§ 1405. Investments of life insurers. (a) The assets of a domestic insurer that is authorized to make investments under this section may be invested in the following types of investments, in addition to investments otherwise authorized, subject in the case of investments made under this section to the limitations set forth below and the provisions of subsections (c), (d) and (e) of this section:

(1) Governmental obligations. Obligations, not in default, issued, assumed, guaranteed or insured by (i) the United States of America or by any agency or instrumentality thereof, (ii) any state of the United States of America, (iii) the District of Columbia, (iv) any territory or possession of the United States of America or any other governmental unit in the United States, or (v) any agency or instrumentality of any governmental unit referred to in items (ii), (iii) and (iv) above, provided that, in the case of obligations issued, assumed, guaranteed or insured by any governmental unit referred to in item (iv) above or any agency or instrumentality referred to in item (v) above, such obligations are 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 and preferred shares of American institutions. (i) Obligations, not in default, whether or not secured and with or without recourse, issued, assumed, guaranteed, insured or accepted by American institutions (or trustees or receivers therefor) and (ii) preferred shares of any such institution, provided, however, that after giving effect to any such investment in preferred shares of any institution, the aggregate amount of investments in preferred shares of such institution made under this section shall not exceed two percent of the insurer's admitted assets.

(3) Obligations secured by real property or interests therein. Obligations, or participations therein, secured by liens on real property or interests therein located within the United States and not eligible under paragraph one or two of this subsection, provided that no insurer making investments under the authority of this section shall

invest in or loan upon the security of any one property, under the authority of this paragraph, more than thirty thousand dollars or two percent of admitted assets, whichever is the greater.

(4) Real property or interests therein. Investments in real property or interests therein located in the United States, held directly or evidenced by partnership interests, stock of corporations (including, without limitation, subsidiaries engaged or organized to engage exclusively in the ownership and management of real property or interests therein), trust certificates or other instruments, and acquired (i) as an investment for the production of income or to be improved or developed for such investment purpose, or (ii) for the convenient accommodation of the insurer's business; provided that, after giving effect to any such investment, (I) the aggregate amount of such investments made under this paragraph and then held by such insurer shall not exceed twenty-five percent of the insurer's admitted assets, (II) the aggregate amount of investments made under item (i) of this paragraph and then held by such insurer shall not exceed twenty percent of the insurer's admitted assets, and (III) investments held under item (i) above in each property constituting such investment (including improvements thereon) shall not in the aggregate exceed two percent of the insurer's admitted assets, and provided, further, that no investment in real property may be made under item (ii) herein, (aa) if, after giving effect thereto, the aggregate amount of such investments then held by the insurer would exceed ten percent of the insurer's admitted assets, (bb) without the prior approval of the superintendent, if, after giving effect thereto, the aggregate amount of such investments in each property constituting such investment (including improvements thereon) then held by such insurer would exceed two percent of the insurer's admitted assets, and (cc) without the prior approval of the superintendent, in the case of an investment by a domestic insurer in real property located outside this state, if, after giving effect thereto, the aggregate amount of such investments in the property constituting such investment (including improvements thereon) would exceed one-fifth of one percent of the insurer's admitted assets.

(5) Personal property or interests therein. Investments in personal property or interests therein located or used wholly or in part within the United States, held directly or evidenced by partnership interests,

stock of corporations (including, without limitation, subsidiaries engaged or organized to engage exclusively in the ownership and management of personal property or interests therein), trust certificates or other instruments, provided that, after giving effect to any such investment, (i) the aggregate amount of such investments made under this paragraph and then held by such insurer shall not exceed ten percent of the insurer's admitted assets and (ii) investments held under this paragraph in the item of personal property constituting such investment shall not in the aggregate exceed one percent of the insurer's admitted assets.

(6) Equity interests. Investments (in addition to investments of the types described in this paragraph but made or acquired under article seventeen, section one thousand four hundred three, paragraphs four and five of this subsection or section four thousand two hundred forty of this chapter) in common shares, partnership interests, trust certificates or other equity interests (other than preferred shares) of American institutions, provided that, after giving effect to any investment made under this paragraph, (i) the aggregate amount of investments made under this paragraph in the institution in which such investment is then being made and then held by such insurer shall not exceed two percent of the insurer's admitted assets and (ii) the aggregate amount of all investments made under this paragraph and then held by such insurer shall not exceed twenty percent of the insurer's admitted assets.

(7) Foreign investments. (A) Canadian investments substantially of the same types as those eligible for investment under paragraphs one through six of this subsection, provided that, after giving effect to any investment made under this subparagraph, the aggregate amount of investments made under this subparagraph and then held by such insurer shall not exceed ten percent of the insurer's admitted assets, except where a greater amount is permitted under subparagraph (B) below (in which case the provisions of this subparagraph shall not be applicable).

