

Public Law 98-440
98th Congress

An Act

To amend the Securities Exchange Act of 1934 with respect to the treatment of mortgage backed securities, to increase the authority of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, and for other purposes.

Oct. 3, 1984
[S. 2040]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Secondary Mortgage Market Enhancement Act of 1984".

Secondary
Mortgage
Market
Enhancement
Act of 1984.
12 USC 1701
note.
Banks and
banking.
Real property.
Personal
property.

TITLE I—SECURITIES LAWS AMENDMENTS

MORTGAGE RELATED SECURITY

SEC. 101. Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) is amended by adding the following new paragraph at the end thereof:

"(41) The term 'mortgage related security' means a security that is rated in one of the two highest rating categories by at least one nationally recognized statistical rating organization, and either:

"(A) represents ownership of one or more promissory notes or certificates of interest or participation in such notes (including any rights designed to assure servicing of, or the receipt or timeliness of receipt by the holders of such notes, certificates, or participations of amounts payable under, such notes, certificates, or participations), which notes:

"(i) are directly secured by a first lien on a single parcel of real estate, including stock allocated to a dwelling unit in a residential cooperative housing corporation, upon which is located a dwelling or mixed residential and commercial structure, or on a residential manufactured home as defined in section 603(6) of the National Manufactured Housing Construction and Safety Standards Act of 1974, whether such manufactured home is considered real or personal property under the laws of the State in which it is to be located; and

"(ii) were originated by a savings and loan association, savings bank, commercial bank, credit union, insurance company, or similar institution which is supervised and examined by a Federal or State authority, or by a mortgagee approved by the Secretary of Housing and Urban Development pursuant to sections 203 and 211 of the National Housing Act, or, where such notes involve a lien on the manufactured home, by any such institution or by any financial institution approved for insurance by the Secretary of Housing and

42 USC 5402.

12 USC 1709,
1715b.

12 USC 1703.

Urban Development pursuant to section 2 of the National Housing Act; or

“(B) is secured by one or more promissory notes or certificates of interest or participations in such notes (with or without recourse to the issuer thereof) and, by its terms, provides for payments of principal in relation to payments, or reasonable projections of payments, on notes meeting the requirements of subparagraphs (A) (i) and (ii) or certificates of interest or participations in promissory notes meeting such requirements.

For the purpose of this paragraph, the term ‘promissory note’, when used in connection with a manufactured home, shall also include a loan, advance, or credit sale as evidence by a retail installment sales contract or other instrument.”.

APPLICABILITY OF MARGIN REQUIREMENTS

SEC. 102. Section 7 of the Securities Exchange Act of 1934 (15 U.S.C. 78g) is amended by adding the following new subsection at the end thereof:

Credit.
Prohibition.

“(g) Subject to such rules and regulations as the Board of Governors of the Federal Reserve System may adopt in the public interest and for the protection of investors, no member of a national securities exchange or broker or dealer shall be deemed to have extended or maintained credit or arranged for the extension or maintenance of credit for the purpose of purchasing a security, within the meaning of this section, by reason of a bona fide agreement for delayed delivery of a mortgage related security against full payment of the purchase price thereof upon such delivery within one hundred and eighty days after the purchase, or within such shorter period as the Board of Governors of the Federal Reserve System may prescribe by rule or regulation.”.

BORROWING IN THE COURSE OF BUSINESS

Prohibition.

SEC. 103. Section 8(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78h(a)) is amended by adding the following new sentence at the end thereof: “Subject to such rules and regulations as the Board of Governors of the Federal Reserve System may adopt in the public interest and for the protection of investors, no person shall be deemed to have borrowed within the ordinary course of business, within the meaning of this subsection, by reason of a bona fide agreement for delayed delivery of a mortgage related security against full payment of the purchase price thereof upon such delivery within one hundred and eighty days after the purchase, or within such shorter period as the Board of Governors of the Federal Reserve System may prescribe by rule or regulation.”.

