minority business enterprises.

(Pub. L. 117–58, div. K, title I, §100101, Nov. 15, 2021, 135 Stat. 1449.)

## **§9512. Public sector development**

The Under Secretary shall, whenever the Under Secretary determines such action is necessary or appropriate—

(1) consult and cooperate with public sector entities for the purpose of leveraging resources available in the jurisdictions of those public sector entities to promote the position of minority business enterprises in the local economies of those public sector entities, including by assisting public sector entities to establish or enhance—

(A) programs to procure goods and services through minority business enterprises and goals for that procurement;

(B) programs offering assistance relating to—

(i) management;

(ii) technology;

(iii) law;

(iv) financing, including accounting;

(v) marketing; and

(vi) workforce development; and

(C) informational programs designed to inform minority business enterprises located in the jurisdictions of those public sector entities about the availability of programs described in this section;

(2) meet with leaders and officials of public sector entities for the purpose of recommending and promoting local administrative and legislative initiatives needed to advance the position of minority business enterprises in the local economies of those public sector entities; and

(3) facilitate the efforts of public sector entities and Federal agencies to advance the growth of minority business enterprises.

(Pub. L. 117–58, div. K, title I, §100102, Nov. 15, 2021, 135 Stat. 1450.)

## **§9513. Research and information**

### **(a) In general**

In order to achieve the purposes of this chapter, the Under Secretary—

(1) shall—

(A) collect and analyze data, including data relating to the causes of the success or failure of minority business enterprises;

(B) conduct research, studies, and surveys of—

- (i) economic conditions generally in the United States; and
- (ii) how the conditions described in clause (i) particularly affect the development of minority business enterprises; and

(C) provide outreach, educational services, and technical assistance in, at a minimum, the 5 most commonly spoken languages in the United States to ensure that limited English proficient individuals receive culturally and linguistically appropriate access to the services and information provided by the Agency; and

(2) may perform an evaluation of programs carried out by the Under Secretary that are designed to assist the development of minority business enterprises.

**(b) Information clearinghouse**

The Under Secretary shall—

(1) establish and maintain an information clearinghouse for the collection and dissemination to relevant parties (including business owners and researchers) of demographic, economic, financial, managerial, and technical data relating to minority business enterprises; and

(2) take such steps as the Under Secretary may determine to be necessary and desirable to—

(A) search for, collect, classify, coordinate, integrate, record, and catalog the data described in paragraph (1); and

(B) in a manner that is consistent with section 552a of title 5, protect the privacy of the minority business enterprises to which the data described in paragraph (1) relates.

(Pub. L. 117–58, div. K, title I, §100103, Nov. 15, 2021, 135 Stat. 1450.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

This chapter, referred to in subsec. (a), was in the original "this division", meaning div. K of Pub. L. 117–58, Nov. 15, 2021, 135 Stat. 1445, which is classified principally to this chapter. For complete classification of division K to the Code, see Short Title note set out under section 9501 of this title and Tables.

**PART B—MINORITY BUSINESS DEVELOPMENT AGENCY BUSINESS CENTER PROGRAM**

**§9521. Definition**

In this part, the term "MBDA Business Center Program" means the program established under section \_\_\_\_\_ 113. <sup>1</sup>

(Pub. L. 117–58, div. K, title I, §100111, Nov. 15, 2021, 135 Stat. 1451.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

Section \_\_\_\_\_ 113, referred to in text, probably means section 100113 of Pub. L. 117–58, which is classified to section 9523 of this title.

<sup>1</sup> *So in original. See References in Text note below.*

## §9522. Purpose

The purpose of the MBDA Business Center Program shall be to create a national network of public-private partnerships that—

- (1) assist minority business enterprises in—
  - (A) accessing capital, contracts, and grants; and
  - (B) creating and maintaining jobs;
- (2) provide counseling and mentoring to minority business enterprises; and
- (3) facilitate the growth of minority business enterprises by promoting trade.

(Pub. L. 117–58, div. K, title I, §100112, Nov. 15, 2021, 135 Stat. 1451.)

## §9523. Establishment

### (a) In general

There is established in the Agency a program—

- (1) that shall be known as the MBDA Business Center Program;
- (2) that shall be separate and distinct from the efforts of the Under Secretary under section \_\_\_\_\_101; <sup>1</sup> and

(3) under which the Under Secretary shall make Federal assistance awards to eligible entities to operate MBDA Business Centers, which shall, in accordance with section \_\_\_\_\_114, <sup>1</sup> provide technical assistance and business development services, or specialty services, to minority business enterprises.

### (b) Coverage

The Under Secretary shall take all necessary actions to ensure that the MBDA Business Center Program, in accordance with section \_\_\_\_\_114, <sup>1</sup> offers the services described in subsection (a)(3) in all regions of the United States.

(Pub. L. 117–58, div. K, title I, §100113, Nov. 15, 2021, 135 Stat. 1451.)

## EDITORIAL NOTES

### REFERENCES IN TEXT

Section \_\_\_\_\_101, referred to in subsec. (a)(2), probably means section 100101 of Pub. L. 117–58, which is classified to section 9511 of this title.

Section \_\_\_\_\_114, referred to in subsecs. (a)(3) and (b), probably means section 100114 of Pub. L. 117–58, which is classified to section 9524 of this title.

<sup>1</sup> *So in original. See References in Text note below.*

## §9524. Grants and cooperative agreements

### (a) Requirements

An MBDA Business Center (referred to in this part as a "Center"), with respect to the Federal financial assistance award made to operate the Center under the MBDA Business Center Program—

- (1) shall—
  - (A) provide to minority business enterprises programs and services determined to be appropriate by the Under Secretary, which may include—

- (i) referral services to meet the needs of minority business enterprises; and
    - (ii) programs and services to accomplish the goals described in section \_\_\_\_\_101(1); <sup>1</sup>

- (B) develop, cultivate, and maintain a network of strategic partnerships with organizations that foster access by minority business enterprises to economic markets, capital, or contracts;
- (C) continue to upgrade and modify the services provided by the Center, as necessary, in order to meet the changing and evolving needs of the business community;
- (D) establish or continue a referral relationship with not less than 1 community-based organization; and
- (E) collaborate with other Centers; and

(2) in providing programs and services under the applicable MBDA Business Center agreement, may—

- (A) operate on a fee-for-service basis; or
- (B) generate income through the collection of—
  - (i) client fees;
  - (ii) membership fees; and
  - (iii) any other appropriate fees proposed by the Center in the application submitted by the Center under subsection (e).

**(b) Term**

Subject to subsection (g)(3), the term of an MBDA Business Center agreement shall be not less than 3 years.

**(c) Financial assistance**

**(1) In general**

The amount of financial assistance provided by the Under Secretary under an MBDA Business Center agreement shall be not less than \$250,000 for the term of the agreement.

**(2) Matching requirement**

**(A) In general**

A Center shall match not less than 1/3 of the amount of the financial assistance awarded to the Center under the terms of the applicable MBDA Business Center agreement, unless the Under Secretary determines that a waiver of that requirement is necessary after a demonstration by the Center of a substantial need for that waiver.

**(B) Form of funds**

- A Center may meet the matching requirement under subparagraph (A) by using—
- (i) cash or in-kind contributions, without regard to whether the contribution is made by a third party; or
  - (ii) Federal funds received from other Federal programs.

**(3) Use of financial assistance and program income**

A Center shall use—

- (A) all financial assistance awarded to the Center under the applicable MBDA Business Center agreement to carry out subsection (a); and
- (B) all income that the Center generates in carrying out subsection (a)—
  - (i) to meet the matching requirement under paragraph (2) of this subsection; and
  - (ii) if the Center meets the matching requirement under paragraph (2) of this subsection, to carry out subsection (a).

**(d) Criteria for selection**

The Under Secretary shall—

- (1) establish criteria that—
  - (A) the Under Secretary shall use in determining whether to enter into an MBDA Business Center agreement with an eligible entity; and
  - (B) may include criteria relating to whether an eligible entity is located in—
    - (i) an area, the population of which is composed of not less than 51 percent socially or

economically disadvantaged individuals, as determined in accordance with data collected by the Bureau of the Census;

(ii) a federally recognized area of economic distress; or

(iii) a State that is underserved with respect to the MBDA Business Center Program, as defined by the Under Secretary; and

(2) make the criteria and standards established under paragraph (1) publicly available, including—

(A) on the website of the Agency; and

(B) in each Notice of Funding Opportunity soliciting MBDA Business Center agreements.

**(e) Applications**

An eligible entity desiring to enter into an MBDA Business Center agreement shall submit to the Under Secretary an application that includes—

(1) a statement of—

(A) how the eligible entity will carry out subsection (a); and

(B) any experience or plans of the eligible entity with respect to—

(i) assisting minority business enterprises to—

(I) obtain—

(aa) large-scale contracts, grants, or procurements;

(bb) financing; or

(cc) legal assistance;

(II) access established supply chains; and

(III) engage in—

(aa) joint ventures, teaming arrangements, and mergers and acquisitions; or

(bb) large-scale transactions in global markets;

(ii) supporting minority business enterprises in increasing the size of the workforces of those enterprises, including, with respect to a minority business enterprise that does not have employees, aiding the minority business enterprise in becoming an enterprise that has employees; and

(iii) advocating for minority business enterprises; and

(2) the budget and corresponding budget narrative that the eligible entity will use in carrying out subsection (a) during the term of the applicable MBDA Business Center agreement.

**(f) Notification**

If the Under Secretary grants an application of an eligible entity submitted under subsection (e), the Under Secretary shall notify the eligible entity that the application has been granted not later than 150 days after the last day on which an application may be submitted under that subsection.

**(g) Program examination; accreditation; extensions**

**(1) Examination**

Not later than 180 days after November 15, 2021, and biennially thereafter, the Under Secretary shall conduct a programmatic financial examination of each Center.

**(2) Accreditation**

The Under Secretary may provide financial support, by contract or otherwise, to an association, not less than 51 percent of the members of which are Centers, to—

(A) pursue matters of common concern with respect to Centers; and

(B) develop an accreditation program with respect to Centers.

**(3) Extensions**

**(A) In general**

The Under Secretary may extend the term under subsection (b) of an MBDA Business Center agreement to which a Center is a party, if the Center consents to the extension.

**(B) Financial assistance**

If the Under Secretary extends the term of an MBDA Business Center agreement under paragraph (1), the Under Secretary shall, in the same manner and amount in which financial assistance was provided during the initial term of the agreement, provide financial assistance under the agreement during the extended term of the agreement.

**(h) MBDA involvement**

The Under Secretary may take actions to ensure that the Agency is substantially involved in the activities of Centers in carrying out subsection (a), including by—

(1) providing to each Center training relating to the MBDA Business Center Program;

(2) requiring that the operator and staff of each Center—

(A) attend—

(i) a conference with the Agency to establish the services and programs that the Center will provide in carrying out the requirements before the date on which the Center begins providing those services and programs; and

(ii) training provided under paragraph (1);

(B) receive necessary guidance relating to carrying out the requirements under subsection (a); and

(C) work in coordination and collaboration with the Under Secretary to carry out the MBDA Business Center Program and other programs of the Agency;

(3) facilitating connections between Centers and—

(A) Federal agencies other than the Agency, as appropriate; and

(B) other institutions or entities that use Federal resources, such as—

(i) small business development centers, as that term is defined in section 632(t) of this title;

(ii) women's business centers described in section 656 of this title;

(iii) eligible entities, as that term is defined in section 2411 <sup>2</sup> of title 10, that provide services under the program carried out under chapter 142 <sup>2</sup> of that title; and

(iv) entities participating in the Hollings Manufacturing Extension Partnership Program established under section 278k of this title;

(4) monitoring projects carried out by each Center; and

(5) establishing and enforcing administrative and reporting requirements for each Center to carry out subsection (a).

**(i) Regulations**

The Under Secretary shall issue and publish regulations that establish minimum standards regarding verification of minority business enterprise status for clients of entities operating under the MBDA Business Center Program.

(Pub. L. 117–58, div. K, title I, §100114, Nov. 15, 2021, 135 Stat. 1452.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

Section \_\_\_\_\_101(1), referred to in subsec. (a)(1)(A)(ii), probably means par. (1) of section 100101 of Pub. L. 117–58, which is classified to section 9511 of this title.

