

**Effective 5/12/2015**

**Part 4  
Utah Fund of Funds**

**63N-6-401 Organization of Utah fund of funds.**

- (1) The corporation shall organize the Utah fund of funds.
- (2) The Utah fund of funds shall make investments in venture capital and private equity partnerships or entities in a manner and for the following purposes:
  - (a) to encourage the availability of a wide variety of venture capital in the state;
  - (b) to strengthen the economy of the state;
  - (c) to help business in the state gain access to sources of capital;
  - (d) to help build a significant, permanent source of capital available to serve the needs of businesses in the state; and
  - (e) to accomplish all these benefits in a way that minimizes the use of contingent tax credits.
- (3) The Utah fund of funds shall be organized:
  - (a) as a limited partnership or limited liability company under Utah law having the corporation and qualified investment professionals as the general partner or manager;
  - (b) to provide for equity interests for designated investors, which provide for a designated scheduled return and a scheduled redemption in accordance with rules made by the board pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and
  - (c) to provide for loans by or the issuance of debt obligations to designated investors that provide for designated payments of principal, interest, or interest equivalent in accordance with rules made by the board pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (4) Public money may not be invested in the Utah fund of funds.

Renumbered and Amended by Chapter 283, 2015 General Session  
Amended by Chapter 420, 2015 General Session

**63N-6-402 Compensation from the Utah fund of funds to the corporation -- Redemption reserve.**

- (1) The corporation shall be compensated for its involvement in the Utah fund of funds through the payment of the management fee described in Section 63N-6-305.
- (2) Before any returns may be reinvested in the Utah fund of funds:
  - (a) any returns shall be paid to designated investors, including the repayment by the Utah fund of funds of any outstanding loans;
  - (b) any returns in excess of those payable to designated investors shall be deposited in the redemption reserve and held by the corporation as a first priority reserve for the redemption of certificates;
  - (c) any returns received by the corporation from investment of amounts held in the redemption reserve shall be added to the redemption reserve until it has reached a total of \$250,000,000; and
  - (d) if at the end of a calendar year the redemption reserve exceeds the \$250,000,000 limitation referred to in Subsection (2)(c), the corporation may reinvest the excess in the Utah fund of funds.
- (3) Funds held by the corporation in the redemption reserve shall be invested in accordance with Title 51, Chapter 7, State Money Management Act.

Renumbered and Amended by Chapter 283, 2015 General Session

**63N-6-403 Investments by Utah fund of funds.**

- (1) The Utah fund of funds shall invest funds:
  - (a) principally in high-quality venture capital funds managed by investment managers who have:
    - (i) made a commitment to equity investments in businesses located within the state; and
    - (ii) have committed to maintain a physical presence within the state;
  - (b) in private venture capital funds and not in direct investments in individual businesses; and
  - (c) in venture capital funds with experienced managers or management teams with demonstrated expertise and a successful history in the investment of venture capital funds.
- (2)
  - (a) The Utah fund of funds shall give priority to investments in private seed and venture capital partnerships and entities that have demonstrated a commitment to the state as evidenced by:
    - (i) the investments they have made in Utah-based entities;
    - (ii) the correspondent relationships they have established with Utah-based venture capital funds; or
    - (iii) the commitment they have made to expand the reach of expertise within the state by adding additional investment areas of expertise.
  - (b) The manager of the Utah fund of funds may waive the priorities under Subsection (2)(a) only if necessary to achieve the targeted investment returns required to attract designated investors.
- (3) The Utah fund of funds may invest funds in a newly created venture capital fund only if the managers or management team of the fund have the experience, expertise, and a successful history in the investment of venture capital funds as described in Subsection (1)(c).
- (4)
  - (a) An investment or investments by the Utah fund of funds in any venture capital fund may comprise no more than 20% of the total committed capital in the venture capital fund.
  - (b)
    - (i) No more than 50% of the funds invested by the Utah fund of funds may be made with venture capital entities with offices in the state established prior to July 1, 2002.
    - (ii) The restriction under Subsection (4)(b)(i) shall remain in place until three additional venture capital entities open new offices in the state.