MORTGAGE RELATED SECURITIES AS COLLATERAL

SEC. 104. Section 11(d)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78k(d)(1)) is amended by—

- (1) inserting “(i)” between “of” and “any”; and
- (2) inserting the following immediately after “thirty-five days after such purchase”: “or (ii) any mortgage related security against full payment of the entire purchase price thereof upon such delivery within one hundred and eighty days after such

purchase, or within such shorter period as the Commission may prescribe by rule or regulation”.

INVESTMENT BY DEPOSITORY INSTITUTIONS

SEC. 105. (a) Section 5(c)(1) of the Home Owner's Loan Act of 1933 (12 U.S.C. 1464(c)(1)) is amended by adding at the end thereof the following:

“(S) MORTGAGE BACKED SECURITIES.—Investments in securities that—

“(i) are offered and sold pursuant to section 4(5) of the Securities Act of 1933 (15 U.S.C. 77d(5)); or

“(ii) are mortgage related securities (as that term is defined in section 3(a)(41) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(41))), subject to such regulations as the Board may prescribe, including regulations prescribing minimum size of the issue (at the time of initial distribution) or minimum aggregate sales prices, or both.”

Ante, p. 1689.

(b) Section 107 of the Federal Credit Union Act (12 U.S.C. 1757) is amended—

(1) by redesignating paragraph (15) as paragraph (16); and
(2) by inserting after paragraph (14) the following:

“(15) to invest in securities that—

“(A) are offered and sold pursuant to section 4(5) of the Securities Act of 1933 (15 U.S.C. 77d(5)); or

“(B) are mortgage related securities (as that term is defined in section 3(a)(41) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(41))), subject to such regulations as the Board may prescribe, including regulations prescribing minimum size of the issue (at the time of initial distribution) or minimum aggregate sales prices, or both;”

(c) Section 5136 of the Revised Statutes (12 U.S.C. 24) is amended by adding at the end of paragraph Seventh the following: “The limitations and restrictions contained in this paragraph as to an association purchasing for its own account investment securities shall not apply to securities that (A) are offered and sold pursuant to section 4(5) of the Securities Act of 1933 (15 U.S.C. 77d(5)); or (B) are mortgage related securities (as that term is defined in section 3(a)(41) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(41))), subject to such regulations as the Comptroller of the Currency may prescribe, including regulations prescribing minimum size of the issue (at the time of initial distribution) or minimum aggregate sales prices, or both.”

PREEMPTION OF STATE LAW

SEC. 106. (a)(1) Any person, trust, corporation, partnership, association, business trust, or business entity created pursuant to or existing under the laws of the United States or any State shall be authorized to purchase, hold, and invest in securities that are—

15 USC 77r-1.

(A) offered and sold pursuant to section 4(5) of the Securities Act of 1933,

(B) mortgage related securities (as that term is defined in section 3(a)(41) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(41))), or

(C) securities issued or guaranteed by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association,

to the same extent that such person, trust, corporation, partnership, association, business trust, or business entity is authorized under any applicable law to purchase, hold or invest in obligations issued by or guaranteed as to principal and interest by the United States or any agency or instrumentality thereof.

(2) Where State law limits the purchase, holding, or investment in obligations issued by the United States by such a person, trust, corporation, partnership, association, business trust, or business entity, such securities that are—

15 USC 77d.

(A) offered and sold pursuant to section 4(5) of the Securities Act of 1933,

Ante, p. 1689.

(B) mortgage related securities (as that term is defined in section 3(a)(41) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(41))), or

(C) securities issued or guaranteed by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association,

shall be considered to be obligations issued by the United States for purposes of the limitation.

Prohibitions.

(b) The provisions of subsection (a) shall not apply with respect to a particular person, trust, corporation, partnership, association, business trust, or business entity or class thereof in any State that, prior to the expiration of seven years after the date of the enactment of this Act, enacts a statute that specifically refers to this section and either prohibits or provides for a more limited authority to purchase, hold, or invest in such securities by any person, trust, corporation, partnership, association, business trust, or business entity or class thereof than is provided in subsection (a). The enactment by any State of any statute of the type described in the preceding sentence shall not affect the validity of any contractual commitment to purchase, hold, or invest that was made prior thereto and shall not require the sale or other disposition of any securities acquired prior thereto.

