NEBRASKA ADMINISTRATIVE CODE

~~TITLE~~ Title - 48 - DEPARTMENT OF BANKING AND FINANCE

CHAPTER 36 - GENERAL OBLIGATION FINANCING BY RELIGIOUS DENOMINATIONS

001 GENERAL.

001.01 This Rule has been promulgated pursuant to authority delegated to the Director in Section 8-1120(3) of the Securities Act of Nebraska ("Act").

001.02 The Department has determined that this Rule relating to the disclosure requirements for an offering of debt securities in the form of general obligation financing issued by a religious denomination, or a national or regional unit thereof, or other entity affiliated or associated therewith (collectively a "church extension fund"), is consistent with investor protection and is in the public interest.

001.03 The Director may, on a case-by-case basis, and with prior written notice to the affected persons, require adherence to additional standards or policies, as deemed necessary in the public interest.

001.04 The definitions in 48 NAC 2 shall apply to the provisions of this Rule, unless otherwise specified.

001.05 This Rule is not applicable to single project financing by individual churches or congregations. Such securities offerings must conform to the requirements of 48 NAC 35.

001.05 Federal statutes referenced herein shall mean those statues as amended on or before the effective date of this Rule. A copy of the applicable statutes or rule referenced in the Rule is attached hereto.

002 DEFINITIONS. The following definitions, in addition to definitions contained in 48 NAC 2, shall apply to this Rule:

002.01 Advertising means any ~~advertisement~~ information or promotional materials, including, but not limited to, magazine or newsletter advertisements, ~~postings on the Internet,~~ brochures, video tapes, fliers, church bulletin inserts, ~~and~~ mailers and Internet information posted by the issuer or denomination, that are used, in addition to offering circulars, to solicit investors.

002.02 Audited financial statements means financial statements prepared in accordance with generally accepted accounting principles applied on a consistent basis, and examined and reported upon by an independent certified public accountant.

002.03 Church extension fund ("CEF") means a ~~unit or division of a denomination, or another entity~~ not for profit organization affiliated or associated with a denomination, or a fund that is accounted for separately by a denomination organized as a not-for-profit organization, that offers and sells notes primarily to

provide funding for loans to various affiliated churches and related religious organizations of the denomination, for the acquisition of property, ~~any~~ construction or acquisition of buildings and other related capital ~~improvements~~ expenditures or operating needs.

~~002.03~~ 002.04 Change in net assets means the change in net assets as reported in the Statement of Activities of the CEF in conformity with ~~GAAP~~ generally accepted accounting principles which reflects the net increase or decrease in net assets of the CEF.

~~002.04~~ 002.05 Denomination means a national or regional religious organization or association that consists of, or acts on behalf of, its individual affiliated churches as well as various affiliated national or regional administrative and ~~other~~ religious organizations or units. ~~affiliated with the denomination.~~ The organizations, associations, churches or units described in this definition shall be organized as, or associated with, a not-for-profit organization.

~~002.05~~ 002.06 Denominational accounts means demand and ~~short-term~~ other obligations ~~and accounts issued by the issuer and~~ of a CEF held by national, regional or other affiliated ~~units, institutions or~~ organizations of the denomination, other than congregations. ~~exclusive of demand and short-term notes which are generally offered and sold through offering circulars pursuant to the registration, exemption or qualification process.~~

002.07 GAAP means Generally Accepted Accounting Principles in the United States as established by the Financial Accounting Standards Board (FASB), Accounting Principles Board (APB), Accounting Research Bulletins (ARB) and American Institute of Certified Public Accountants (AICPA). The AICPA Audit and Accounting Guide for Not-For-Profit Organizations provides guidance on specific GAAP for not-for-profit organizations.

~~002.06~~ 002.08 Investor(s) means the person(s) who purchase(s) notes.

002.09 Issuer means the CEF that issues or proposes to issue notes.

002.10~~002.07~~ Loan delinquency means a borrower's loan balance on which payments of principal or interest are delinquent ninety ~~90~~ days or more, whether in default or not.

002.11 Net assets mean the excess or deficiency of assets over liabilities, classified according to the existence or absence of donor-imposed restrictions.

~~002.08 Net income means all items of issuer income and revenue, including operating income, gift revenues and gains or losses from investments, less all items of expense, as reflected in the issuer's audited financial statements.~~

~~002.09 Net worth means the unrestricted equity or fund balance that represents the difference between assets and liabilities, as reflected in the issuer's audited financial statements. Internally restricted funds may be considered unrestricted for this purpose.~~

~~002.10~~ 002.12 Notes mean~~s~~ notes, certificates, ~~or~~ similar debt instruments or other evidences of indebtedness which may be certificated or issued in book entry form by a CEF and ~~issued by an issuer which~~ represent a general unsecured obligation to repay a specific principal amount~~,~~ at a stated or variable rate of interest, when due. Notes shall not include denominational accounts.

002.13 Not-for-profit organization means an entity as described in section 501(c)(3) of the Internal Revenue Code of 1986, as amended, that is accounted for as a not-for-profit organization under GAAP. A not-for-profit organization generally possesses the following characteristics, in varying degrees, that distinguish it from a business enterprise: (a) contributions of significant amounts of resources from resource providers who do not expect commensurate or proportionate pecuniary return, (b) operating purposes other than to provide goods or services at a profit, and (c) absence of ownership interests like those of business enterprises.

~~002.11~~ 002.14 Offering circular means the disclosure document or prospectus that provides material information about ~~prepared by~~ the issuer and the offering of notes.

~~002.12~~ 002.15 Seasoned issuer means a CEF that, alone or through a predecessor organization, has been in continuous existence for more than ten ~~(10)~~ years, has offered notes for more than ten ~~(10)~~ years, and has paid or otherwise satisfied all ~~uncontested~~ obligations to pay principal and interest on its notes in a timely manner.

~~002.13~~ 002.16 Senior secured indebtedness means any debt or debt securities incurred or issued by a CEF and secured by assets of the CEF in such a manner as to have a priority claim against any of the assets of the CEF over and above the notes. Such debt may include, but is not limited to, a mortgage loan incurred for the purchase of an advance church site or CEF headquarters building, and a secured operating line of credit.

003 REQUIREMENTS.

003.01 Any CEF intending to offer and sell notes to Nebraska residents shall comply with the disclosure provisions of the Act.

003.02 The notes shall be offered and sold without the payment of any direct or indirect underwriting, sales or similar fees, or commissions.

003.03 ~~An~~A CEF shall comply with the applicable broker-dealer, issuer-dealer, and agent licensing requirements.

004 LIMITED CLASS OF INVESTORS. The notes shall be sold to a limited class of investors~~, defined by the~~. The issuer ~~to be~~ shall specify a limited class of investors that is consistent with its operations and compatible with the mission, structure, organization and theology of its denomination.

004.01 A suggested form of limited class of investors is persons who are, prior to the receipt of the offering circular, members of, contributors to, including previous investors, or participants in the denomination, the CEF or in any program, activity or organization which constitutes a part of the denomination or the CEF, or in other

religious organizations that have a programmatic relationship with the denomination or the CEF.

005 ADVERTISING. Any advertising used by the issuer must comply with the following standards:

005.01 Advertising shall set forth that:

005.01A The advertising does not constitute an offer to sell or the solicitation of an offer to buy;

005.01B ~~There shall not be any~~The issuer will offer and sell ~~sale of~~ the securities only in ~~any state in which such offer, solicitation or sale is not~~ states where authorized; and

005.01C The offering is made solely by the offering circular.

005.02 Advertising~~may~~ shall not be directed ~~only~~ to persons who ~~fall,~~ are not, or potentially ~~will fall,~~ may not be, within the limited class of investors described in Section 004, above.

005.03 Advertising shall not ~~contain~~ set forth any statements, data or information that:

005.03A Is materially inconsistent with the statements, data or information set forth in the offering circular; ~~or~~

005.03B When read in connection with the offering circular, renders either the offering circular or advertising materially misleading; or ~~confusing.~~

005.03C Emphasizes the religious aspect or any other aspect of the offering or issuer in a manner that is materially misleading.

006 OPERATIONAL AND STRUCTURAL STANDARDS. A CEF shall be a not-for-profit organization, validly organized ~~and shall operate~~ under the laws of a state, that operates exclusively for religious, charitable or educational purposes and ~~qualify~~ qualifies as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

006.01 The notes ~~shall~~ offered and sold by the CEF should be exempt from registration pursuant to the provisions of Section 3(a)(4) of the Securities Act of 1933, as amended.

006.02 The notes shall ~~be offered under one or more programs of~~ provide general obligation financing for the CEF and shall not be specifically secured by particular loans to specific borrowing entities.

~~006.02A The notes shall not be specifically secured by particular loans to specific borrowing entities.~~

~~006.02B~~ 006.02A The proceeds from the notes ~~shall~~ may be deposited to a general fund or unrestricted account from which the CEF ~~makes and completes~~ will make or complete commitments for loans primarily to churches and religious organizations affiliated with the denomination.

~~006.02C~~ 006.02B ~~To the extent that~~ If a material amount of assets, liabilities, ~~operating~~ revenues or expenses of the CEF are unrelated to CEF operations, ~~arise out of activities other than general obligation financing programs,~~ appropriate disclosure ~~of such activities~~ shall be provided in the offering circular. ~~made.~~

~~006.02D~~ 006.02C In all cases there shall be a separate accounting for the operations of the CEF.

006.03 ~~Except as provided, notes shall be of the same rank and priority as the issuer's other debt securities and debt obligations.~~ The amount of any senior secured indebtedness to which the notes are or will be subordinated shall not exceed ten percent of the tangible assets, including total assets less intangible assets as defined by GAAP, of the CEF. To the extent that such subordination of the notes exists, appropriate disclosure shall be required.

~~006.03A The amount of any senior secured indebtedness to which the notes are or will be subordinated shall not exceed ten percent (10%) of the tangible assets of the CEF. Senior secured indebtedness, within the operation of the CEF, may be:~~

~~006.03A1 A mortgage loan incurred for the purchase of an advance church site or headquarters building; and/or~~

~~006.03A2 A secured operating line of credit with a commercial financial institution.~~

~~006.03B To the extent that such subordination of the notes exists, appropriate disclosure shall be required.~~

006.04 Limit on Securitization of CEF Loan Portfolio. A CEF may ordinarily securitize up to ten percent of its loan portfolio, if all of the following are met:

006.04A The loans are securitized and sold on a non-recourse basis predominantly to entities not affiliated with the CEF;

006.04B The proceeds from the sale of the securitized loans will be used to make additional loans to churches and other entities within the denomination; and

006.04C The securitization will not hinder the ability of the CEF to repay the principal and interest on the notes when due.

006.05 Management of the CEF. One or more executive officers or other individuals engaged in the day to day management of the CEF shall have at least

three years of relevant experience in lending and investment activities involving churches or similar organizations or otherwise must demonstrate sufficient knowledge and experience to manage loans, investments and operations of the CEF.

007 FINANCIAL STANDARDS. ~~A CEF shall comply with the following financial standards in reference to whether the issuer can reasonably expect to repay the notes, when due, in the ordinary course of its business.~~ An issuer shall not offer and sell more notes than it can reasonably expect to repay, when due, in the ordinary course of its operations.

007.01 Audited financial statements of the issuer and/or the offering circular must disclose sufficient information to evaluate the extent of compliance with the standards in this Rule. To facilitate review by investors, the offering circular should provide the financial information required by this section in a tabular or graphic presentation.

~~007.01 At the end of its most recent fiscal year, the issuer's net worth shall be positive and at least equal to three percent (3%) of its total assets.~~

007.02 At the end of its most recent fiscal year as reported on its audited financial statements, the issuer's ~~cash, cash equivalents and readily marketable~~ net assets shall ~~have a market value of at least~~ be positive and equal to five percent ~~(5%)~~ or more of ~~the principal balance of its total outstanding notes.~~ its total assets.

007.03 At the end of its most recent fiscal year as reported in its audited financial statements, the issuer's cash, cash equivalents, readily marketable securities and available lines of credit shall have a value of at least eight percent of the principal balance of its total outstanding notes, except that the value of available lines of credit for meeting this standard shall not exceed two percent of the principal balance of its total outstanding notes.

007.03A Management of the CEF shall establish and administer investment policies that provide for reasonable and prudent diversification and preservation of its cash, cash equivalents and readily marketable securities for compliance with this section.

~~007.03~~ 007.04 For each of the issuer's three most recent fiscal ~~years and~~years and, as estimated, for each of the issuer's next two fiscal years, as reported in its audited financial statements, the ~~issuer's~~ coverage ratio of available cash ~~shall equal or exceed its~~ as compared to cash redemptions, exclusive of denominational accounts, shall be at least one to one. In determining the issuer's available cash, the ~~issuer shall consider:~~ following may be considered:

~~007.03A~~ 007.04A Cash provided by its normal CEF operating activities as reported in its Statements of Cash Flows;

~~007.03B~~ 007.04B ~~The market value of its liquid~~ Liquid assets, including the total of cash, cash equivalents and readily marketable securities, at the beginning of ~~the~~ its fiscal year;

~~007.03C~~ 007.04C Loan principal repayments, less loan disbursements;

~~007.03D~~ 007.04D Cash generated from the sale of notes, exclusive of denominational accounts, except to the extent that year-end redemptions exceed deposits to, or investments in, such denominational accounts during its fiscal year; and

~~007.03E~~ 007.04E Funds from other sources.~~; and~~

~~007.03F Loan disbursements.~~

~~007.04~~ 007.05 Loan delinquencies during the issuer's most recent fiscal year as reported in its audited financial statements and disclosed in the offering circular, ~~reviewed in light of its historical operating experience,~~ shall not be excessive and shall be at such a level that the overall quality of its loan portfolio will allow the issuer:

~~007.04A~~ 007.05A To maintain ~~a positive net worth~~sufficient capital adequacy in compliance with this Rule; and

~~007.04B~~ 007.05B Receive the timely repayments of sufficient loan principal necessary to meet the liquidity and cash flow requirements as set forth in ~~Sections 007.02 and 007.03 above.~~ this Rule.

