

NCTA BYLAWS

DRAFT AMENDMENTS – JANUARY 2022

ARTICLE 1 NAME

1.01 The name of this organization shall be the National College Testing Association, Inc. (“NCTA” or the “Organization”).

ARTICLE 2 PURPOSE

2.01 The purpose of NCTA shall be to create a network of testing professionals in post-secondary institutions, companies providing service to or delivery of testing or testing-related products, and policy-making agencies. Objectives of the Organization are to

- Enhance professional testing practices
- Offer opportunities for professional development
- Encourage professional support activities
- Advance collaborative efforts among testing professionals, testing companies, and other policy-making agencies

2.02 These purposes shall be realized through regular contact with the membership by means such as an annual conference, a membership directory, a website, email, or other methods determined by the NCTA Council.

ARTICLE 3 MEMBERSHIP

3.01 Membership in NCTA is open to individuals and entities that, in the sole discretion of the NCTA Council following review of each membership application or request, meet NCTA criteria for membership established in these Bylaws and as articulated in greater detail in any written policies adopted by the Council.

3.02 All voting and nonvoting members of the Organization must:

- Meet all eligibility applicable requirements set forth in these Bylaws and all written policies adopted by the Council.
- Comply with these Bylaws, all written policies of the organization adopted by the Council, and all terms and conditions for access to and use of NCTA services, as established in writing by the Council.
- Timely remit payment of membership fees and dues for the applicable membership category in accordance with the amounts established by the Council.

3.03 There are five membership categories. Collegiate membership shall be open to testing professionals employed by post-secondary institutions; Corporate membership shall be open to companies providing services to or delivery of testing or providing test-related products; Associate membership shall be open to testing Organizations comprised of testing professionals; Lifetime membership shall be open to individual recipients of NCTA’s Lifetime Achievement Award; and Affiliate membership shall be open to individuals or entities that have a professional interest in the field of testing but do not fit into the other membership categories.

3.04 Individual memberships are available to Collegiate and Affiliate members. Aside from regular individual memberships, there shall be one sub-category of individual Collegiate membership: Emeritus Membership, a reduced-dues membership available to Collegiate NCTA members after retirement. All individual Collegiate memberships carry voting privileges. Affiliate memberships shall not carry voting privileges and may not serve on the Governing Council.

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3.05 Institutional memberships are available to Collegiate and Affiliate members who wish to take advantage of reduced membership fees or provide additional financial support to the Organization. Institutional members may add an unlimited number of employees to their membership, however, the first ten individuals are included with the Institutional membership; additional individuals may be added for an additional cost. Each individual listed on the Institutional membership has voting privileges.

3.06 Corporate memberships are open to any company providing testing services, test delivery, or test-related products. Corporations may add an unlimited number of employees to their Corporate membership. The first ten individuals are included with the membership; extra individuals may be added for an additional cost. Each individual listed on the Corporate membership has voting privileges.

3.07 Associate memberships are available to non-profit testing Organizations with a tax ID comprised of collegiate testing professionals that meet the requirements of membership as identified in NCTA's agreement, such as those in a state, region, or group of states within a set geographical area. Each testing Organization must complete an agreement between the testing Organization and NCTA that provides further details of maintaining membership with NCTA. Organizations that are eligible for NCTA membership as either Corporate or Affiliate members are not eligible to become Associate members. Upon receiving an Associate membership, testing Organizations shall be permitted to limited benefits described in the agreement. Associate memberships do not carry voting privileges.

3.08 Lifetime memberships are available to individuals awarded NCTA's Lifetime Achievement Award. The recipient of the Lifetime Achievement Award remains a collegiate member in good standing at no charge, with all benefits of paying members, including voting rights.

3.09 All members (except recipients of the Lifetime Achievement Award) shall submit annual dues to remain in good standing.

ARTICLE 4 NCTA COUNCIL

4.01 The business of the Organization shall be conducted by the NCTA Council (hereafter referred to as "Council"). The Council is equivalent to and functions as the board of directors for NCTA, and the Council and all of its members shall comply with all laws and regulations that apply to boards of directors. The Council is responsible for formulating and executing policy and program recommendations approved by the Council. The Council is empowered to act in the name of the Organization in matters not covered by policy statements.

4.02 The Council shall consist of no fewer than ten (10) and no more than eighteen (18) members. The Council will consist of a Board of Directors (hereafter referred to as "Board"), consisting of Division Chairs and an Executive Committee which includes a President, a President-Elect/Past President, Treasurer and, depending on year, junior co-chair of Finance (See 5.10)

4.03 Each member of the Council shall demonstrate a commitment to participate actively in the governing of the Organization.

4.04 The Council may appoint Board members to fill vacancies (except as designated in 5.11). A Board member appointed to fill a vacancy shall be appointed for the unexpired portion of the term of his/her predecessor. In the event that an elected board member resigns prior to the start of his/her term, the Council may also seek to fill that position with a special election, if time permits before the annual meeting.

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4.05 Any member who assumes a Board seat through election or appointment will have completed one full “term” on the Board upon finishing or vacating that term. An elected Board member who resigns prior to the start of his/her term will also be considered to have completed one full term.

4.06 The Council shall meet at least three times a year. One Council meeting will be scheduled in conjunction with the NCTA conference, the others as appropriate to handle the business of the Organization in a timely manner.

4.07 Special meetings of the Council may be called as business dictates. Council members shall be notified by electronic mail, at least 15 calendar days in advance, of the date, place or electronic media use, and purpose of such meetings. The purpose(s) of such meetings shall be stated in the notice.