Exemption.

(c) Any securities that are offered and sold pursuant to section 4(5) of the Securities Act of 1933 or that are mortgage related securities (as that term is defined in section 3(a)(41) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(41))) shall be exempt from any law of any State with respect to or requiring registration or qualification of securities or real estate to the same extent as any obligation issued by or guaranteed as to principal and interest by the United States or any agency or instrumentality thereof. Any State may, prior to the expiration of seven years after the date of the enactment of this Act, enact a statute that specifically refers to this section and requires registration or qualification of any such security on terms that differ from those applicable to any obligation issued by the United States.

TITLE II—SECONDARY MORTGAGE MARKET PROGRAMS

LIMITATIONS ON PARTICIPATION AGREEMENTS

12 USC 1717.

SEC. 201. (a) The sixth sentence of section 302(b)(2) of the Federal National Mortgage Association Charter Act is amended to read as follows: "The corporation shall establish limitations governing the maximum original principal obligation of conventional mortgages

that are purchased by it; in any case in which the corporation purchases a participation interest in such a mortgage, the limitation shall be calculated with respect to the total original principal obligation of the mortgage and not merely with respect to the interest purchased by the corporation.”

(b) The fifth sentence of section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act is amended to read as follows: “The Corporation shall establish limitations governing the maximum original principal obligation of conventional mortgages that are purchased by it; in any case in which the Corporation purchases a participation interest in such a mortgage, the limitation shall be calculated with respect to the total original principal obligation of the mortgage and not merely with respect to the interest purchased by the Corporation.”

12 USC 1454.

AUTHORITY OF FEDERAL HOME LOAN MORTGAGE CORPORATION TO
PURCHASE LOANS ON MANUFACTURED HOMES

SEC. 202. (a) Section 302(d) of the Federal Home Loan Mortgage Corporation Act is amended by inserting after “located” the following: “or a manufactured home that is personal property under the laws of the State in which the manufactured home is located”.

12 USC 1451.

(b) Section 302(h) of the Federal Home Loan Mortgage Corporation Act is amended by adding at the end thereof the following new sentence: “The term ‘residential mortgage’ also includes a loan or advance of credit secured by a mortgage or other lien on a manufactured home that is the principal residence of the borrower, without regard to whether the security property is real, personal, or mixed.”.

(c) Section 302 of the Federal Home Loan Mortgage Corporation Act is amended by adding at the end thereof the following new subsection:

“(1) The term ‘mortgage insurance program’ includes, in the case of a residential mortgage secured by a manufactured home, any manufactured home lending program under title I of the National Housing Act.”.

12 USC 1702.

PURCHASE OF SECOND MORTGAGES

SEC. 203. (a) Section 302(b) of the Federal National Mortgage Association Charter Act is amended by adding at the end thereof the following new paragraph:

Loans.

12 USC 1717.

“(5)(A) The corporation is authorized to purchase, service, sell, lend on the security of, and otherwise deal in (i) until October 1, 1987, conventional mortgages that are secured by a subordinate lien against a one- to four-family residence that is the principal residence of the mortgagor; and (ii) until October 1, 1985, conventional mortgages that are secured by a subordinate lien against a property comprising five or more family dwelling units. If the corporation, pursuant to paragraphs (1) through (4), shall have purchased, serviced, sold, or otherwise dealt with any other outstanding mortgage secured by the same residence, the aggregate original amount of such other mortgage and the mortgage authorized to be purchased, serviced, sold, or otherwise dealt with under this paragraph shall not exceed the applicable limitation determined under paragraph (2).

Expiration
dates.