~~007.04C~~ 007.06 When the loan delinquencies become material, the extent of the loan delinquencies and the quality of the issuer's loan portfolio should be disclosed as risk factors in the offering circular.

007.07 Management of the CEF shall establish and administer lending policies that provide reasonable assurance of sufficient loan quality to prevent excessive loan delinquencies that could result in loan losses by the CEF. The provisions of lending policies, such as, but not limited to, requirements for appraisals of properties to be financed, financial statements of borrowers, and limits or criteria for loan to value ratios, debt-service ratios and geographic concentration of loans shall be disclosed in the offering circular.

007.08 A CEF's loan program shall be primarily secured. Unless a lower percentage is justified by management of the issuer, at least ninety percent of the CEF's outstanding loans shall be secured by real or personal property or guaranteed by third parties.

~~007.05~~ 007.09 The ~~issuer's net income~~ change in net assets of the issuer,, less any non-recurring or extraordinary items, for three of its last five fiscal years as reported in the audited financial statements of the issuer shall be positive.

~~007.06~~ 007.10 A seasoned issuer shall be deemed to comply with the above financial standards in any given fiscal year, if ~~it~~ the issuer can show that:

~~007.06A~~ 007.10A It has fulfilled the requirements of the financial standards for at least three out of its five most recent fiscal years;

~~007.06B~~ 007.10B The average of the relevant financial information for its five most recent fiscal years reflects compliance with the financial standards; ~~or~~and

~~007.06C~~ 007.10C ~~The information and data furnished indicates the ability of the seasoned issuer to repay its notes and other debt obligations when due in the ordinary course of its business.~~ Management of the issuer has taken appropriate action to correct or mitigate the circumstances that caused noncompliance and can demonstrate satisfactory plans or ability to meet the financial standards and repay notes in future years.

008 ISSUANCE OF NOTES. An issuer that meets the standards of this Rule shall be entitled to offer and sell its notes under the following provisions:

008.01 Trust indentures or sinking funds shall not be required in connection with the notes.

008.02 Notes, upon maturity, may be extended or rolled over under the expressed terms and conditions stated in the offering circular, if:

008.02A Each investor is provided with written notification of the maturity and the proposed extension or rollover of the notes at least thirty ~~30~~ days prior to the maturity dates of the notes; and

008.02B Each investor is or has been provided with the issuer's most current offering circular.

008.02C If the investor notifies the issuer in writing, on or prior to the maturity date, that the investor elects not to extend or roll-over the note, the issuer promptly shall repay the principal and interest accrued thereon.

008.03 ~~Notes may contain provisions pursuant to which interest payable thereon may be retained and compounded.~~ Interest payable on notes may be compounded for payment at maturity of the notes if accrued interest is included with redemption amounts for determining compliance with Section 007.04, above.

009 DISCLOSURE. ~~The~~ Investors shall receive adequate material information in order to make informed investment decisions, and the issuer must provide investors with a complete offering ~~circulars~~ circular prior to their ~~investments which shall include, in narrative or descriptive form, all relevant and material information relating to the issuer and the notes, and any other material information that affects or would affect an investor's decision to purchase the notes, including the following information:~~ purchase of notes.

009.01 The offering circular must be written in clearly understandable language and disclose all relevant and material information that affects or would affect a prospective investor's decision to purchase the notes.

009.01A The information set forth in this Rule shall be included in the offering circular unless the issuer can demonstrate that a particular type of information is not applicable or material to an understanding of the issuer of the notes.

009.01B The information set forth in this Rule is not all-inclusive. The issuer must include all information, whether or not specifically listed, that would be important for an investor's understanding of the issuer and the notes.

009.02 Any material adverse changes in the financial condition of the issuer or material changes in other information in the offering circular during the offering period shall be promptly disclosed in an appropriate supplement, or an amendment to the offering circular.

~~009.01~~ 009.03 The offering circular shall contain a cover page which includes:

~~009.01A~~ 009.03A The name of the issuer;

~~009.01B~~ 009.03B The ~~issuer's~~ principal business address and telephone number of the issuer;

~~009.01C~~ 009.03C A brief description of the notes offered, including interest rates and maturity terms available;

~~009.01D~~ 009.03D The total amount of the offering, the estimated offering expenses, and the net proceeds of the offering;

~~009.01E~~ 009.03E A statement that the offering is subject to certain risks~~, with a reference to~~ and ~~the page(s) of~~ page numbers in the offering circular ~~that disclose(s)~~ where the risk factors are disclosed;

~~009.01F~~ 009.03F A description of the limited class of investors to whom the notes will be sold;

009.03G The date of the offering circular and the proposed offering period;

~~009.01G~~ 009.03H Any legends ~~and other information~~ deemed to be appropriate by the Director;

~~009.01H~~ 009.03I Any other state-specific limitations or conditions on the sale of the notes to investors ~~in any state~~; and

009.03J An advisory disclosure for consideration by investors encouraging investors to consider the concept of investment diversification when determining the amount of notes that would be appropriate to purchase in relation to the investor's overall investment portfolio and personal financial needs.

~~009.01I The date of the offering circular.~~

009.04 A summary of narrative and financial information that highlights the key aspects and risks of the notes and the financial and operational characteristics of the issuer should be presented concisely in the offering circular following the cover page

or risk factor section. The "Summary" Section should include the disclosure of the issuer's proposed use of proceeds and a summary in tabular form of the financial data, for the issuer's most recent fiscal year.

~~009.02 The offering circular shall contain all material information on the issuer's history and operations, including:~~

~~009.02A A description of the issuer, including the name, address of principal business office, place and date of incorporation, type and nature of the corporation (not-for-profit, tax exempt, etc.);~~

~~009.02B A description of the history of the issuer and its denominational affiliation or association;~~

~~009.02C A description of the religious purposes of the issuer and the general nature and purposes of its operations;~~

~~009.02D A description of the nature and extent of the offering of the notes and the extent of the issuer's offerings on a nationwide basis; and~~

~~009.02E A description of the current operations and principal business activities of the issuer.~~

~~009.03 The offering circular must describe the risks of investing in the notes, including, if applicable:~~

~~009.03A A statement that the notes are unsecured general obligations of the issuer, and the investors will be dependent solely upon the financial condition of the issuer for repayment of principal and interest;~~

~~009.03B A statement that no sinking fund or trust indenture has been or will be established;~~

~~009.03C A description of the ranking and priority of the notes in relation to the issuer's existing and anticipated future notes and indebtedness;~~

~~009.03D A statement that no public market exists for the notes and none will develop and the transferability of the notes is limited and restricted;~~

~~009.03E A description of the financial condition of the issuer, including any relevant information concerning its income or losses from operations and any other information relevant to the issuer's ability to make payments of principal and interest on the notes when due;~~

~~009.03F A description of the issuer's policy on the maintenance of liquid funds;~~

~~009.03G A description of the investor's tax consequences with respect to investments in the notes;~~

~~009.03H A statement that the issuer's loans are made primarily to affiliated churches and related religious organizations, including local churches, whose ability to repay the loans depends primarily upon contributions that they receive from their members;~~

~~009.03I A description of the loan policies with respect to the issuer's relationship with its affiliated churches and its related religious organizations which distinguish it from commercial lenders;~~

~~009.03J A statement of the risks involved in future changes in federal or state laws that may affect the issuer's ability to continue to sell its notes; and~~

~~009.03K A statement of the risks involved in the issuer's activities other than its loan operations.~~

~~009.03L Statements to the effect that little or no risk is involved in purchasing notes are prohibited and will be regarded as material misrepresentations.~~

009.05 Risk Factors

009.05A Format and Use of Risk Factors.

009.05A1 Risk factors should immediately follow the "Cover" Section or the "Summary" Section. Consistent with investor protection, a comprehensive listing of the material risks to the potential investor in the offering should be located at the forefront of the offering circular. Potential investors often focus on the forepart of the document. When comparing potential investment opportunities, consistency in format of complex disclosure documents further assists the investor.

009.05A2 The "Risk Factor" Section is a list identifying the material risks associated with the offering. The "Risk Factor" Section should not be a comprehensive discussion of the risks and counterbalancing considerations. Like the "Summary" Section, the "Risk Factor" Section is a summary of the material disclosures that are discussed and analyzed in more detail in the appropriate, related sections of the body of the offering circular. Consistent with this purpose, most risk factors will not be comprehensive discussions of the issues. The "Risk Factor" Section itself should be limited in length. In order to emphasize the nature of the disclosures as risks, no ameliorative statements should appear in the risk factors.

009.05A3 The risk factors that identify risks the potential investor is likely to find most significant should appear at or close to the beginning of the list.

009.05A4 A caption shall precede each risk factor and shall appear in off-set or emphasized type. As a listing of the material risks of the notes, captions should stand out to the eye of the reader. Italicized, bold-face, or underlined type assists the

reader to quickly comprehend the scope and nature of the particular risk factors, and permits the reader to focus further on the risk factors of most interest to that reader. For the same reason, issuers should avoid lengthy captions.

009.05B Risk Factor Content.

009.05B1 Each caption should succinctly identify the risky element of the factor. The caption should avoid the use of general, boiler-plate language. As a topic sentence to the factor, the caption can further streamline and shorten the factor.

009.05B2 Specific cross-references point the reader to complete discussions of the issue. Risk factors should not merely repeat verbatim disclosure appearing elsewhere in the disclosure document. Where appropriate, the risk factor should be a two or three sentence summary with a cross reference to the discussion appearing elsewhere in the offering circular. In some cases, there may be no need to repeat the risk factor in the body of the offering circular. Potential investors often focus interest on disclosure that is of most interest to them, and cross-references assist the potential investor in locating this disclosure.

009.05B3 Eliminate general, boiler-plate risk factors that could apply to any type of securities offering. Include only risks that are material to the particular offering, the particular issuer, or specific to notes.

009.05C Specific Risk Factors for CEF notes. The issuer must describe to the investors the risks of investing in the notes. Particular care must be taken with respect to risks associated with the financial condition of the issuer. Statements to the effect that little or no risk is involved in buying notes are prohibited, and such statements by most issuers will be regarded as material misrepresentations. It is important that the issuer concisely describe all of the relevant and material risks. These risks could include, but are not limited to, explanations of any of the following risks, if applicable to the particular offering. The captions of those risk factors may be, but are not required to be, similar to the following:

009.05C1 Notes are unsecured general obligations of the issuer, and investors will be dependent solely upon the financial condition and operations of the issuer for repayment of principal and interest.

009.05C2 No sinking fund or trust indenture has been or will be established to ensure or secure the repayment of notes.

009.05C3 The notes are subordinate in ranking and priority in relation to the issuer's existing and anticipated future senior secured indebtedness (See Section 006.03, above).

009.05C4 No public market exists for the notes and none will develop, and therefore, the transferability of the notes is limited and restricted.

009.05C5 The recent negative changes or trends in the financial condition of the issuer and its operations may adversely affect the issuer's ability to make payments of principal and interest on the notes when due.

009.05C6 The issuer's liquid assets invested in readily marketable securities are subject to various market risks which may result in losses if market values of investments decline.

009.05C7 There are no income tax benefits with respect to investment in the notes; and interest paid or payable on notes is taxed as ordinary income, regardless of whether interest is received by the investor or retained and compounded by the issuer.

009.05C8 The issuer's loans are made primarily to affiliated churches and related religious organizations, including local churches, whose ability to repay the loans depends primarily upon contributions that they receive from their members.

009.05C9 The loan policies of the issuer for loans to its affiliated churches and its related religious organizations are less stringent than loan policies of commercial lenders.

009.05C10 Future changes in federal or state laws may adversely affect the issuer's ability to continue to sell its notes.

009.05C11 The issuer is involved in activities other than its CEF operations.

009.05C12 There are risks involved in specific transactions or arrangements, such as loan securitizations, undertaken or entered into by the CEF.

009.05C13 There are risks related to geographic concentration of loans to affiliated churches or other related organizations within a limited region, such that changes in economic conditions of that region could affect the ability of the churches or organizations, as a group, to repay the loans.

009.05C14 Risks of investment in the notes may be greater than implied by relatively low interest rates on the notes.

009.05C15 The notes are not insured by any governmental agency or private insurance company.

009.06 The offering circular shall contain all material information on the issuer's history and operations, including:

009.06A A description of the issuer, including the name, address of principal business office, place and date of incorporation, type and nature of the corporation, such as not-for-profit;

009.06B A description of the history of the issuer and its denominational affiliation or association;

009.06C A description of the religious purposes of the issuer and the general nature and purposes of its operations;

009.06D A description of the nature and extent of the offering of the notes and the extent of the issuer's offerings on a nationwide basis; and

009.06E A description of the current operations and principal business activities of the issuer.

~~009.04~~ 009.07 The offering circular shall describe ~~how the proceeds from the sale of the notes are to be used~~ the use of the proceeds and other material information related thereto.

009.07A If a material amount of proceeds are to be used for purposes other than operating a CEF program, the offering circular shall explain the uses and the need to use the funds for such purposes.

~~009.05~~ 009.08 The offering circular shall describe the financing operations and activities of the issuer, including:

~~009.05A~~009.08A A description and summary, in tabular form, of the issuer's outstanding notes and debt obligations, categorized to the extent necessary to inform an investor of the nature and type of notes and debt obligations that it has sold and incurred, including the principal amounts due at maturity, if the information is not disclosed in the audited financial statements of the issuer or the footnotes attached thereto;

~~009.05B~~009.08B A description of the receipts that the issuer received from the sale of its notes and the amount of any redemptions that it made on its notes in its prior fiscal year;

~~009.05C~~009.08C A description and summary, in tabular form, of the amount and nature of the issuer's outstanding loans receivable at the end of its last fiscal year and a summary of maturities of the various outstanding loans receivable of the issuer, if the information is not disclosed in the audited financial statements of the issuer or the footnotes attached thereto;

009.08C1 The disclosure of loans receivable shall also demonstrate that loans are primarily secured as required under Section 007.05D, above.