Section 2411 of title 10, referred to in subsec. (h)(3)(B)(iii), was renumbered section 4951 of Title 10, Armed Forces, by Pub. L. 116–283, div. A, title XVIII, §1872(a)(1)(B), (2), Jan. 1, 2021, 134 Stat. 4287, as amended by Pub. L. 117–81, div. A, title XVII, §1701(m)(1)(A), (3), Dec. 27, 2021, 135 Stat. 2144, 2145.

Chapter 142 of that title, referred to in subsec. (h)(3)(B)(iii), was repealed by Pub. L. 116–283, div. A, title

XVIII, §1872(b)(1), Jan. 1, 2021, 134 Stat. 4289, effective Jan. 1, 2022, in conjunction with the transfer and reorganization of acquisition provisions in Title 10, Armed Forces, by Pub. L. 116–283, div. A, title XVIII, Jan. 1, 2022, 134 Stat. 4149.

<sup>1</sup> *So in original. See References in Text note below.*

<sup>2</sup> *See References in Text note below.*

### **§9525. Minimizing disruptions to existing MBDA Business Center program**

The Under Secretary shall ensure that each Federal assistance award made under the Business Centers program of the Agency, as is in effect on the day before November 15, 2021, is carried out in a manner that, to the greatest extent practicable, prevents disruption of any activity carried out under that award.

(Pub. L. 117–58, div. K, title I, §100115, Nov. 15, 2021, 135 Stat. 1455.)

### **§9526. Publicity**

In carrying out the MBDA Business Center Program, the Under Secretary shall widely publicize the MBDA Business Center Program, including—

- (1) on the website of the Agency;
- (2) via social media outlets; and
- (3) by sharing information relating to the MBDA Business Center Program with community-based organizations, including interpretation groups where necessary, to communicate in the most common languages spoken by the groups served by those organizations.

(Pub. L. 117–58, div. K, title I, §100116, Nov. 15, 2021, 135 Stat. 1455.)

## **SUBCHAPTER II—NEW INITIATIVES TO PROMOTE ECONOMIC RESILIENCY FOR MINORITY BUSINESSES**

### **§9541. Annual diverse business forum on capital formation**

#### **(a) Responsibility of Agency**

Not later than 18 months after November 15, 2021, and annually thereafter, the Under Secretary shall conduct a Government-business forum to review the current status of problems and programs relating to capital formation by minority business enterprises.

#### **(b) Participation in forum planning**

The Under Secretary shall invite the heads of other Federal agencies, such as the Chairman of the Securities and Exchange Commission, the Secretary of the Treasury, and the Chairman of the Board of Governors of the Federal Reserve System, organizations representing State securities commissioners, representatives of leading minority chambers of commerce, not less than 1 certified owner of a minority business enterprise, business organizations, and professional organizations concerned with capital formation to participate in the planning of each forum conducted under subsection (a).

#### **(c) Preparation of statements and reports**

##### **(1) Requests**

The Under Secretary may request that any head of a Federal agency, department, or



organization, including those described in subsection (b), or any other group or individual, prepare a statement or report to be delivered at any forum conducted under subsection (a).

**(2) Cooperation**

Any head of a Federal agency, department, or organization who receives a request under paragraph (1) shall, to the greatest extent practicable, cooperate with the Under Secretary to fulfill that request.

**(d) Transmittal of proceedings and findings**

The Under Secretary shall—

(1) prepare a summary of the proceedings of each forum conducted under subsection (a), which shall include the findings and recommendations of the forum; and

(2) transmit the summary described in paragraph (1) with respect to each forum conducted under subsection (a) to—

(A) the participants in the forum;

(B) Congress; and

(C) the public, through a publicly available website.

**(e) Review of findings and recommendations; public statements**

**(1) In general**

A Federal agency to which a finding or recommendation described in subsection (d)(1) relates shall—

(A) review that finding or recommendation; and

(B) promptly after the finding or recommendation is transmitted under subsection (d)(2)(C), issue a public statement—

(i) assessing the finding or recommendation; and

(ii) disclosing the action, if any, the Federal agency intends to take with respect to the finding or recommendation.

**(2) Joint statement permitted**

If a finding or recommendation described in subsection (d)(1) relates to more than 1 Federal agency, the applicable Federal agencies may, for the purposes of the public statement required under paragraph (1)(B), issue a joint statement.

(Pub. L. 117–58, div. K, title II, §100201, Nov. 15, 2021, 135 Stat. 1455.)

**§9542. Agency study on alternative financing solutions**

**(a) Purpose**

The purpose of this section is to provide information relating to alternative financing solutions to minority business enterprises, as those business enterprises are more likely to struggle in accessing, particularly at affordable rates, traditional sources of capital.

**(b) Study and report**

Not later than 1 year after November 15, 2021, the Under Secretary shall—

(1) conduct a study on opportunities for providing alternative financing solutions to minority business enterprises; and

(2) submit to Congress, and publish on the website of the Agency, a report describing the findings of the study carried out under paragraph (1).

(Pub. L. 117–58, div. K, title II, §100202, Nov. 15, 2021, 135 Stat. 1456.)

**§9543. Educational development relating to management and entrepreneurship**

**(a) Duties**

The Under Secretary shall, whenever the Under Secretary determines such action is necessary or appropriate—

(1) promote the education and training of socially or economically disadvantaged individuals in subjects directly relating to business administration and management;

(2) encourage institutions of higher education, leaders in business and industry, and other public sector entities and private sector entities, particularly minority business enterprises, to—

(A) develop programs to offer scholarships and fellowships, apprenticeships, and internships relating to business to socially or economically disadvantaged individuals; and

(B) sponsor seminars, conferences, and similar activities relating to business for the benefit of socially or economically disadvantaged individuals;

(3) stimulate and accelerate curriculum design and improvement in support of development of minority business enterprises; and

(4) encourage and assist private institutions and organizations and public sector entities to undertake activities similar to the activities described in paragraphs (1), (2), and (3).

#### **(b) Parren J. Mitchell Entrepreneurship Education Grants**

##### **(1) Definition**

In this subsection, the term "eligible institution" means an institution of higher education described in any of paragraphs (1) through (7) of section 1067q(a) of title 20.

##### **(2) Grants**

The Under Secretary shall award grants to eligible institutions to develop and implement entrepreneurship curricula.

##### **(3) Requirements**

An eligible institution to which a grant is awarded under this subsection shall use the grant funds to—

(A) develop a curriculum that includes training in various skill sets needed by contemporary successful entrepreneurs, including—

(i) business management and marketing;

(ii) financial management and accounting;

(iii) market analysis;

(iv) competitive analysis;

(v) innovation;

(vi) strategic and succession planning;

(vii) marketing;

(viii) general management;

(ix) technology and technology adoption;

(x) leadership; and

(xi) human resources; and

(B) implement the curriculum developed under subparagraph (A) at the eligible institution.

##### **(4) Implementation timeline**

The Under Secretary shall establish and publish a timeline under which an eligible institution to which a grant is awarded under this section shall carry out the requirements under paragraph (3).

##### **(5) Reports**

Each year, the Under Secretary shall submit to all applicable committees of Congress, and as part of the annual budget submission of the President under section 1105(a) of title 31, a report evaluating the awarding and use of grants under this subsection during the fiscal year immediately preceding the fiscal year in which the report is submitted, which shall include, with respect to the fiscal year covered by the report—

(A) a description of each curriculum developed and implemented under each grant awarded

under this section;

(B) the date on which each grant awarded under this section was awarded; and

(C) the number of eligible entities that were recipients of grants awarded under this section.

(Pub. L. 117–58, div. K, title II, §100203, Nov. 15, 2021, 135 Stat. 1457.)

## **SUBCHAPTER III—RURAL MINORITY BUSINESS CENTER PROGRAM**

### **§9551. Definitions**

In this subchapter:

#### **(1) Appropriate congressional committees**

The term "appropriate congressional committees" means—

(A) the Committee on Commerce, Science, and Transportation of the Senate; and

(B) the Committee on Financial Services of the House of Representatives.

#### **(2) Eligible entity**

The term "eligible entity" means—

(A) a minority-serving institution; or

(B) a consortium of institutions of higher education that is led by a minority-serving institution.

#### **(3) MBDA Rural Business Center**

The term "MBDA Rural Business Center" means an MBDA Business Center that provides technical business assistance to minority business enterprises located in rural areas.

#### **(4) MBDA Rural Business Center agreement**

The term "MBDA Rural Business Center agreement" means an MBDA Business Center agreement that establishes the terms by which the recipient of the Federal assistance award that is the subject of the agreement shall operate an MBDA Rural Business Center.

#### **(5) Minority-serving institution**

The term "minority-serving institution" means an institution described in any of paragraphs (1) through (7) of section 1067q(a) of title 20.

#### **(6) Rural area**

The term "rural area" has the meaning given the term in section 1991(a) of title 7.

#### **(7) Rural minority business enterprise**

The term "rural minority business enterprise" means a minority business enterprise located in a rural area.

(Pub. L. 117–58, div. K, title III, §100301, Nov. 15, 2021, 135 Stat. 1458.)

### **§9552. Business Centers**

#### **(a) In general**

The Under Secretary may establish MBDA Rural Business Centers.

#### **(b) Partnership**

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

With respect to an MBDA Rural Business Center established by the Under Secretary, the Under Secretary shall establish the MBDA Rural Business Center in partnership with an eligible entity in

accordance with paragraph (2).

## **(2) MBDA agreement**

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

With respect to each MBDA Rural Business Center established by the Under Secretary, the Under Secretary shall enter into a cooperative agreement with an eligible entity that provides that—

- (i) the eligible entity shall provide space, facilities, and staffing for the MBDA Rural Business Center;
- (ii) the Under Secretary shall provide funding for, and oversight with respect to, the MBDA Rural Business Center; and
- (iii) subject to subparagraph (B), the eligible entity shall match 20 percent of the amount of the funding provided by the Under Secretary under clause (ii), which may be calculated to include the costs of providing the space, facilities, and staffing under clause (i).

### **(B) Lower match requirement**

Based on the available resources of an eligible entity, the Under Secretary may enter into a cooperative agreement with the eligible entity that provides that—

- (i) the eligible entity shall match less than 20 percent of the amount of the funding provided by the Under Secretary under subparagraph (A)(ii); or
- (ii) if the Under Secretary makes a determination, upon a demonstration by the eligible entity of substantial need, the eligible entity shall not be required to provide any match with respect to the funding provided by the Under Secretary under subparagraph (A)(ii).

### **(C) Eligible funds**

An eligible entity may provide matching funds required under an MBDA Rural Business Center agreement with Federal funds received from other Federal programs.

## **(3) Term**

The initial term of an MBDA Rural Business Center agreement shall be not less than 3 years.

## **(4) Extension**

The Under Secretary and an eligible entity may agree to extend the term of an MBDA Rural Business Center agreement with respect to an MBDA Rural Business Center.

## **(c) Functions**

An MBDA Rural Business Center shall—

- (1) primarily serve clients that are—
  - (A) rural minority business enterprises; or
  - (B) minority business enterprises that are located more than 50 miles from an MBDA Business Center (other than that MBDA Rural Business Center);
- (2) focus on—
  - (A) issues relating to—
    - (i) the adoption of broadband internet access service (as defined in section 8.1(b) of title 47, Code of Federal Regulations, or any successor regulation), digital literacy skills, and e-commerce by rural minority business enterprises;
    - (ii) advanced manufacturing;
    - (iii) the promotion of manufacturing in the United States;
    - (iv) ways in which rural minority business enterprises can meet gaps in the supply chain of critical supplies and essential goods and services for the United States;
    - (v) improving the connectivity of rural minority business enterprises through transportation and logistics;
    - (vi) promoting trade and export opportunities by rural minority business enterprises;
    - (vii) securing financial capital;

- (viii) facilitating entrepreneurship in rural areas; and
- (ix) creating jobs in rural areas; and

(B) any other issue relating to the unique challenges faced by rural minority business enterprises; and

(3) provide education, training, and legal, financial, and technical assistance to minority business enterprises.

#### **(d) Applications**

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

Not later than 90 days after November 15, 2021, the Under Secretary shall issue a Notice of Funding Opportunity requesting applications from eligible entities that desire to enter into MBDA Rural Business Center agreements.