“(B) The corporation shall establish limitations governing the maximum original principal obligation of conventional mortgages

described in subparagraph (A). In any case in which the corporation purchases a participation interest in such a mortgage, the limitation shall be calculated with respect to the total original principal obligation of such mortgage described in subparagraph (A) and not merely with respect to the interest purchased by the corporation. Such limitations shall not exceed (i) with respect to mortgages described in subparagraph (A)(i), 50 per centum of the single-family residence mortgage limitation determined under paragraph (2); and (ii) with respect to mortgages described in subparagraph (A)(ii), the applicable limitation determined under paragraph (2).

Prohibitions.

“(C) No subordinate mortgage against a one- to four-family residence shall be purchased by the corporation if the total outstanding indebtedness secured by the property as a result of such mortgage exceeds 80 per centum of the value of such property unless (i) that portion of such total outstanding indebtedness that exceeds such 80 per centum is guaranteed or insured by a qualified insurer as determined by the corporation; (ii) the seller retains a participation of not less than 10 per centum in the mortgage; or (iii) for such period and under such circumstances as the corporation may require, the seller agrees to repurchase or replace the mortgage upon demand of the corporation in the event that the mortgage is in default. The corporation shall not issue a commitment to purchase a subordinate mortgage prior to the date the mortgage is originated, if such mortgage is eligible for purchase under the preceding sentence only by reason of compliance with the requirements of clause (ii) of such sentence.”

12 USC 1451.

(b)(1) Section 302(h) of the Federal Home Loan Mortgage Corporation Act is amended—

(A) in the first sentence, by striking out “first”; and

(B) by striking out “The maximum principal obligation” and all that follows through “associations,” and inserting in lieu thereof the following: “Such term shall also include other secured loans that are secured by a subordinate lien against a property as to which the Corporation may purchase a residential mortgage as defined under the first sentence of this subsection.”

Expiration dates.

12 USC 1454.

(2) Section 305(a) of such Act is amended by adding at the end thereof the following new paragraph:

“(4)(A) The Corporation is authorized to purchase, service, sell, lend on the security of, and otherwise deal in (i) until October 1, 1987, residential mortgages that are secured by a subordinate lien against a one- to four-family residence that is the principal residence of the mortgagor; and (ii) until October 1, 1985, residential mortgages that are secured by a subordinate lien against a property comprising five or more family dwelling units. If the Corporation shall have purchased, serviced, sold, or otherwise dealt with any other outstanding mortgage secured by the same residence, the aggregate original amount of such other mortgage and the mortgage authorized to be purchased, serviced, sold, or otherwise dealt with under this paragraph shall not exceed the applicable limitation determined under paragraph (2).

“(B) The Corporation shall establish limitations governing the maximum original principal obligation of such mortgages. In any case in which the Corporation purchases a participation interest in such a mortgage, the limitation shall be calculated with respect to the total original principal obligation of such mortgage secured by a subordinate lien and not merely with respect to the interest pur-

chased by the Corporation. Such limitations shall not exceed (i) with respect to mortgages described in subparagraph (A)(i), 50 per centum of the single-family residence mortgage limitation determined under paragraph (2); and (ii) with respect to mortgages described in subparagraph (A)(ii), the applicable limitation determined under paragraph (2).

“(C) No subordinate mortgage against a one- to four-family residence shall be purchased by the Corporation if the total outstanding indebtedness secured by the property as a result of such mortgage exceeds 80 per centum of the value of such property unless (i) that portion of such total outstanding indebtedness that exceeds such 80 per centum is guaranteed or insured by a qualified insurer as determined by the Corporation; (ii) the seller retains a participation of not less than 10 per centum in the mortgage; or (iii) for such period and under such circumstances as the Corporation may require, the seller agrees to repurchase or replace the mortgage upon demand of the Corporation in the event that the mortgage is in default. The Corporation shall not issue a commitment to purchase a subordinate mortgage prior to the date the mortgage is originated, if such mortgage is eligible for purchase under the preceding sentence only by reason of compliance with the requirements of clause (iii) of such sentence.”