009.08C2 Information concerning loans guaranteed by third parties, including a summary of the financial condition of guarantors, shall be disclosed, if material

~~009.05D A description and summary of the nature and amount of any invested funds which the issuer maintains, pending utilization for its loan activities or maintaining a reasonable liquidity, and a description of the policies of the issuer with respect to the maintenance of such invested funds;~~

~~009.05E~~ 009.08D A description of the issuer's direct and indirect ~~non-related~~ revenues and expenses that are unrelated to its CEF operations, ~~-~~if ~~a significant percentage of the issuer's operating revenues or expenses arise out of its non-related operations;~~ material; and

~~009.05F~~ 009.08E A description of any other related material financial information of the issuer's financial activities and operations that relate to its ability to repay the principal and interest on its outstanding notes and other debt securities when due.

~~009.06~~ 009.09 The offering circular shall describe the lending activities of the issuer, including, if applicable:

~~009.06A~~ 009.09A The nature and types of its loans receivable;

~~009.06B~~ 009.09B The issuer's loan policies;

~~009.06C~~ 009.09C Material loans made to a single borrower;

~~009.06D~~ 009.09D The nature and extent of any material loan delinquencies for ~~its~~ the last three fiscal years; and

~~009.06E~~ 009.09E The nature and extent of any material loan losses that the issuer has incurred within its last three fiscal years.

009.10 The offering circular shall describe the investing activities of the issuer, including:

009.10A A description and summary of the nature and amount of any invested funds which the issuer maintains pending utilization for its loan activities or for purposes of maintaining a reasonable liquidity as required by Section 007.03, above.

009.10B A description of the policies of the issuer as required by Section 007.03A, above, with respect to making and maintaining such investments, including the types of investments the issuer is permitted to make under its investment policy and any limitations on such investments. Any investment(s) currently held by the issuer that does not comport with this policy must be disclosed and a reason provided as to why the issuer holds that investment(s).

009.10C The name(s) of the person(s) responsible for setting or altering the issuer's investment policy and the person(s) responsible for making and maintaining the issuer's investments. If the issuer has engaged a third party to make or maintain its investments, the identity of that third party must be disclosed.

009.10D A description in tabular form of the issuer's outstanding investments categorized according to the types of investments held, such as equity securities, government securities or corporate bonds, which discloses the amount invested in each category, both in monetary terms and as a percentage of the issuer's total investments. The monetary value of investments disclosed in the table should be presented in conformity with GAAP for not-for-profit organizations.

009.10E The issuer's aggregate realized and unrealized gains and losses from investments for each of its last three fiscal years.

009.10F Any other material information regarding the issuer's investments.

~~009.07~~ 009.11 Selected Financial Data. The offering circular shall:

~~009.07A The offering circular shall set forth in tabular form certain selected financial data of the issuer's last five fiscal years, including cash and liquid reserve balances, outstanding notes and debt obligations, outstanding loans receivable, fund balances, and net income or loss.~~

~~009.07B The issuer should include, to the extent relevant and material, any discussion and analysis by management of the issuer that will assist investors in understanding the nature of the operations of the issuer and the occurrence of any items of income or loss arising out of its operations.~~
009.11A Disclose the following selected financial data in tabular form for each of the issuer's last five fiscal years as reported in or derived from its audited financial statements:

009.11A1 Cash, cash equivalents and readily marketable securities, combined;

009.11A2 Total loans receivable;

009.11A3 Amount and percent of unsecured loans receivable;

009.11A4 Loan delinquencies as a percent of loans receivable;

009.11A5 Total assets;

009.11A6 Total notes payable;

009.11A7 Amount of notes redeemed during the fiscal year;

009.11A8 Other long-term debt;

009.11A9 Net assets; and

009.11A10 Change in net assets.

009.11B Include, to the extent relevant and material, any discussion and analysis by management of the issuer that will assist investors in understanding the nature of the operations of the issuer and the selected financial data.

~~009.08~~ 009.12 The offering circular shall contain all material information on the notes, including:

~~009.08A~~ 009.12A A description of the type and nature of the notes and the manner in which the interest thereon will be computed and/or accrued;

~~009.08B~~ 009.12B A description of the terms of the notes, including any right to early redemption and any penalties that will be applied thereto;

~~009.08C~~ 009.12C A description of the nature of cash or cash equivalent that will be acceptable for purchase of the notes;

~~009.08D~~ 009.12D A description of the restrictions and limitations on transferability of the notes; and

~~009.08E~~ 009.12E A description of the ranking and priority of the notes in relation to other indebtedness of the issuer.

~~009.09~~ 009.13 The offering circular shall contain all material information regarding the distribution of the securities, including:

~~009.09A~~ 009.13A A description of the method and manner in which the notes will be offered and sold to investors, including the methods of solicitation and subscription; and

~~009.09B~~ 009.13B A statement that no underwriting or selling agreements exist and that no direct or indirect commissions or other remuneration will be paid to any individuals or organizations in connection with the offer and sale of the notes.

~~009.10~~ 009.14 The offering circular shall contain a description of the federal tax aspects of ownership of the notes and ~~a statement that~~a description of the taxability of the interest paid or accrued on the notes ~~will be taxable as ordinary income to investors.~~ under current federal tax law.

~~009.11~~ 009.15 The offering circular shall contain all material information ~~in~~ on litigation and other materials ~~and~~ transactions to which the issuer is a party, including:

~~009.11A~~ 009.15A A description of all present, pending or threatened material legal proceedings, including those that are known to be contemplated by governmental authorities, administrative bodies, or other administrative persons to which the issuer or its property is or may become a party;~~,~~

009.15B ~~including the~~The name of the court or agency in which the proceedings are pending, the date that the proceedings were instituted, the principal parties involved, and a description of the factual basis underlying the proceedings and the relief sought;~~, and the outcome of any proceeding which is no longer pending;~~ and

~~009.11B~~ 009.15C A description of any transactions that may materially affect the offering or an investor's investment decision and which are not otherwise mentioned in the offering circular.

~~009.12~~ 009.16 Management. The offering circular shall contain all material information concerning the issuer's management, including:

~~009.12A~~ 009.16A A description of the organizational structure of the issuer, including the method of choosing or replacing the members of its Board of Directors or other legal governing body;

~~009.12B~~ 009.16B A statement identifying all directors and executive officers, or persons having similar authority, of the issuer, and describing their experience and credentials, the functions they perform for the issuer and the dates that their terms of office expire;

009.16C~~009.12C~~ A statement disclosing if any director or officer of the issuer has, during the past ten ~~(10)~~ years, been convicted in any criminal proceeding, ~~(~~other than for traffic violations or other minor misdemeanors~~)~~, is the subject of any pending criminal proceedings, or was the subject of any order, judgment or decree of any court enjoining such person from any activities associated with the offer or sale of securities; ~~, or is or was the subject of any action by an administrative agency in connection with the offer or sale of securities;~~

~~009.12D~~ 009.16D ~~A statement disclosing all direct and indirect remuneration paid by the issuer to its executive officers or directors or persons having similar authority for the issuer's last fiscal year in the aggregate, and individually, if the remuneration, which includes, but is not limited to, salaries, pensions, retirement plans and the use of the issuer's assets for personal purposes, equals or exceeds the amount requiring disclosure as set forth in the rules and regulations of the Securities and Exchange Commission; and~~ A table disclosing all direct and indirect remuneration, which includes, but is not limited to, salaries, health and other insurance, pensions or retirement plans and the use of the issuer's assets for personal purposes, that are paid by the issuer to the following:

009.16D1 Its executive officers, directors or persons having similar authority for the issuer's last fiscal year in the aggregate, and

009.16D2 Its executive officers, directors or persons having similar authority, individually, if the remuneration equals or exceeds one hundred fifty thousand dollars ($150,000.00) during the issuer's last fiscal year; and

~~009.12E~~ 009.16E A description of all material employment contracts, perquisites of employment and conflicts of interests of the issuer's officers, directors, or persons having similar authority.

~~009.13~~ 009.17 Financial Statements. The offering circular shall contain the ~~issuer's~~ audited financial statements, ~~consisting of:~~ of the issuer, which shall include all financial statements and notes required by GAAP as follows:

~~009.13A~~ 009.17A ~~Statements of assets and liabilities (balance sheet)~~ Balance sheets for ~~its~~ the issuer's two most recent fiscal years;

~~009.13B~~ 009.17B Statements of ~~revenues and expenses (income statement or aggregation of fund balances)~~ activities, including revenues, expenses and the change in net assets, for ~~its~~ the issuer's three most recent fiscal years;

~~009.13C~~ 009.17C Statements of cash flows for ~~its~~ the issuer's three most recent fiscal years with gross rather than net reporting of financing and investing activities;

~~009.13D~~ 009.17D ~~A description of any recent changes in its current accounting policies; and~~ Notes to the financial statements to explain accounting policies and provide other disclosures required by GAAP for not-for-profit organizations or as required by this Section.

~~009.13E A copy of the report of the independent certified public accountant.~~

~~009.13F Any material adverse changes in the financial condition of the CEF during the offering period shall be promptly disclosed in an appropriate supplement, or an amendment to the offering circular.~~

~~009.13G~~ 009.18 The offering circular shall state that the ~~CEF's~~ issuer's current audited financial statements will be made available to investors upon written request, and will be mailed to investors within one hundred twenty ~~120~~ days of its last fiscal year end.

010 WAIVER OF RULE. While disclosures not conforming to the provisions of this Rule shall be looked upon with disfavor, where good cause is shown, certain provisions of the Rule may be waived by the Director.

26 U.S.C.
United States Code, 2013 Edition
Title 26 - INTERNAL REVENUE CODE
Subtitle A - Income Taxes
CHAPTER 1 - NORMAL TAXES AND SURTAXES
Subchapter F - Exempt Organizations
PART I - GENERAL RULE
Sec. 501 - Exemption from tax on corporations, certain trusts, etc.
From the U.S. Government Printing Office, www.gpo.gov

§501. Exemption from tax on corporations, certain trusts, etc.

(a) Exemption from taxation

An organization described in subsection (c) or (d) or section 401(a) shall be exempt from taxation under this subtitle unless such exemption is denied under section 502 or 503.

(b) Tax on unrelated business income and certain other activities

An organization exempt from taxation under subsection (a) shall be subject to tax to the extent provided in parts II, III, and VI of this subchapter, but (notwithstanding parts II, III, and VI of this subchapter) shall be considered an organization exempt from income taxes for the purpose of any law which refers to organizations exempt from income taxes.

(c) List of exempt organizations

The following organizations are referred to in subsection (a):

(1) Any corporation organized under Act of Congress which is an instrumentality of the United States but only if such corporation—

(A) is exempt from Federal income taxes—

(i) under such Act as amended and supplemented before July 18, 1984, or

(ii) under this title without regard to any provision of law which is not contained in this title and which is not contained in a revenue Act, or

(B) is described in subsection (l).

(2) Corporations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt under this section. Rules similar to the rules of subparagraph (G) of paragraph (25) shall apply for purposes of this paragraph.

(3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

(4)(A) Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes.

(B) Subparagraph (A) shall not apply to an entity unless no part of the net earnings of such entity inures to the benefit of any private shareholder or individual.

(5) Labor, agricultural, or horticultural organizations.

(6) Business leagues, chambers of commerce, real-estate boards, boards of trade, or professional football leagues (whether or not administering a pension fund for football players), not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(7) Clubs organized for pleasure, recreation, and other nonprofitable purposes, substantially all of the activities of which are for such purposes and no part of the net earnings of which inures to the benefit of any private shareholder.

(8) Fraternal beneficiary societies, orders, or associations—

(A) operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and

(B) providing for the payment of life, sick, accident, or other benefits to the members of such society, order, or association or their dependents.

(9) Voluntary employees' beneficiary associations providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents or designated beneficiaries, if no part of the net earnings of such association inures (other than through such payments) to the benefit of any private shareholder or individual. For purposes of providing for the payment of sick and accident benefits to members of such an association and their dependents, the term "dependent" shall include any individual who is a child (as defined in section 152(f)(1)) of a member who as of the end of the calendar year has not attained age 27.

(10) Domestic fraternal societies, orders, or associations, operating under the lodge system—

(A) the net earnings of which are devoted exclusively to religious, charitable, scientific, literary, educational, and fraternal purposes, and

(B) which do not provide for the payment of life, sick, accident, or other benefits.

(11) Teachers' retirement fund associations of a purely local character, if—

(A) no part of their net earnings inures (other than through payment of retirement benefits) to the benefit of any private shareholder or individual, and

(B) the income consists solely of amounts received from public taxation, amounts received from assessments on the teaching salaries of members, and income in respect of investments.

(12)(A) Benevolent life insurance associations of a purely local character, mutual ditch or irrigation companies, mutual or cooperative telephone companies, or like organizations; but only if 85 percent or more of the income consists of amounts collected from members for the sole purpose of meeting losses and expenses.

(B) In the case of a mutual or cooperative telephone company, subparagraph (A) shall be applied without taking into account any income received or accrued—

(i) from a nonmember telephone company for the performance of communication services which involve members of the mutual or cooperative telephone company,

(ii) from qualified pole rentals,

(iii) from the sale of display listings in a directory furnished to the members of the mutual or cooperative telephone company, or

(iv) from the prepayment of a loan under section 306A, 306B, or 311 [1] of the Rural Electrification Act of 1936 (as in effect on January 1, 1987).