(B) In the case of any domestic insurer that is authorized to do business in a foreign country or possession of the United States of America or that has outstanding insurance, annuity or reinsurance contracts on lives or risks resident or located in such foreign country or possession, investments in such foreign country or possession that

are substantially of the same types as those eligible for investment under paragraphs one through six of this subsection; provided that, except where a greater amount is permitted under subparagraph (A) above, after giving effect to any investment in such foreign country or possession made under this subparagraph, the aggregate amount of cash in the currency of such foreign country or possession and of investments in such foreign country or possession made under this subparagraph and then held by such insurer shall not exceed one and one-half times the amount of such insurer's reserves and other obligations under such contracts or the amount which such insurer is required by law to invest in such country or possession, whichever shall be greater.

(C) Investments in foreign countries, in addition to Canadian investments and investments permitted by subparagraph (B) of this paragraph, that are substantially of the same types as those eligible for investment under paragraphs one through six of this subsection, provided that, after giving effect to any investment made under this subparagraph, the aggregate amount of investments qualified under this subparagraph and then held by such insurer shall not exceed twenty percent of the insurer's admitted assets; and

(i) the issuer or obligor is (I) a jurisdiction, which is rated in one of the four highest rating categories by an independent, nationally recognized United States rating agency, (II) any political subdivision or other governmental unit of any such jurisdiction, or any agency or instrumentality of any such jurisdiction, political subdivision or other governmental unit or (III) an institution which is organized under the laws of any such jurisdiction or, in the case of such paragraphs three and four of this subsection, the real property is located in any such jurisdiction; and

(ii) an insurer shall not make any investment in any foreign country pursuant to this subparagraph, if such investment, together with all other investments in the same foreign country so made and then held by such insurer, would exceed seven percent of the insurer's admitted assets.

(D) In addition to the foreign investments permitted under the preceding subparagraphs of this paragraph, foreign investments that are substantially of the same types as those eligible for investment under paragraphs one through six of this subsection, provided that, after

giving effect to any investment made under this subparagraph, the aggregate amount of investments made under this subparagraph and then held by such insurer shall not exceed six percent of the insurer's admitted assets, and provided further that an insurer shall not make any investment in any foreign country pursuant to this subparagraph, if such investment, together with all other investments in the same foreign country so made and then held by such insurer, would exceed three percent of the insurer's admitted assets.

(8) Other investments. Investments that do not qualify or are not permitted under any other paragraph of this subsection, provided that, after giving effect to any such investment, (i) if such investment is of a type described in paragraph three or five or item (i) of paragraph four or paragraph six of this subsection, the aggregate amount of investments of such type made under this paragraph and then held by such insurer shall not exceed five percent of the insurer's admitted assets, (ii) if such investment is of a type described in paragraph six of this subsection, the aggregate amount of such investments made under this paragraph in the institution in which such investment is then being made and then held by such insurer shall not exceed two percent of the insurer's admitted assets, (iii) if such investment is of a type described in paragraph seven of this subsection, the aggregate amount of investments of all types described in said paragraph seven and made under this paragraph and then held by such insurer shall not exceed two percent of the insurer's admitted assets, and (iv) the aggregate amount of all investments made under this paragraph and then held by such insurer shall not exceed fourteen percent (but not more than ten percent in investments in institutions not having their principal operations in this state and in real and personal property and interests therein located outside this state and in mortgages and security interests with respect to real and personal property located outside this state) of the insurer's admitted assets. Investments that are neither interest bearing nor income paying, made under this paragraph as provided in paragraph one of subsection (d) of section one thousand four hundred three of this article, shall be subject to all the provisions of this paragraph and may not be acquired if the aggregate amount thereof immediately after such acquisition would exceed three percent of the insurer's admitted assets.

(b) (1) For the purposes of this section, article seventeen of this chapter and section one thousand four hundred three of this article,

(A) "aggregate amount" of investments means, subject to the provisions of the final sentence of this subsection, the aggregate depreciated cost thereof, in the case of investments of the types described in paragraphs four and five of subsection (a) of this section, and the aggregate cost thereof in the case of investments of other types;

(B) "admitted assets" means the amount thereof as of the last day of the most recently concluded annual statement year subject to the following adjustments;

(i) assets held in separate accounts established under section four thousand two hundred forty of this chapter shall be included only to the extent of amounts allocated to such separate accounts pursuant to paragraph three of subsection (a) of said section four thousand two hundred forty; and