Prohibitions.

AUTHORITY OF FEDERAL HOME LOAN MORTGAGE CORPORATION TO
PURCHASE STATE AGENCY INSURED MORTGAGE LOANS

SEC. 204. Section 302(i) of the Federal Home Loan Mortgage Corporation Act is amended by striking out “a State or any agency or instrumentality of either” and inserting in lieu thereof “any of its agencies or instrumentalities”.

12 USC 1451.

MULTIFAMILY MORTGAGE LOAN-TO-VALUE RATIO

SEC. 205. (a) The second sentence of section 302(b)(2) of the Federal National Mortgage Association Charter Act is amended by inserting after “mortgage” the first place it appears the following: “secured by a property comprising one- to four-family dwelling units”.

12 USC 1717.

(b) The first sentence of section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act is amended by inserting after “mortgages” the first place it appears the following: “secured by a property comprising one- to four-family dwelling units”.

12 USC 1454.

LIMITATIONS ON PURCHASE OF CONVENTIONAL MORTGAGES ON
MULTIFAMILY PROPERTIES

SEC. 206. (a) Section 302(b)(2) of the Federal National Mortgage Association Charter Act is amended by striking out the penultimate sentence and inserting in lieu thereof the following: “With respect to mortgages secured by property comprising five or more family dwelling units, such limitations shall not exceed 125 per centum of the dollar amounts set forth in section 207(c)(3) of this Act, except that such limitations may be increased by the corporation (taking into account construction costs) to not to exceed 240 per centum of such dollar amounts in any geographical area for which the Secretary of Housing and Urban Development determines under such section that cost levels require any increase in the dollar amount limitations under such section.”

Ante, p. 1692.

12 USC 1713.

- 12 USC 1454. (b) Section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act is amended by striking out the penultimate sentence and inserting in lieu thereof the following: "With respect to mortgages secured by property comprising five or more family dwelling units, such limitations shall not exceed 125 per centum of the dollar amounts set forth in section 207(c)(3) of the National Housing Act, except that such limitations may be increased by the Corporation (taking into account construction costs) to not to exceed 240 per centum of such dollar amounts in any geographical area for which the Secretary of Housing and Urban Development determines under such section that cost levels require any increase in the dollar amount limitations under such section."
- 12 USC 1713.

BOARD OF DIRECTORS OF FEDERAL NATIONAL MORTGAGE ASSOCIATION

- President of U.S.
12 USC 1723. SEC. 207. The first sentence of section 308(b) of the Federal National Mortgage Association Charter Act is amended to read as follows: "The Federal National Mortgage Association shall have a board of directors, which shall consist of eighteen persons, five of whom shall be appointed annually by the President of the United States, and the remainder of whom shall be elected annually by the common stockholders."

ANNUAL REPORT OF SECRETARY OF HOUSING AND URBAN DEVELOPMENT ON ACTIVITIES OF FEDERAL NATIONAL MORTGAGE ASSOCIATION

- 12 USC 1723a. SEC. 208. Section 309(h) of the Federal National Mortgage Association Charter Act is amended by striking out the last two sentences and inserting in lieu thereof the following: "Pursuant to the authority provided in this subsection, the Secretary shall, not later than June 30 of each year, report to the Congress on the activities of the corporation under this title."

PERIOD FOR APPROVAL OF ACTIONS OF FEDERAL NATIONAL MORTGAGE ASSOCIATION

- 12 USC 1723a. SEC. 209. Section 309 of the Federal National Mortgage Association Charter Act is amended by adding at the end thereof the following new subsection:
- Report. "(i) If the Federal National Mortgage Association submits to the Secretary of Housing and Urban Development, after the date of the enactment of the Secondary Mortgage Market Enhancement Act of 1984, a request for approval or other action under this title, the Secretary shall, not later than the expiration of the forty-five-day period following the submission of such request, approve such request or transmit to the Congress a report explaining why such request has not been approved. Such period may be extended for an additional fifteen-day period if the Secretary requests additional information from the corporation. If the Secretary fails to transmit such report to the Congress within such forty-five-day period or sixty-day period, as the case may be, the corporation may proceed as if such request had been approved."
- Ante*, p. 1689.
- Extension.