##### **(2) Criteria and priority**

In selecting an eligible entity with which to enter into an MBDA Rural Business Center agreement, the Under Secretary shall—

(A) select an eligible entity that demonstrates—

(i) the ability to collaborate with governmental and private sector entities to leverage capabilities of minority business enterprises through public-private partnerships;

(ii) the research and extension capacity to support minority business enterprises;

(iii) knowledge of the community that the eligible entity serves and the ability to conduct effective outreach to that community to advance the goals of an MBDA Rural Business Center;

(iv) the ability to provide innovative business solutions, including access to contracting opportunities, markets, and capital;

(v) the ability to provide services that advance the development of science, technology, engineering, and math jobs within minority business enterprises;

(vi) the ability to leverage resources from within the eligible entity to advance an MBDA Rural Business Center;

(vii) that the mission of the eligible entity aligns with the mission of the Agency;

(viii) the ability to leverage relationships with rural minority business enterprises; and

(ix) a referral relationship with not less than 1 community-based organization; and

(B) give priority to an eligible entity that—

(i) is located in a State or region that has a significant population of socially or economically disadvantaged individuals;

(ii) has a history of serving socially or economically disadvantaged individuals; or

(iii) in the determination of the Under Secretary, has not received an equitable allocation of land and financial resources under—

(I) the Act of July 2, 1862 (commonly known as the "First Morrill Act") (12 Stat. 503, chapter 130; 7 U.S.C. 301 et seq.); or

(II) the Act of August 30, 1890 (commonly known as the "Second Morrill Act") (26 Stat. 417, chapter 841; 7 U.S.C. 321 et seq.).

##### **(3) Considerations**

In determining whether to enter into an MBDA Rural Business Center agreement with an eligible entity under this section, the Under Secretary shall consider the needs of the eligible entity.

(Pub. L. 117–58, div. K, title III, §100302, Nov. 15, 2021, 135 Stat. 1459.)

## REFERENCES IN TEXT

The Act of July 2, 1862, referred to in subsec. (d)(2)(B)(iii)(I), is act July 2, 1862, ch. 130, 12 Stat. 503, popularly known as the Morrill Act and also as the First Morrill Act, which is classified generally to subchapter I (§301 et seq.) of chapter 13 of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 301 of Title 7 and Tables.

The Act of August 30, 1890, referred to in subsec. (d)(2)(B)(iii)(II), is act Aug. 30, 1890, ch. 841, 26 Stat. 417, popularly known as the Agricultural College Act of 1890 and also as the Second Morrill Act, which is classified generally to subchapter II (§321 et seq.) of chapter 13 of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 321 of Title 7 and Tables.

### **§9553. Report to Congress**

Not later than 1 year after November 15, 2021, the Under Secretary shall submit to the appropriate congressional committees a report that includes—

- (1) a summary of the efforts of the Under Secretary to provide services to minority business enterprises located in States that lack an MBDA Business Center, as of November 15, 2021, and especially in those States that have significant minority populations; and
- (2) recommendations for extending the outreach of the Agency to underserved areas.

(Pub. L. 117–58, div. K, title III, §100303, Nov. 15, 2021, 135 Stat. 1461.)

### **§9554. Study and report**

#### **(a) In general**

The Under Secretary, in coordination with relevant leadership of the Agency and relevant individuals outside of the Department of Commerce, shall conduct a study that addresses the ways in which minority business enterprises can meet gaps in the supply chain of the United States, with a particular focus on the supply chain of advanced manufacturing and essential goods and services.

#### **(b) Report**

Not later than 1 year after November 15, 2021, the Under Secretary shall submit to the appropriate congressional committees a report that includes the results of the study conducted under subsection (a), which shall include recommendations regarding the ways in which minority business enterprises can meet gaps in the supply chain of the United States.

(Pub. L. 117–58, div. K, title III, §100304, Nov. 15, 2021, 135 Stat. 1461.)

## **SUBCHAPTER IV—MINORITY BUSINESS DEVELOPMENT GRANTS**

### **§9561. Grants to nonprofit organizations that support minority business enterprises**

#### **(a) Definition**

In this section, the term "covered entity" means a private nonprofit organization that—

(1) is described in paragraph (3), (4), (5), or (6) of section 501(c) of title 26 and exempt from tax under section 501(a) of such title; and

(2) can demonstrate that a primary activity of the organization is to provide services to minority business enterprises, whether through education, making grants or loans, or other similar activities.

#### **(b) Purpose**

The purpose of this section is to make grants to covered entities to help those covered entities

continue the necessary work of supporting minority business enterprises.

**(c) Designation of office**

**(1) In general**

Not later than 180 days after November 15, 2021, the Under Secretary shall designate an office to make and administer grants under this section.

**(2) Considerations**

In designating an office under paragraph (1), the Under Secretary shall ensure that the office designated has adequate staffing to carry out the responsibilities of the office under this section.

**(d) Application**

A covered entity desiring a grant under this section shall submit to the Under Secretary an application at such time, in such manner, and containing such information as the Under Secretary may require.

**(e) Priority**

The Under Secretary shall, in carrying out this section, prioritize granting an application submitted by a covered entity that is located in a federally recognized area of economic distress.

**(f) Use of funds**

A covered entity to which a grant is made under this section may use the grant funds to support the development, growth, or retention of minority business enterprises.

**(g) Procedures**

The Under Secretary shall establish procedures to—

(1) discourage and prevent waste, fraud, and abuse by applicants for, and recipients of, grants made under this section; and

(2) ensure that grants are made under this section to a diverse array of covered entities, which may include—

(A) covered entities with a national presence;

(B) community-based covered entities;

(C) covered entities with annual budgets below \$1,000,000; or

(D) covered entities that principally serve low-income and rural communities.

**(h) Inspector General audit**

Not later than 180 days after the date on which the Under Secretary begins making grants under this section, the Inspector General of the Department of Commerce shall—

(1) conduct an audit of grants made under this section, which shall seek to identify any discrepancies or irregularities with respect to those grants; and

(2) submit to Congress a report regarding the audit conducted under paragraph (1).

**(i) Updates to Congress**

Not later than 90 days after the date on which the Under Secretary makes the designation required under subsection (c), and once every 30 days thereafter, the Under Secretary shall submit to Congress a report that contains—

(1) the number of grants made under this section during the period covered by the report; and

(2) with respect to the grants described in paragraph (1)—

(A) the geographic distribution of those grants by State and county;

(B) if applicable, demographic information with respect to the minority business enterprises served by the covered entities to which the grants were made; and

(C) information regarding the industries of the minority business enterprises served by the covered entities to which the grants were made.

(Pub. L. 117–58, div. K, title IV, §100401, Nov. 15, 2021, 135 Stat. 1461.)

## **SUBCHAPTER V—MINORITY BUSINESS ENTERPRISES ADVISORY COUNCIL**

### **§9571. Purpose**

The Under Secretary shall establish the Minority Business Enterprises Advisory Council (referred to in this subchapter as the "Council") to advise and assist the Agency.

(Pub. L. 117–58, div. K, title V, §100501, Nov. 15, 2021, 135 Stat. 1463.)

### **§9572. Composition and term**

#### **(a) Composition**

The Council shall be composed of 9 members of the private sector and 1 representative from each of not fewer than 10 Federal agencies that support or otherwise have duties that relate to business formation, including duties relating to labor development, monetary policy, national security, energy, agriculture, transportation, and housing.

#### **(b) Chair**

The Under Secretary shall designate 1 of the private sector members of the Council as the Chair of the Council for a 1-year term.

#### **(c) Term**

The Council shall meet at the request of the Under Secretary and members shall serve for a term of 2 years. Members of the Council may be reappointed.

(Pub. L. 117–58, div. K, title V, §100502, Nov. 15, 2021, 135 Stat. 1463.)

### **§9573. Duties**

#### **(a) In general**

The Council shall provide advice to the Under Secretary by—

(1) serving as a source of knowledge and information on developments in areas of the economic and social life of the United States that affect socially or economically disadvantaged business concerns;

(2) providing the Under Secretary with information regarding plans, programs, and activities in the public and private sectors that relate to socially or economically disadvantaged business concerns; and

(3) advising the Under Secretary regarding—

(A) any measures to better achieve the objectives of this chapter; and

(B) problems and matters the Under Secretary refers to the Council.

#### **(b) Capacity**

Members of the Council shall not be compensated for service on the Council but may be allowed travel expenses, including per diem in lieu of subsistence, in accordance with subchapter I of chapter 57 of title 5.

#### **(c) Termination**

Notwithstanding section 14 of the Federal Advisory Committee Act (5 U.S.C. App.),<sup>1</sup> the Council shall terminate on the date that is 5 years after November 15, 2021.

(Pub. L. 117–58, div. K, title V, §100503, Nov. 15, 2021, 135 Stat. 1463.)



## EDITORIAL NOTES

### REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(3)(A), was in the original "this division", meaning div. K of Pub. L. 117–58, Nov. 15, 2021, 135 Stat. 1445, which is classified principally to this chapter. For complete classification of division K to the Code, see Short Title note set out under section 9501 of this title and Tables.

Section 14 of the Federal Advisory Committee Act, referred to in subsec. (c), is section 14 of Pub. L. 92–463, which was set out in the Appendix to Title 5, Government Organization and Employees, and was repealed and restated as section 1013 of Title 5 by Pub. L. 117–286, §§3(a), 7, Dec. 27, 2022, 136 Stat. 4204, 4361.

<sup>1</sup> [\*See References in Text note below.\*](#)

## SUBCHAPTER VI—FEDERAL COORDINATION OF MINORITY BUSINESS PROGRAMS

### §9581. General duties

The Under Secretary may coordinate, as consistent with law, the plans, programs, and operations of the Federal Government that affect, or may contribute to, the establishment, preservation, and strengthening of socially or economically disadvantaged business concerns.

(Pub. L. 117–58, div. K, title VI, §100601, Nov. 15, 2021, 135 Stat. 1464.)

### §9582. Participation of Federal departments and agencies

The Under Secretary shall—

(1) consult with other Federal agencies and departments as appropriate to—

(A) develop policies, comprehensive plans, and specific program goals for the programs carried out under part B of subchapter I and subchapter III;

(B) establish regular performance monitoring and reporting systems to ensure that goals established by the Under Secretary with respect to the implementation of this chapter are being achieved; and

(C) evaluate the impact of Federal support of socially or economically disadvantaged business concerns in achieving the objectives of this chapter;

(2) conduct a coordinated review of all proposed Federal training and technical assistance activities in direct support of the programs carried out under part B of subchapter I and subchapter III to ensure consistency with program goals and to avoid duplication; and

(3) convene, for purposes of coordination, meetings of the heads of such Federal agencies and departments, or their designees, the programs and activities of which may affect or contribute to the carrying out of this chapter.

(Pub. L. 117–58, div. K, title VI, §100602, Nov. 15, 2021, 135 Stat. 1464.)

## EDITORIAL NOTES

### REFERENCES IN TEXT

This chapter, referred to in pars. (1)(B), (C), and (3), was in the original "this division", meaning div. K of Pub. L. 117–58, Nov. 15, 2021, 135 Stat. 1445, which is classified principally to this chapter. For complete classification of division K to the Code, see Short Title note set out under section 9501 of this title and Tables.

## **SUBCHAPTER VII—ADMINISTRATIVE POWERS OF THE AGENCY; MISCELLANEOUS PROVISIONS**

### **§9591. Administrative powers**

#### **(a) In general**

In carrying out this chapter, the Under Secretary may—

- (1) adopt and use a seal for the Agency, which shall be judicially noticed;
- (2) hold hearings, sit and act, and take testimony as the Under Secretary may determine to be necessary or appropriate to carry out this chapter;
- (3) acquire, in any lawful manner, any property that the Under Secretary determines to be necessary or appropriate to carry out this chapter;
- (4) with the consent of another Federal agency, enter into an agreement with that Federal agency to utilize, with or without reimbursement, any service, equipment, personnel, or facility of that Federal agency;
- (5) coordinate with the heads of the Offices of Small and Disadvantaged Business Utilization of Federal agencies;
- (6) develop procedures under which the Under Secretary may evaluate the compliance of a recipient of assistance under this chapter with the requirements of this chapter;
- (7) deobligate assistance provided under this chapter to a recipient that has demonstrated an insufficient level of performance with respect to the assistance, or has engaged in wasteful or fraudulent spending; and
- (8) provide that a recipient of assistance under this chapter that has demonstrated an insufficient level of performance with respect to the assistance, or has engaged in wasteful or fraudulent spending, shall be ineligible to receive assistance under this chapter for a period determined by the Under Secretary, consistent with the considerations under section 180.865 of title 2, Code of Federal Regulations (or any successor regulation), beginning on the date on which the Under Secretary makes the applicable finding.