(C) In the case of a mutual or cooperative electric company, subparagraph (A) shall be applied without taking into account any income received or accrued—

(i) from qualified pole rentals, or

(ii) from any provision or sale of electric energy transmission services or ancillary services if such services are provided on a nondiscriminatory open access basis under an open access transmission tariff approved or accepted by FERC or under an independent transmission provider agreement approved or accepted by FERC (other than income received or accrued directly or indirectly from a member),

(iii) from the provision or sale of electric energy distribution services or ancillary services if such services are provided on a nondiscriminatory open access basis to distribute electric energy not owned by the mutual or electric cooperative company—

(I) to end-users who are served by distribution facilities not owned by such company or any of its members (other than income received or accrued directly or indirectly from a member), or

(II) generated by a generation facility not owned or leased by such company or any of its members and which is directly connected to distribution facilities owned by such company or any of its members (other than income received or accrued directly or indirectly from a member),

(iv) from any nuclear decommissioning transaction, or

(v) from any asset exchange or conversion transaction.

(D) For purposes of this paragraph, the term "qualified pole rental" means any rental of a pole (or other structure used to support wires) if such pole (or other structure)—

(i) is used by the telephone or electric company to support one or more wires which are used by such company in providing telephone or electric services to its members, and

(ii) is used pursuant to the rental to support one or more wires (in addition to the wires described in clause (i)) for use in connection with the transmission by wire of electricity or of telephone or other communications.

For purposes of the preceding sentence, the term "rental" includes any sale of the right to use the pole (or other structure).

(E) For purposes of subparagraph (C)(ii), the term "FERC" means the Federal Energy Regulatory Commission and references to such term shall be treated as including the Public Utility Commission of Texas with respect to any ERCOT utility (as defined in section 212(k)(2)(B) of the Federal Power Act (16 U.S.C. 824k(k)(2)(B))).

(F) For purposes of subparagraph (C)(iv), the term "nuclear decommissioning transaction" means—

(i) any transfer into a trust, fund, or instrument established to pay any nuclear decommissioning costs if the transfer is in connection with the transfer of the mutual or cooperative electric company's interest in a nuclear power plant or nuclear power plant unit,

(ii) any distribution from any trust, fund, or instrument established to pay any nuclear decommissioning costs, or

(iii) any earnings from any trust, fund, or instrument established to pay any nuclear decommissioning costs.

(G) For purposes of subparagraph (C)(v), the term "asset exchange or conversion transaction" means any voluntary exchange or involuntary conversion of any property related to generating, transmitting, distributing, or selling electric energy by a mutual or cooperative electric company, the gain from which qualifies for deferred recognition under section 1031 or 1033, but only if the replacement property acquired by such company pursuant to such section constitutes property which is used, or to be used, for—

(i) generating, transmitting, distributing, or selling electric energy, or

(ii) producing, transmitting, distributing, or selling natural gas.

(H)(i) In the case of a mutual or cooperative electric company described in this paragraph or an organization described in section 1381(a)(2)(C), income received or accrued from a load loss transaction shall be treated as an amount collected from members for the sole purpose of meeting losses and expenses.

(ii) For purposes of clause (i), the term "load loss transaction" means any wholesale or retail sale of electric energy (other than to members) to the extent that the aggregate sales during the recovery period do not exceed the load loss mitigation sales limit for such period.

(iii) For purposes of clause (ii), the load loss mitigation sales limit for the recovery period is the sum of the annual load losses for each year of such period.

(iv) For purposes of clause (iii), a mutual or cooperative electric company's annual load loss for each year of the recovery period is the amount (if any) by which—

(I) the megawatt hours of electric energy sold during such year to members of such electric company are less than

(II) the megawatt hours of electric energy sold during the base year to such members.

(v) For purposes of clause (iv)(II), the term "base year" means—

(I) the calendar year preceding the start-up year, or

(II) at the election of the mutual or cooperative electric company, the second or third calendar years preceding the start-up year.

(vi) For purposes of this subparagraph, the recovery period is the 7-year period beginning with the start-up year.

(vii) For purposes of this subparagraph, the start-up year is the first year that the mutual or cooperative electric company offers nondiscriminatory open access or the calendar year which includes the date of the enactment of this subparagraph, if later, at the election of such company.

(viii) A company shall not fail to be treated as a mutual or cooperative electric company for purposes of this paragraph or as a corporation operating on a cooperative basis for purposes of section 1381(a)(2)(C) by reason of the treatment under clause (i).

(ix) For purposes of subparagraph (A), in the case of a mutual or cooperative electric company, income received, or accrued, indirectly from a member shall be treated as an amount collected from members for the sole purpose of meeting losses and expenses.

(13) Cemetery companies owned and operated exclusively for the benefit of their members or which are not operated for profit; and any corporation chartered solely for the purpose of the disposal of bodies by burial or cremation which is not permitted by its charter to engage in any business not necessarily incident to that purpose and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(14)(A) Credit unions without capital stock organized and operated for mutual purposes and without profit.

(B) Corporations or associations without capital stock organized before September 1, 1957, and operated for mutual purposes and without profit for the purpose of providing reserve funds for, and insurance of shares or deposits in—

(i) domestic building and loan associations,

(ii) cooperative banks without capital stock organized and operated for mutual purposes and without profit,

(iii) mutual savings banks not having capital stock represented by shares, or

(iv) mutual savings banks described in section 591(b) [2]

(C) Corporations or associations organized before September 1, 1957, and operated for mutual purposes and without profit for the purpose of providing reserve funds for associations or banks described in clause (i), (ii), or (iii) of subparagraph (B); but only if 85 percent or more of the

income is attributable to providing such reserve funds and to investments. This subparagraph shall not apply to any corporation or association entitled to exemption under subparagraph (B).

(15)(A) Insurance companies (as defined in section 816(a)) other than life (including interinsurers and reciprocal underwriters) if—

(i)(I) the gross receipts for the taxable year do not exceed $600,000, and

(II) more than 50 percent of such gross receipts consist of premiums, or

(ii) in the case of a mutual insurance company—

(I) the gross receipts of which for the taxable year do not exceed $150,000, and

(II) more than 35 percent of such gross receipts consist of premiums.

Clause (ii) shall not apply to a company if any employee of the company, or a member of the employee's family (as defined in section 2032A(e)(2)), is an employee of another company exempt from taxation by reason of this paragraph (or would be so exempt but for this sentence).

(B) For purposes of subparagraph (A), in determining whether any company or association is described in subparagraph (A), such company or association shall be treated as receiving during the taxable year amounts described in subparagraph (A) which are received during such year by all other companies or associations which are members of the same controlled group as the insurance company or association for which the determination is being made.

(C) For purposes of subparagraph (B), the term "controlled group" has the meaning given such term by section 831(b)(2)(B)(ii), except that in applying section 831(b)(2)(B)(ii) for purposes of this subparagraph, subparagraphs (B) and (C) of section 1563(b)(2) shall be disregarded.

(16) Corporations organized by an association subject to part IV of this subchapter or members thereof, for the purpose of financing the ordinary crop operations of such members or other producers, and operated in conjunction with such association. Exemption shall not be denied any such corporation because it has capital stock, if the dividend rate of such stock is fixed at not to exceed the legal rate of interest in the State of incorporation or 8 percent per annum, whichever is greater, on the value of the consideration for which the stock was issued, and if substantially all such stock (other than nonvoting preferred stock, the owners of which are not entitled or permitted to participate, directly or indirectly, in the profits of the corporation, on dissolution or otherwise, beyond the fixed dividends) is owned by such association, or members thereof; nor shall exemption be denied any such corporation because there is accumulated and maintained by it a reserve required by State law or a reasonable reserve for any necessary purpose.

(17)(A) A trust or trusts forming part of a plan providing for the payment of supplemental unemployment compensation benefits, if—

(i) under the plan, it is impossible, at any time prior to the satisfaction of all liabilities, with respect to employees under the plan, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, any purpose other than the providing of supplemental unemployment compensation benefits,

(ii) such benefits are payable to employees under a classification which is set forth in the plan and which is found by the Secretary not to be discriminatory in favor of employees who are highly compensated employees (within the meaning of section 414(q)), and

(iii) such benefits do not discriminate in favor of employees who are highly compensated employees (within the meaning of section 414(q)). A plan shall not be considered discriminatory within the meaning of this clause merely because the benefits received under the plan bear a uniform relationship to the total compensation, or the basic or regular rate of compensation, of the employees covered by the plan.

(B) In determining whether a plan meets the requirements of subparagraph (A), any benefits provided under any other plan shall not be taken into consideration, except that a plan shall not be considered discriminatory—

(i) merely because the benefits under the plan which are first determined in a nondiscriminatory manner within the meaning of subparagraph (A) are then reduced by any sick, accident, or unemployment compensation benefits received under State or Federal law (or reduced by a portion of such benefits if determined in a nondiscriminatory manner), or

(ii) merely because the plan provides only for employees who are not eligible to receive sick, accident, or unemployment compensation benefits under State or Federal law the same benefits (or a portion of such benefits if determined in a nondiscriminatory manner) which such employees would receive under such laws if such employees were eligible for such benefits, or

(iii) merely because the plan provides only for employees who are not eligible under another plan (which meets the requirements of subparagraph (A)) of supplemental unemployment compensation benefits provided wholly by the employer the same benefits (or a portion of such benefits if determined in a nondiscriminatory manner) which such employees would receive under such other plan if such employees were eligible under such other plan, but only if the employees eligible under both plans would make a classification which would be nondiscriminatory within the meaning of subparagraph (A).

(C) A plan shall be considered to meet the requirements of subparagraph (A) during the whole of any year of the plan if on one day in each quarter it satisfies such requirements.

(D) The term "supplemental unemployment compensation benefits" means only—

(i) benefits which are paid to an employee because of his involuntary separation from the employment of the employer (whether or not such separation is temporary) resulting directly from a reduction in force, the discontinuance of a plant or operation, or other similar conditions, and

(ii) sick and accident benefits subordinate to the benefits described in clause (i).

(E) Exemption shall not be denied under subsection (a) to any organization entitled to such exemption as an association described in paragraph (9) of this subsection merely because such organization provides for the payment of supplemental unemployment benefits (as defined in subparagraph (D)(i)).

(18) A trust or trusts created before June 25, 1959, forming part of a plan providing for the payment of benefits under a pension plan funded only by contributions of employees, if—

(A) under the plan, it is impossible, at any time prior to the satisfaction of all liabilities with respect to employees under the plan, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, any purpose other than the providing of benefits under the plan,

(B) such benefits are payable to employees under a classification which is set forth in the plan and which is found by the Secretary not to be discriminatory in favor of employees who are highly compensated employees (within the meaning of section 414(q)),

(C) such benefits do not discriminate in favor of employees who are highly compensated employees (within the meaning of section 414(q)). A plan shall not be considered discriminatory within the meaning of this subparagraph merely because the benefits received under the plan bear a uniform relationship to the total compensation, or the basic or regular rate of compensation, of the employees covered by the plan, and

(D) in the case of a plan under which an employee may designate certain contributions as deductible—

(i) such contributions do not exceed the amount with respect to which a deduction is allowable under section 219(b)(3),

(ii) requirements similar to the requirements of section 401(k)(3)(A)(ii) are met with respect to such elective contributions,

(iii) such contributions are treated as elective deferrals for purposes of section 402(g), and

(iv) the requirements of section 401(a)(30) are met.

For purposes of subparagraph (D)(ii), rules similar to the rules of section 401(k)(8) shall apply. For purposes of section 4979, any excess contribution under clause (ii) shall be treated as an excess contribution under a cash or deferred arrangement.

(19) A post or organization of past or present members of the Armed Forces of the United States, or an auxiliary unit or society of, or a trust or foundation for, any such post or organization—

(A) organized in the United States or any of its possessions,

(B) at least 75 percent of the members of which are past or present members of the Armed Forces of the United States and substantially all of the other members of which are individuals who are cadets or are spouses, widows,,[3] widowers, ancestors, or lineal descendants of past or present members of the Armed Forces of the United States or of cadets, and

(C) no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(20) an [4] organization or trust created or organized in the United States, the exclusive function of which is to form part of a qualified group legal services plan or plans, within the meaning of section 120. An organization or trust which receives contributions because of section 120(c)(5)(C) shall not be prevented from qualifying as an organization described in this paragraph merely because it provides legal services or indemnification against the cost of legal services unassociated with a qualified group legal services plan.

(21)(A) A trust or trusts established in writing, created or organized in the United States, and contributed to by any person (except an insurance company) if—

(i) the purpose of such trust or trusts is exclusively—

(I) to satisfy, in whole or in part, the liability of such person for, or with respect to, claims for compensation for disability or death due to pneumoconiosis under Black Lung Acts,

(II) to pay premiums for insurance exclusively covering such liability,

(III) to pay administrative and other incidental expenses of such trust in connection with the operation of the trust and the processing of claims against such person under Black Lung Acts, and

(IV) to pay accident or health benefits for retired miners and their spouses and dependents (including administrative and other incidental expenses of such trust in connection therewith) or premiums for insurance exclusively covering such benefits; and

(ii) no part of the assets of the trust may be used for, or diverted to, any purpose other than—

(I) the purposes described in clause (i),

(II) investment (but only to the extent that the trustee determines that a portion of the assets is not currently needed for the purposes described in clause (i)) in qualified investments, or

(III) payment into the Black Lung Disability Trust Fund established under section 9501, or into the general fund of the United States Treasury (other than in satisfaction of any tax or other civil or criminal liability of the person who established or contributed to the trust).

(B) No deduction shall be allowed under this chapter for any payment described in subparagraph (A)(i)(IV) from such trust.

(C) Payments described in subparagraph (A)(i)(IV) may be made from such trust during a taxable year only to the extent that the aggregate amount of such payments during such taxable year does not exceed the excess (if any), as of the close of the preceding taxable year, of—

(i) the fair market value of the assets of the trust, over

(ii) 110 percent of the present value of the liability described in subparagraph (A)(i)(I) of such person.

