

Subsec. (a)(4)(E). Pub. L. 109-304, §15(29)(B), substituted “for purposes of documentation under section 12103” for “under section 12102(a)”.

Subsec. (d)(1)(A). Pub. L. 109-304, §16(c)(7), substituted “section 13107(b)(8)” for “section 13106(b)(8)”.

Subsec. (f)(2). Pub. L. 109-304, §15(29)(C), substituted “section 12113(c)” for “section 12102(c)”.

2001—Subsec. (a)(4)(B) to (F). Pub. L. 107-20, §2202(b), added subpars. (B) to (F) and struck out former subpars. (B) and (C) which read as follows:

“(B) a state or federally chartered financial institution that satisfies the controlling interest criteria of section 2(b) of the Shipping Act, 1916 (46 U.S.C. 802(b));

“(C) a person that complies with the provisions of section 12102(c)(4) of this title.”

Subsecs. (f) to (h). Pub. L. 107-20, §2202(c), added subsecs. (f) to (h).

1999—Subsec. (a)(4). Pub. L. 106-31 made technical amendment to directory language of Pub. L. 105-277, §202(b). See 1998 Amendment note below.

1998—Subsec. (a)(4). Pub. L. 105-277, §202(b), as amended by Pub. L. 106-31, added par. (4).

Subsec. (b). Pub. L. 105-383, §401(c)(1), added subsec. (b) and struck out former subsec. (b) which read as follows: “A preferred mortgage filed or recorded under this chapter may have any rate of interest that the parties to the mortgage agree to.”

Subsec. (d)(1). Pub. L. 105-383, §401(c)(2), substituted “mortgage, security agreement, or instrument” for “mortgage or instrument” in introductory provisions and subpar. (B).

Subsec. (d)(2). Pub. L. 105-383, §401(c)(4), substituted “mortgages, security agreements, or instruments” for “mortgages or instruments” in introductory provisions.

Subsec. (d)(3). Pub. L. 105-383, §401(c)(3), added par. (3) and struck out former par. (3) which read as follows: “A preferred mortgage under this subsection continues to be a preferred mortgage if the vessel is no longer titled in the State where the mortgage was made.”

1996—Subsec. (a). Pub. L. 104-324 amended subsec. (a) generally. Prior to amendment, subsec. (a) consisted of 2 pars. with substantially similar provisions defining a preferred mortgage except that it included a mortgage with a State, the United States Government, a federally insured depository institution, or specified individual as mortgagee.

1989—Subsec. (a)(2). Pub. L. 101-225, §303(3)(A), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “Paragraph (1)(D) of this subsection does not apply to a vessel operated only as a fishing vessel, fish processing vessel, or a fish tender vessel (as defined in section 2101 of this title) or to a vessel operated only for pleasure.”

Subsec. (d)(1). Pub. L. 101-225, §303(3)(B), substituted “granting a security interest perfected under State law” for “representing financing of a vessel under State law that is made under applicable State law”.

Subsec. (e). Pub. L. 101-225, §303(3)(C), substituted “the status of the preferred mortgage” for “the validity of the preferred mortgage” in pars. (1) and (2).

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107-20, title II, §2202(d), July 24, 2001, 115 Stat. 170, provided that: “Section 31322 of title 46, United States Code as amended in this section, and as amended by section 202(b) of the American Fisheries Act (Public Law 105-277, division C, title II) shall not take effect until April 1, 2003, nor shall the Secretary of Transportation, in determining whether a vessel owner complies with the requirements of section 12102(c) of title 46, United States Code [now 46 U.S.C. 12113(b)(2) to (d)], consider the citizenship status of a lender, in its capacity as a lender with respect to that vessel owner, until after April 1, 2003.”

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-277, div. C, title II, §203(a), Oct. 21, 1998, 112 Stat. 2681-619, provided that: “The amendments

made by section 202 [amending this section and former section 12102 of this title] shall take effect on October 1, 2001.”

EFFECTIVE DATE

Section effective Jan. 1, 1989, not to affect any civil action filed before that date, and, insofar as applicable to vessels for which an application for documentation has been filed, effective Jan. 1, 1990, with other exceptions and qualifications, see section 107 of Pub. L. 100-710, set out as a note under section 31301 of this title.

§ 31323. Disclosing and incurring obligations before executing preferred mortgages

(a) On request of the mortgagee and before executing a preferred mortgage, the mortgagor shall disclose in writing to the mortgagee the existence of any obligation known to the mortgagor on the vessel to be mortgaged.

(b) After executing a preferred mortgage and before the mortgagee has had a reasonable time to file the mortgage, the mortgagor may not incur, without the consent of the mortgagee, any contractual obligation establishing a lien on the vessel except a lien for—

- (1) wages of a stevedore when employed directly by a person listed in section 31341 of this title;
- (2) wages for the crew of the vessel;
- (3) general average; or
- (4) salvage, including contract salvage.

(c) On conviction of a mortgagor under section 31330(a)(1)(A) or (B) of this title for violating this section, the mortgage indebtedness, at the option of the mortgagee, is payable immediately.

(Pub. L. 100-710, title I, §102(c), Nov. 23, 1988, 102 Stat. 4744.)

HISTORICAL AND REVISION NOTES

Revised section	Source section (U.S. Code)
31323(a) .....	46:924(1)
31323(b) .....	46:924(2)
31323(c) .....	46:941(b) (last sentence)

Section 31323(a) requires the mortgagor to disclose any obligations on the vessel before executing a preferred mortgage. This subsection makes no substantive change to law.

Section 31323(b) provides that, after executing a preferred mortgage, the mortgagor may not incur, without consent of the mortgagee, any contractual obligations establishing a lien on the vessel—except a lien for stevedore wages, crew wages, general average, and salvage. The only substantive change to law made by this subsection is that the reasonable time to record a mortgage is changed to a reasonable time to file the mortgage, and the elimination of the reference to endorsements. These changes are in keeping with the changes made in section 31322.

Section 31323(c) provides that if a mortgagor is convicted of a violation of this section, then the mortgage indebtedness, at the option of the mortgagee, is payable immediately. This subsection makes no substantive change to law.

EFFECTIVE DATE

Section effective Jan. 1, 1989, with certain exceptions and qualifications, see section 107 of Pub. L. 100-710, set out as a note under section 31301 of this title.

§ 31324. Retention and examination of mortgages of vessels covered by preferred mortgages

(a) On request, the owner, master, or individual in charge of a vessel covered by a preferred