#### **(b) Use of property**

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

Subject to paragraph (2), in carrying out this chapter, the Under Secretary may, without cost (except for costs of care and handling), allow any public sector entity, or any recipient nonprofit organization, for the purpose of the development of minority business enterprises, to use any real or tangible personal property acquired by the Agency in carrying out this chapter.

##### **(2) Terms, conditions, reservations, and restrictions**

The Under Secretary may impose reasonable terms, conditions, reservations, and restrictions upon the use of any property under paragraph (1).

(Pub. L. 117–58, div. K, title VII, §100701, Nov. 15, 2021, 135 Stat. 1464.)

### **EDITORIAL NOTES**

#### **REFERENCES IN TEXT**

This chapter, referred to in subsecs. (a) and (b)(1), was in the original "this division" or "this Act", meaning div. K of Pub. L. 117–58, Nov. 15, 2021, 135 Stat. 1445, known as the Minority Business Development Act of 2021, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 9501 of this title and Tables.

### **§9592. Federal assistance**

**(a) In general**

**(1) Provision of Federal assistance**

To carry out sections \_\_\_\_\_101, \_\_\_\_\_102, and \_\_\_\_\_103(a),<sup>1</sup> the Under Secretary may provide Federal assistance to public sector entities and private sector entities in the form of grants or cooperative agreements.

**(2) Notice**

Not later than 120 days after the date on which amounts are appropriated to carry out this section, the Under Secretary shall, in accordance with subsection (b), broadly publish a statement regarding Federal assistance that will, or may, be provided under paragraph (1) during the fiscal year for which those amounts are appropriated, including—

(A) the actual, or anticipated, amount of Federal assistance that will, or may, be made available;

(B) the types of Federal assistance that will, or may, be made available;

(C) the manner in which Federal assistance will be allocated among public sector entities and private sector entities, as applicable; and

(D) the methodology used by the Under Secretary to make allocations under subparagraph (C).

**(3) Consultation**

The Under Secretary shall consult with public sector entities and private sector entities, as applicable, in deciding the amounts and types of Federal assistance to make available under paragraph (1).

**(b) Publicity**

In carrying out this section, the Under Secretary shall broadly publicize all opportunities for Federal assistance available under this section, including through the means required under section \_\_\_\_\_116.<sup>1</sup>

(Pub. L. 117–58, div. K, title VII, §100702, Nov. 15, 2021, 135 Stat. 1465.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

Sections \_\_\_\_\_101, \_\_\_\_\_102, and \_\_\_\_\_103(a), referred to in subsec. (a)(1), probably mean sections 100101, 100102, and 100103(a) of Pub. L. 117–58, which are classified to sections 9511, 9512, and 9513(a) of this title.

Section \_\_\_\_\_116, referred to in subsec. (b), probably means section 100116 of Pub. L. 117–58, which is classified to section 9526 of this title.

<sup>1</sup> *So in original. See References in Text note below.*

**§9593. Recordkeeping**

**(a) In general**

Each recipient of assistance under this chapter shall keep such records as the Under Secretary shall prescribe, including records that fully disclose, with respect to the assistance received by the recipient under this chapter—

(1) the amount and nature of that assistance;

(2) the disposition by the recipient of the proceeds of that assistance;

(3) the total cost of the undertaking for which the assistance is given or used;

(4) the amount and nature of the portion of the cost of the undertaking described in paragraph

(3) that is supplied by a source other than the Agency;

- (5) the return on investment, as defined by the Under Secretary; and
- (6) any other record that will facilitate an effective audit with respect to the assistance.

**(b) Access by government officials**

The Under Secretary, the Inspector General of the Department of Commerce, and the Comptroller General of the United States, or any duly authorized representative of any such individual, shall have access, for the purpose of audit, investigation, and examination, to any book, document, paper, record, or other material of the Agency or an MBDA Business Center.

(Pub. L. 117–58, div. K, title VII, §100703, Nov. 15, 2021, 135 Stat. 1466.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

This chapter, referred to in subsec. (a), was in the original "this division", meaning div. K of Pub. L. 117–58, Nov. 15, 2021, 135 Stat. 1445, which is classified principally to this chapter. For complete classification of division K to the Code, see Short Title note set out under section 9501 of this title and Tables.

**§9594. Review and report by Comptroller General**

Not later than 4 years after November 5, 2021, the Comptroller General of the United States shall—

- (1) conduct a thorough review of the programs carried out under this chapter; and
- (2) submit to Congress a detailed report of the findings of the Comptroller General of the United States under the review carried out under paragraph (1), which shall include—
  - (A) an evaluation of the effectiveness of the programs in achieving the purposes of this chapter;
  - (B) a description of any failure by any recipient of assistance under this chapter to comply with the requirements under this chapter; and
  - (C) recommendations for any legislative or administrative action that should be taken to improve the achievement of the purposes of this chapter.

(Pub. L. 117–58, div. K, title VII, §100704, Nov. 15, 2021, 135 Stat. 1466.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

This chapter, referred to in pars. (1) and (2), was in the original "this division", meaning div. K of Pub. L. 117–58, Nov. 15, 2021, 135 Stat. 1445, which is classified principally to this chapter. For complete classification of division K to the Code, see Short Title note set out under section 9501 of this title and Tables.

**§9595. Biannual reports; recommendations**

**(a) Biannual report**

Not later than 1 year after November 15, 2021, and 90 days after the last day of each odd-numbered year thereafter, the Under Secretary shall submit to Congress, and publish on the website of the Agency, a report of each activity of the Agency carried out under this chapter during the period covered by the report.

**(b) Recommendations**

The Under Secretary shall periodically submit to Congress and the President recommendations for legislation or other actions that the Under Secretary determines to be necessary or appropriate to promote the purposes of this chapter.

(Pub. L. 117–58, div. K, title VII, §100705, Nov. 15, 2021, 135 Stat. 1466.)

## EDITORIAL NOTES

### REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this division", meaning div. K of Pub. L. 117–58, Nov. 15, 2021, 135 Stat. 1445, which is classified principally to this chapter. For complete classification of division K to the Code, see Short Title note set out under section 9501 of this title and Tables.

## **§9596. Separability**

If a provision of this chapter, or the application of a provision of this chapter to any person or circumstance, is held by a court of competent jurisdiction to be invalid, that judgment—

(1) shall not affect, impair, or invalidate—

(A) any other provision of this chapter; or

(B) the application of this chapter to any other person or circumstance; and

(2) shall be confined in its operation to—

(A) the provision of this chapter with respect to which the judgment is rendered; or

(B) the application of the provision of this chapter to each person or circumstance directly involved in the controversy in which the judgment is rendered.

(Pub. L. 117–58, div. K, title VII, §100706, Nov. 15, 2021, 135 Stat. 1467.)

## EDITORIAL NOTES

### REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this division", meaning div. K of Pub. L. 117–58, Nov. 15, 2021, 135 Stat. 1445, which is classified principally to this chapter. For complete classification of division K to the Code, see Short Title note set out under section 9501 of this title and Tables.

## **§9597. Executive Order 11625**

The powers and duties of the Agency shall be determined—

(1) in accordance with this chapter and the requirements of this chapter; and

(2) without regard to Executive Order 11625 (36 Fed. Reg. 19967; relating to prescribing additional arrangements for developing and coordinating a national program for minority business enterprise).

(Pub. L. 117–58, div. K, title VII, §100707, Nov. 15, 2021, 135 Stat. 1467.)

## EDITORIAL NOTES

### REFERENCES IN TEXT

Executive Order 11625, referred to in section catchline and par. (2), is Ex. Ord. No. 11625, Oct. 13, 1971, 36 F.R. 19967, which is set out as a note under section 631 of this title.

This chapter, referred to in par. (1), was in the original "this division", meaning div. K of Pub. L. 117–58, Nov. 15, 2021, 135 Stat. 1445, which is classified principally to this chapter. For complete classification of division K to the Code, see Short Title note set out under section 9501 of this title and Tables.

## **§9598. Authorization of appropriations**

There are authorized to be appropriated to the Under Secretary \$110,000,000 for each of fiscal years 2021 through 2025 to carry out this chapter, of which—

(1) a majority shall be used in each such fiscal year to carry out the MBDA Business Center

Program under part B of subchapter I, including the component of that program relating to specialty centers; and

(2) \$20,000,000 shall be used in each such fiscal year to carry out subchapter III.

(Pub. L. 117–58, div. K, title VII, §100708, Nov. 15, 2021, 135 Stat. 1467.)

## EDITORIAL NOTES

### REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this division", meaning div. K of Pub. L. 117–58, Nov. 15, 2021, 135 Stat. 1445, which is classified principally to this chapter. For complete classification of division K to the Code, see Short Title note set out under section 9501 of this title and Tables.

## CHAPTER 121—FLOOD LEVEL OBSERVATION, OPERATIONS, AND DECISION SUPPORT

Sec.

- 9701. Definitions.
- 9702. National Integrated Flood Information System.
- 9703. Observations and modeling for total water prediction.
- 9704. Service coordination hydrologists at River Forecast Centers of the National Weather Service.
- 9705. Improving National Oceanic and Atmospheric Administration communication of future flood risks and hazardous flash flood events.
- 9706. Freshwater monitoring along the coast.
- 9707. Estimates of precipitation frequency in the United States.
- 9708. Interagency Committee on Water Management and Infrastructure.
- 9709. National Weather Service hydrologic research fellowship program.
- 9710. Identification and support of consistent, Federal set of forward-looking, long-term meteorological information.
- 9711. Gap analysis on availability of snow-related data to assess and predict flood and flood impacts.
- 9712. Availability to the public of flood-related data.

### §9701. Definitions

In this chapter:

#### (1) Administrator

The term "Administrator" means the Administrator of the National Oceanic and Atmospheric Administration.

#### (2) State

The term "State" means each State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Virgin Islands of the United States, and any other territory or possession of the United States.

(Pub. L. 117–316, §2, Dec. 27, 2022, 136 Stat. 4406.)

## EDITORIAL NOTES

### REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 117–316, Dec. 27, 2022,

136 Stat. 4406, known as the Flood Level Observation, Operations, and Decision Support Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### SHORT TITLE

Pub. L. 117–316, §1(a), Dec. 27, 2022, 136 Stat. 4406, provided that: "This Act [enacting this chapter and amending sections 8513, 8514, 8515, and 8521 of this title] may be cited as the 'Flood Level Observation, Operations, and Decision Support Act' or the 'FLOODS Act'."

## §9702. National Integrated Flood Information System

### (a) In general

The Administrator shall establish a system, to be known as the "National Integrated Flood Information System", to better inform and provide for more timely decision making to reduce flood-related effects and costs.

### (b) System functions

The Administrator, through the National Integrated Flood Information System, shall—

(1) provide an effective flood early warning system that—

(A) collects and integrates information on the key indicators of floods and flood impacts, including streamflow, reservoir release and diversion, precipitation, soil moisture, snow water equivalent, land cover, and evaporative demand;

(B) makes usable, reliable, and timely forecasts of floods;

(C) assesses the severity of flood conditions and effects;

(D) provides information described in subparagraph (A), forecasts described in subparagraph (B), and assessments described in subparagraph (C) at the national, regional, and local levels, as appropriate; and

(E) communicates flood forecasts, flood conditions, and flood impacts to appropriate entities engaged in flood planning, preparedness, and response and post-event flood extent, including—

(i) decision makers at the Federal, State, local, and Tribal levels of government; and

(ii) the public;

(2) provide timely data, information, and products that reflect differences in flood conditions among localities, regions, watersheds, and States;

(3) coordinate and integrate, through interagency agreements as practicable, Federal research and monitoring in support of the flood early warning information system provided under paragraph (1);

(4) use existing forecasting and assessment programs and partnerships;

(5) make improvements in seasonal precipitation and temperature, subseasonal precipitation and temperature, and flood water prediction; and

(6) continue ongoing research and monitoring activities relating to floods, including research activities relating to—

(A) the prediction, length, severity, and impacts of floods and improvement of the accuracy, timing, and specificity of flash flood warnings;

(B) the role of extreme weather events and climate variability in floods; and

(C) how water travels over and through surfaces.

