§ 1404. Types of reserve investments permitted for non-life insurers. (a) In addition to the investments specified in subsection (b) hereof, but excluding any investment prohibited by the provisions of paragraph one, three, four, six, eight, nine or ten of subsection (a) of section one thousand four hundred seven of this article, the reserve investments of a domestic insurer authorized to make investments under the authority of this section shall consist of the following:

(1) Government obligations. Obligations which are not in default as to principal or interest, which are valid and legally authorized, and which are issued, assumed, guaranteed or insured by:

(A) the United States or by any agency or instrumentality thereof,

(B) any state of the United States,

(C) any territory or possession of the United States or any other governmental unit in the United States, or

(D) any agency or instrumentality of any governmental unit referred to in subparagraphs (B) and (C) of this paragraph, provided that obligations to be eligible under this paragraph shall be by law (statutory or otherwise) payable, as to both principal and interest, from taxes levied or by law required to be levied or from adequate special revenues pledged or otherwise appropriated or by law required to be provided for the purpose of such payment, but in no event shall obligations be eligible for investment under this paragraph if payable solely out of special assessments on properties benefited by local improvements.

(2) Obligations of American institutions.

(A) Obligations which are issued by any solvent American institution or which are assumed or guaranteed by any solvent American institution (other than an insurance company) and which are not in default as to principal or interest provided such obligations:

(i) are adequately secured by collateral security having a market value not less than the principal amount thereof and have investment qualities and characteristics wherein the speculative elements are not predominant, or

(ii) are rated A or higher (or the equivalent thereto) by a securities rating agency recognized by the superintendent, or if not so rated, are similar in structure and in all material respects to other obligations of the same institution which are so rated, or

(iii) are insured by one or more authorized insurance companies (other than the investing insurer or any parent, subsidiary or affiliate of such insurer) who are licensed to insure obligations in this state and, after considering such insurance, are rated Aaa (or the equivalent thereto) by a securities rating agency recognized by the superintendent, or

(iv) have been given the highest quality designation by the Securities Valuation Office of the National Association of Insurance Commissioners.

(B) No investment in or loan upon the obligations of any institution, other than an institution which issues mortgage related securities, and no investment in any one mortgage related security, made pursuant to the provisions of this paragraph shall exceed five per centum of the admitted assets of such insurer as shown by its last statement on file with the superintendent.

(3) Preferred or guaranteed shares of American institutions. (A) Preferred or guaranteed shares issued or guaranteed by a solvent American institution if all of the institution's obligations are eligible as investments under item (ii) or (iv) of subparagraph (A) of paragraph two of this subsection.

(B) No investment in the preferred or guaranteed shares of any institution made pursuant to the provisions of this paragraph shall exceed two percent of such insurer's admitted assets as shown by its last statement on file with the superintendent.

(4) Loans secured by real property. (A) Loans secured by first or second mortgages which are liens on improved real property in the United States (including leasehold estates having an unexpired term of not less than twenty years, inclusive of the term or terms which may be provided by enforceable terms of renewal) meeting the following requirements:

(i) Priority of mortgages. The mortgaged property shall be subject to no prior lien, except a first mortgage and liens for non-delinquent ground rents, taxes, assessments and similar charges. There shall be no condition or right of re-entry or forfeiture not insured against under which the mortgage can be cut off, subordinated or otherwise disturbed. No loan secured by a second mortgage shall be made if the principal amount secured by a prior first mortgage can be increased without the insurer's consent unless the amount of increase is applied to reduce the second mortgage.

(ii) Leaseholds. If the mortgaged property is a leasehold:

(I) the lease shall provide for a term of at least twenty-one years,

(II) the property underlying the leasehold shall be subject to no prior lien except for liens for non-delinquent ground rents, taxes, assessments and similar charges and there shall be no condition or right of re-entry or forfeiture not insured against under which the insurer is unable to continue the lease in force for the duration of the loan, and

(III) the loan shall provide for such payments that at any time during the period of the loan the aggregate payments of principal to be made will be sufficient to repay the loan within the lesser of forty years or a period equal to eighty percent of the term of the lease, through payments of interest only for five years and equal payments applicable first to interest and then to principal at the end of each year thereafter. "Term", as used in this paragraph six with reference to a lease, means its unexpired term at the date of the loan, plus any term which may be provided by options of the lessee to renew.