FEDERAL HOME LOAN MORTGAGE CORPORATION GUARANTEE OF
MORTGAGE-BACKED SECURITIES ISSUED BY OTHERS

SEC. 210. Section 306 of the Federal Home Loan Mortgage Corporation Act is amended by adding at the end thereof the following new subsection:

“(h) The Corporation may not guarantee mortgage-backed securities or mortgage related payment securities backed by mortgages not purchased by the Corporation.”.

97 Stat. 198.
12 USC 1455.
Prohibition.

PREFERRED STOCK OF FEDERAL HOME LOAN MORTGAGE CORPORATION

SEC. 211. Section 306(f) of the Federal Home Loan Mortgage Corporation Act is amended—

(1) by inserting before the period at the end of the last sentence the following: “, and shall not be entitled to vote with respect to the election of any member of the Board of Directors”; and

(2) by adding at the end thereof the following new sentence: “Such preferred stock, or any class thereof, may have such terms as would be required for listing of preferred stock on the New York Stock Exchange, except that this sentence does not apply to any preferred stock, or class thereof, the initial sale of which is made directly or indirectly by the Corporation exclusively to any Federal Home Loan Bank or Banks.”.

12 USC 1455.

STUDY OF PREPAYMENT PENALTIES AND THE SECONDARY MORTGAGE
MARKET

SEC. 212. Not later than one hundred and eighty days after the date of the enactment of this Act, the Secretary of Housing and Urban Development, following consultation with the Board of Directors of the Federal National Mortgage Association, the Board of Directors of the Federal Home Loan Mortgage Corporation, the President of the Government National Mortgage Association, the Board of Governors of the Federal Reserve System, the Federal Home Loan Bank Board, the Comptroller of the Currency, and the National Credit Union Administration Board, shall submit to the Congress a report regarding mortgage prepayment penalties and their impact on secondary mortgage market activities. Such report shall include—

Report.

(1) a review of State laws and regulations regarding prepayment penalties;

(2) an evaluation of the impact of prepayment penalties on the ability to attract investors to the secondary mortgage market;

(3) an analysis of existing authority for lenders to offer mortgage instruments containing prepayment penalties; and

(4) a proposal for federally standardized mortgage instruments that would contain prepayment penalties in combination with features that would be attractive to prospective purchasers of homes, including below-market interest rates and prohibitions on nonrisk related settlement charges normally incurred by homeowners upon refinancing.

**AUTHORITY OF SECRETARY OF HOUSING AND URBAN DEVELOPMENT
REGARDING FEDERAL NATIONAL MORTGAGE ASSOCIATION OBLIGATIONS**

Ante, p. 1696. SEC. 213. (a) The second sentence of section 309(h) of the Federal National Mortgage Association Charter Act is amended by inserting "before October 1, 1985," after "corporation".

12 USC 1723c. (b) The last sentence of section 311 of the Federal National Mortgage Association Charter Act is amended by inserting after "issuances" the following: "by the Association and all issuances of stock, and debt obligations convertible into stock, by the corporation".

Approved October 3, 1984.

LEGISLATIVE HISTORY—S. 2040 (H.R. 4557):

HOUSE REPORT No. 98-994, Pt. 1, accompanying H.R. 4557 (Comm. on Energy and Commerce).

SENATE REPORT No. 98-293 (Comm. on Banking, Housing, and Urban Affairs).

CONGRESSIONAL RECORD:

Vol. 129 (1983): Nov. 17, considered and passed Senate.

Vol. 130 (1984): Feb. 9, earlier passage vitiated; considered and passed Senate.

Sept. 11, considered and passed House, amended.
Sept. 26, Senate concurred in House amendment.