### (c) Partnerships

The Administrator, through the National Integrated Flood Information System, may—

(1) engage with the private sector to improve flood monitoring, forecasts, land and topography data, and communication, if the Administrator determines that such engagement is appropriate,

cost effective, and beneficial to the public and decision makers described in subsection

(b)(1)(E)(i);

(2) facilitate the development of 1 or more academic cooperative partnerships to assist in carrying out the functions of the National Integrated Flood Information System described in subsection (b);

(3) use and support monitoring by citizen scientists, including by developing best practices to facilitate maximum data integration, as the Administrator considers appropriate;

(4) engage with, and leverage the resources of, entities within the National Oceanic and Atmospheric Administration in existence as of December 27, 2022, such as the National Weather Service with respect to forecast and warning functions, the National Integrated Drought Information System, the Regional Climate Center, and the National Mesonet Program, to improve coordination of water monitoring, forecasting, and management; and

(5) engage with and support water monitoring by the United States Geological Survey—

(A) to improve the availability and continuity of streamflow data at critical locations through the deployment of rapid deployment gages and the flood-hardening of at-risk streamflow gauges; and

(B) to increase storm surge monitoring data through the deployment of additional storm surge sensors.

**(d) Consultation**

In developing and maintaining the National Integrated Flood Information System, the Administrator shall consult with relevant Federal, State, local, and Tribal government agencies, research institutions, and the private sector.

**(e) Cooperation from other Federal agencies**

Each Federal agency shall cooperate as appropriate with the Administrator in carrying out this section.

(Pub. L. 117–316, §3, Dec. 27, 2022, 136 Stat. 4406.)

## **§9703. Observations and modeling for total water prediction**

**(a) Partnerships**

**(1) In general**

The Administrator shall establish partnerships with 1 or more institutions of higher education (as defined in section 1001 of title 20) to evaluate observations that would improve total water prediction.

**(2) Priority observations**

In establishing partnerships under paragraph (1), the Administrator shall prioritize partnerships to evaluate observations from uncrewed aerial systems.

**(b) Maintained observations**

If the Administrator determines that incorporating additional observations improves total water prediction, the Administrator shall, to the extent practicable, continue incorporating those observations.

**(c) Modeling improvements**

The Administrator shall advance geographic coverage, resolution, skill, and efficiency of coastal oceanographic modeling, including efforts that improve the coupling of and interoperability between hydrological models and coastal ocean models.

(Pub. L. 117–316, §4, Dec. 27, 2022, 136 Stat. 4408.)



## **§9704. Service coordination hydrologists at River Forecast Centers of the National Weather Service**

### **(a) Designation of service coordination hydrologists**

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

The Director of the National Weather Service (in this section referred to as the "Director") shall designate at least 1 service coordination hydrologist at each River Forecast Center of the National Weather Service.

#### **(2) Performance by other employees**

Performance of the responsibilities outlined in this section is not limited to the service coordination hydrologist position.

### **(b) Primary role of service coordination hydrologists**

The primary role of the service coordination hydrologist shall be to carry out the responsibilities required by this section.

### **(c) Responsibilities**

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

Subject to paragraph (2), consistent with the analysis described in section 409 of the Weather Research and Forecasting Innovation Act of 2017 (Public Law 115–25; 131 Stat. 112), and in order to increase impact-based decision support services, each service coordination hydrologist designated under subsection (a) shall, with respect to hydrology—

(A) be responsible for providing service to the geographic area of responsibility covered by the River Forecast Center at which the service coordination hydrologist is employed to help ensure that users of products and services of the National Weather Service can respond effectively to improve outcomes from flood events;

(B) liaise with users of products and services of the National Weather Service, such as the public, academia, media outlets, users in the hydropower, transportation, recreation, and agricultural communities, and forestry, land, fisheries, and water management interests, to evaluate the adequacy and usefulness of the products and services of the National Weather Service;

(C) collaborate with such River Forecast Centers and Weather Forecast Offices and Federal, State, local, and Tribal government agencies as the Director considers appropriate in developing, proposing, and implementing plans to develop, modify, or tailor products and services of the National Weather Service to improve the usefulness of such products and services;

(D) engage in interagency partnerships with Federal, State, local, and Tribal government agencies to explore the use of forecast-informed reservoir operations to reduce flood risk;

(E) ensure the maintenance and accuracy of flooding call lists, appropriate office flooding policy or procedures, and other flooding information or dissemination methodologies or strategies; and

(F) work closely with Federal, State, local, and Tribal emergency and floodplain management agencies, and other agencies relating to disaster management, to ensure a planned, coordinated, and effective preparedness and response effort.

#### **(2) Other staff**

The Director may assign a responsibility set forth in paragraph (1) to such other staff as the Director considers appropriate to carry out such responsibility.

### **(d) Additional responsibilities**

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

Subject to paragraph (2), a service coordination hydrologist designated under subsection (a) may, with respect to hydrology—

- (A) work with a State agency to develop plans for promoting more effective use of products and services of the National Weather Service throughout the State;
- (B) identify priority community preparedness objectives;
- (C) develop plans to meet the objectives identified under subparagraph (B); and
- (D) conduct flooding event preparedness planning and citizen education efforts with and through various State, local, and Tribal government agencies and other disaster management-related organizations.

**(2) Other staff**

The Director may assign a responsibility set forth in paragraph (1) to such other staff as the Director considers appropriate to carry out such responsibility.

(Pub. L. 117–316, §5, Dec. 27, 2022, 136 Stat. 4408.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

Section 409 of the Weather Research and Forecasting Innovation Act of 2017, referred to in subsec. (c)(1), is section 409 of Pub. L. 115–25, title IV, Apr. 18, 2017, 131 Stat. 112, which is not classified to the Code.

**§9705. Improving National Oceanic and Atmospheric Administration  
communication of future flood risks and hazardous flash flood events**

**(a) Assessment of flash flood watches and warnings**

**(1) In general**

Not later than 2 years after December 27, 2022, the Administrator shall—

- (A) conduct an assessment of—
  - (i) the flash flood watches and warnings of the National Weather Service; and
  - (ii) the information delivery to support preparation and responses to floods; and

(B) submit to Congress a report on the findings of the Administrator with respect to the assessment required by subparagraph (A).

**(2) Elements**

The assessment required by paragraph (1)(A) shall include the following:

- (A) An evaluation of whether the watches, warnings, and information described in paragraph (1)(A) effectively—
  - (i) communicate risk to the general public;
  - (ii) inform action to prevent loss of life and property;
  - (iii) inform action to support flood preparation and response; and
  - (iv) deliver information in a manner designed to lead to appropriate action.

(B) Subject to subsection (b)(2), such recommendations as the Administrator may have for—

- (i) legislative and administrative action to improve the watches and warnings described in paragraph (1)(A)(i); and
- (ii) such research as the Administrator considers necessary to address the focus areas described in paragraph (3).

**(3) Focus areas**

The assessment required by paragraph (1)(A) shall focus on the following areas:

- (A) Ways to communicate the risks posed by hazardous flash flood events to the public that are most likely to result in informed decision making regarding the mitigation of those risks.
- (B) Ways to provide actionable geographic information to the recipient of a watch or warning for a flash flood, including partnering with emergency response agencies, as appropriate.

(C) Evaluation of information delivery to support the preparation for and response to floods.

**(4) Consultation**

In conducting the assessment required by paragraph (1)(A), the Administrator shall consult with—

- (A) individuals in the academic sector, including individuals in the field of social and behavioral sciences;
- (B) other weather services;
- (C) media outlets and other entities that distribute the watches and warnings described in paragraph (1)(A)(i);
- (D) floodplain managers and emergency planners and responders, including State, local, and Tribal emergency management agencies;
- (E) other government users of the watches and warnings described in paragraph (1)(A)(i), including the Federal Highway Administration; and
- (F) such other Federal agencies as the Administrator determines rely on watches and warnings regarding flash floods for operational decisions.

**(5) National Academy of Sciences**

The Administrator shall engage with the National Academy of Sciences, as the Administrator considers necessary and practicable, including by contracting with the National Research Council to review the scientific and technical soundness of the assessment required by paragraph (1)(A), including the recommendations under paragraph (2)(B).

**(6) Methodologies**

In conducting the assessment required by paragraph (1)(A), the Administrator shall use such methodologies as the Administrator considers are generally accepted by the weather enterprise, including social and behavioral sciences.

**(b) Improvements to flash flood watches and warnings**

**(1) In general**

Based on the assessment required by subsection (a)(1)(A), the Administrator shall make such improvements to the watches and warnings described in that subsection as the Administrator considers necessary—

- (A) to improve the communication of the risks posed by hazardous flash flood events; and
- (B) to provide actionable geographic information to the recipient of a watch or warning for a flash flood.

**(2) Requirements regarding recommendations**

In conducting the assessment required by subsection (a)(1)(A), the Administrator shall ensure that any recommendation under subsection (a)(2)(B) that the Administrator considers a major change—

- (A) is validated by social and behavioral science using a generalizable sample;
- (B) accounts for the needs of various demographics, vulnerable populations, and geographic regions;
- (C) responds to the needs of Federal, State, local, and Tribal government partners and media partners; and
- (D) accounts for necessary changes to federally operated watch and warning propagation and dissemination infrastructure and protocols.

**(c) Definitions**

In this section:

**(1) Watch; warning**

**(A) In general**

Except as provided in subparagraph (B), the terms "watch" and "warning", with respect to a

hazardous flash flood event, mean products issued by the National Oceanic and Atmospheric Administration, intended for use by the general public—

- (i) to alert the general public to the potential for or presence of the event; and
- (ii) to inform action to prevent loss of life and property.

**(B) Exclusion**

The terms "watch" and "warning" do not include technical or specialized meteorological and hydrological forecasts, outlooks, or model guidance products.

**(2) Weather enterprise**

The term "weather enterprise" has the meaning given that term in section 8501 of this title.

(Pub. L. 117–316, §6, Dec. 27, 2022, 136 Stat. 4410.)

## **§9706. Freshwater monitoring along the coast**

**(a) Data availability assessment**

The Administrator shall assess the availability of short- and long-term data on large-scale freshwater flooding into oceans, bays, and estuaries, including data on—

- (1) flow rate, including discharge;
- (2) conductivity;
- (3) oxygen concentration;
- (4) nutrient load;
- (5) water temperature; and
- (6) sediment load.

**(b) Data needs assessment**

The Administrator shall assess the need for additional data to assess and predict the effect of the flooding and freshwater discharge described in subsection (a).

**(c) Inventory of data needs**

Based on the assessments required by subsections (a) and (b), the Administrator shall create an inventory of data needs with respect to the flooding and freshwater discharge described in subsections (a) and (b).

**(d) Planning**

In planning for the collection of additional data necessary for ecosystem-based modeling of the effect of the flooding and freshwater discharge described in subsections (a) and (b), the Administrator shall use the inventory created under subsection (c).

(Pub. L. 117–316, §7, Dec. 27, 2022, 136 Stat. 4412.)

## **§9707. Estimates of precipitation frequency in the United States**

**(a) Definitions**

In this section:

**(1) Freely Associated States**

The term "Freely Associated States" means the Republic of Palau, the Republic of the Marshall Islands, and the Federated States of Micronesia, which have each entered into a Compact of Free Association with the United States.

**(2) United States**

The term "United States" means the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Freely Associated States.

**(b) In general**

The Administrator shall establish a program, to be known as the "NOAA Precipitation Frequency Atlas of the United States", to compile, estimate, analyze, and communicate the frequency of precipitation in the United States.

**(c) Functions**

The NOAA Precipitation Frequency Atlas of the United States—

(1) shall better inform the public and provide information on—

- (A) temporal and spatial distribution of heavy precipitation;
- (B) analyses of seasonality in precipitation; and
- (C) trends in annual maximum series data; and

(2) may serve as the official source of the Federal Government on estimates of precipitation frequency and associated information with respect to the United States.

**(d) Requirements**

**(1) Coverage**

The NOAA Precipitation Frequency Atlas of the United States shall include such estimates of the frequency of precipitation in the United States as the Administrator determines appropriate.

**(2) Frequency**

Such estimates—

- (A) shall be conducted not less frequently than once every 10 years; and
- (B) may be conducted more frequently if determined appropriate by the Administrator.

**(3) Publication**

Such estimates and methodologies used to conduct such estimates shall be—

- (A) subject to an appropriate, scientific process, as determined by the Administrator; and
- (B) published on a publicly accessible website of the National Oceanic and Atmospheric Administration.