The determinations under the preceding sentence shall be made by an independent actuary using actuarial methods and assumptions (not inconsistent with the regulations prescribed under section 192(c)(1)(A)) each of which is reasonable and which are reasonable in the aggregate.

(D) For purposes of this paragraph:

(i) The term "Black Lung Acts" means part C of title IV of the Federal Mine Safety and Health Act of 1977, and any State law providing compensation for disability or death due to that pneumoconiosis.

(ii) The term "qualified investments" means—

(I) public debt securities of the United States,

(II) obligations of a State or local government which are not in default as to principal or interest, and

(III) time or demand deposits in a bank (as defined in section 581) or an insured credit union (within the meaning of section 101(7) of the Federal Credit Union Act, 12 U.S.C. 1752 (7)) located in the United States.

(iii) The term "miner" has the same meaning as such term has when used in section 402(d) of the Black Lung Benefits Act (30 U.S.C. 902(d)).

(iv) The term "incidental expenses" includes legal, accounting, actuarial, and trustee expenses.

(22) A trust created or organized in the United States and established in writing by the plan sponsors of multiemployer plans if—

(A) the purpose of such trust is exclusively—

(i) to pay any amount described in section 4223(c) or (h) of the Employee Retirement Income Security Act of 1974, and

(ii) to pay reasonable and necessary administrative expenses in connection with the establishment and operation of the trust and the processing of claims against the trust,

(B) no part of the assets of the trust may be used for, or diverted to, any purpose other than—

(i) the purposes described in subparagraph (A), or

(ii) the investment in securities, obligations, or time or demand deposits described in clause (ii) of paragraph (21)(D),

(C) such trust meets the requirements of paragraphs (2), (3), and (4) of section 4223(b), 4223 (h), or, if applicable, section 4223(c) of the Employee Retirement Income Security Act of 1974, and

(D) the trust instrument provides that, on dissolution of the trust, assets of the trust may not be paid other than to plans which have participated in the plan or, in the case of a trust established under section 4223(h) of such Act, to plans with respect to which employers have participated in the fund.

(23) Any association organized before 1880 more than 75 percent of the members of which are present or past members of the Armed Forces and a principal purpose of which is to provide insurance and other benefits to veterans or their dependents.

(24) A trust described in section 4049 of the Employee Retirement Income Security Act of 1974 (as in effect on the date of the enactment of the Single-Employer Pension Plan Amendments Act of 1986).

(25)(A) Any corporation or trust which—

(i) has no more than 35 shareholders or beneficiaries,

(ii) has only 1 class of stock or beneficial interest, and

(iii) is organized for the exclusive purposes of—

(I) acquiring real property and holding title to, and collecting income from, such property, and

(II) remitting the entire amount of income from such property (less expenses) to 1 or more organizations described in subparagraph (C) which are shareholders of such corporation or beneficiaries of such trust.

For purposes of clause (iii), the term "real property" shall not include any interest as a tenant in common (or similar interest) and shall not include any indirect interest.

(B) A corporation or trust shall be described in subparagraph (A) without regard to whether the corporation or trust is organized by 1 or more organizations described in subparagraph (C).

(C) An organization is described in this subparagraph if such organization is—

(i) a qualified pension, profit sharing, or stock bonus plan that meets the requirements of section 401(a),

(ii) a governmental plan (within the meaning of section 414(d)),

(iii) the United States, any State or political subdivision thereof, or any agency or instrumentality of any of the foregoing, or

(iv) any organization described in paragraph (3).

(D) A corporation or trust shall in no event be treated as described in subparagraph (A) unless such corporation or trust permits its shareholders or beneficiaries—

(i) to dismiss the corporation's or trust's investment adviser, following reasonable notice, upon a vote of the shareholders or beneficiaries holding a majority of interest in the corporation or trust, and

(ii) to terminate their interest in the corporation or trust by either, or both, of the following alternatives, as determined by the corporation or trust:

(I) by selling or exchanging their stock in the corporation or interest in the trust (subject to any Federal or State securities law) to any organization described in subparagraph (C) so long as the sale or exchange does not increase the number of shareholders or beneficiaries in such corporation or trust above 35, or

(II) by having their stock or interest redeemed by the corporation or trust after the shareholder or beneficiary has provided 90 days notice to such corporation or trust.

(E)(i) For purposes of this title—

(I) a corporation which is a qualified subsidiary shall not be treated as a separate corporation, and

(II) all assets, liabilities, and items of income, deduction, and credit of a qualified subsidiary shall be treated as assets, liabilities, and such items (as the case may be) of the corporation or trust described in subparagraph (A).

(ii) For purposes of this subparagraph, the term "qualified subsidiary" means any corporation if, at all times during the period such corporation was in existence, 100 percent of the stock of such corporation is held by the corporation or trust described in subparagraph (A).

(iii) For purposes of this subtitle, if any corporation which was a qualified subsidiary ceases to meet the requirements of clause (ii), such corporation shall be treated as a new corporation acquiring all of its assets (and assuming all of its liabilities) immediately before such cessation from the corporation or trust described in subparagraph (A) in exchange for its stock.

(F) For purposes of subparagraph (A), the term "real property" includes any personal property which is leased under, or in connection with, a lease of real property, but only if the rent attributable to such personal property (determined under the rules of section 856(d)(1)) for the taxable year does not exceed 15 percent of the total rent for the taxable year attributable to both the real and personal property leased under, or in connection with, such lease.

(G)(i) An organization shall not be treated as failing to be described in this paragraph merely by reason of the receipt of any otherwise disqualifying income which is incidentally derived from the holding of real property.

(ii) Clause (i) shall not apply if the amount of gross income described in such clause exceeds 10 percent of the organization's gross income for the taxable year unless the organization establishes to the satisfaction of the Secretary that the receipt of gross income described in clause (i) in excess of such limitation was inadvertent and reasonable steps are being taken to correct the circumstances giving rise to such income.

(26) Any membership organization if—

(A) such organization is established by a State exclusively to provide coverage for medical care (as defined in section 213(d)) on a not-for-profit basis to individuals described in subparagraph (B) through—

(i) insurance issued by the organization, or

(ii) a health maintenance organization under an arrangement with the organization,

(B) the only individuals receiving such coverage through the organization are individuals—

(i) who are residents of such State, and

(ii) who, by reason of the existence or history of a medical condition—

(I) are unable to acquire medical care coverage for such condition through insurance or from a health maintenance organization, or

(II) are able to acquire such coverage only at a rate which is substantially in excess of the rate for such coverage through the membership organization,

(C) the composition of the membership in such organization is specified by such State, and

(D) no part of the net earnings of the organization inures to the benefit of any private shareholder or individual.

A spouse and any qualifying child (as defined in section 24(c)) of an individual described in subparagraph (B) (without regard to this sentence) shall be treated as described in subparagraph (B).

(27)(A) Any membership organization if—

(i) such organization is established before June 1, 1996, by a State exclusively to reimburse its members for losses arising under workmen's compensation acts,

(ii) such State requires that the membership of such organization consist of—

(I) all persons who issue insurance covering workmen's compensation losses in such State, and

(II) all persons and governmental entities who self-insure against such losses, and

(iii) such organization operates as a non-profit organization by—

(I) returning surplus income to its members or workmen's compensation policyholders on a periodic basis, and

(II) reducing initial premiums in anticipation of investment income.

(B) Any organization (including a mutual insurance company) if—

(i) such organization is created by State law and is organized and operated under State law exclusively to—

(I) provide workmen's compensation insurance which is required by State law or with respect to which State law provides significant disincentives if such insurance is not purchased by an employer, and

(II) provide related coverage which is incidental to workmen's compensation insurance,

(ii) such organization must provide workmen's compensation insurance to any employer in the State (for employees in the State or temporarily assigned out-of-State) which seeks such insurance and meets other reasonable requirements relating thereto,

(iii)(I) the State makes a financial commitment with respect to such organization either by extending the full faith and credit of the State to the initial debt of such organization or by providing the initial operating capital of such organization, and (II) in the case of periods after the date of enactment of this subparagraph, the assets of such organization revert to the State upon dissolution or State law does not permit the dissolution of such organization, and

(iv) the majority of the board of directors or oversight body of such organization are appointed by the chief executive officer or other executive branch official of the State, by the State legislature, or by both.

(28) The National Railroad Retirement Investment Trust established under section 15(j) of the Railroad Retirement Act of 1974.

(29) CO–OP HEALTH INSURANCE ISSUERS.—

(A) IN GENERAL.—A qualified nonprofit health insurance issuer (within the meaning of section 1322 of the Patient Protection and Affordable Care Act) which has received a loan or grant under the CO–OP program under such section, but only with respect to periods for which the issuer is in compliance with the requirements of such section and any agreement with respect to the loan or grant.

(B) CONDITIONS FOR EXEMPTION.—Subparagraph (A) shall apply to an organization only if—

(i) the organization has given notice to the Secretary, in such manner as the Secretary may by regulations prescribe, that it is applying for recognition of its status under this paragraph,

(ii) except as provided in section 1322(c)(4) of the Patient Protection and Affordable Care Act, no part of the net earnings of which inures to the benefit of any private shareholder or individual,

(iii) no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and

(iv) the organization does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

(d) Religious and apostolic organizations

The following organizations are referred to in subsection (a): Religious or apostolic associations or corporations, if such associations or corporations have a common treasury or community treasury, even if such associations or corporations engage in business for the common benefit of the members, but only if the members thereof include (at the time of filing their returns) in their gross income their entire pro rata shares, whether distributed or not, of the taxable income of the association or corporation for such year. Any amount so included in the gross income of a member shall be treated as a dividend received.

(e) Cooperative hospital service organizations

For purposes of this title, an organization shall be treated as an organization organized and operated exclusively for charitable purposes, if—

(1) such organization is organized and operated solely—

(A) to perform, on a centralized basis, one or more of the following services which, if performed on its own behalf by a hospital which is an organization described in subsection (c)(3) and exempt from taxation under subsection (a), would constitute activities in exercising or performing the purpose or function constituting the basis for its exemption: data processing, purchasing (including the purchasing of insurance on a group basis), warehousing, billing and collection (including the purchase of patron accounts receivable on a recourse basis), food,

clinical, industrial engineering, laboratory, printing, communications, record center, and personnel (including selection, testing, training, and education of personnel) services; and

(B) to perform such services solely for two or more hospitals each of which is—

(i) an organization described in subsection (c)(3) which is exempt from taxation under subsection (a),

(ii) a constituent part of an organization described in subsection (c)(3) which is exempt from taxation under subsection (a) and which, if organized and operated as a separate entity, would constitute an organization described in subsection (c)(3), or

(iii) owned and operated by the United States, a State, the District of Columbia, or a possession of the United States, or a political subdivision or an agency or instrumentality of any of the foregoing;

(2) such organization is organized and operated on a cooperative basis and allocates or pays, within 8½ months after the close of its taxable year, all net earnings to patrons on the basis of services performed for them; and

(3) if such organization has capital stock, all of such stock outstanding is owned by its patrons.

For purposes of this title, any organization which, by reason of the preceding sentence, is an organization described in subsection (c)(3) and exempt from taxation under subsection (a), shall be treated as a hospital and as an organization referred to in section 170(b)(1)(A)(iii).

(f) Cooperative service organizations of operating educational organizations

For purposes of this title, if an organization is—

(1) organized and operated solely to hold, commingle, and collectively invest and reinvest (including arranging for and supervising the performance by independent contractors of investment services related thereto) in stocks and securities, the moneys contributed thereto by each of the members of such organization, and to collect income therefrom and turn over the entire amount thereof, less expenses, to such members,

(2) organized and controlled by one or more such members, and

(3) comprised solely of members that are organizations described in clause (ii) or (iv) of section 170(b)(1)(A)—

(A) which are exempt from taxation under subsection (a), or

(B) the income of which is excluded from taxation under section 115(a),

then such organization shall be treated as an organization organized and operated exclusively for charitable purposes.

(g) Definition of agricultural

For purposes of subsection (c)(5), the term "agricultural" includes the art or science of cultivating land, harvesting crops or aquatic resources, or raising livestock.

(h) Expenditures by public charities to influence legislation

(1) General rule

In the case of an organization to which this subsection applies, exemption from taxation under subsection (a) shall be denied because a substantial part of the activities of such organization consists of carrying on propaganda, or otherwise attempting, to influence legislation, but only if such organization normally—

(A) makes lobbying expenditures in excess of the lobbying ceiling amount for such organization for each taxable year, or

(B) makes grass roots expenditures in excess of the grass roots ceiling amount for such organization for each taxable year.

(2) Definitions

For purposes of this subsection—

(A) Lobbying expenditures

The term "lobbying expenditures" means expenditures for the purpose of influencing legislation (as defined in section 4911(d)).

(B) Lobbying ceiling amount

The lobbying ceiling amount for any organization for any taxable year is 150 percent of the lobbying nontaxable amount for such organization for such taxable year, determined under section 4911.

(C) Grass roots expenditures

The term "grass roots expenditures" means expenditures for the purpose of influencing legislation (as defined in section 4911(d) without regard to paragraph (1)(B) thereof).

(D) Grass roots ceiling amount

The grass roots ceiling amount for any organization for any taxable year is 150 percent of the grass roots nontaxable amount for such organization for such taxable year, determined under section 4911.

(3) Organizations to which this subsection applies

This subsection shall apply to any organization which has elected (in such manner and at such time as the Secretary may prescribe) to have the provisions of this subsection apply to such organization and which, for the taxable year which includes the date the election is made, is described in subsection (c)(3) and—

(A) is described in paragraph (4), and

(B) is not a disqualified organization under paragraph (5).

