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May 30, 2023

Mr. John Richter
South Dakota Investment Council
4009 West 49th Street, Suite 300
Sioux Falls, SD, 57106

Dear Mr. Richter:

The Legislative Research Council (LRC) received proposed rules from the South Dakota Investment Council (SDIC) on May 19, 2023. In accordance with SDCL 1-26-6.5, the LRC reviewed the proposed rules for form, style, clarity, and legality, and now returns them with recommendations.

Please find enclosed:

- Proposed Rules Review Checklists;
- The proposed rules with recommended form, style, and clarity edits;
- Directions for Submitting the Final Draft of the Rules; and
- The Interim Rules Review Committee Rules Presentation Format.

In addition to the recommendations provided in the enclosed packet, LRC identifies a potential legality issue surrounding compliance with SDCL subdivisions 1-26-4(1) & (2) and Forms 1 and 2 submitted by the SDIC. Specifically, subdivision 1-26-4(1) specifies, in relevant part, that the rulemaking agency "shall serve a copy of a proposed rule . . . upon the departmental secretary, bureau commissioner, public utilities commissioner, or constitutional officer to which it is attached for the secretary's, commissioner's, or officer's written approval to proceed[.]" As submitted by SDIC, Forms 1 and 2—meant to memorialize this service and the approval of the officer, respectively—contain the signature of the State Investment Officer, who does not fall under one of the express categories in SDCL 1-26-4. Instead, SDCL 4-5-12.1 specifies that for purposes of S.D. Const. Art. IV, § 8, the SDIC is under the Office of the State Treasurer. Accordingly, it would appear that the State Treasurer needed to execute Forms 1 & 2 to comply with SDCL subdivisions 1-26-4(1) & (2).

Additionally, in future rulemakings, on the Notice of Public Hearing, the city where the public hearing is to be held should be noted. In the notice submitted by SDIC, this was readily implied, but for the sake of clarity, it should be expressed.

Under SDCL 1-26-4(4), the SDIC is required to adopt LRC recommendations, subject to an appeal to the Interim Rules Review Committee for the Committee's final determination. Note, however, that LRC reserves the right to withdraw recommendations if they are resolved via discussion with SDIC staff. Please do not hesitate to contact me if you have any questions or to discuss and possibly resolve any of the recommendations.

Sincerely,

A handwritten signature in black ink, appearing to read "Justin J. Goetz".

Justin J. Goetz
Code Counsel
Enclosures

CC: Josh Haeder, State Treasurer
Matthew L. Clark, State Investment Officer ✓

ARTICLE 6:01

STATE INVESTMENT COUNCIL

Chapter

- 6:01:01 Changes in rules.
- 6:01:02 State funds in South Dakota banks.
- 6:01:03 Savings and loan association, Repealed.
- 6:01:04 Investment in mortgage-backed securities, Repealed.
- 6:01:05 Investment in venture capital funds, Void.
- 6:01:06 Higher education savings plan, Repealed.
- 6:01:07 Other qualified public depositories, Repealed.

CHAPTER 6:01:01

CHANGES IN RULES

Section

- 6:01:01:01 Superseded.
- 6:01:01:02 Agency action on request, Repealed.
- 6:01:01:03 Request for decision from agency, Repealed.
- 6:01:01:04 Petition for declaratory ruling.

6:01:01:02. Agency action on request. ~~Upon receipt of a petition for a change in rule the investment officer shall immediately mail one copy to each council member and set a meeting within 25 days to act on the petition. The meeting shall be held via a telephone conference call if the investment council does not meet with a quorum in a common place. If no other action is taken on the petition at the meeting, or if the meeting is not held within 30 days~~

after the receipt of the petition, the chairman of the investment council must initiate rule-making proceedings as if the board had approved the petition. A hearing pursuant to SDCL 1-26-4(1) shall be held no later than 60 days after the initial receipt of the petition by the investment officer. Repealed.

Source: SL 1975, ch 16, § 1.

General Authority: SDCL 4-5-28.

Law Implemented: SDCL 1-26-13, 1-26-14.

6:01:01:03. Request for decision from agency. Any party having a contested case before this agency may make a request for a final order terminating administrative action and declaring the rights and liabilities of the parties thereto, by delivering a demand to the chairman of the investment council in person or by certified mail. The chairman must thereon either issue such order or issue an explanation of what procedures must be followed before he can issue the order, within four weeks after the receipt of the demand. Repealed.

Source: SL 1975, ch 16, § 1.

General Authority: SDCL 4-5-28.

Law Implemented: SDCL 1-26-13, 1-26-14, 1-26-15.