**(e) Partnerships**

The Administrator may partner with other Federal agencies, members of the private sector, academic cooperative partnerships, or nongovernment associations to assist in carrying out the functions described in subsection (c).

**(f) Consultation**

In carrying out this section, the Administrator may consult with relevant Federal, State, local, Tribal, and Territorial government agencies, research institutions, and the private sector, as the Administrator determines necessary.

**(g) Coordination**

In carrying out this section, the Administrator may coordinate with other Federal agencies.

**(h) Authorization of appropriations**

There are authorized to be appropriated to carry out this section, from amounts otherwise authorized to be appropriated to the Administrator to carry out this chapter, \$3,500,000 for each of fiscal years 2022 through 2030.

(Pub. L. 117–316, §12, Dec. 27, 2022, 136 Stat. 4413.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

This chapter, referred to in subsec. (h), was in the original "this Act", meaning Pub. L. 117–316, Dec. 27, 2022, 136 Stat. 4406, known as the Flood Level Observation, Operations, and Decision Support Act, which is

classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 9701 of this title and Tables.

## **§9708. Interagency Committee on Water Management and Infrastructure**

### **(a) Establishment**

There is established a committee, to be known as the "Interagency Committee on Water Management and Infrastructure" (in this section referred to as the "Water Policy Committee").

### **(b) Membership**

The Water Policy Committee shall be composed of the following members:

- (1) The Administrator.
- (2) The Secretary of the Interior.
- (3) The Administrator of the Environmental Protection Agency.
- (4) The Secretary of Agriculture.
- (5) The Secretary of Commerce.
- (6) The Secretary of Energy.
- (7) The Secretary of the Army.
- (8) The heads of such other agencies as the co-chairs consider appropriate.

### **(c) Co-chairs**

The Water Policy Committee shall be co-chaired by the Secretary of the Interior and the Administrator of the Environmental Protection Agency.

### **(d) Meetings**

The Water Policy Committee shall meet not less frequently than 6 times each year, at the call of the co-chairs.

### **(e) General purpose and duties**

The Water Policy Committee shall ensure that agencies and departments across the Federal Government that engage in water-related matters, including water storage and supplies, water quality and restoration activities, water infrastructure, transportation on United States rivers and inland waterways, and water forecasting, work together where such agencies and departments have joint or overlapping responsibilities to—

- (1) improve interagency coordination among Federal agencies and departments on water resource management and water infrastructure issues;
- (2) coordinate existing water-related Federal task forces, working groups, and other formal cross-agency initiatives, as appropriate;
- (3) prioritize managing the water resources of the United States and promoting resilience of the water-related infrastructure of the United States, including—
  - (A) increasing water storage, water supply reliability, and drought resiliency;
  - (B) improving water quality, source water protection, and nutrient management;
  - (C) promoting restoration activities;
  - (D) improving water systems, including with respect to drinking water, desalination, water reuse, wastewater, and flood control; and
  - (E) improving water data management, research, modeling, and forecasting;
- (4) improve interagency coordination of data management, access, modeling, and visualization with respect to water-related matters;
- (5) promote integrated planning for Federal investments in water-related infrastructure to enhance coordination and protect taxpayer investment; and
- (6) support workforce development and efforts to recruit, train, and retain professionals to operate and maintain essential drinking water, wastewater, flood control, hydropower, water delivery, and water storage facilities in the United States.

**(f) Cross-agency priority research needs**

Not later than 1 year after December 27, 2022, the Water Policy Committee shall develop and submit to Congress a list of research needs that includes needs for cross-agency research and coordination.

(Pub. L. 117–316, §13, Dec. 27, 2022, 136 Stat. 4414.)

**§9709. National Weather Service hydrologic research fellowship program**

**(a) Definitions**

In this section:

**(1) Assistant Administrator**

The term "Assistant Administrator" means the Assistant Administrator for Weather Services of the National Oceanic and Atmospheric Administration.

**(2) Decision support services**

The term "decision support services" means information, including data and refined products, that supports water resources-related decision-making processes.

**(3) Institution of higher education**

The term "institution of higher education" has the meaning given that term in section 1001 of title 20.

**(4) NOAA line offices**

The term "NOAA line offices" means the following offices of the National Oceanic and Atmospheric Administration:

- (A) The National Ocean Service.
- (B) The National Environmental Satellite, Data, and Information Service.
- (C) The National Marine Fisheries Service.
- (D) The Office of Oceanic and Atmospheric Research.
- (E) The Office of Marine and Aviation Operations.

**(b) Hydrologic research fellowship program**

**(1) Establishment**

The Administrator shall establish a hydrologic research fellowship program (in this section referred to as the "program") for qualified individuals.

**(2) Qualified individual**

For purposes of this section, a qualified individual is an individual who is—

- (A) a citizen of the United States; and
- (B) enrolled in a research-based graduate program, at an institution of higher education, in a field that advances the research priorities developed by the Assistant Administrator under paragraph (7), such as—
  - (i) hydrology;
  - (ii) earth sciences;
  - (iii) atmospheric sciences;
  - (iv) computer sciences;
  - (v) engineering;
  - (vi) environmental sciences;
  - (vii) geosciences;
  - (viii) urban planning; or
  - (ix) related social sciences.

**(3) Award guidelines**

Fellowships under the program shall be awarded pursuant to guidelines established by the Assistant Administrator.

**(4) Selection preference**

In selecting qualified individuals for participation in the program, the Assistant Administrator shall give preference to applicants from historically Black colleges and universities and minority-serving institutions.

**(5) Placement**

The program shall support the placement of qualified individuals in positions within the executive branch of the Federal Government where such individuals can address and advance the research priorities developed by the Assistant Administrator under paragraph (7).

**(6) Fellowship term**

A fellowship under the program shall be for a period of up to 2 years.

**(7) Fellowship research priorities**

The Assistant Administrator, in consultation with representatives from the NOAA line offices, the United States Geological Survey, the Federal Emergency Management Agency, and the Army Corps of Engineers, as appropriate, shall develop and publish priorities for the conduct of research by fellows, which may include the following:

(A) Advance the collaborative development of a flexible community-based water resources modeling system.

(B) Apply artificial intelligence and machine learning capabilities to advance existing hydrologic modeling capabilities.

(C) Support the evolution and integration of hydrologic modeling within an Earth Systems Modeling Framework.

(D) Improve visualizations of hydrologic model outputs.

(E) Advance the state of coupled freshwater and salt water modeling and forecasting capabilities.

(F) Advance understanding and process representation of water quality parameters.

(G) Advance the assimilation of in-situ and remotely sensed observations and data.

(H) Support the integration of social science to advance decision support services.

(I) Develop methods to study groundwater sustainability and estimate the efficiency of recharge management.

**(c) Direct hiring**

**(1) Authority**

During fiscal year 2022 and any fiscal year thereafter, the head of any Federal agency may appoint, without regard to the provisions of subchapter I of chapter 33 of title 5, other than sections 3303 and 3328 of that title, to a position with the Federal agency a recipient of a fellowship under the program who—

(A) earned a degree from a program described in subsection (b)(2)(B);

(B) successfully fulfilled the requirements of the fellowship within the executive branch of the Federal Government; and

(C) meets qualification standards established by the Office of Personnel Management.

**(2) Exercise of authority**

The direct hire authority provided by this subsection shall be exercised with respect to an individual described in paragraph (1) not later than 2 years after the date on which the individual completed the fellowship under the program.

(Pub. L. 117–316, §14, Dec. 27, 2022, 136 Stat. 4415.)

**§9710. Identification and support of consistent, Federal set of forward-looking,**



## **long-term meteorological information**

### **(a) Definitions**

In this section:

#### **(1) Extreme weather**

The term "extreme weather" includes observed or anticipated severe and unseasonable atmospheric conditions, including drought, heavy precipitation, hurricanes, tornadoes and other windstorms (including derechos), large hail, extreme heat, extreme cold, flooding, sustained temperatures or precipitation that deviate substantially from historical averages, and any other weather event that the Administrator determines qualifies as extreme weather.

#### **(2) Long-term**

The term "long-term" shall have such meaning as the Director of the National Institute of Standards and Technology, in consultation with the Administrator, considers appropriate for purposes of this section.

#### **(3) Other environmental trends**

The term "other environmental trends" means wildfires, coastal flooding, inland flooding, land subsidence, rising sea levels, and any other challenges relating to changes in environmental systems over time that the Administrator determines qualify as environmental challenges other than extreme weather.

### **(b) Identification and support of consistent, Federal set of forward-looking, long-term meteorological information**

The Administrator shall identify, and support research that enables, a consistent, Federal set of forward-looking, long-term meteorological information that models future extreme weather events, other environmental trends, projections, and up-to-date observations, including mesoscale information as determined appropriate by the Administrator.

(Pub. L. 117–316, §15, Dec. 27, 2022, 136 Stat. 4417.)

## **§9711. Gap analysis on availability of snow-related data to assess and predict flood and flood impacts**

### **(a) In general**

The Administrator, in consultation with the Department of Agriculture, the Department of the Interior, and the Army Corps of Engineers, shall conduct an analysis of gaps in the availability of snow-related data to assess and predict floods and flood impacts, including data on the following:

- (1) Snow water equivalent.
- (2) Snow depth.
- (3) Snowpack temperature.
- (4) Snow and mixed-phase precipitation.
- (5) Snow melt.
- (6) Rain-snow line.

### **(b) Report**

Not later than 180 days after December 27, 2022, the Administrator shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives a report on—

- (1) the findings of the gap analysis required by subsection (a); and
- (2) opportunities for additional collaboration among Federal agencies to collect snow-related data to better assess and predict floods and flood impacts.

(Pub. L. 117–316, §16, Dec. 27, 2022, 136 Stat. 4417.)

## **§9712. Availability to the public of flood-related data**

### **(a) In general**

The Administrator shall make flood-related data available to the public on the website of the National Oceanic and Atmospheric Administration.

### **(b) Cost**

The Administrator may make the data under subsection (a) freely accessible or available at a cost that does not exceed the cost of preparing the data.

(Pub. L. 117–316, §17, Dec. 27, 2022, 136 Stat. 4418.)

## **CHAPTER 122—TRAVEL AND TOURISM**

Sec.

- 9801. Defined term.
- 9802. Purposes.
- 9803. Responsibilities of the Assistant Secretary of Commerce for Travel and Tourism.
- 9804. Travel and tourism strategy.
- 9805. Data on domestic travel and tourism.

### **§9801. Defined term**

In this title,<sup>1</sup> the term "COVID–19 public health emergency"—

(1) means the public health emergency first declared on January 31, 2020, by the Secretary of Health and Human Services under section 247d of title 42 with respect to COVID–19; and

(2) includes any renewal of such declaration pursuant to such section 247d of title 42.

(Pub. L. 117–328, div. BB, title VI, §600, Dec. 29, 2022, 136 Stat. 5566.)

### **EDITORIAL NOTES**

#### **REFERENCES IN TEXT**

This title, referred to in text, is title VI of div. BB of Pub. L. 117–328, Dec. 29, 2022, 136 Stat. 5566. Section 600 and subtitle A (§§601–609) of title VI enacted this chapter, amended section 1546 of this title, enacted provisions set out as notes under this section and section 9802 of this title, amended provisions set out as a note under section 2171 of Title 19, Customs Duties, and amended Reorg. Plan No. 3 of 1979, set out in the Appendix to Title 5, Government Organization and Employees. Subtitle B (§611) of title VI is not classified to the Code. For complete classification of title VI to the Code, see Tables.

### **STATUTORY NOTES AND RELATED SUBSIDIARIES**

#### **SHORT TITLE OF 2022 AMENDMENT**

Pub. L. 117–328, div. BB, title VI, §601, Dec. 29, 2022, 136 Stat. 5566, provided that: "This subtitle [subtitle A (§§601–609) of title VI of div. BB of Pub. L. 117–328, enacting sections 9802 to 9805 of this title, amending section 1546 of this title, enacting provisions set out as notes under this section and section 9802 of this title, amending provisions set out as notes under section 2171 of Title 19, Customs Duties, and amended Reorg. Plan No. 3 of 1979, set out in the Appendix to Title 5, Government Organization and Employees] may be cited as the 'Visit America Act'."