(4) Organizations permitted to elect to have this subsection apply

An organization is described in this paragraph if it is described in—

(A) section 170(b)(1)(A)(ii) (relating to educational institutions),

(B) section 170(b)(1)(A)(iii) (relating to hospitals and medical research organizations),

(C) section 170(b)(1)(A)(iv) (relating to organizations supporting government schools),

(D) section 170(b)(1)(A)(vi) (relating to organizations publicly supported by charitable contributions),

(E) section 509(a)(2) (relating to organizations publicly supported by admissions, sales, etc.), or

(F) section 509(a)(3) (relating to organizations supporting certain types of public charities) except that for purposes of this subparagraph, section 509(a)(3) shall be applied without regard to the last sentence of section 509(a).

(5) Disqualified organizations

For purposes of paragraph (3) an organization is a disqualified organization if it is—

(A) described in section 170(b)(1)(A)(i) (relating to churches),

(B) an integrated auxiliary of a church or of a convention or association of churches, or

(C) a member of an affiliated group of organizations (within the meaning of section 4911(f)(2)) if one or more members of such group is described in subparagraph (A) or (B).

(6) Years for which election is effective

An election by an organization under this subsection shall be effective for all taxable years of such organization which—

(A) end after the date the election is made, and

(B) begin before the date the election is revoked by such organization (under regulations prescribed by the Secretary).

(7) No effect on certain organizations

With respect to any organization for a taxable year for which—

(A) such organization is a disqualified organization (within the meaning of paragraph (5)), or

(B) an election under this subsection is not in effect for such organization,

nothing in this subsection or in section 4911 shall be construed to affect the interpretation of the phrase, "no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation," under subsection (c)(3).

(8) Affiliated organizations

For rules regarding affiliated organizations, see section 4911(f).

(i) Prohibition of discrimination by certain social clubs

Notwithstanding subsection (a), an organization which is described in subsection (c)(7) shall not be exempt from taxation under subsection (a) for any taxable year if, at any time during such taxable year, the charter, bylaws, or other governing instrument, of such organization or any written policy statement of such organization contains a provision which provides for discrimination against any person on the basis of race, color, or religion. The preceding sentence to the extent it relates to discrimination on the basis of religion shall not apply to—

(1) an auxiliary of a fraternal beneficiary society if such society—

(A) is described in subsection (c)(8) and exempt from tax under subsection (a), and

(B) limits its membership to the members of a particular religion, or

(2) a club which in good faith limits its membership to the members of a particular religion in order to further the teachings or principles of that religion, and not to exclude individuals of a particular race or color.

(j) Special rules for certain amateur sports organizations

(1) In general

In the case of a qualified amateur sports organization—

(A) the requirement of subsection (c)(3) that no part of its activities involve the provision of athletic facilities or equipment shall not apply, and

(B) such organization shall not fail to meet the requirements of subsection (c)(3) merely because its membership is local or regional in nature.

(2) Qualified amateur sports organization defined

For purposes of this subsection, the term "qualified amateur sports organization" means any organization organized and operated exclusively to foster national or international amateur sports competition if such organization is also organized and operated primarily to conduct national or international competition in sports or to support and develop amateur athletes for national or international competition in sports.

(k) Treatment of certain organizations providing child care

For purposes of subsection (c)(3) of this section and sections 170(c)(2), 2055(a)(2), and 2522(a)(2), the term "educational purposes" includes the providing of care of children away from their homes if—

(1) substantially all of the care provided by the organization is for purposes of enabling individuals to be gainfully employed, and

(2) the services provided by the organization are available to the general public.

(l) Government corporations exempt under subsection (c)(1)

For purposes of subsection (c)(1), the following organizations are described in this subsection:

(1) The Central Liquidity Facility established under title III of the Federal Credit Union Act (12 U.S.C. 1795 et seq.).

(2) The Resolution Trust Corporation established under section 21A [1] of the Federal Home Loan Bank Act.

(3) The Resolution Funding Corporation established under section 21B of the Federal Home Loan Bank Act.

(4) The Patient-Centered Outcomes Research Institute established under section 1181(b) of the Social Security Act.

(m) Certain organizations providing commercial-type insurance not exempt from tax

(1) Denial of tax exemption where providing commercial-type insurance is substantial part of activities

An organization described in paragraph (3) or (4) of subsection (c) shall be exempt from tax under subsection (a) only if no substantial part of its activities consists of providing commercial-type insurance.

(2) Other organizations taxed as insurance companies on insurance business

In the case of an organization described in paragraph (3) or (4) of subsection (c) which is exempt from tax under subsection (a) after the application of paragraph (1) of this subsection—

(A) the activity of providing commercial-type insurance shall be treated as an unrelated trade or business (as defined in section 513), and

(B) in lieu of the tax imposed by section 511 with respect to such activity, such organization shall be treated as an insurance company for purposes of applying subchapter L with respect to such activity.

(3) Commercial-type insurance

For purposes of this subsection, the term "commercial-type insurance" shall not include—

(A) insurance provided at substantially below cost to a class of charitable recipients,

(B) incidental health insurance provided by a health maintenance organization of a kind customarily provided by such organizations,

(C) property or casualty insurance provided (directly or through an organization described in section 414(e)(3)(B)(ii)) by a church or convention or association of churches for such church or convention or association of churches,

(D) providing retirement or welfare benefits (or both) by a church or a convention or association of churches (directly or through an organization described in section 414(e)(3)(A) or 414(e)(3)(B)(ii)) for the employees (including employees described in section 414(e)(3)(B)) of such church or convention or association of churches or the beneficiaries of such employees, and

(E) charitable gift annuities.

(4) Insurance includes annuities

For purposes of this subsection, the issuance of annuity contracts shall be treated as providing insurance.

(5) Charitable gift annuity

For purposes of paragraph (3)(E), the term "charitable gift annuity" means an annuity if—

(A) a portion of the amount paid in connection with the issuance of the annuity is allowable as a deduction under section 170 or 2055, and

(B) the annuity is described in section 514(c)(5) (determined as if any amount paid in cash in connection with such issuance were property).

(n) Charitable risk pools

(1) In general

For purposes of this title—

(A) a qualified charitable risk pool shall be treated as an organization organized and operated exclusively for charitable purposes, and

(B) subsection (m) shall not apply to a qualified charitable risk pool.

(2) Qualified charitable risk pool

For purposes of this subsection, the term "qualified charitable risk pool" means any organization—

(A) which is organized and operated solely to pool insurable risks of its members (other than risks related to medical malpractice) and to provide information to its members with respect to loss control and risk management,

(B) which is comprised solely of members that are organizations described in subsection (c)(3) and exempt from tax under subsection (a), and

(C) which meets the organizational requirements of paragraph (3).

(3) Organizational requirements

An organization (hereinafter in this subsection referred to as the "risk pool") meets the organizational requirements of this paragraph if—

(A) such risk pool is organized as a nonprofit organization under State law provisions authorizing risk pooling arrangements for charitable organizations,

(B) such risk pool is exempt from any income tax imposed by the State (or will be so exempt after such pool qualifies as an organization exempt from tax under this title),

(C) such risk pool has obtained at least $1,000,000 in startup capital from nonmember charitable organizations,

(D) such risk pool is controlled by a board of directors elected by its members, and

(E) the organizational documents of such risk pool require that—

(i) each member of such pool shall at all times be an organization described in subsection (c)(3) and exempt from tax under subsection (a),

(ii) any member which receives a final determination that it no longer qualifies as an organization described in subsection (c)(3) shall immediately notify the pool of such determination and the effective date of such determination, and

(iii) each policy of insurance issued by the risk pool shall provide that such policy will not cover the insured with respect to events occurring after the date such final determination was issued to the insured.

An organization shall not cease to qualify as a qualified charitable risk pool solely by reason of the failure of any of its members to continue to be an organization described in subsection (c)(3) if, within a reasonable period of time after such pool is notified as required under subparagraph (E)(ii), such pool takes such action as may be reasonably necessary to remove such member from such pool.

(4) Other definitions

For purposes of this subsection—

(A) Startup capital

The term "startup capital" means any capital contributed to, and any program-related investments (within the meaning of section 4944(c)) made in, the risk pool before such pool commences operations.

(B) Nonmember charitable organization

The term "nonmember charitable organization" means any organization which is described in subsection (c)(3) and exempt from tax under subsection (a) and which is not a member of the

risk pool and does not benefit (directly or indirectly) from the insurance coverage provided by the pool to its members.

(o) Treatment of hospitals participating in provider-sponsored organizations

An organization shall not fail to be treated as organized and operated exclusively for a charitable purpose for purposes of subsection (c)(3) solely because a hospital which is owned and operated by such organization participates in a provider-sponsored organization (as defined in section 1855(d) of the Social Security Act), whether or not the provider-sponsored organization is exempt from tax. For purposes of subsection (c)(3), any person with a material financial interest in such a provider-sponsored organization shall be treated as a private shareholder or individual with respect to the hospital.

(p) Suspension of tax-exempt status of terrorist organizations

(1) In general

The exemption from tax under subsection (a) with respect to any organization described in paragraph (2), and the eligibility of any organization described in paragraph (2) to apply for recognition of exemption under subsection (a), shall be suspended during the period described in paragraph (3).

(2) Terrorist organizations

An organization is described in this paragraph if such organization is designated or otherwise individually identified—

(A) under section 212(a)(3)(B)(vi)(II) or 219 of the Immigration and Nationality Act as a terrorist organization or foreign terrorist organization,

(B) in or pursuant to an Executive order which is related to terrorism and issued under the authority of the International Emergency Economic Powers Act or section 5 of the United Nations Participation Act of 1945 for the purpose of imposing on such organization an economic or other sanction, or

(C) in or pursuant to an Executive order issued under the authority of any Federal law if—

(i) the organization is designated or otherwise individually identified in or pursuant to such Executive order as supporting or engaging in terrorist activity (as defined in section 212(a)(3)(B) of the Immigration and Nationality Act) or supporting terrorism (as defined in section 140(d)(2) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989); and

(ii) such Executive order refers to this subsection.

(3) Period of suspension

With respect to any organization described in paragraph (2), the period of suspension—

(A) begins on the later of—

(i) the date of the first publication of a designation or identification described in paragraph (2) with respect to such organization, or

(ii) the date of the enactment of this subsection, and

(B) ends on the first date that all designations and identifications described in paragraph (2) with respect to such organization are rescinded pursuant to the law or Executive order under which such designation or identification was made.

(4) Denial of deduction

No deduction shall be allowed under any provision of this title, including sections 170, 545(b)(2), 556(b)(2),[1] 642(c), 2055, 2106(a)(2), and 2522, with respect to any contribution to an organization described in paragraph (2) during the period described in paragraph (3).

(5) Denial of administrative or judicial challenge of suspension or denial of deduction

Notwithstanding section 7428 or any other provision of law, no organization or other person may challenge a suspension under paragraph (1), a designation or identification described in paragraph (2), the period of suspension described in paragraph (3), or a denial of a deduction under paragraph (4) in any administrative or judicial proceeding relating to the Federal tax liability of such organization or other person.

(6) Erroneous designation

(A) In general

If—

(i) the tax exemption of any organization described in paragraph (2) is suspended under paragraph (1),

(ii) each designation and identification described in paragraph (2) which has been made with respect to such organization is determined to be erroneous pursuant to the law or Executive order under which such designation or identification was made, and

(iii) the erroneous designations and identifications result in an overpayment of income tax for any taxable year by such organization,

credit or refund (with interest) with respect to such overpayment shall be made.

(B) Waiver of limitations

If the credit or refund of any overpayment of tax described in subparagraph (A)(iii) is prevented at any time by the operation of any law or rule of law (including res judicata), such credit or refund may nevertheless be allowed or made if the claim therefor is filed before the close of the 1-year period beginning on the date of the last determination described in subparagraph (A)(ii).

(7) Notice of suspensions

If the tax exemption of any organization is suspended under this subsection, the Internal Revenue Service shall update the listings of tax-exempt organizations and shall publish appropriate notice to taxpayers of such suspension and of the fact that contributions to such organization are not deductible during the period of such suspension.

(q) Special rules for credit counseling organizations

(1) In general

An organization with respect to which the provision of credit counseling services is a substantial purpose shall not be exempt from tax under subsection (a) unless such organization is described in paragraph (3) or (4) of subsection (c) and such organization is organized and operated in accordance with the following requirements:

(A) The organization—

(i) provides credit counseling services tailored to the specific needs and circumstances of consumers,

(ii) makes no loans to debtors (other than loans with no fees or interest) and does not negotiate the making of loans on behalf of debtors,

(iii) provides services for the purpose of improving a consumer's credit record, credit history, or credit rating only to the extent that such services are incidental to providing credit counseling services, and

(iv) does not charge any separately stated fee for services for the purpose of improving any consumer's credit record, credit history, or credit rating.

(B) The organization does not refuse to provide credit counseling services to a consumer due to the inability of the consumer to pay, the ineligibility of the consumer for debt management plan enrollment, or the unwillingness of the consumer to enroll in a debt management plan.

(C) The organization establishes and implements a fee policy which—

(i) requires that any fees charged to a consumer for services are reasonable,

(ii) allows for the waiver of fees if the consumer is unable to pay, and

(iii) except to the extent allowed by State law, prohibits charging any fee based in whole or in part on a percentage of the consumer's debt, the consumer's payments to be made pursuant to a debt management plan, or the projected or actual savings to the consumer resulting from enrolling in a debt management plan.

(D) At all times the organization has a board of directors or other governing body—

(i) which is controlled by persons who represent the broad interests of the public, such as public officials acting in their capacities as such, persons having special knowledge or expertise in credit or financial education, and community leaders,

(ii) not more than 20 percent of the voting power of which is vested in persons who are employed by the organization or who will benefit financially, directly or indirectly, from the organization's activities (other than through the receipt of reasonable directors' fees or the repayment of consumer debt to creditors other than the credit counseling organization or its affiliates), and

(iii) not more than 49 percent of the voting power of which is vested in persons who are employed by the organization or who will benefit financially, directly or indirectly, from the organization's activities (other than through the receipt of reasonable directors' fees).