6:01:01:04. Petition for declaratory ruling. A person described in SDCL 1-26-15 may file a petition with the State Investment Council requesting a declaratory ruling on the applicability of a statutory provision administered by the council or of a rule or order made by the council. The petition must be in writing and contain the facts necessary to inform the council of the nature of the ruling requested. Upon receipt of the petition, the council may request of the petitioner any additional information necessary for the council to issue its ruling. Within thirty days following the receipt of the petition, or within thirty days following receipt of any

additional requested information, the council shall issue its declaratory ruling and serve a copy of the ruling by mail upon the petitioner.

Source:

General Authority: SDCL 1-26-15.

Law Implemented: SDCL 1-26-15.

CHAPTER 6:01:04

INVESTMENT IN MORTGAGE-BACKED SECURITIES

(Repealed)

Section

- 6:01:04:01 Investment in mortgage-backed securities permitted, Repealed.
- 6:01:04:02 Incorporation or charter of issuer, Repealed.
- 6:01:04:03 Delinquency rate on mortgage portfolio managed by issuer, Repealed.
- 6:01:04:04 Par value of mortgage collateral, Repealed.
- 6:01:04:05 Individual mortgage loans serving as collateral, Repealed.
- 6:01:04:06 Collateral for mortgages not federally insured or guaranteed, Repealed.
- 6:01:04:07 Mortgages to be controlled by trustee, Repealed.
- 6:01:04:08 Maturity of and security for fixed maturity bonds, Repealed.
- 6:01:04:09 Mortgage credit insurance and special hazard insurance for mortgage pass-through certificates, Repealed.
- 6:01:04:10 Registration with the securities and exchange commission, Repealed.
- 6:01:04:11 Purchase not to exceed 50 percent of one issue, Repealed.



- 6:01:04:12 Thirty percent of issue to be purchased by funds subject to certain federal regulation, Repealed.
- 6:01:04:13 Limit on purchase of any one issue, Repealed.
- 6:01:04:14 Prospectus required before purchase, Repealed.
- 6:01:04:15 Application of chapter, Repealed.

6:01:04:01. Investment in mortgage-backed securities permitted. ~~The investment officer may invest or reinvest the moneys of the South Dakota retirement system fund and the cement plant retirement fund in securities fully collateralized by mortgage securities, which are rated "AA" or better by either Standard and Poor's Corporation or Moody's Investor Service, Inc., if the issuer of the securities and the collateral meet the requirements of this chapter~~Repealed.

Source: 9 SDR 53, effective November 3, 1982.

General Authority: ~~SDCL 4-5-28.~~

Law Implemented: ~~SDCL 4-5-28.~~

6:01:04:02. Incorporation or charter of issuer. ~~The issuer must be incorporated or chartered under the laws of the United States, any state, or the District of Columbia~~Repealed.

Source: 9 SDR 53, effective November 3, 1982.

General Authority: ~~SDCL 4-5-28.~~

Law Implemented: ~~SDCL 4-5-28.~~

6:01:04:03. Delinquency rate on mortgage portfolio managed by issuer. ~~The 90-day delinquency rate on the mortgage portfolio managed by the issuer for any of the 5 years preceding the investment or reinvestment in such securities shall not have exceeded 3 percent for any 12-~~

~~month period nor shall the rate have averaged more than 1 1/2 percent for the 5 year period~~Repealed.

Source: 9 SDR 53, effective November 3, 1982.

General Authority: ~~SDCL 4-5-28.~~

Law Implemented: ~~SDCL 4-5-28.~~

6:01:04:04. Par value of mortgage collateral. ~~The par value of the mortgage collateral shall be no less than the par value of the issue~~Repealed.

Source: 9 SDR 53, effective November 3, 1982.

General Authority: ~~SDCL 4-5-28.~~

Law Implemented: ~~SDCL 4-5-28.~~

6:01:04:05. Individual mortgage loans serving as collateral. ~~The individual mortgage loans serving as collateral for an issue of securities shall meet either of the following requirements:~~

~~(1) Be insured by the federal housing administration or guaranteed by the veterans' administration; or~~

~~(2) If not insured or guaranteed under subdivision (1) of this section, have a total loan-to-value ratio of 90 percent or less with a minimum of 20 percent mortgage insurance coverage issued by a private mortgage insurer. Up to 20 percent of the par value of the mortgage loans serving as collateral may be made up of mortgage loans having a loan-to-value ratio of up to 95 percent with a minimum of 25 percent mortgage insurance coverage issued by a private mortgage insurer. Insurance on all such mortgage loans shall be issued by a private mortgage insurer which meets the following requirements:~~

~~(a) Is approved by the Federal Home Loan Mortgage Corporation;~~

~~(b) Has been engaged in the mortgage insurance business for at least 3 years; and~~

~~(c) Is authorized under SDCL 58-6-1 to issue mortgage insurance in South Dakota~~
Repealed.