(ii) investments in subsidiaries referred to in subsection (c) of section one thousand seven hundred four of this chapter shall be excluded; and

(C) the eligibility of any investment under any paragraph of subsection (a) of this section shall be determined at the time of acquisition thereof, except that (i) any investment qualified pursuant to item (ii) of subparagraph (C) of paragraph seven of such subsection (a) shall remain so qualified only at such time or times as the hedging requirements of such item (ii) are met with respect thereto; and (ii) investments qualified under paragraph eight of said subsection (a) may be requalified at a later date under another paragraph of said subsection (a), if the relevant conditions are satisfied at the time of such requalification. In computing depreciated cost of investments of the types described in paragraphs four and five of subsection (a) of this section, depreciation may be computed at a rate no greater than that permitted for federal income tax purposes and, in the case of investments described in said paragraph four, the cost of an investment shall be depreciated over its estimated useful life, not to exceed fifty years.

(2) In computing the "aggregate amount" of investments, as provided in the first sentence of paragraph one of this subsection, (A) valuation of investments acquired under paragraph four of subsection (a) of this

section shall also be subject to any regulation with respect to such valuation that the superintendent may prescribe and (B) investments of investment subsidiaries as defined in section one thousand seven hundred two of this chapter shall be valued as though the parent corporation owned the assets of such subsidiaries directly instead of the stock of such subsidiaries and shall be subject to the provisions of subsection (d) of section one thousand seven hundred four of this chapter.

(c) In addition to other requirements of law (statutory or otherwise) that affect the standard of care of directors and officers of corporations, in making investments under this section, directors and officers shall perform their duties in good faith and with that degree of care that an ordinarily prudent individual in a like position would use under similar circumstances. In the case of investments made under paragraphs two and six of subsection (a) of this section and investments that are substantially of the same types as those eligible for investment under such paragraphs, but are made under paragraph seven of such subsection, the institution that determines the eligibility of any such investment shall be a solvent institution whose obligations, if any, are not in default as to principal or interest, unless such investment is necessary to protect an investment theretofore made in the securities of such institution.

(d) After giving effect to any investment of a type described in item (i), (ii) or (iii) below, the aggregate amount of (i) investments in subsidiaries charged against the limit contained in paragraph one of subsection (a) of section one thousand seven hundred five of this chapter, (ii) investments made under item (i) of paragraph four and paragraphs five and six of subsection (a) of this section, and (iii) investments of the types described in said item (i) of paragraph four and such paragraphs five and six but made under paragraph seven or eight of subsection (a) of this section, shall not exceed forty percent of the insurer's admitted assets plus, to the extent permitted by the superintendent, investments (not exceeding five percent of the insurer's admitted assets) of the types referred to above in (I) new business enterprises located in the state; (II) technologically oriented businesses located in the state; (III) minority-owned businesses located in the state; (IV) businesses located in areas in the state that have experienced a high rate of chronic unemployment; and (V) development of

housing in the state for families and persons of low income. If, at the time of the making of any investment of a type described in item (i), (ii) or (iii) of the first sentence of this subsection, the aggregate amount of investments of the types described in clauses (I), (II), (III), (IV) and (V) of such sentence made by the insurer on or after the date on which this subdivision becomes effective and then held by the insurer is one percent or more of its admitted assets, then the forty percent figure in such sentence shall be deemed to be increased by an equal amount up to a maximum of forty-five percent, thus providing for a maximum of investments described in items (i), (ii) and (iii) herein of fifty percent of total admitted assets.

(e) No domestic life insurer shall hold a direct or indirect ownership interest in a risk retention group, as defined in article fifty-nine of this chapter, other than in a risk retention group all of whose members are insurance companies.

(f) Any investment may be denominated in a currency other than United States dollars, provided that the aggregate amount of all such investments (other than investments made pursuant to subparagraphs (A) and (B) of paragraph seven of subsection (a) of this section) that are not effectively hedged, substantially in their entirety, against the United States dollar, reduced, on a currency by currency basis, by the amount of foreign-currency denominated insurance liabilities may not exceed four percent of the insurer's admitted assets. An investment shall be deemed to be effectively hedged, substantially in its entirety, if it has been hedged:

(1) for an insurer that has an approved derivative use plan under section one thousand four hundred ten of this article, pursuant to contracts or agreements entered into under and in accordance with that derivative use plan and subject to the counterparty exposure limits thereunder; or

(2) for any other insurer, pursuant to contracts or agreements (derivative transactions) which are cleared through a "derivatives clearinghouse" or entered into with a "qualified counterparty", as those terms are defined pursuant to subsection (f) of section one thousand four hundred ten of this article.