

31A-18-106 Investment limitations generally applicable.

- (1) The investment limitations listed in Subsections (1)(a) through (m) apply to an insurer.
 - (a) For an investment authorized under Subsection 31A-18-105(1) that is not amortizable under applicable valuation rules, the limitation is 5% of assets.
 - (b) For an investment authorized under Subsection 31A-18-105(2), the limitation is 10% of assets.
 - (c) For an investment authorized under Subsection 31A-18-105(3), the limitation is 50% of assets.
 - (d) For an investment authorized under Subsection 31A-18-105(4) that is considered to be an investment in a kind of security or evidence of debt pledged, the investment is subject to the class limitations applicable to the pledged security or evidence of debt.
 - (e) For an investment authorized under Subsection 31A-18-105(5), the limitation is 35% of assets.
 - (f) For an investment authorized under Subsection 31A-18-105(6), the limitation is:
 - (i) 20% of assets for a life insurer; and
 - (ii) 50% of assets for a nonlife insurer.
 - (g) For an investment authorized under Subsection 31A-18-105(7), the limitation is:
 - (i) 5% of assets; or
 - (ii) for an insurer organized and operating under Chapter 7, Nonprofit Health Service Insurance Corporations, 25% of assets.
 - (h) For an investment authorized under Subsection 31A-18-105(8), the limitation is:
 - (i) 20% of assets, inclusive of home office and branch office properties; or
 - (ii) for an insurer organized and operating under Chapter 7, Nonprofit Health Service Insurance Corporations, 35% of assets, inclusive of home office and branch office properties.
 - (i) For an investment authorized under Subsection 31A-18-105(10), the limitation is 1% of assets.
 - (j) For an investment authorized under Subsection 31A-18-105(11), the limitation is the greater of that permitted or required for compliance with Section 31A-18-103.
 - (k) Except as provided in Subsection (1)(l), an insurer's investments in subsidiaries is limited to 50% of the insurer's total adjusted capital. An investment by an insurer in a subsidiary includes:
 - (i) a loan, advance, or contribution to a subsidiary by an insurer; and
 - (ii) an insurer holding a bond, note, or stock of a subsidiary.
 - (l) Under a plan of merger approved by the commissioner, the commissioner may allow an insurer any portion of its assets invested in an insurance subsidiary. The approved plan of merger shall require the acquiring insurer to conform its accounting for investments in subsidiaries to Subsection (1)(k) within a specified period that may not exceed five years.
 - (m) For an investment authorized under Subsections 31A-18-105(13) and (14), the aggregate limitation is 10% of assets.
- (2) The limits on investments listed in Subsections (2)(a) through (e) apply to each insurer.
 - (a)
 - (i) For all investments in a single entity, its affiliates, and subsidiaries, the limitation is 10% of assets, except that the limit imposed by this Subsection (2)(a) does not apply to:
 - (A) an investment in the government of the United States or its agencies;
 - (B) an investment guaranteed by the government of the United States;
 - (C) an investment in the insurer's insurance subsidiaries; or
 - (D) a cash deposit that:
 - (I) is cash;
 - (II) is held by a depository institution, as defined in Section 7-1-103, that:

- (Aa) is solvent;
- (Bb) is federally insured; and
- (Cc) subject to Subsection (2)(a)(ii), has a Tier 1 leverage ratio of at least 5%, if the depository institution is a bank as defined in Section 7-1-103, or a ratio of Tier 1 capital to total assets of at least 5%, if the depository institution is not a bank; and
- (III) does not exceed the greater of:
 - (Aa) .4 times the Tier 1 capital of the depository institution; or
 - (Bb) the amount insured by a federal deposit insurance agency.
- (ii) The commissioner by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, shall:
 - (A) define "Tier 1 leverage ratio";
 - (B) define "Tier 1 capital"; and
 - (C) proscribe the method to calculate Tier 1 capital.
- (b) An investment authorized by Subsection 31A-18-105(3) shall comply with the requirements listed in this Subsection (2)(b).
 - (i)
 - (A) Except as provided in this Subsection (2)(b)(i), the amount of a loan secured by a mortgage or deed of trust may not exceed 80% of the value of the real estate interest mortgaged, unless the excess over 80%:
 - (I) is insured or guaranteed by:
 - (Aa) the United States;
 - (Bb) a state of the United States;
 - (Cc) an instrumentality, agency, or political subdivision of the United States or a state; or
 - (Dd) a combination of entities described in this Subsection (2)(b)(i)(A)(I); or
 - (II) is insured by an insurer approved by the commissioner and qualified to insure that type of risk in this state.
 - (B) A mortgage loan representing a purchase money mortgage acquired from the sale of real estate is not subject to the limitation of Subsection (2)(b)(i)(A).
 - (ii) Subject to Subsection (2)(b)(v), a loan or evidence of debt secured by real estate may only be secured by:
 - (A) unencumbered real property that is located in the United States; or
 - (B) an unencumbered interest in real property that is located in the United States.
 - (iii) Evidence of debt secured by a first mortgage or deed of trust upon a leasehold estate shall require that:
 - (A) the leasehold estate exceed the maturity of the loan by not less than 10% of the lease term;
 - (B) the real estate not be otherwise encumbered; and
 - (C) the mortgagee is entitled to be subrogated to all rights under the leasehold.
 - (iv) Subject to Subsection (2)(b)(v):
 - (A) participation in a mortgage loan shall:
 - (I) be senior to other participants; and
 - (II) give the holder substantially the rights of a first mortgagee; or
 - (B) the interest of the insurer in the evidence of indebtedness shall be of equal priority, to the extent of the interest, with other interests in the real property.
 - (v) A fee simple or leasehold real estate or an interest in a fee simple or leasehold is not considered to be encumbered within the meaning of this chapter by reason of a prior mortgage or trust deed held or assumed by the insurer as a lien on the property, if:

- (A) the total of the mortgages or trust deeds held does not exceed 70% of the value of the property; and
- (B) the security created by the prior mortgage or trust deed is a first lien.
- (c) A loan permitted under Subsection 31A-18-105(4) may not exceed 75% of the market value of the collateral pledged, except that a loan upon the pledge of a United States government bond may be equal to the market value of the pledge.
- (d) For an equity interest in a single real estate property authorized under Subsection 31A-18-105(8), the limitation is 5% of assets.
- (e) An investment authorized under Subsection 31A-18-105(10) shall be in connection with a potential change in the value of specifically identified:
 - (i) asset that the insurer owns; or
 - (ii) liability that the insurer has incurred.
- (3) The restrictions on investments listed in Subsections (3)(a) and (b) apply to each insurer.
 - (a) Except for a financial futures contract and real property acquired and occupied by the insurer for home and branch office purposes, a security or other investment is not eligible for purchase or acquisition under this chapter unless it is:
 - (i) interest bearing or income paying; and
 - (ii) not then in default.
 - (b) A security is not eligible for purchase at a price above its market value.
- (4) Computation of percentage limitations under this section:
 - (a) is based only upon the insurer's total qualified invested assets described in Section 31A-18-105 and this section, as these assets are valued under Section 31A-17-401; and
 - (b) excludes investments permitted under Section 31A-18-108 and Subsections 31A-17-203(2) and (3).
- (5) An insurer may not make an investment that, because the investment does not conform to Section 31A-18-105 and this section, has the result of rendering the insurer, under Chapter 17, Part 6, Risk-Based Capital, subject to proceedings under Chapter 27a, Insurer Receivership Act.
- (6) A pattern of persistent deviation from the investment diversification standards set forth in Section 31A-18-105 and this section may be grounds for a finding that the one or more persons with authority to make the insurer's investment decisions are "incompetent" as used in Subsection 31A-5-410(3).
- (7) Section 77r-1 of the Secondary Mortgage Market Enhancement Act of 1984 does not apply to the purchase, holding, investment, or valuation limitations of assets of insurance companies subject to this chapter.

Amended by Chapter 297, 2011 General Session