(iii) Participations. If the investment is a participation in a loan:

(I) all participations shall be held by the insurer, or

(II) the participation held by the insurer shall give it substantially the rights of a first or second mortgagee, and shall be prior to those of the holders of the other participations, or

(III) each participation shall be of equal rank, and

(aa) the loan shall comply with items (i), (ii), and (iv) of this subparagraph (A) and with any regulations prescribed by the superintendent for investments under this clause (III), and

(bb) if, when the participation is acquired by the insurer, there are more than five holders of participations in the loan, or more than three such holders and such loan is less than five million dollars in original principal amount, the mortgagee shall be (and, in the case of a participation in an obligation, the obligation shall be held by) a bank or trust company duly authorized and licensed to act as a corporate trustee (with or without a co-trustee). "Participation", as used in this paragraph four, means an obligation forming part of an issue of bonds, notes or other evidences of indebtedness which are secured by the same mortgage and also an instrument evidencing a participating interest in any such bond, note or other evidence of indebtedness.

(iv) Amount of loan. The amount of the loan (excluding any part

guaranteed or insured under title three of the Servicemen's Readjustment Act of 1944, 38 U.S.C. §§ 1801-1827), when added to the amount unpaid on any prior first mortgage, shall not exceed the following percentages of the value of the real property or leasehold securing the loan, as determined by an appraisal made by an appraiser for the purpose of the investment:

(I) sixty-six and two-thirds percent,

(II) seventy-five percent, if the mortgage provides for such payments of principal that at no time during the period of the loan shall the aggregate payments of principal required to be made be less than would have been necessary to reduce the amount of the loan (plus the amount secured by any such prior mortgage) to sixty-six and two-thirds percent of such value by the end of thirty-five years, through payments of interest only for five years and equal payments applicable first to interest and then to principal at the end of each year thereafter, or

(III) ninety percent, if the loan is secured by a first mortgage on real property improved primarily with a residential building, which may be a condominium unit, for not more than four families and provides for monthly payments of principal and interest sufficient to repay the loan within the lesser of forty years or the remaining useful life of the building as estimated in the appraisal.

(v) Investment limitations.

(I) Investments held by an insurer, except a fraternal benefit society, under this subparagraph (A) shall not exceed:

(aa) in the aggregate twenty-five percent of its admitted assets as shown by its last statement on file with the superintendent excluding any amount guaranteed or insured under the Servicemen's Readjustment Act of 1944, 38 U.S.C. §§ 1801-1827, or

(bb) in the aggregate two percent of its admitted assets as shown by its last statement on file with the superintendent in loans secured by other than first mortgages.

(II) Investments held by a fraternal benefit society under this paragraph shall not exceed:

(aa) in the aggregate fifty percent of its admitted assets as shown by its last statement on file with the superintendent, excluding any amount guaranteed or insured under the Servicemen's Readjustment Act of 1944, 38 U.S.C. §§ 1801-1827, or

(bb) in the aggregate two percent of its admitted assets as shown by its last statement on file with the superintendent in loans secured by other than first mortgages.

(III) No insurer or society shall invest in or lend upon the security of any one property more than the greater of thirty thousand dollars or two percent of its admitted assets as shown by its last statement on file with the superintendent.

(IV) Separate evidences of indebtedness which are separately transferable shall be deemed to constitute separate loans which may be separately qualified under this paragraph whether or not secured by a single mortgage.

(B) Purchase money mortgages. Purchase money mortgages or like securities received by the insurer on the sale or exchange of real property held under paragraph five hereof.

(5) Real property or interests therein. (A) The following investments in real property (including incidental equipment thereto) located in the United States, if acquired and held directly or through partnership interests engaged exclusively in the business of acquiring, owing and managing such property:

(i) The land and the building thereon in which the insurer has its principal office.

(ii) Real property requisite for the insurer's convenient accommodation in the transaction of its business.

(iii) Real property acquired in total or partial satisfaction of mortgages, liens, judgments, claims or indebtedness held by the insurer in the course of its business.

(iv) Real property acquired as an investment for the production of income or to be improved or developed for such investment purpose.