Source: 9 SDR 53, effective November 3, 1982.

General Authority: ~~SDCL 4-5-28.~~

Law Implemented: ~~SDCL 4-5-28.~~

6:01:04:06. Collateral for mortgages not federally insured or guaranteed. ~~Mortgages serving as collateral for an issue of securities which are not insured or guaranteed as provided in subdivision 6:01:04:05(1) shall be secured by residential properties geographically dispersed within the states served by the issuer. At least 85 percent of the par value of such mortgages shall be secured by detached single-family residential properties. A maximum of 5 percent of the par value of such mortgages may be secured by attached single-family residential properties and 2 to 4 family residential properties, and a maximum of 10 percent of the par value of such mortgages may be secured by primary residential townhouses and condominiums~~
Repealed.

Source: 9 SDR 53, effective November 3, 1982.

General Authority: ~~SDCL 4-5-28.~~

Law Implemented: ~~SDCL 4-5-28.~~

6:01:04:07. Mortgages to be controlled by trustee. ~~Mortgages serving as collateral for an issue of securities shall be under the control of a trustee incorporated under the laws of the United States, any state, or the District of Columbia. Such mortgages shall not be under the direct control of the issuer of the securities~~
Repealed.

Source: 9 SDR 53, effective November 3, 1982.

General Authority: ~~SDCL 4-5-28.~~

Law Implemented: ~~SDCL 4-5-28.~~

6:01:04:08. Maturity of and security for fixed maturity bonds. ~~Fixed maturity bonds secured by mortgages meeting the other criteria in this chapter shall have a maturity of 10 years or less and shall be continuously secured by mortgages having a market value equal to at least 140 percent of the par value of the bonds~~Repealed.

Source: 9 SDR 53, effective November 3, 1982.

General Authority: ~~SDCL 4-5-28.~~

Law Implemented: ~~SDCL 4-5-28.~~

6:01:04:09. Mortgage credit insurance and special hazard insurance for mortgage pass-through certificates. ~~Mortgage pass-through certificates where the underlying mortgage loans are not insured or guaranteed as provided in subdivision 6:01:04:05(1) may be purchased only if the underlying pool of mortgage loans is covered by mortgage credit insurance in an amount equal to at least 5 percent of the amount of the pool in addition to the mortgage credit insurance on the individual mortgages and the properties securing the underlying pool of mortgages are covered by special hazard insurance in an amount at least equal to one percent of the amount of the pool to compensate for catastrophes not normally covered by home owners' insurance~~Repealed.

Source: 9 SDR 53, effective November 3, 1982.

General Authority: ~~SDCL 4-5-28.~~

Law Implemented: ~~SDCL 4-5-28.~~

6:01:04:10. Registration with the securities and exchange commission. Securities described in this chapter may be purchased only if the securities are registered with the securities and exchange commission. The investment council may waive this requirement where registration is not required by law~~Repealed~~.

Source: 9 SDR 53, effective November 3, 1982.

General Authority: ~~SDCL 4-5-28.~~

Law Implemented: ~~SDCL 4-5-28.~~

6:01:04:11. Purchase not to exceed 50 percent of one issue. No more than 50 percent of a single issue of mortgage-backed securities may be purchased~~Repealed~~.

Source: 9 SDR 53, effective November 3, 1982.

General Authority: ~~SDCL 4-5-28.~~

Law Implemented: ~~SDCL 4-5-28.~~

6:01:04:12. Thirty percent of issue to be purchased by funds subject to certain federal regulation. No mortgage-backed securities may be purchased unless at least 30 percent of the issue under consideration is purchased by funds regulated under the federal Employee Retirement Income Security Act of 1974~~Repealed~~.

Source: 9 SDR 53, effective November 3, 1982.

General Authority: ~~SDCL 4-5-28.~~

Law Implemented: ~~SDCL 4-5-28.~~

6:01:04:13. Limit on purchase of any one issue. No more than three percent of the assets of the South Dakota retirement system fund and no more than three percent of the cement plant

~~retirement fund, measured at the time of purchase, may be invested in a single issue of mortgage-backed securities~~Repealed.

Source: 9 SDR 53, effective November 3, 1982.

