

WAC 284-13-537 Trust fund requirements—Assets. Assets deposited in trusts established under RCW 48.12.405 through 48.12.455, and WAC 284-13-520 through 284-13-538 must be valued according to their current fair market value and must consist only of cash in United States dollars, certificates of deposit issued by a United States financial institution as defined in RCW 48.12.465(1), clean, irrevocable, unconditional and "evergreen" letters of credit issued or confirmed by a qualified United States financial institution, as defined in RCW 48.12.465(1), and investments of the type specified in this section, but investments in or issued by an entity controlling, controlled by, or under common control with either the grantor or beneficiary of the trust must not exceed five percent of total investments. No more than twenty percent of the total investments in the trust may be foreign investments authorized under subsections (1)(e), (3), (6)(b), or (7) of this section, and no more than ten percent of the total of the investments in the trust may be securities denominated in foreign currencies. For purposes of applying the preceding sentence, a depository receipt denominated in United States dollars and representing rights conferred by a foreign security must be classified as a foreign investment denominated in foreign currency. The assets of a trust established to satisfy the requirements of RCW 48.12.405 through 48.12.455, must be invested only as follows:

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

(a) The United States or by any agency or instrumentality of the United States;

(b) A state of the United States;

(c) A territory, possession or other governmental unit of the United States;

(d) An agency or instrumentality of a government unit referred to in subsections (1)(b) and (c) of this section if the obligations shall 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 making these payments, but shall not be obligations eligible for investment under this subsection if payable solely out of special assessments on properties benefited by local improvements; or

(e) The government of any other country that is a member of the Organization for Economic Cooperation and Development and whose government obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NA-IC.

(2) Obligations that are issued in the United States, or that are dollar denominated and issued in a non-United States market, by a solvent United States institution (other than an insurance company) or that are assumed or guaranteed by a solvent United States institution (other than an insurance company) and that are not in default as to principal or interest if the obligations:

(a) Are rated A or higher (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the NA-IC, or if not so rated, are similar in structures and other material respects to other obligations of the same institution that are so rated;

(b) Are insured by at least one authorized insurer (other than the investing insurer or a parent, subsidiary or affiliate of the investing insurer) licensed to insure obligations in this state and, after considering the insurance, are rated AAA (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the NAIC; or

(c) Have been designated as Class one or Class two by the Securities Valuation Office of the NAIC.

(3) Obligations issued, assumed or guaranteed by a solvent non-United States institution chartered in a country that is a member of the Organization for Economic Cooperation and Development or obligations of United States corporations issued in a non-United States currency, provided that in either case the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC.

(4) An investment made under subsections (1), (2), or (3) of this section are subject to the following additional limitations:

(a) An investment in or loan upon the obligations of an institution other than an institution that issues mortgage-related securities must not exceed five percent of the assets of the trust;

(b) An investment in any one mortgage-related security must not exceed five percent of the assets of the trust;

(c) The aggregate total investment in mortgage-related securities must not exceed twenty-five percent of the assets of the trust; and

(d) Preferred or guaranteed shares issued or guaranteed by a solvent United States institution are permissible investments if all of the institution's obligations are eligible as investments under subsection (2)(a) and (c) of this section, but must not exceed two percent of the assets of the trust.

(5) As used in WAC 284-13-500 through 284-13-590:

(a) "Mortgage-related security" means an obligation that is rated AA or higher (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the NAIC that either:

(i) Represents ownership of one or more promissory notes or certificates of interest or participation in the notes (including any rights designed to assure servicing of, or the receipt or timeliness of receipt by the holders of the notes, certificates, or participation of amounts payable under, the notes, certificates or participation), that:

(A) Are directly secured by a first lien on a single parcel of real estate, including stock allocated to a dwelling unit in a residential cooperative housing corporation, upon which is located a dwelling or mixed residential and commercial structure, or on a residential manufactured home as defined in 42 U.S.C. Section 5402(6), whether the manufactured home is considered real or personal property under the laws of the state in which it is located; and