(B) Investments under this paragraph shall be subject to the following limitations:

(i) The cost of each parcel acquired under item (iv) of subparagraph (A) of this paragraph, including the estimated cost to the insurer of the improvement or development thereof, shall not exceed one percent of the insurer's admitted assets as shown by its last statement on file with the superintendent, and when added to the book value of all other real property then held by it pursuant to such item (iv), shall not exceed twelve and one-half percent of such admitted assets. Unless

otherwise required by the superintendent under subsection (b) of section one thousand four hundred fourteen of this article, each parcel of real property held under such item (iv) together with each capital improvement or development thereof existing at acquisition or made subsequently shall be valued on the insurer's books as of each last year-end so as to write down the cost of such improvement or development, at a rate averaging at least two percent per annum commencing on the date of acquisition or completion, as the case may be, of such improvement or development.

(ii) The acquisition of real property serving as the residence of an employee, except a director or trustee of such insurer, if acquired in connection with the relocation by the insurer of the employee's place of employment, including any relocation in connection with his initial employment, at a purchase price not exceeding the property's value as determined by an independent appraiser for the purpose of such acquisition, provided such employee has made reasonable efforts otherwise to dispose of such property during the month before such acquisition. Such property must be acquired under item (ii) of subparagraph (A) hereof, and, in the case of a non-director officer, such acquisition is subject to the provisions of subsection (h) of section one thousand four hundred eleven of this article.

(iii) Real property acquired pursuant to items (i) and (ii) of subparagraph (A) hereof shall be disposed of within five years after it shall have ceased to be necessary for the convenient accommodation of such insurer in the transaction of its business, and real property acquired pursuant to item (iii) of subparagraph (A) hereof shall be disposed of within five years after the date of acquisition, unless the superintendent certifies that the interests of the insurer will suffer materially by the forced sale thereof and extends the time in such certificate.

(iv) No real property shall be acquired by any domestic insurer pursuant to items (i) and (ii) of subparagraph (A) hereof if its cost, together with the book value of all real property then held pursuant to such items (i) and (ii), exceeds ten percent of the insurer's admitted assets as shown by its last statement on file with the superintendent.

(v) Except with the superintendent's approval, no domestic insurer shall:

(I) acquire any real property pursuant to items (i) and (ii) of subparagraph (A) of this paragraph, if the real property being acquired is greater than one percent of the insurer's admitted assets as shown by its last statement on file with the superintendent, or

(II) with respect to any building which was acquired under items (i) and (ii) of subparagraph (A) of this paragraph, make any improvement which should be capitalized according to generally accepted accounting principles if the annual expenditure for such improvements for any such building will exceed the greater of ten percent of its book value or one percent of the insurer's admitted assets as shown by its last statement on file with the superintendent.

(6) Foreign investments. (A) Investments in a foreign country or in a possession of the United States which are substantially of the same kinds, classes and investment grades as those eligible for investment under other provisions of this subsection. The aggregate amount of foreign investments including cash in the currency of such country or possession, obligations of American institutions payable outside of the United States and cash deposited in a bank, trust company or thrift institution located outside of the United States held at any time pursuant to the provisions of this section shall not exceed ten percent of the insurer's admitted assets as shown by its last statement on file with the superintendent.

(B) Investments in any one possession of the United States or in any one foreign country, other than Canada, made pursuant to this paragraph shall not exceed (i) in the case of any possession or country having the highest sovereign debt rating, as established by a securities rating agency recognized by the superintendent, three percent of the insurer's admitted assets as shown by its last statement on file with the superintendent, or

(ii) in the case of any other possession or country one percent of the insurer's admitted assets as shown by its last statement on file with the superintendent.

(7) Development bank obligations. Obligations issued or guaranteed by the international bank for reconstruction and development, the inter-American development bank, the Asian development bank, the African development bank or the international finance corporation; provided that

(i) obligations of such banks and the international finance

corporation are rated AA or higher (or the equivalent thereto) by a securities rating agency recognized by the superintendent, or if not so rated are similar in structure and in all material respects to other obligations of the same institution which are so rated, and

(ii) the aggregate investment made pursuant to the provisions of this paragraph in each such bank and the international finance corporation at any time, shall not exceed five percent of the insurer's admitted assets as shown by its last statement on file with the superintendent, and

(iii) the aggregate investment made pursuant to the provisions of this paragraph in all such banks and the international finance corporation shall not exceed fifteen percent of the insurer's admitted assets as shown by its last statement on file with the superintendent.