#### **COMPLETION OF PROCEEDING**

Pub. L. 117–328, div. BB, title VI, §609, Dec. 29, 2022, 136 Stat. 5570, provided that: "If the Secretary of Commerce, before the date of the enactment of this Act [Dec. 29, 2022], has taken any action that, in whole or

in part, implements this title [see References in Text note above] or the amendments made by this title, the Secretary is not required to revisit such action to the extent such action is consistent with this title and the amendments made by this title."

<sup>1</sup> [See References in Text note below.](#)

## **§9802. Purposes**

The purposes of this subtitle are—

(1) to support the travel and tourism industry, which produces economic impacts that are vital to our national economy; and

(2) to establish national goals for international visitors to the United States, including—

(A) recommendations for achieving such goals and timelines for implementing such recommendations;

(B) coordination between Federal and State agencies;

(C) the resources needed by each Government agency to achieve such goals; and

(D) the number of international visitors and the value of national travel exports.

(Pub. L. 117–328, div. BB, title VI, §602, Dec. 29, 2022, 136 Stat. 5566.)

### **EDITORIAL NOTES**

#### **REFERENCES IN TEXT**

This subtitle, referred to in text, is subtitle A (§§601–609) of title VI of div. BB of Pub. L. 117–328, Dec. 29, 2022, 136 Stat. 5566, which enacted sections 9802 to 9805 of this title, amended section 1546 of this title, enacted provisions set out as notes under this section and section 9801 of this title, and amended provisions set out as a note under section 2171 of Title 19, Customs Duties. For complete classification of this title to the Code, see Short Title of 2022 Amendment note set out under section 9801 of this title and Tables.

### **STATUTORY NOTES AND RELATED SUBSIDIARIES**

#### **SENSE OF CONGRESS**

Pub. L. 117–328, div. BB, title VI, §603, Dec. 29, 2022, 136 Stat. 5566, provided that: "It is the sense of Congress that—

"(1) setting a national goal for the number of international visitors to the United States is vital for aligning Federal tourism policy to support American jobs and economic growth;

"(2) setting a national goal for travel exports is vital for aligning Federal tourism policy to support American jobs, increase travel exports, and improve our Nation's balance of trade;

"(3) the travel industry is an essential part of the United States services exports with respect to business, education, medical, and leisure travel;

"(4) the promotion of travel and visitation by the Corporation for Travel Promotion (doing business as 'Brand USA') is vital to increasing visitation and articulating the visitation laws of the United States; and

"(5) there is an urgent need for a coordinated travel and tourism industry response and strategy to respond to the current state of such industry and future unforeseen circumstances that may impact the travel and tourism industry."

## **§9803. Responsibilities of the Assistant Secretary of Commerce for Travel and Tourism**

### **(a) Visitation goals**

The Assistant Secretary of Commerce for Travel and Tourism (referred to in this section as the "Assistant Secretary") shall—

(1) after consultation with the travel and tourism industry, work with the Travel Promotion

Committee and the United States Travel and Tourism Advisory Board to establish an annual goal, consistent with the goals of the travel and tourism strategy developed pursuant to section 9804(1) of this title, for—

- (A) the number of international visitors to the United States; and
- (B) the value of travel and tourism commerce;

(2) develop recommendations for achieving the annual goals established pursuant to paragraph (1);

(3) ensure that travel and tourism policy is developed in consultation with—

- (A) the Tourism Policy Council;
- (B) the Secretary of State;
- (C) the Secretary of Homeland Security;
- (D) the Corporation for Travel Promotion;
- (E) the United States Travel and Tourism Advisory Board; and
- (F) travel and tourism industry representatives, including public and private destination marketing organizations, travel and tourism suppliers, gig economy representatives, and labor representatives from these industries;

(4) establish short, medium, and long-term timelines for implementing the recommendations developed pursuant to paragraph (2);

(5) conduct Federal agency needs assessments, in consultation with the Office of Management and Budget and other relevant Federal agencies, to identify the resources, statutory or regulatory changes, and private sector engagement needed to achieve the annual visitation goals; and

(6) provide assessments and recommendations to—

- (A) the Committee on Commerce, Science, and Transportation of the Senate;
- (B) the Committee on Energy and Commerce of the House of Representatives; and
- (C) the public through a publicly accessible website.

**(b) Domestic travel and tourism**

The Assistant Secretary, to the extent feasible, shall—

(1) evaluate, on an ongoing basis, domestic policy options for supporting competitiveness with respect to the strengths, weaknesses, and growth of the domestic travel industry;

(2) develop recommendations and goals to support and enhance domestic tourism, separated by business and leisure; and

(3) engage public and private stakeholders to support domestic tourism.

**(c) Workforce**

The Assistant Secretary shall—

(1) consult with the Secretary of Labor to develop strategies and best practices for improving the timeliness and reliability of travel and tourism workforce data;

(2) work with the Secretary of Labor and the Bureau of Economic Analysis to improve travel and tourism industry data;

(3) provide recommendations for policy enhancements and efficiencies; and

(4) provide policy recommendations regarding the gig economy as it relates to travel and tourism.

**(d) Facilitation of international business travel**

The Assistant Secretary, in coordination with relevant Federal agencies, shall strive to increase and facilitate international business travel to the United States and ensure competitiveness by—

(1) facilitating large meetings, incentives, conferences, and exhibitions in the United States;

(2) emphasizing rural and other destinations in the United States that are rich in cultural heritage or ecological tourism, among other uniquely American destinations, as locations for hosting international meetings, incentives, conferences, and exhibitions; and

(3) facilitating sports and recreation events and activities in the United States.

**(e) Recovery strategies**

**(1) In general**

Not later than 1 year after amounts are appropriated to the Department of Commerce to accomplish the purposes of this section, the Assistant Secretary, in consultation with the entities referred to in subsection (a)(3), shall develop recovery strategies for the travel and tourism industry in response to the economic impacts of the COVID–19 pandemic and in anticipation of other unpredictable catastrophic events that would significantly affect the travel and tourism industry, such as hurricanes, floods, tsunamis, tornadoes, wildfires, terrorist attacks, and pandemics.

**(2) Cost-benefit analysis**

In developing the recovery strategies under paragraph (1), the Assistant Secretary shall conduct cost-benefit analyses that take into account the health and economic effects of public health mitigation measures on the travel and tourism industry.

**(f) Reporting requirements**

**(1) Assistant Secretary**

The Assistant Secretary, subject to the availability of appropriations, shall produce an annual forecasting report on the travel and tourism industry, which shall include current and anticipated—

- (A) domestic employment needs;
- (B) international inbound volume and spending, taking into account the lasting effects of the COVID–19 public health emergency and the impact of the recovery strategy implemented pursuant to subsection (e)(1); and
- (C) domestic volume and spending, including Federal and State public land travel and tourism data.

**(2) Bureau of Economic Analysis**

The Director of the Bureau of Economic Analysis, subject to the availability of appropriations and to the extent feasible, should make quarterly updates to the Travel and Tourism Satellite Accounts, including—

- (A) State-level travel and tourism spending data;
- (B) travel and tourism workforce data for full-time and part-time employment; and
- (C) Federal and State public lands outdoor recreational activity and tourism spending data.

**(3) National Travel and Tourism Office**

The Director of the National Travel and Tourism Office—

(A) in partnership with the Bureau of Economic Analysis and other relevant Federal agencies, shall provide a monthly report on international arrival and spending data to—

- (i) the Travel and Tourism Advisory Board; and
- (ii) the public through a publicly accessible website; and

(B) shall include questions in the Survey of International Air Travelers regarding wait-times, visits to public lands, and State data, to the extent applicable.

(Pub. L. 117–328, div. BB, title VI, §605, Dec. 29, 2022, 136 Stat. 5567.)

**§9804. Travel and tourism strategy**

Not less frequently than once every 10 years, the Secretary of Commerce, in consultation with the United States Travel and Tourism Advisory Board, the Tourism Policy Council, the Secretary of State, and the Secretary of Homeland Security, shall develop and submit to Congress a 10-year travel and tourism strategy, which shall include—

- (1) the establishment of goals with respect to the number of annual international visitors to the United States and the annual amount of travel and tourism commerce in the United States during

such 10-year period;

(2) the resources needed to achieve the goals established pursuant to paragraph (1); and

(3) recommendations for statutory or regulatory changes that would be necessary to achieve such goals.

(Pub. L. 117–328, div. BB, title VI, §606, Dec. 29, 2022, 136 Stat. 5569.)

## **§9805. Data on domestic travel and tourism**

The Assistant Secretary of Commerce for Travel and Tourism, subject to the availability of appropriations, shall collect and make public aggregate data on domestic travel and tourism trends.

(Pub. L. 117–328, div. BB, title VI, §608, Dec. 29, 2022, 136 Stat. 5570.)

## **CHAPTER 123—PROTECTING AMERICANS' DATA FROM FOREIGN ADVERSARIES**

Sec.

9901. Prohibition on transfer of personally identifiable sensitive data of United States individuals to foreign adversaries.

### **§9901. Prohibition on transfer of personally identifiable sensitive data of United States individuals to foreign adversaries**

#### **(a) Prohibition**

It shall be unlawful for a data broker to sell, license, rent, trade, transfer, release, disclose, provide access to, or otherwise make available personally identifiable sensitive data of a United States individual to—

- (1) any foreign adversary country; or
- (2) any entity that is controlled by a foreign adversary.

#### **(b) Enforcement by Federal Trade Commission**

##### **(1) Unfair or deceptive acts or practices**

A violation of this section shall be treated as a violation of a rule defining an unfair or a deceptive act or practice under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

##### **(2) Powers of Commission**

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

The Commission shall enforce this section in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this section.

###### **(B) Privileges and immunities**

Any person who violates this section shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act.

##### **(3) Authority preserved**

Nothing in this section may be construed to limit the authority of the Commission under any other provision of law.

#### **(c) Definitions**

In this section:

**(1) Commission**

The term "Commission" means the Federal Trade Commission.

**(2) Controlled by a foreign adversary**

The term "controlled by a foreign adversary" means, with respect to an individual or entity, that such individual or entity is—

(A) a foreign person that is domiciled in, is headquartered in, has its principal place of business in, or is organized under the laws of a foreign adversary country;

(B) an entity with respect to which a foreign person or combination of foreign persons described in subparagraph (A) directly or indirectly own at least a 20 percent stake; or

(C) a person subject to the direction or control of a foreign person or entity described in subparagraph (A) or (B).

**(3) Data broker**

**(A) In general**

The term "data broker" means an entity that, for valuable consideration, sells, licenses, rents, trades, transfers, releases, discloses, provides access to, or otherwise makes available data of United States individuals that the entity did not collect directly from such individuals to another entity that is not acting as a service provider.

**(B) Exclusion**

The term "data broker" does not include an entity to the extent such entity—

(i) is transmitting data of a United States individual, including communications of such an individual, at the request or direction of such individual;

(ii) is providing, maintaining, or offering a product or service with respect to which personally identifiable sensitive data, or access to such data, is not the product or service;

(iii) is reporting or publishing news or information that concerns local, national, or international events or other matters of public interest;

(iv) is reporting, publishing, or otherwise making available news or information that is available to the general public—

(I) including information from—

(aa) a book, magazine, telephone book, or online directory;

(bb) a motion picture;

(cc) a television, internet, or radio program;

(dd) the news media; or

(ee) an internet site that is available to the general public on an unrestricted basis; and

(II) not including an obscene visual depiction (as such term is used in section 1460 of title 18); or

(v) is acting as a service provider.

**(4) Foreign adversary country**

The term "foreign adversary country" means a country specified in section 4872(d)(2) of title 10.

**(5) Personally identifiable sensitive data**

The term "personally identifiable sensitive data" means any sensitive data that identifies or is linked or reasonably linkable, alone or in combination with other data, to an individual or a device that identifies or is linked or reasonably linkable to an individual.

**(6) Precise geolocation information**

The term "precise geolocation information" means information that—

(A) is derived from a device or technology of an individual; and

(B) reveals the past or present physical location of an individual or device that identifies or is

linked or reasonably linkable to 1 or more individuals, with sufficient precision to identify street level location information of an individual or device or the location of an individual or device within a range of 1,850 feet or less.

**(7) Sensitive data**

The term "sensitive data" includes the following:

(A) A government-issued identifier, such as a Social Security number, passport number, or driver's license number.