General Authority: ~~SDCL 4-5-28.~~

Law Implemented: ~~SDCL 4-5-28.~~

6:01:04:14. Prospectus required before purchase. ~~Before making a commitment to purchase mortgage-backed securities, the investment officer shall obtain a prospectus or offering circular describing the securities~~Repealed.

Source: 9 SDR 53, effective November 3, 1982.

General Authority: ~~SDCL 4-5-28.~~

Law Implemented: ~~SDCL 4-5-28.~~

6:01:04:15. Application of chapter. ~~This chapter does not apply to any security issued by an agency of the United States government or a corporation owned or controlled by the United States government~~Repealed.

Source: 9 SDR 53, effective November 3, 1982.

General Authority: ~~SDCL 4-5-28.~~

Law Implemented: ~~SDCL 4-5-28.~~

CHAPTER 6:01:06

HIGHER EDUCATION SAVINGS PLAN

(Repealed)

Section

6:01:06:01 Definitions, Repealed.

6:01:06:02 Changing designated beneficiary, Repealed.

6:01:06:03 Account balance limitations, Repealed.

6:01:06:04 Repealed.

6:01:06:05 Oversight of financial institutions, Repealed.

6:01:06:01. Definitions. ~~Words and phrases defined in SDCL chapter 13-63 have the same meaning when used in this chapter. Terms used in this chapter mean:~~

~~(1) "Cash," currency, bills, and coin in circulation, or converting a negotiable instrument to cash by endorsing and presenting to a financial institution for deposit. An automatic transfer, cashier's check, certified check, money order, payroll deposit, traveler's check, personal check, and wire transfer are cash;~~

~~(2) "Investment direction," specifying or attempting to specify the particular financial instruments or ownership interests either individually, or within a fund family or other group of financial instruments or ownership interests held as an investment group, into which the contributions or earnings are invested. Investment direction does not mean selecting an initial type of investment program if more than one program is offered;~~

~~(3) "IRC," section 529 of the Internal Revenue Code as amended on February 17, 2009.~~

~~(4) "Program manager," any financial institution selected by the council to act as the depository and manager for the higher education savings plan~~Repealed.

Source: 28 SDR 47, effective October 7, 2001; SL 2002, ch 94, § 5, effective February 22, 2002; 40 SDR 223, effective June 23, 2014.

General Authority: ~~SDCL 13-63-2(2).~~

Law Implemented: ~~SDCL 13-63-4, 13-63-10, 13-63-18.~~

6:01:06:02. Changing designated beneficiary. ~~An account owner may change the designated beneficiary by certifying and providing to the financial institution the name, address, social security number, and relationship of the new designated beneficiary to the previously named designated beneficiary. The change is effective upon the financial institution's receipt of such certification~~Repealed.

Source: 28 SDR 47, effective October 7, 2001.

General Authority: ~~SDCL 13-63-12.~~

Law Implemented: ~~SDCL 13-63-12, 13-63-13, 13-63-14(1).~~

6:01:06:03. Account balance limitations. ~~For each designated beneficiary, the balance in the qualified state tuition program may not exceed the limits as defined in IRC. If the financial institution determines that a contribution would cause the account balance limit to be exceeded, the financial institution may only deposit that portion of the contribution, if any, that does not result in an excess balance. The financial institution shall return the balance of the contribution to the contributor or permit the account owner to transfer to another account in accordance with SDCL 13-63-13. The program manager shall continuously monitor the current, cumulative balance in the accounts for each designated beneficiary~~Repealed.

Source: 28 SDR 47, effective October 7, 2001.

General Authority: ~~SDCL 13-63-21.~~

Law Implemented: ~~SDCL 13-63-13, 13-63-17, 13-63-21.~~

6:01:06:05. Oversight of financial institutions. ~~The financial institutions shall provide the following:~~

~~(1) Disclaimer of state liability. The principal and earnings of accounts established under this plan are not guaranteed by any state or the financial institution selected for this investment program. Each document pertaining to the higher education savings plan shall clearly indicate in a typeface and a location that are readily visible that "NOTICE: The account is not insured by any state and neither the principal deposited nor the investment return is guaranteed by any state.";~~

~~(2) Investment direction. A financial institution may not permit an account holder to move funds, once deposited, that in any way results in investment direction under IRC; and~~

~~(3) Reporting requirements. At least annually, each financial institution shall provide each account holder with a statement. The statement shall list a beginning balance, all activity during the year, including any interest paid or dividends earned and any penalties charged, and an ending balance.~~
Repealed.

Source: 28 SDR 47, effective October 7, 2001.

General Authority: ~~SDCL 13-63-23.~~

Law Implemented: ~~SDCL 13-63-18, 13-63-23, 13-63-30.~~