(E) The organization does not own more than 35 percent of—

(i) the total combined voting power of any corporation (other than a corporation which is an organization described in subsection (c)(3) and exempt from tax under subsection (a)) which is in the trade or business of lending money, repairing credit, or providing debt management plan services, payment processing, or similar services,

(ii) the profits interest of any partnership (other than a partnership which is an organization described in subsection (c)(3) and exempt from tax under subsection (a)) which is in the trade or business of lending money, repairing credit, or providing debt management plan services, payment processing, or similar services, and

(iii) the beneficial interest of any trust or estate (other than a trust which is an organization described in subsection (c)(3) and exempt from tax under subsection (a)) which is in the trade or business of lending money, repairing credit, or providing debt management plan services, payment processing, or similar services.

(F) The organization receives no amount for providing referrals to others for debt management plan services, and pays no amount to others for obtaining referrals of consumers.

(2) Additional requirements for organizations described in subsection (c)(3)

(A) In general

In addition to the requirements under paragraph (1), an organization with respect to which the provision of credit counseling services is a substantial purpose and which is described in paragraph (3) of subsection (c) shall not be exempt from tax under subsection (a) unless such organization is organized and operated in accordance with the following requirements:

(i) The organization does not solicit contributions from consumers during the initial counseling process or while the consumer is receiving services from the organization.

(ii) The aggregate revenues of the organization which are from payments of creditors of consumers of the organization and which are attributable to debt management plan services do not exceed the applicable percentage of the total revenues of the organization.

(B) Applicable percentage

(i) In general

For purposes of subparagraph (A)(ii), the applicable percentage is 50 percent.

(ii) Transition rule

Notwithstanding clause (i), in the case of an organization with respect to which the provision of credit counseling services is a substantial purpose and which is described in paragraph (3) of subsection (c) and exempt from tax under subsection (a) on the date of the enactment of this subsection, the applicable percentage is—

(I) 80 percent for the first taxable year of such organization beginning after the date which is 1 year after the date of the enactment of this subsection, and

(II) 70 percent for the second such taxable year beginning after such date, and

(III) 60 percent for the third such taxable year beginning after such date.

(3) Additional requirement for organizations described in subsection (c)(4)

In addition to the requirements under paragraph (1), an organization with respect to which the provision of credit counseling services is a substantial purpose and which is described in paragraph (4) of subsection (c) shall not be exempt from tax under subsection (a) unless such organization notifies the Secretary, in such manner as the Secretary may by regulations prescribe, that it is applying for recognition as a credit counseling organization.

(4) Credit counseling services; debt management plan services

For purposes of this subsection—

(A) Credit counseling services

The term "credit counseling services" means—

(i) the providing of educational information to the general public on budgeting, personal finance, financial literacy, saving and spending practices, and the sound use of consumer credit,

(ii) the assisting of individuals and families with financial problems by providing them with counseling, or

(iii) a combination of the activities described in clauses (i) and (ii).

(B) Debt management plan services

The term "debt management plan services" means services related to the repayment, consolidation, or restructuring of a consumer's debt, and includes the negotiation with creditors of lower interest rates, the waiver or reduction of fees, and the marketing and processing of debt management plans.

(r) Additional requirements for certain hospitals

(1) In general

A hospital organization to which this subsection applies shall not be treated as described in subsection (c)(3) unless the organization—

(A) meets the community health needs assessment requirements described in paragraph (3),

(B) meets the financial assistance policy requirements described in paragraph (4),

(C) meets the requirements on charges described in paragraph (5), and

(D) meets the billing and collection requirement described in paragraph (6).

(2) Hospital organizations to which subsection applies

(A) In general

This subsection shall apply to—

(i) an organization which operates a facility which is required by a State to be licensed, registered, or similarly recognized as a hospital, and

(ii) any other organization which the Secretary determines has the provision of hospital care as its principal function or purpose constituting the basis for its exemption under subsection (c)(3) (determined without regard to this subsection).

(B) Organizations with more than 1 hospital facility

If a hospital organization operates more than 1 hospital facility—

(i) the organization shall meet the requirements of this subsection separately with respect to each such facility, and

(ii) the organization shall not be treated as described in subsection (c)(3) with respect to any such facility for which such requirements are not separately met.

(3) Community health needs assessments

(A) In general

An organization meets the requirements of this paragraph with respect to any taxable year only if the organization—

(i) has conducted a community health needs assessment which meets the requirements of subparagraph (B) in such taxable year or in either of the 2 taxable years immediately preceding such taxable year, and

(ii) has adopted an implementation strategy to meet the community health needs identified through such assessment.

(B) Community health needs assessment

A community health needs assessment meets the requirements of this paragraph if such community health needs assessment—

(i) takes into account input from persons who represent the broad interests of the community served by the hospital facility, including those with special knowledge of or expertise in public health, and

(ii) is made widely available to the public.

(4) Financial assistance policy

An organization meets the requirements of this paragraph if the organization establishes the following policies:

(A) Financial assistance policy

A written financial assistance policy which includes—

(i) eligibility criteria for financial assistance, and whether such assistance includes free or discounted care,

(ii) the basis for calculating amounts charged to patients,

(iii) the method for applying for financial assistance,

(iv) in the case of an organization which does not have a separate billing and collections policy, the actions the organization may take in the event of non-payment, including collections action and reporting to credit agencies, and

(v) measures to widely publicize the policy within the community to be served by the organization.

(B) Policy relating to emergency medical care

A written policy requiring the organization to provide, without discrimination, care for emergency medical conditions (within the meaning of section 1867 of the Social Security Act (42 U.S.C. 1395dd)) to individuals regardless of their eligibility under the financial assistance policy described in subparagraph (A).

(5) Limitation on charges

An organization meets the requirements of this paragraph if the organization—

(A) limits amounts charged for emergency or other medically necessary care provided to individuals eligible for assistance under the financial assistance policy described in paragraph (4)(A) to not more than the amounts generally billed to individuals who have insurance covering such care, and

(B) prohibits the use of gross charges.

(6) Billing and collection requirements

An organization meets the requirement of this paragraph only if the organization does not engage in extraordinary collection actions before the organization has made reasonable efforts to determine whether the individual is eligible for assistance under the financial assistance policy described in paragraph (4)(A).

(7) Regulatory authority

The Secretary shall issue such regulations and guidance as may be necessary to carry out the provisions of this subsection, including guidance relating to what constitutes reasonable efforts to determine the eligibility of a patient under a financial assistance policy for purposes of paragraph (6).

(s) Cross reference

For nonexemption of Communist-controlled organizations, see section 11(b) of the Internal Security Act of 1950 (64 Stat. 997; 50 U.S.C. 790(b)).

(Aug. 16, 1954, ch. 736, 68A Stat. 163; Mar. 13, 1956, ch. 83, §5(2), 70 Stat. 49; Pub. L. 86–428, §1, Apr. 22, 1960, 74 Stat. 54; Pub. L. 86–667, §1, July 14, 1960, 74 Stat. 534; Pub. L. 87–834, §8(d), Oct. 16, 1962, 76 Stat. 997; Pub. L. 89–352, §1, Feb. 2, 1966, 80 Stat. 4; Pub. L. 89–800, §6(a), Nov. 8, 1966, 80 Stat. 1515; Pub. L. 90–364, title I, §109(a), June 28, 1968, 82 Stat. 269; Pub. L. 91–172, title I, §§101(j)(3)–(6), 121(b)(5)(A), (6)(A), Dec. 30, 1969, 83 Stat. 526, 527, 541; Pub. L. 91–618, §1, Dec. 31, 1970, 84 Stat. 1855; Pub. L. 92–418, §1(a), Aug. 29, 1972, 86 Stat. 656; Pub. L. 93–310, §3(a), June 8, 1974, 88 Stat. 235; Pub. L. 93–625, §10(c), Jan. 3, 1975, 88 Stat. 2119; Pub. L. 94–455, title XIII, §§1307(a)(1), (d)(1)(A), 1312(a), 1313(a), title XIX, §1906(b)(13)(A), title XXI, §§2113(a), 2134(b), Oct. 4, 1976, 90 Stat. 1720, 1727, 1730, 1834, 1907, 1927; Pub. L. 94–568, §§1(a), 2(a), Oct. 20, 1976, 90 Stat. 2697; Pub. L. 95–227, §4(a), Feb. 10, 1978, 92 Stat. 15; Pub. L. 95–345, §1(a), Aug. 15, 1978, 92 Stat. 481; Pub. L. 95–600, title VII, §703(b)(2), (g)(2)(A), (B), Nov. 6, 1978, 92 Stat. 2939, 2940; Pub. L. 96–222, title I, §108(b)(2)(B), Apr. 1, 1980, 94 Stat. 226; Pub. L. 96–364, title II, §209(a), Sept. 26, 1980, 94 Stat. 1290; Pub. L. 96–601, §3(a), Dec. 24, 1980, 94 Stat. 3496; Pub. L. 96–605, title I, §106(a), Dec. 28, 1980, 94 Stat. 3523; Pub. L. 97–119, title I, §103(c)(1), Dec. 29, 1981, 95 Stat. 1638; Pub. L. 97–248, title II, §286(a), title III, §354(a), (b), Sept. 3, 1982, 96 Stat. 569, 640, 641; Pub. L. 97–448, title III, §306(b)(5), Jan. 12, 1983, 96 Stat. 2406; Pub. L. 98–369, div. A, title X, §§1032(a), 1079, div. B, title VIII, §2813(b), July 18, 1984, 98 Stat. 1033, 1056, 1206; Pub. L. 99–272, title XI, §11012(b), Apr. 7, 1986, 100 Stat. 260; Pub. L. 99–514, title X, §§1012(a), 1024(b), title XI, §§1109(a), 1114(b)(14), title XVI, §1603(a), title XVIII, §§1879(k)(1), 1899A(15), Oct. 22, 1986, 100 Stat. 2390, 2406, 2435, 2451, 2768, 2909, 2959; Pub. L. 100–203, title X, §10711(a)(2), Dec. 22, 1987, 101 Stat. 1330–464; Pub. L. 100–647, title I, §§1010(b)(4), 1011(c)(7)(D), 1016(a)(1)(A), (2)–(4), 1018(u)(14), (15), (34), title II, §2003(a)(1), (2), title VI, §6202(a), Nov. 10, 1988, 102 Stat. 3451, 3458, 3573, 3574, 3590, 3592, 3597, 3598, 3730; Pub. L. 101–73, title XIV, §1402(a), Aug. 9, 1989, 103 Stat. 550; Pub. L. 102–486, title XIX, §1940(a), Oct. 24, 1992, 106 Stat. 3034; Pub. L. 103–66, title XIII, §13146(a), (b), Aug. 10, 1993, 107 Stat. 443; Pub. L. 104–168, title XIII, §1311(b)(1), July 30, 1996, 110 Stat. 1477; Pub. L. 104–188, title I, §§1114(a), 1704(j)(5), Aug. 20, 1996, 110 Stat. 1759, 1882; Pub. L. 104–191, title III, §§341(a), 342(a), Aug. 21, 1996, 110 Stat. 2070; Pub. L. 105–33, title IV, §4041(a), Aug. 5, 1997, 111 Stat. 360; Pub. L. 105–34, title I, §101(c), title IX, §§963(a), (b), 974(a), Aug. 5, 1997, 111 Stat. 799, 892, 898; Pub. L. 105–206, title VI, §6023(6), (7), July 22, 1998, 112 Stat. 825; Pub. L. 107–16, title VI, §611(d)(3)(C), June 7, 2001, 115 Stat. 98; Pub. L. 107–90, title II, §202, Dec. 21, 2001, 115 Stat. 890;

15 U.S.C.
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Title 15 - COMMERCE AND TRADE
CHAPTER 2A - SECURITIES AND TRUST INDENTURES
SUBCHAPTER I - DOMESTIC SECURITIES
Sec. 77c - Classes of securities under this subchapter
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§77c. Classes of securities under this subchapter

(a) Exempted securities

Except as hereinafter expressly provided, the provisions of this subchapter shall not apply to any of the following classes of securities:

(1) Reserved.