(8) Equity interests. (A) Investments in common shares or partnership interests of any solvent American institution, if:

(i) all its obligations and preferred shares, if any, are eligible as investments under this subsection and

(ii) such equity interests of any such institution except an insurance company are registered on a national securities exchange, as provided in the Securities Exchange Act of 1934, 15 U.S.C. §§78a-78kk or otherwise registered pursuant to said act and, if so otherwise registered, price quotations therefor are furnished through a nationwide automated quotations system approved by the National Association of Securities Dealers, Inc., provided that an insurer may invest under this paragraph an amount not exceeding one percent of the insurer's admitted assets as shown by its last statement on file with the superintendent even though such equity interests are not so registered and are not issued by an insurance company.

(B) Investment limitations. (i) No insurer subject to the provisions of paragraph two of subsection (a) or subsection (b) of section one thousand four hundred three of this article shall invest in or loan upon any one institution's outstanding equity interests an amount exceeding one percent of the insurer's admitted assets as shown by its last statement on file with the superintendent, and (ii) the cost of any investment in equity interests, made pursuant to this paragraph, when added to the aggregate cost of all other investments in equity interests then held pursuant to this paragraph, paragraph six and clause (ii) of subparagraph (A) of paragraph ten of this subsection shall not exceed:

(I) in the case of an insurer authorized to make investments under item (i) of this subparagraph except a retirement system organized pursuant to article forty-six of this chapter, the lesser of its surplus to policyholders or ten percent of its admitted assets as shown by its last statement on file with the superintendent, and

(II) in the case of a retirement system organized pursuant to article forty-six of this chapter, thirty percent of its admitted assets as shown by its last statement on file with the superintendent.

(9) Investments made by subsidiaries. The net investment in real property and loans secured by real property made by subsidiaries engaged or organized to engage exclusively in the acquisition, ownership and management of such investments. Such loans and real property must qualify as a reserve investment under paragraph four or five of this subsection. The subsidiary's net investment in such real property and loans shall be included under such paragraph when computing any limitations applicable to such real property and loans and excluded when computing the limitations applicable to equity interests under paragraph eight of this subsection. In order to qualify, a subsidiary must be wholly-owned either by the insurer or by two or more insurance companies domiciled in the United States who are members of the same holding company system, as such term is defined in article fifteen of this chapter, and each individual insurer's share of the net investments made by such subsidiary shall be computed in proportion to its equity interest in such subsidiary.

(10) Investment companies. (A) Securities of any investment company registered pursuant to the federal Investment Company Act of 1940, 15 U.S.C. § 802, if such company:

(i) invests at least ninety percent of its assets in the types of securities which qualify as a reserve investment pursuant to the provisions of paragraph one, two or three of this subsection or which invest in securities which are determined by the superintendent to be substantively similar to the types of securities set forth in such paragraphs; or

(ii) invests at least ninety percent of its assets in the types of equity interests which qualify as a reserve investment pursuant to the provisions of paragraph eight of this subsection.

(B) Investment limitations. Investments made by an insurer subject to

the provisions of paragraph two of subsection (a) or subsection (b) of section one thousand four hundred three of this article shall not exceed the following limitations:

(i) in any investment company qualifying under item (i) of subparagraph (A) hereof, ten percent of such insurer's admitted assets as shown by its last statement on file with the superintendent and the aggregate amount of investment in such qualifying investment companies shall not exceed twenty-five percent of such insurer's admitted assets as shown by its last statement on file with the superintendent; and

(ii) in any investment company qualifying under item (ii) of subparagraph (A) hereof, five percent of such insurer's admitted assets as shown by its last statement on file with the superintendent and the aggregate amount of investment in such qualifying investment companies shall be included when calculating the permissible aggregate value of equity interests pursuant to the provisions of subparagraph (B) of paragraph eight of this subsection.

(11) Credit union shares, share certificates and share draft accounts. Shares, share certificates and share draft accounts issued by credit unions and federal credit unions not to exceed the amounts which are assumed, guaranteed or insured by the United States or any agency or instrumentality thereof.

(b) Leeway provision. Investments which do not qualify or are not permitted under subsection (a) hereof, but excluding any investment prohibited by the provisions of paragraph six of subsection (a) of this section or by the provisions of paragraph one, two, three, four, six, eight, nine or ten of subsection (a) of section one thousand four hundred seven of this article, provided that:

(1) the aggregate cost of such investments shall not exceed five percent of the admitted assets of the insurer as shown by its last statement on file with the superintendent, and

(2) investments that are neither interest-bearing nor income-paying, made under this subsection as provided in paragraph one of subsection (d) of section one thousand four hundred three of this article shall not in the aggregate exceed three percent of the admitted assets of the insurer as shown by its last statement on file with the superintendent.