



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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FILE NO. 99-014

FINANCE:

Investment of Public Funds in
Federal National Mortgage
Association Obligations

The Honorable Kirk W. Dillard
Chair, Senate Local Government Committee
State Senator, 41st District
M120 State Capitol
Springfield, Illinois 62706

Dear Senator Dillard:

I have your letter wherein you inquire whether it is permissible to invest public funds in Illinois in Federal National Mortgage Association (hereinafter referred to as "Fannie Mae") securities in light of the preemptive provisions of the Secondary Mortgage Market Enhancement Act of 1984 (hereinafter referred to as "SMMEA") (Public Law 98-440, 98 Stat. 1689-98 (1984)). For the reasons hereinafter stated, it is my opinion that because no statute specifically referring to the Federal law and prohibiting or limiting such investments was enacted within

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the period provided by the law, it is permissible for public entities in Illinois to invest in Fannie Mae securities.

Section 106 of SMMEA (15 U.S.C. § 77r-1) provides, in pertinent part:

"§ 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-

* * *

(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-

* * *

(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) of this section 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) of this section. * * *

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The term "person", as used in the Act, includes a government or political subdivision. (15 U.S.C. § 77b(a)(2).)

The Public Funds Investment Act (30 ILCS 235/0.01 et seq. (West 1996)) authorizes the State of Illinois and its political subdivisions to invest public funds in their custody in accordance with that Act. Section 2 of the Act (30 ILCS 235/2 (West 1997 Supp.)) provides, in part:

"§ 2. Authorized investments.

(a) Any public agency may invest any public funds as follows:

(1) in bonds, notes, certificates of indebtedness, treasury bills or other securities now or hereafter issued, which are guaranteed by the full faith and credit of the United States of America as to principal and interest;

(2) in bonds, notes, debentures, or other similar obligations of the United States of America or its agencies;

* * *

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No restriction has been placed upon the investment of public funds in securities guaranteed by the full faith and credit of the United States as to principal and interest or upon investment in obligations of the United States or its agencies.

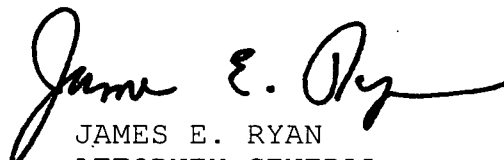
Although the General Assembly has enacted two provisions limiting certain transactions by domestic insurance companies which specifically refer to section 106 of SMMEA (see 215 ILCS 5/125.15b, repealed by Public Act 90-418, effective August 15, 1997; 215 ILCS 5/126.2(Y) (West 1997 Supp.)), no legislation has been enacted to limit the investments of other Illinois entities in securities issued or guaranteed by Fannie Mae, as provided for in section 106(b) of SMMEA. Clearly, the General Assembly was aware of the preemptive provisions of SMMEA because

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it legislated in accordance therewith regarding investments by insurance companies. No statutes were enacted or amended, however, to limit the application of SMMEA to investments by the State or its political subdivisions.

In the absence of appropriate legislative action, therefore, it is my opinion that it is permissible to invest public funds in securities issued by the Federal National Mortgage Association, which is a government-sponsored private corporation (see 1991 Ill. Att'y Gen. Op. No. 101), to the same extent as securities issued by or guaranteed as to principal and interest by the United States or its agencies and instrumentalities.

Sincerely,



JAMES E. RYAN
ATTORNEY GENERAL