Renumbered and Amended by Chapter 283, 2015 General Session

**63N-6-404 Powers of Utah fund of funds.**

- (1) The Utah fund of funds may:
  - (a) engage consultants and legal counsel;
  - (b) expend funds;
  - (c) invest funds;
  - (d) issue debt and borrow funds;
  - (e) enter into contracts;
  - (f) insure against loss;
  - (g) hire employees;
  - (h) issue equity interests to designated investors that have purchased equity interest certificates from the board; and
  - (i) perform any other act necessary to carry out its purposes.
- (2)

- (a) The Utah fund of funds shall engage a venture capital investment fund allocation manager.
  - (b) The compensation paid to the fund manager shall be in addition to the management fee paid to the corporation under Section 63N-6-305.
- (3) The Utah fund of funds may:
- (a) open and manage bank and short-term investment accounts as considered necessary by the venture capital investment fund allocation manager; and
  - (b) expend money to secure investment ratings for investments by designated investors in the Utah fund of funds.

Renumbered and Amended by Chapter 283, 2015 General Session

**63N-6-405 Annual audits.**

- (1) Each calendar year, an audit of the activities of the Utah fund of funds shall be made as described in this section.
- (2)
- (a) The audit shall be conducted by:
    - (i) the state auditor; or
    - (ii) an independent auditor engaged by the state auditor.
  - (b) An independent auditor used under Subsection (2)(a)(ii) must have no business, contractual, or other connection to:
    - (i) the corporation; or
    - (ii) the Utah fund of funds.
- (3) The corporation shall pay the costs associated with the annual audit.
- (4) The annual audit report shall:
- (a) be delivered to:
    - (i) the corporation; and
    - (ii) the board;
  - (b) include a valuation of the assets owned by the Utah fund of funds as of the end of the reporting year;
  - (c) include an opinion regarding the accuracy of the information provided in the annual report described in Subsection 63N-6-301(6);
  - (d) include an opinion regarding the accuracy of the information that supports the economic development impact in the state of the Utah fund of funds as described in Subsections 63N-6-203(3)(b)(ii) and 63N-6-406(3); and
  - (e) be completed on or before September 1 for the previous calendar year so that it may be included in the annual report described in Subsection 63N-6-301(6).

Renumbered and Amended by Chapter 283, 2015 General Session

Amended by Chapter 420, 2015 General Session

**63N-6-406 Certificates and contingent tax credits.**

- (1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board, in consultation with the State Tax Commission, shall make rules governing the application for, form, issuance, transfer, and redemption of certificates.
- (2) The board's issuance of certificates and related contingent tax credits to designated investors is subject to the following:
- (a) the aggregate outstanding certificates may not exceed a total of:

- (i) \$130,000,000 of contingent tax credits used as collateral or a guarantee on loans for the debt-based financing of investments in the Utah fund of funds initiated before July 1, 2014, or \$120,000,000 of contingent tax credits for a loan refinanced using debt- or equity-based financing as described in Subsection (2)(e); and
  - (ii) \$100,000,000 used as an incentive for equity investments in the Utah fund of funds;
  - (b) the board shall issue a certificate contemporaneously with a debt-based investment in the Utah fund of funds by a designated investor, including a refinanced loan as described in Subsection (2)(e);
  - (c) the board shall issue contingent tax credits in a manner that not more than \$20,000,000 of contingent tax credits for each \$100,000,000 increment of contingent tax credits may be redeemable in a fiscal year;
  - (d) the credits are certifiable if there are insufficient funds in the redemption reserve to make a cash redemption and the board does not exercise its other options under Subsection 63N-6-408(3)(b);
  - (e) the board may not issue additional certificates as collateral or a guarantee on a loan for the debt-based financing of investments in the Utah fund of funds that is initiated after July 1, 2014, except for a loan refinanced using debt- or equity-based financing on or after July 1, 2014, that was originated before July 1, 2014; and
  - (f) after July 1, 2014, the board may issue certificates that represent no more than 100% of the principal of each equity investment in the Utah fund of funds.
- (3) For an equity-based private investment initiated on or after July 1, 2015, the applicable designated investor may apply for a tax credit if the following criteria are met:
- (a) the Utah fund of funds has received payment from the designated investor as set forth in the investor's agreement with the Utah fund of funds;
  - (b) the designated investor has not received a return of the initial equity investment in the time established in the investor's agreement with the Utah fund of funds;
  - (c) there are insufficient funds in the redemption reserve to make a cash redemption and the board does not exercise its other options under Subsection 63N-6-408(3)(b); and
  - (d) there is a demonstrated positive impact on economic development in the state related to the Utah fund of funds' investments or the success of the corporation's economic development plan in the state, which shall be measured by:
    - (i) a method to calculate the impact on economic development in the state, established by rule; and
    - (ii) the corporation, with approval of the board, engaging an independent third party to evaluate the Utah fund of funds and determine the economic impact of the Utah fund of funds and the activities of the corporation as further described in Section 63N-6-203 and board rules.
- (4) In determining the maximum limits in Subsections (2)(a)(i) and (ii) and the \$20,000,000 limitation for each \$100,000,000 increment of contingent tax credits in Subsection (2)(b):
- (a) the board shall use the cumulative amount of scheduled aggregate returns on certificates issued by the board to designated investors;
  - (b) certificates and related contingent tax credits that have expired may not be included; and
  - (c) certificates and related contingent tax credits that have been redeemed shall be included only to the extent of tax credits actually allowed.
- (5) Contingent tax credits are subject to the following:
- (a) a contingent tax credit may not be redeemed except by a designated investor in accordance with the terms of a certificate from the board;

