

(4) Senior security

The term “senior security” means any bond, debenture, note, or similar obligation or instrument constituting a security and evidencing indebtedness, and any stock of a class having priority over any other class as to distribution of assets or payment of dividends.

(May 27, 1933, ch. 38, title I, § 18, 48 Stat. 85; Pub. L. 104-290, title I, § 102(a), Oct. 11, 1996, 110 Stat. 3417; Pub. L. 105-353, title III, §§ 301(a)(4), 302, Nov. 3, 1998, 112 Stat. 3235, 3237; Pub. L. 111-203, title IX, § 985(a)(2), July 21, 2010, 124 Stat. 1933; Pub. L. 112-106, title III, § 305(a), (b)(2), (c), (d)(2), title IV, § 401(b), Apr. 5, 2012, 126 Stat. 322, 323, 325; Pub. L. 114-94, div. G, title LXXVI, § 76001(b), Dec. 4, 2015, 129 Stat. 1789.)

REFERENCES IN TEXT

The Investment Company Act of 1940, referred to in subsec. (b)(2), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, as amended, which is classified generally to subchapter I (§80a-1 et seq.) of chapter 2D of this title. For complete classification of this Act to the Code, see section 80a-51 of this title and Tables.

Section 77d(1), (2), (3), (4), and (6) of this title, referred to in subssecs. (b)(4)(A) to (C), (E) and (c)(1)(B), were redesignated section 77d(a)(1), (2), (3), (4), and (6), respectively, of this title by Pub. L. 112-106, title II, § 201(b)(1), (c)(1), Apr. 5, 2012, 126 Stat. 314.

AMENDMENTS

2015—Subsec. (b)(4)(E). Pub. L. 114-94, § 76001(b)(1), which directed amendment of subsec. (b)(4) by redesignating “the second subparagraph (D)” as (E), was executed by making the redesignation for the subpar. (D) relating to section 77c(a) of this title to reflect the probable intent of Congress. Former subpar. (E) redesignated (F).

Subsec. (b)(4)(F). Pub. L. 114-94, § 76001(b)(1), redesignated subpar. (E) as (F).

Subsec. (b)(4)(G). Pub. L. 114-94, § 76001(b)(2)–(4), added subpar. (G).

2012—Subsec. (b)(4)(C). Pub. L. 112-106, § 305(a)(2), added subpar. (C). Former subpar. (C) redesignated (D).

Subsec. (b)(4)(D). Pub. L. 112-106, § 401(b), added subpar. (D) relating to section 77c(b)(2) of this title.

Pub. L. 112-106, § 305(a)(1), redesignated subpar. (C), relating to section 77c(a) of this title, as (D). Former subpar (D) redesignated (E).

Subsec. (b)(4)(E). Pub. L. 112-106, § 305(a)(1), redesignated subpar. (D) as (E).

Subsec. (c)(1). Pub. L. 112-106, § 305(b)(2), substituted “, in connection with securities or securities transactions” for “with respect to fraud or deceit, or unlawful conduct by a broker or dealer, in connection with securities or securities transactions.” and added subpars. (A) and (B).

Subsec. (c)(1)(A)(ii). Pub. L. 112-106, § 305(d)(2), which directed amendment of subsec. (c)(1) by substituting “, dealer, or funding portal” for “or dealer”, was executed by making the substitution in subpar. (A)(ii) as added by Pub. L. 112-106, § 305(b)(2).

Subsec. (c)(2)(F). Pub. L. 112-106, § 305(c), added subpar. (F).

2010—Subsec. (b)(1)(C). Pub. L. 111-203, § 985(a)(2)(A), substituted “(C) a security” for “(C) is a security”.

Subsec. (c)(2)(B)(i). Pub. L. 111-203, § 985(a)(2)(B), substituted “State or” for “State, or”.

1998—Subsec. (b)(1)(A). Pub. L. 105-353, § 301(a)(4)(A), inserted “, or authorized for listing,” after “Exchange, or listed”.

Subsec. (b)(4)(C). Pub. L. 105-353, § 302, substituted “paragraph (4), (10), or (11)” for “paragraph (4) or (11)”.

Subsec. (c)(2)(B)(i), (C)(i). Pub. L. 105-353, § 301(a)(4)(B), (C), made technical amendments to references in original act which appear in text as references to October 11, 1996.

Subsec. (d)(1)(A). Pub. L. 105-353, § 301(a)(4)(D), substituted “section 77b(a)(10)” for “section 77b(10)” and “subparagraphs (a) and (b)” for “subparagraphs (A) and (B)”.

Subsec. (d)(2). Pub. L. 105-353, § 301(a)(4)(E), made technical amendment to reference in original act which appears in text as reference to October 11, 1996.

Subsec. (d)(4). Pub. L. 105-353, § 301(a)(4)(F), substituted “The term” for “For purposes of this paragraph, the term”.