(B) Were originated by a savings and loan association, savings bank, commercial bank, credit union, insurance company, or similar institution that is supervised and examined by a federal or state housing authority, or by a mortgage approved by the Secretary of Housing and Urban Development under 12 U.S.C. Sections 1709 and 1715-b, or where the notes involve a lien on the manufactured home, by an institution or by a financial institution approved for insurance by the Secretary of Housing and Urban Development under 12 U.S.C. Section 1703; or

(ii) Is secured by one or more promissory notes or certificates of deposit or participations in the notes (with or without recourse to

the insurer of the notes) and, by its terms, provides for payments of principal in relation to payments, or reasonable projections of payments, or notes meeting the requirements of subsection (5)(a)(i)(A) and (B) of this section.

(b) "Promissory note" when used in connection with a manufactured home, shall also include a loan, advance or credit sale as evidenced by a retail installment sales contract or other instrument.

(6) Equity interests.

(a) Investments in common shares or partnership interests of a solvent United States institution are permissible if:

(i) Its obligations and preferred shares, if any, are eligible as investments under this section; and

(ii) The equity interests of the 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. Sections 78a to 78kk or otherwise registered under the act, and if otherwise registered, price quotations for them are furnished through a nationwide automated quotations system approved by the Financial Industry Regulatory Authority, or successor organization. A trust must not invest in equity interests under this section an amount exceeding one percent of the assets of the trust even though the equity interests are not so registered and are not issued by an insurance company.

(b) Investments in common shares of a solvent institution organized under the laws of a country that is a member of the Organization for Economic Cooperation and Development, if:

(i) All its obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC; and

(ii) The equity interests of the institution are registered on a securities exchange regulated by the government of a country that is a member of the Organization for Economic Cooperation and Development.

(c) An investment in or a loan upon any one institution's outstanding equity interests must not exceed one percent of the assets of the trust. The cost of an investment in equity made under this subsection, when added to the aggregate cost of other investments in equity interests then held under this subsection, must not exceed ten percent of the assets of the trust.

(7) Obligations issued, assumed or guaranteed by a multinational development bank, provided the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC.

(8) Investment companies.

(a) Securities of an investment company registered under the Investment Company Act of 1940, 15 U.S.C. Section 80a, are permissible investments if the investment company:

(i) Invests at least ninety percent of its assets in the type of securities that qualify as an investment under subsections (1), (2), or (3) of this section or invests in securities that are determined by the commissioner to be substantively similar to the type of securities set forth in subsections (1), (2), or (3) of this section; or

(ii) Invests at least ninety percent of its assets in the type of equity interests that qualify as an investment under subsection (6)(a) of this section.

(b) Investments made by a trust in investment companies under this subsection must not exceed the following limitations:

(i) An investment in an investment company qualifying under (a)(i) of this subsection must not exceed ten percent of the assets in

the trust and the aggregate amount of investment in qualifying investment companies must not exceed twenty-five percent of the assets in the trust; and

(ii) Investments in an investment company qualifying under (a)(ii) of this subsection must not exceed five percent of the assets in the trust and the aggregate amount of investment in qualifying investment companies must be included when calculating the permissible aggregate value of equity interests under subsection (6)(a) of this section.

(9) Letters of credit.

(a) In order for a letter of credit to qualify as an asset of the trust, the trustee must have the right and the obligation under the deed of trust or some other binding agreement (as duly approved by the commissioner), to immediately draw down the full amount of the letter of credit and hold the proceeds in trust for the beneficiaries of the trust if the letter of credit will otherwise expire without being renewed or replaced.

(b) The trust agreement must provide that the trustee is liable for its negligence, willful misconduct or lack of good faith. The failure of the trustee to draw against the letter of credit in circumstances where the draw would be required is either negligence, willful misconduct, or both.

[Statutory Authority: RCW 48.02.060, 48.12.430 (1)(b) and (c), (3)(b), (4), (5), 48.12.480, and 2015 c 63. WSR 15-24-126 (Matter No. R 2015-09), § 284-13-537, filed 12/2/15, effective 1/2/16.]