- (b) a contingent tax credit may not be redeemed prior to the time the Utah fund of funds receives full payment from the designated investor for the certificate as established in the agreement with the Utah fund of funds;
  - (c) a contingent tax credit shall be claimed for a tax year that begins during the calendar year maturity date stated on the certificate;
  - (d) an investor who redeems a certificate and the related contingent tax credit shall allocate the amount of the contingent tax credit to the taxpayers of the investor based on the taxpayer's pro rata share of the investor's earnings; and
  - (e) a contingent tax credit shall be claimed as a refundable credit.
- (6) In calculating the amount of a contingent tax credit:
- (a) the board shall certify a contingent tax credit only if the actual return, or payment of principal and interest for a loan initiated before July 1, 2014, including a loan refinanced on or after July 1, 2014, that was originated before July 1, 2014, to the designated investor is less than that targeted at the issuance of the certificate;
  - (b) the amount of the contingent tax credit for a designated investor with an equity interest may not exceed the difference between the actual principal investment of the designated investor in the Utah fund of funds and the aggregate actual return received by the designated investor and any predecessor in interest of the initial equity investment and interest on the initial equity investment;
  - (c) the rates, whether fixed rates or variable rates, shall be determined by a formula stipulated in the certificate; and
  - (d) the amount of the contingent tax credit for a designated investor with an outstanding loan to the Utah fund of funds initiated before July 1, 2014, including a loan refinanced on or after July 1, 2014, that was originated before July 1, 2014, may be equal to no more than the amount of any principal, interest, or interest equivalent unpaid at the redemption of the loan or other obligation, as stipulated in the certificate.
- (7) The board shall clearly indicate on the certificate:
- (a) the targeted return on the invested capital, if the private investment is an equity interest;
  - (b) the payment schedule of principal, interest, or interest equivalent, if the private investment is a loan initiated before July 1, 2014, including a loan refinanced on or after July 1, 2014, that was originated before July 1, 2014;
  - (c) the amount of the initial private investment;
  - (d) the calculation formula for determining the scheduled aggregate return on the initial equity investment, if applicable; and
  - (e) the calculation formula for determining the amount of the contingent tax credit that may be claimed.
- (8) Once a certificate is issued, a certificate:
- (a) is binding on the board; and
  - (b) may not be modified, terminated, or rescinded.
- (9) Funds invested by a designated investor for a certificate shall be paid to the corporation for placement in the Utah fund of funds.
- (10) The State Tax Commission may, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and in consultation with the board, make rules to help implement this section.