1996—Pub. L. 104-290 substituted “Exemption from State regulation of securities offerings” for “State control of securities” as section catchline and amended text generally. Prior to amendment, text read as follows: “Nothing in this subchapter shall affect the jurisdiction of the securities commission (or any agency or office performing like functions) of any State or Territory of the United States, or the District of Columbia, over any security or any person.”

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111-203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CLARIFICATION OF THE PRESERVATION OF STATE ENFORCEMENT AUTHORITY

Pub. L. 112-106, title III, § 305(b)(1), Apr. 5, 2012, 126 Stat. 322, provided that: The amendments made by subsection (a) [amending this section] relate solely to State registration, documentation, and offering requirements, as described under section 18(a) of [the] Securities Act of 1933 (15 U.S.C. 77r(a)), and shall have no impact or limitation on other State authority to take enforcement action with regard to an issuer, funding portal, or any other person or entity using the exemption from registration provided by section 4(6) [probably means “section 4(a)(6)"] of that Act [15 U.S.C. 77d(a)(6)].”

STUDY AND REPORT ON UNIFORMITY OF STATE REGULATORY REQUIREMENTS

Pub. L. 104-290, title I, § 102(b), Oct. 11, 1996, 110 Stat. 3420, provided that: “The Commission shall conduct a study, after consultation with States, issuers, brokers, and dealers, on the extent to which uniformity of State regulatory requirements for securities or securities transactions has been achieved for securities that are not covered securities (within the meaning of section 18 of the Securities Act of 1933 [15 U.S.C. 77r], as amended by paragraph (1) of this subsection). Not later than 1 year after the date of enactment of this Act [Oct. 11, 1996], the Commission shall submit a report to the Congress on the results of such study.”

§ 77r-1. Preemption of State law**(a) Authority to purchase, hold, and invest in securities; securities considered as obligations of United States**

(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—

(A) offered and sold pursuant to section 77d(5)¹ of this title,

¹ See References in Text note below.

(B) mortgage related securities (as that term is defined in section 78c(a)(41) of this title),

(C) small business related securities (as defined in section 78c(a)(53) of this title), or

(D) 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—

(A) offered and sold pursuant to section 77d(5)¹ of this title,

(B) mortgage related securities (as that term is defined in section 78c(a)(41) of this title),

(C) small business related securities (as defined in section 78c(a)(53) of this title), or

(D) 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.

(b) Exception; validity of contracts under prior law

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 October 3, 1984, 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.

(c) Registration and qualification requirements; exemption; subsequent enactment by State

Any securities that are offered and sold pursuant to section 77d(5)¹ of this title, that are mortgage related securities (as that term is defined in section 78c(a)(41) of this title), or that are small business related securities (as defined in section 78c(a)(53) of this title) 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 October 3, 1984, 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.

(d) Implementation

(1) Limitation

The provisions of subsections (a) and (b) concerning small business related securities 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 7 years after September 23, 1994, 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 small business related securities by any person, trust, corporation, partnership, association, business trust, or business entity or class thereof than is provided in this section. 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 to such enactment, and shall not require the sale or other disposition of any small business related securities acquired prior to the date of such enactment.

(2) State registration or qualification requirements

Any State may, not later than 7 years after September 23, 1994, enact a statute that specifically refers to this section and requires registration or qualification of any small business related securities on terms that differ from those applicable to any obligation issued by the United States.

(Pub. L. 98-440, title I, §106, Oct. 3, 1984, 98 Stat. 1691; Pub. L. 103-325, title II, §207, Sept. 23, 1994, 108 Stat. 2199.)

REFERENCES IN TEXT

Section 77d(5) of this title, referred to in subsecs. (a)(1)(A), (2)(A) and (c), was redesignated section 77d(a)(5) of this title by Pub. L. 112-106, title II, §201(b)(1), (c)(1), Apr. 5, 2012, 126 Stat. 314.

CODIFICATION

Section was enacted as part of the Secondary Mortgage Market Enhancement Act of 1984, and not as part of the Securities Act of 1933, which comprises this subchapter.

AMENDMENTS

1994—Subsec. (a)(1)(B) to (D). Pub. L. 103-325, §207(a), struck out “or” at end of subpar. (B), added subpar. (C), and redesignated former subpar. (C) as (D).

Subsec. (a)(2)(B) to (D). Pub. L. 103-325, §207(b), struck out “or” at end of subpar. (B), added subpar. (C), and redesignated former subpar. (C) as (D).

Subsec. (c). Pub. L. 103-325, §207(c), in first sentence substituted “, that” for “or that” before “are mortgage related securities” and inserted “, or that are small business related securities (as defined in section 78c(a)(53) of this title)” before “shall be exempt”.

Subsec. (d). Pub. L. 103-325, §207(d), added subsec. (d).

§ 77s. Special powers of Commission

(a) Rules and regulations

The Commission shall have authority from time to time to make, amend, and rescind such rules and regulations as may be necessary to