(2) Any security issued or guaranteed by the United States or any territory thereof, or by the District of Columbia, or by any State of the United States, or by any political subdivision of a State or territory, or by any public instrumentality of one or more States or territories, or by any person controlled or supervised by and acting as an instrumentality of the Government of the United States pursuant to authority granted by the Congress of the United States; or any certificate of deposit for any of the foregoing; or any security issued or guaranteed by any bank; or any security issued by or representing an interest in or a direct obligation of a Federal Reserve bank; or any interest or participation in any common trust fund or similar fund that is excluded from the definition of the term "investment company" under section 3(c)(3) of the Investment Company Act of 1940 [15 U.S.C. 80a–3(c)(3)]; or any security which is an industrial development bond (as defined in section 103(c)(2) [1] of title 26) the interest on which is excludable from gross income under section 103(a)(1) [1] of title 26 if, by reason of the application of paragraph (4) or (6) of section 103(c) [1] of title 26 (determined as if paragraphs (4)(A), (5), and (7) were not included in such section 103(c)),[1] paragraph (1) of such section 103(c) [1] does not apply to such security; or any interest or participation in a single trust fund, or in a collective trust fund maintained by a bank, or any security arising out of a contract issued by an insurance company, which interest, participation, or security is issued in connection with (A) a stock bonus, pension, or profit-sharing plan which meets the requirements for qualification under section 401 of title 26, (B) an annuity plan which meets the requirements for the deduction of the employer's contributions under section 404(a)(2) of title 26, (C) a governmental plan as defined in section 414(d) of title 26 which has been established by an employer for the exclusive benefit of its employees or their beneficiaries for the purpose of distributing to such employees or their beneficiaries the corpus and income of the funds accumulated under such plan, if under such plan it is impossible, prior to the satisfaction of all liabilities with respect to such employees and their beneficiaries, for any part of the corpus or income to be used for, or diverted to, purposes other than the exclusive benefit of such employees or their beneficiaries, or (D) a church plan, company, or account that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940 [15 U.S.C. 80a–3(c)(14)], other than any plan described in subparagraph (A), (B), (C), or (D) of this paragraph (i) the contributions under which are held in a single trust fund or in a separate account maintained by an insurance company for a single employer and under which an amount in excess of the employer's contribution is allocated to the purchase of securities (other than interests or participations in the trust or separate account itself) issued by the employer or any company directly or indirectly controlling, controlled by, or under common control with the employer, (ii) which covers employees some or all of whom are employees within the meaning of section 401(c)(1) of title 26 (other than a person participating in a church plan who is described in section 414(e)

(3)(B) of title 26), or (iii) which is a plan funded by an annuity contract described in section 403(b) of title 26 (other than a retirement income account described in section 403(b)(9) of title 26, to the extent that the interest or participation in such single trust fund or collective trust fund is issued to a church, a convention or association of churches, or an organization described in section 414(e)(3)(A) of title 26 establishing or maintaining the retirement income account or to a trust established by any such entity in connection with the retirement income account). The Commission, by rules and regulations or order, shall exempt from the provisions of section 77e of this title any interest or participation issued in connection with a stock bonus, pension, profit-sharing, or annuity plan which covers employees some or all of whom are employees within the meaning of section 401(c)(1) of title 26, if and to the extent that the Commission determines this to be necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this subchapter. For purposes of this paragraph, a security issued or guaranteed by a bank shall not include any interest or participation in any collective trust fund maintained by a bank; and the term "bank" means any national bank, or banking institution organized under the laws of any State, territory, or the District of Columbia, the business of which is substantially confined to banking and is supervised by the State or territorial banking commission or similar official; except that in the case of a common trust fund or similar fund, or a collective trust fund, the term "bank" has the same meaning as in the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.];

(3) Any note, draft, bill of exchange, or banker's acceptance which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which has a maturity at the time of issuance of not exceeding nine months, exclusive of days of grace, or any renewal thereof the maturity of which is likewise limited;

(4) Any security issued by a person organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, or reformatory purposes and not for pecuniary profit, and no part of the net earnings of which inures to the benefit of any person, private stockholder, or individual, or any security of a fund that is excluded from the definition of an investment company under section 3(c)(10)(B) of the Investment Company Act of 1940 [15 U.S.C. 80a–3(c)(10)(B)];

(5) Any security issued (A) by a savings and loan association, building and loan association, cooperative bank, homestead association, or similar institution, which is supervised and examined by State or Federal authority having supervision over any such institution; or (B) by (i) a farmer's cooperative organization exempt from tax under section 521 of title 26, (ii) a corporation described in section 501(c)(16) of title 26 and exempt from tax under section 501(a) of title 26, or (iii) a corporation described in section 501(c)(2) of title 26 which is exempt from tax under section 501(a) of title 26 and is organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization or corporation described in clause (i) or (ii);

(6) Any interest in a railroad equipment trust. For purposes of this paragraph "interest in a railroad equipment trust" means any interest in an equipment trust, lease, conditional sales contract, or other similar arrangement entered into, issued, assumed, guaranteed by, or for the benefit of, a common carrier to finance the acquisition of rolling stock, including motive power;

(7) Certificates issued by a receiver or by a trustee or debtor in possession in a case under title 11, with the approval of the court;

(8) Any insurance or endowment policy or annuity contract or optional annuity contract, issued by a corporation subject to the supervision of the insurance commissioner, bank commissioner, or any agency or officer performing like functions, of any State or Territory of the United States or the District of Columbia;

(9) Except with respect to a security exchanged in a case under title 11, any security exchanged by the issuer with its existing security holders exclusively where no commission or other remuneration is paid or given directly or indirectly for soliciting such exchange;

(10) Except with respect to a security exchanged in a case under title 11, any security which is issued in exchange for one or more bona fide outstanding securities, claims or property interests, or partly in such exchange and partly for cash, where the terms and conditions of such issuance and exchange are approved, after a hearing upon the fairness of such terms and conditions at which all persons to whom it is proposed to issue securities in such exchange shall have the right to appear, by any court, or by any official or agency of the United States, or by any State or Territorial banking or insurance commission or other governmental authority expressly authorized by law to grant such approval;

(11) Any security which is a part of an issue offered and sold only to persons resident within a single State or Territory, where the issuer of such security is a person resident and doing business within or, if a corporation, incorporated by and doing business within, such State or Territory.

(12) Any equity security issued in connection with the acquisition by a holding company of a bank under section 1842(a) of title 12 or a savings association under section 1467a(e) of title 12, if—

(A) the acquisition occurs solely as part of a reorganization in which security holders exchange their shares of a bank or savings association for shares of a newly formed holding company with no significant assets other than securities of the bank or savings association and the existing subsidiaries of the bank or savings association;

(B) the security holders receive, after that reorganization, substantially the same proportional share interests in the holding company as they held in the bank or savings association, except for nominal changes in shareholders' interests resulting from lawful elimination of fractional interests and the exercise of dissenting shareholders' rights under State or Federal law;

(C) the rights and interests of security holders in the holding company are substantially the same as those in the bank or savings association prior to the transaction, other than as may be required by law; and

(D) the holding company has substantially the same assets and liabilities, on a consolidated basis, as the bank or savings association had prior to the transaction.

For purposes of this paragraph, the term "savings association" means a savings association (as defined in section 1813(b) of title 12) the deposits of which are insured by the Federal Deposit Insurance Corporation.

(13) Any security issued by or any interest or participation in any church plan, company or account that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940 [15 U.S.C. 80a–3(c)(14)].

(14) Any security futures product that is—

(A) cleared by a clearing agency registered under section 78q–1 of this title or exempt from registration under subsection (b)(7) of such section 78q–1; and

(B) traded on a national securities exchange or a national securities association registered pursuant to section 78o–3(a) of this title.

(b) Additional exemptions

(1) Small issues exemptive authority

The Commission may from time to time by its rules and regulations, and subject to such terms and conditions as may be prescribed therein, add any class of securities to the securities exempted as provided in this section, if it finds that the enforcement of this subchapter with respect to such securities is not necessary in the public interest and for the protection of investors by reason of the small amount involved or the limited character of the public offering; but no issue of securities shall be exempted under this subsection where the aggregate amount at which such issue is offered to the public exceeds $5,000,000.

(2) Additional issues

The Commission shall by rule or regulation add a class of securities to the securities exempted pursuant to this section in accordance with the following terms and conditions:

(A) The aggregate offering amount of all securities offered and sold within the prior 12-month period in reliance on the exemption added in accordance with this paragraph shall not exceed $50,000,000.

(B) The securities may be offered and sold publicly.

(C) The securities shall not be restricted securities within the meaning of the Federal securities laws and the regulations promulgated thereunder.

(D) The civil liability provision in section 77l(a)(2) of this title shall apply to any person offering or selling such securities.

(E) The issuer may solicit interest in the offering prior to filing any offering statement, on such terms and conditions as the Commission may prescribe in the public interest or for the protection of investors.

(F) The Commission shall require the issuer to file audited financial statements with the Commission annually.

(G) Such other terms, conditions, or requirements as the Commission may determine necessary in the public interest and for the protection of investors, which may include—

(i) a requirement that the issuer prepare and electronically file with the Commission and distribute to prospective investors an offering statement, and any related documents, in such form and with such content as prescribed by the Commission, including audited financial statements, a description of the issuer's business operations, its financial condition, its corporate governance principles, its use of investor funds, and other appropriate matters; and

(ii) disqualification provisions under which the exemption shall not be available to the issuer or its predecessors, affiliates, officers, directors, underwriters, or other related persons, which shall be substantially similar to the disqualification provisions contained in the regulations adopted in accordance with section 926 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (15 U.S.C. 77d note).

(3) Limitation

Only the following types of securities may be exempted under a rule or regulation adopted pursuant to paragraph (2): equity securities, debt securities, and debt securities convertible or exchangeable to equity interests, including any guarantees of such securities.

(4) Periodic disclosures

Upon such terms and conditions as the Commission determines necessary in the public interest and for the protection of investors, the Commission by rule or regulation may require an issuer of a class of securities exempted under paragraph (2) to make available to investors and file with the Commission periodic disclosures regarding the issuer, its business operations, its financial condition, its corporate governance principles, its use of investor funds, and other appropriate matters, and also may provide for the suspension and termination of such a requirement with respect to that issuer.

(5) Adjustment

Not later than 2 years after April 5, 2012,[1] and every 2 years thereafter, the Commission shall review the offering amount limitation described in paragraph (2)(A) and shall increase such amount as the Commission determines appropriate. If the Commission determines not to increase such amount, it shall report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on its reasons for not increasing the amount.

(c) Securities issued by small investment company

The Commission may from time to time by its rules and regulations and subject to such terms and conditions as may be prescribed therein, add to the securities exempted as provided in this section

any class of securities issued by a small business investment company under the Small Business Investment Act of 1958 [15 U.S.C. 661 et seq.] if it finds, having regard to the purposes of that Act, that the enforcement of this subchapter with respect to such securities is not necessary in the public interest and for the protection of investors.

(May 27, 1933, ch. 38, title I, §3, 48 Stat. 75; June 6, 1934, ch. 404, title II, §202, 48 Stat. 906; Feb. 4, 1887, ch. 104, title II, §214, as added Aug. 9, 1935, ch. 498, 49 Stat. 557; amended June 29, 1938, ch. 811, §15, 52 Stat. 1240; May 15, 1945, ch. 122, 59 Stat. 167; Aug. 10, 1954, ch. 667, title I, §5, 68 Stat. 684; Pub. L. 85–699, title III, §307(a), Aug. 21, 1958, 72 Stat. 694; Pub. L. 91–373, title IV, §401(a), Aug. 10, 1970, 84 Stat. 718; Pub. L. 91–547, §27(b), (c), Dec. 14, 1970, 84 Stat. 1434; Pub. L. 91–565, Dec. 19, 1970, 84 Stat. 1480; Pub. L. 91–567, §6(a), Dec. 22, 1970, 84 Stat. 1498; Pub. L. 94–210, title III, §308(a)(1), (3), Feb. 5, 1976, 90 Stat. 56, 57; Pub. L. 95–283, §18, May 21, 1978, 92 Stat. 275; Pub. L. 95–425, §2, Oct. 6, 1978, 92 Stat. 962; Pub. L. 95–598, title III, §306, Nov. 6, 1978, 92 Stat. 2674; Pub. L. 96–477, title III, §301, title VII, §701, Oct. 21, 1980, 94 Stat. 2291, 2294; Pub. L. 97–261, §19(d), Sept. 20, 1982, 96 Stat. 1121; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100–181, title II, §§203, 204, Dec. 4, 1987, 101 Stat. 1252; Pub. L. 103–325, title III, §320, Sept. 23, 1994, 108 Stat. 2225; Pub. L. 104–62, §3, Dec. 8, 1995, 109 Stat. 684; Pub. L. 104–290, title V, §508(b), Oct. 11, 1996, 110 Stat. 3447; Pub. L. 106–102, title II, §221(a), Nov. 12, 1999, 113 Stat. 1401; Pub. L. 106–554, §1(a)(5) [title II, §208(a)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–435; Pub. L. 108–359, §1(b), Oct. 25, 2004, 118 Stat. 1666; Pub. L. 111–203, title IX, §985(a)(1), July 21, 2010, 124 Stat. 1933; Pub. L. 112–106, title IV, §401(a), Apr. 5, 2012, 126 Stat. 323; Pub. L. 112–142, §2, July 9, 2012, 126 Stat. 989.)

REFERENCES IN TEXT

Section 103 of title 26, referred to in subsec. (a)(2), which related to interest on certain governmental obligations was amended generally by Pub. L. 99–514, title XIII, §1301(a), Oct. 22, 1986, 100 Stat. 2602, and as so amended relates to interest on State and local bonds. Section 103(b)(2) (formerly section 103(c)(2)), which prior to the general amendment defined industrial development bond, relates to the applicability of the interest exclusion to arbitrage bonds.

The Investment Company Act of 1940, referred to in subsec. (a)(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 926 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, referred to in subsec. (b)(2)(G)(ii), is section 926 of Pub. L. 111–203, which is set out as a note under section 77d of this title.

April 5, 2012, referred to in subsec. (b)(5), was in the original "the date of enactment of the Small Company Capital Formation Act of 2011", and was translated as meaning the date of enactment of the Jumpstart Our Business Startups Act, Pub. L. 112–106, which enacted subsec. (b)(5), to reflect the probable intent of Congress.

The Small Business Investment Act of 1958, referred to in subsec. (c), is Pub. L. 85–699, Aug. 21, 1958, 72 Stat. 689, as amended, which is classified principally to chapter 14B (§661 et seq.) 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.

AMENDMENTS

2012—Subsec. (a)(2). Pub. L. 112–142 inserted "(other than a retirement income account described in section 403(b)(9) of title 26, to the extent that the interest or participation in such single trust fund or collective trust fund is issued to a church, a convention or association of churches, or an organization described in section 414(e)(3)(A) of title 26 establishing or maintaining the retirement income account or to a trust established by any such entity in connection with the retirement income account)" after "403(b) of title 26" and "(other than a person participating in a church plan who is described in section 414(e)(3)(B) of title 26)" after "(ii) which covers employees some or all of whom are employees within the meaning of section 401(c)(1) of title 26".

Subsec. (b). Pub. L. 112–106 inserted subsec. heading, designated existing provisions as par. (1), inserted par. heading, and added pars. (2) to (5).

2010—Subsec. (a)(4). Pub. L. 111–203 substituted "individual," for "individual;".