Renumbered and Amended by Chapter 283, 2015 General Session  
Amended by Chapter 420, 2015 General Session

**63N-6-407 Transfer and registration of certificates.**

- (1) A certificate and the related contingent tax credit may be transferred by the designated investor.
- (2) The board, in conjunction with the State Tax Commission, shall develop:
  - (a) a system for registration of any certificate and related contingent tax credit issued or transferred under this part; and
  - (b) a system that permits verification that:
    - (i) any contingent tax credit claimed is valid; and
    - (ii) any transfers of the certificate and related contingent tax credit are made in accordance with the requirements of this part.
- (3) A certificate or contingent tax credit issued or transferred under this part may not be considered a security under Title 61, Chapter 1, Utah Uniform Securities Act.

Renumbered and Amended by Chapter 283, 2015 General Session

**63N-6-408 Redemption of certificates.**

- (1) If a designated investor elects to redeem a certificate, the certificate shall be presented to the board for redemption no later than June 30 of the calendar year maturity date stated on the certificate.
- (2) Upon presentment to the board, it shall determine and certify the amount of the contingent tax credit that may be claimed by the designated investor based on:
  - (a) the limitations in Section 63N-6-406; and
  - (b) rules made by the board in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (3)
  - (a) If there are sufficient funds in the redemption reserve, the board shall direct the corporation to make a cash redemption of the certificate.
  - (b) If there are insufficient funds in the redemption reserve, the board may elect to redeem the certificate:
    - (i) by certifying a contingent tax credit to the designated investor; or
    - (ii) by making demand on designated purchasers to purchase certificates in accordance with Section 63N-6-409.
- (4) The board shall certify to the State Tax Commission the contingent tax credit which can be claimed by the designated investor with respect to the redemption of the certificate.
- (5) The board shall cancel all redeemed certificates.

Renumbered and Amended by Chapter 283, 2015 General Session

**63N-6-409 Use of commitments to redeem certificates.**

- (1) The board may elect to draw on a commitment to redeem a certificate from a designated investor.
- (2) If the board makes an election under Subsection (1), it shall:
  - (a) inform the designated purchaser of the amount of the contingent tax credit that must be purchased from the board;
  - (b) specify the date on which the purchase must be consummated; and
  - (c) use the funds delivered to the board by the designated purchaser to redeem the certificate from the designated investor.
- (3) The board has discretion in determining which commitment or commitments and what portion of those commitments to use to redeem certificates.

- (4) The contingent tax credits acquired by a designated purchaser under this section are subject to Section 63N-6-406.

Renumbered and Amended by Chapter 283, 2015 General Session

**63N-6-410 Powers and effectiveness.**

- (1) This chapter may not be construed as a restriction or limitation upon any power which the board might otherwise have under any other law of this state and the provisions of this chapter are cumulative to those powers.
- (2) This chapter shall be construed to provide a complete, additional, and alternative method for performing the duties authorized and shall be regarded as supplemental and additional powers to those conferred by any other laws.
- (3) With respect to a debt-based private investment only, the provisions of any contract entered into by the board or the Utah fund of funds may not be compromised, diminished, invalidated, or affected by the:
  - (a) level, timing, or degree of success of the Utah fund of funds or the investment funds in which the Utah fund of funds invests; or
  - (b) extent to which the investment funds are:
    - (i) invested in Utah venture capital projects; or
    - (ii) successful in accomplishing any economic development objectives.

Renumbered and Amended by Chapter 283, 2015 General Session

Amended by Chapter 420, 2015 General Session

**63N-6-411 Permissible investments.**

Investments by designated investors in the Utah fund of funds are permissible investments under applicable laws of the state for:

- (1) state-chartered banks;
- (2) state-chartered credit unions;
- (3) state-chartered industrial banks; and
- (4) domestic insurance companies.

Renumbered and Amended by Chapter 283, 2015 General Session

**63N-6-412 Exemption from certain statutes.**

- (1) Except as otherwise provided in this part, the corporation is exempt from statutes governing state agencies, as provided in Section 63E-2-109.
- (2) The corporation is exempt from:
  - (a) Title 52, Chapter 4, Open and Public Meetings Act; and
  - (b) Title 63G, Chapter 2, Government Records Access and Management Act.
- (3) The board is exempt from the requirement to report fund performance of venture firms and private equity firms set forth in Title 63G, Chapter 2, Government Records Access and Management Act.

Renumbered and Amended by Chapter 283, 2015 General Session