(B) Any information that describes or reveals the past, present, or future physical health, mental health, disability, diagnosis, or healthcare condition or treatment of an individual.

(C) A financial account number, debit card number, credit card number, or information that describes or reveals the income level or bank account balances of an individual.

(D) Biometric information.

(E) Genetic information.

(F) Precise geolocation information.

(G) An individual's private communications such as voicemails, emails, texts, direct messages, mail, voice communications, and video communications, or information identifying the parties to such communications or pertaining to the transmission of such communications, including telephone numbers called, telephone numbers from which calls were placed, the time calls were made, call duration, and location information of the parties to the call.

(H) Account or device log-in credentials, or security or access codes for an account or device.

(I) Information identifying the sexual behavior of an individual.

(J) Calendar information, address book information, phone or text logs, photos, audio recordings, or videos, maintained for private use by an individual, regardless of whether such information is stored on the individual's device or is accessible from that device and is backed up in a separate location.

(K) A photograph, film, video recording, or other similar medium that shows the naked or undergarment-clad private area of an individual.

(L) Information revealing the video content requested or selected by an individual.

(M) Information about an individual under the age of 17.

(N) An individual's race, color, ethnicity, or religion.

(O) Information identifying an individual's online activities over time and across websites or online services.

(P) Information that reveals the status of an individual as a member of the Armed Forces.

(Q) Any other data that a data broker sells, licenses, rents, trades, transfers, releases, discloses, provides access to, or otherwise makes available to a foreign adversary country, or entity that is controlled by a foreign adversary, for the purpose of identifying the types of data listed in subparagraphs (A) through (P).

**(8) Service provider**

The term "service provider" means an entity that—

(A) collects, processes, or transfers data on behalf of, and at the direction of—

(i) an individual or entity that is not a foreign adversary country or controlled by a foreign adversary; or

(ii) a Federal, State, Tribal, territorial, or local government entity; and

(B) receives data from or on behalf of an individual or entity described in subparagraph (A)(i) or a Federal, State, Tribal, territorial, or local government entity.

**(9) United States individual**

The term "United States individual" means a natural person residing in the United States.

**(d) Effective date**

This section shall take effect on the date that is 60 days after April 24, 2024.

(Pub. L. 118–50, div. I, §2, Apr. 24, 2024, 138 Stat. 960.)



## EDITORIAL NOTES

### REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsec. (b)(2), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### SHORT TITLE

Pub. L. 118–50, div. I, §1, Apr. 24, 2024, 138 Stat. 960, provided that: "This division [enacting this chapter] may be cited as the 'Protecting Americans' Data from Foreign Adversaries Act of 2024'."

### PROTECTING AMERICANS FROM FOREIGN ADVERSARY CONTROLLED APPLICATIONS

Pub. L. 118–50, div. H, Apr. 24, 2024, 138 Stat. 955, provided that:

"SEC. 1. SHORT TITLE.

"This division may be cited as the 'Protecting Americans from Foreign Adversary Controlled Applications Act'.

"SEC. 2. PROHIBITION OF FOREIGN ADVERSARY CONTROLLED APPLICATIONS.

"(a) IN GENERAL.—

"(1) PROHIBITION OF FOREIGN ADVERSARY CONTROLLED APPLICATIONS.—It shall be unlawful for an entity to distribute, maintain, or update (or enable the distribution, maintenance, or updating of) a foreign adversary controlled application by carrying out, within the land or maritime borders of the United States, any of the following:

"(A) Providing services to distribute, maintain, or update such foreign adversary controlled application (including any source code of such application) by means of a marketplace (including an online mobile application store) through which users within the land or maritime borders of the United States may access, maintain, or update such application.

"(B) Providing internet hosting services to enable the distribution, maintenance, or updating of such foreign adversary controlled application for users within the land or maritime borders of the United States.

"(2) APPLICABILITY.—Subject to paragraph (3), this subsection shall apply—

"(A) in the case of an application that satisfies the definition of a foreign adversary controlled application pursuant to subsection (g)(3)(A), beginning on the date that is 270 days after the date of the enactment of this division [Apr. 24, 2024]; and

"(B) in the case of an application that satisfies the definition of a foreign adversary controlled application pursuant to subsection (g)(3)(B), beginning on the date that is 270 days after the date of the relevant determination of the President under such subsection.

"(3) EXTENSION.—With respect to a foreign adversary controlled application, the President may grant a 1-time extension of not more than 90 days with respect to the date on which this subsection would otherwise apply to such application pursuant to paragraph (2), if the President certifies to Congress that—

"(A) a path to executing a qualified divestiture has been identified with respect to such application;

"(B) evidence of significant progress toward executing such qualified divestiture has been produced with respect to such application; and

"(C) there are in place the relevant binding legal agreements to enable execution of such qualified divestiture during the period of such extension.

"(b) DATA AND INFORMATION PORTABILITY TO ALTERNATIVE APPLICATIONS.—Before the date on which a prohibition under subsection (a) applies to a foreign adversary controlled application, the entity that owns or controls such application shall provide, upon request by a user of such application within the land or maritime borders of United States, to such user all the available data related to the account of such user with respect to such application. Such data shall be provided in a machine readable format and shall include any data maintained by such application with respect to the account of such user, including content (including posts, photos, and videos) and all other account information.

"(c) EXEMPTIONS.—

"(1) EXEMPTIONS FOR QUALIFIED DIVESTITURES.—Subsection (a)—

"(A) does not apply to a foreign adversary controlled application with respect to which a qualified divestiture is executed before the date on which a prohibition under subsection (a) would begin to apply to such application; and

"(B) shall cease to apply in the case of a foreign adversary controlled application with respect to which a qualified divestiture is executed after the date on which a prohibition under subsection (a) applies to such application.

"(2) EXEMPTIONS FOR CERTAIN NECESSARY SERVICES.—Subsections (a) and (b) do not apply to services provided with respect to a foreign adversary controlled application that are necessary for an entity to attain compliance with such subsections.

"(d) ENFORCEMENT.—

"(1) CIVIL PENALTIES.—

"(A) FOREIGN ADVERSARY CONTROLLED APPLICATION VIOLATIONS.—An entity that violates subsection (a) shall be subject to pay a civil penalty in an amount not to exceed the amount that results from multiplying \$5,000 by the number of users within the land or maritime borders of the United States determined to have accessed, maintained, or updated a foreign adversary controlled application as a result of such violation.

"(B) DATA AND INFORMATION VIOLATIONS.—An entity that violates subsection (b) shall be subject to pay a civil penalty in an amount not to exceed the amount that results from multiplying \$500 by the number of users within the land or maritime borders of the United States affected by such violation.

"(2) ACTIONS BY ATTORNEY GENERAL.—The Attorney General—

"(A) shall conduct investigations related to potential violations of subsection (a) or (b), and, if such an investigation results in a determination that a violation has occurred, the Attorney General shall pursue enforcement under paragraph (1); and

"(B) may bring an action in an appropriate district court of the United States for appropriate relief, including civil penalties under paragraph (1) or declaratory and injunctive relief.

"(e) SEVERABILITY.—

"(1) IN GENERAL.—If any provision of this section or the application of this section to any person or circumstance is held invalid, the invalidity shall not affect the other provisions or applications of this section that can be given effect without the invalid provision or application.

"(2) SUBSEQUENT DETERMINATIONS.—If the application of any provision of this section is held invalid with respect to a foreign adversary controlled application that satisfies the definition of such term pursuant to subsection (g)(3)(A), such invalidity shall not affect or preclude the application of the same provision of this section to such foreign adversary controlled application by means of a subsequent determination pursuant to subsection (g)(3)(B).

"(f) RULE OF CONSTRUCTION.—Nothing in this division may be construed—

"(1) to authorize the Attorney General to pursue enforcement, under this section, other than enforcement of subsection (a) or (b);

"(2) to authorize the Attorney General to pursue enforcement, under this section, against an individual user of a foreign adversary controlled application; or

"(3) except as expressly provided herein, to alter or affect any other authority provided by or established under another provision of Federal law.

"(g) DEFINITIONS.—In this section:

"(1) CONTROLLED BY A FOREIGN ADVERSARY.—The term 'controlled by a foreign adversary' means, with respect to a covered company or other entity, that such company or other entity is—

"(A) a foreign person that is domiciled in, is headquartered in, has its principal place of business in, or is organized under the laws of a foreign adversary country;

"(B) an entity with respect to which a foreign person or combination of foreign persons described in subparagraph (A) directly or indirectly own at least a 20 percent stake; or

"(C) a person subject to the direction or control of a foreign person or entity described in subparagraph (A) or (B).

"(2) COVERED COMPANY.—

"(A) IN GENERAL.—The term 'covered company' means an entity that operates, directly or indirectly (including through a parent company, subsidiary, or affiliate), a website, desktop application, mobile application, or augmented or immersive technology application that—

"(i) permits a user to create an account or profile to generate, share, and view text, images, videos, real-time communications, or similar content;

"(ii) has more than 1,000,000 monthly active users with respect to at least 2 of the 3 months preceding the date on which a relevant determination of the President is made pursuant to paragraph (3)(B);

"(iii) enables 1 or more users to generate or distribute content that can be viewed by other users of the website, desktop application, mobile application, or augmented or immersive technology application; and

"(iv) enables 1 or more users to view content generated by other users of the website, desktop application, mobile application, or augmented or immersive technology application.

"(B) EXCLUSION.—The term 'covered company' does not include an entity that operates a website, desktop application, mobile application, or augmented or immersive technology application whose primary purpose is to allow users to post product reviews, business reviews, or travel information and reviews.

"(3) FOREIGN ADVERSARY CONTROLLED APPLICATION.—The term 'foreign adversary controlled application' means a website, desktop application, mobile application, or augmented or immersive technology application that is operated, directly or indirectly (including through a parent company, subsidiary, or affiliate), by—

"(A) any of—

"(i) ByteDance, Ltd.;

"(ii) TikTok;

"(iii) a subsidiary of or a successor to an entity identified in clause (i) or (ii) that is controlled by a foreign adversary; or

"(iv) an entity owned or controlled, directly or indirectly, by an entity identified in clause (i), (ii), or (iii); or

"(B) a covered company that—

"(i) is controlled by a foreign adversary; and

"(ii) that is determined by the President to present a significant threat to the national security of the United States following the issuance of—

"(I) a public notice proposing such determination; and

"(II) a public report to Congress, submitted not less than 30 days before such determination, describing the specific national security concern involved and containing a classified annex and a description of what assets would need to be divested to execute a qualified divestiture.

"(4) FOREIGN ADVERSARY COUNTRY.—The term 'foreign adversary country' means a country specified in section 4872(d)(2) of title 10, United States Code.

"(5) INTERNET HOSTING SERVICE.—The term 'internet hosting service' means a service through which storage and computing resources are provided to an individual or organization for the accommodation and maintenance of 1 or more websites or online services, and which may include file hosting, domain name server hosting, cloud hosting, and virtual private server hosting.

"(6) QUALIFIED DIVESTITURE.—The term 'qualified divestiture' means a divestiture or similar transaction that—

"(A) the President determines, through an interagency process, would result in the relevant foreign adversary controlled application no longer being controlled by a foreign adversary; and

"(B) the President determines, through an interagency process, precludes the establishment or maintenance of any operational relationship between the United States operations of the relevant foreign adversary controlled application and any formerly affiliated entities that are controlled by a foreign adversary, including any cooperation with respect to the operation of a content recommendation algorithm or an agreement with respect to data sharing.

"(7) SOURCE CODE.—The term 'source code' means the combination of text and other characters comprising the content, both viewable and nonviewable, of a software application, including any publishing language, programming language, protocol, or functional content, as well as any successor languages or protocols.

"(8) UNITED STATES.—The term 'United States' includes the territories of the United States.

### "SEC. 3. JUDICIAL REVIEW.

"(a) RIGHT OF ACTION.—A petition for review challenging this division or any action, finding, or determination under this division may be filed only in the United States Court of Appeals for the District of Columbia Circuit.

"(b) EXCLUSIVE JURISDICTION.—The United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction over any challenge to this division or any action, finding, or determination under this division.

"(c) STATUTE OF LIMITATIONS.—A challenge may only be brought—

"(1) in the case of a challenge to this division, not later than 165 days after the date of the enactment of this division [Apr. 24, 2024]; and

"(2) in the case of a challenge to any action, finding, or determination under this division, not later than 90 days after the date of such action, finding, or determination."