4.08 Business may be conducted electronically to facilitate decisions needing consideration prior to the next scheduled meeting.

4.09 A simple majority of the number of Council members eligible to vote shall constitute a quorum for the transaction of business.

4.10 A majority vote of Council members present at a meeting shall determine the passage of routine business matters unless a larger number is specified elsewhere in these Bylaws.

4.11 Between meetings, electronic votes on motions may be called by the President following an online discussion and comment period of at least 24 hours. For purposes of a quorum for an electronic vote, all Council members shall be considered present and a majority vote shall determine the passage of such motions.

ARTICLE 5 EXECUTIVE COMMITTEE AND BOARD OF DIRECTORS

5.01 At a minimum, the NCTA Executive Committee shall consist of the President, President-Elect/Past President, Treasurer, and the junior co-chair of Finance in any year that a person is serving in that position. The Council may elect or appoint other Council members to the NCTA Executive Committee as necessary.

5.02 Only Collegiate members in good standing (as defined by 3.02 and 3.03) are eligible to run for a seat on the Board or Treasurer. To be eligible to run for the Board or Treasurer, individuals must volunteer to serve or continue to serve on at least one additional NCTA committee. At the discretion of the Nominating Committee, other NCTA service (not committee-related) may substitute for this requirement.

5.03 Members of the Board and the Treasurer serve staggered three-year terms.

5.04 Members of the Governing Council must maintain Collegiate membership throughout their term. Should a Governing Council member not have a Collegiate membership, if they wish to continue serving on the Governing Council, they will have ninety (90) calendar days to obtain Collegiate membership or will be required to step down from their position on the Governing Council.

5.05 Members may serve a maximum of two terms in any position on Council with the exception of presidency. Each elected (i.e., non-appointed) term of service begins at the Council meeting immediately following the annual meeting and ends at the conclusion of the conference three years later. Appointed members shall begin their term immediately following their appointment.

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Their term ends at the conclusion of the conference three years from the date of the elected term that they assumed, or immediately upon vacating the position.

5.06 Only Collegiate members in good standing (as defined by 3.02 and 3.03) who have served a minimum of one year on the Board are eligible to run for President-Elect.

5.07 The President shall be elected for a two-year term but the person elected to fill that role shall serve a total term of four years, as set forth in this paragraph. The person elected as President will serve as President-Elect during the first year following election, as President during the second and third years, and as Past President during the fourth year of the term. The President will be elected every other year, and the Past President will fulfill the duties of the President-Elect on the alternate years when there is no President-Elect. Members may serve a maximum of one term as President, for a total of four consecutive years. During presidential elections, the Nominating Committee shall prepare a separate slate for President. Individuals running for President may not run for other positions on the Governing Council.

5.08 The President assumes full responsibility for the general activities of the Organization. Together with the NCTA Treasurer, the President signs contracts or documents authorized by the Council unless that authority has been delegated elsewhere.

5.09 The President-Elect or Past President shall perform the duties of the President during a scheduled absence of the President or if such duties are delegated by the Council.

5.10 The chair or co-chair of the Finance Division with the most years of service in the chair or co-chair role shall serve as the NCTA Treasurer. In years in which the Treasurer is rotating out of that position, the Nominating Committee shall prepare a separate slate for Treasurer. Individuals running for Treasurer may not run for other positions on the Governing Council. The newly elected individual will serve as junior co-chair of the Finance Division during the first year and as Treasurer during the second and third years of the term.

5.11 The Treasurer shall have charge of, custody of, and responsibility for all funds and securities of the Organization and shall report to the Council concerning the disbursement of same at each regular meeting of the Council.

5.12 A vacancy in the office of President shall be filled by the President-Elect for the unexpired portion of the term. If there is no current President-Elect (since the President-Elect's position would be filled every other year to coincide with the two year presidency), the Past President will serve as Interim President until a special election can be held. In the event of a vacancy in the office of Treasurer, the Council shall either elevate the Finance Division's junior co-chair (if one exists) to the office of Treasurer, or appoint a replacement, as per 4.04. Should the Council elect to elevate the junior co-chair, this individual will serve as Treasurer for the duration of his/her term, and the position of junior co-chair of Finance will be filled as per 4.04.

5.13 Any Council member may be removed from his/her position by the Council by vote of two-thirds of the entire Council when the best interest of the Organization will be served in the judgment of Council. Proper notice specifying the proposed removal shall be given prior to any meeting of the Council at which such removal shall be considered (See 4.07).

5.14 The Council may enter into independent contractor agreements for positions as approved by a majority of the Council.

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ARTICLE 6 ELECTIONS

6.01 All Council members shall be elected by the general membership from a slate of nominees compiled by the Nominating Committee and approved by the Executive Committee. In the event of a tie vote, a runoff election will be held between those candidates only. In the event of another tie vote, the Council will decide between the tied candidates.

6.02 Slates for all Council seats elected by the general membership will be produced by the Nominating Committee, following a Call for Nominations to the membership at large. The Nominating Committee will receive its charge annually from the Council. The Nominating Committee shall make every effort to ensure that each slate includes one to three members more than are able to be elected. However, on the recommendation from the Nominating Committee, the Executive Committee may approve a slate of any size.

6.03 The Nominating Committee will consist of four members. The Committee will be chaired by the Past President, if a Council member; otherwise, the President serves in that capacity. The Chair will not be a voting member of the committee. The three voting members will be elected by the Council from a slate prepared by the Executive Committee and may not be sitting Council members. Voting members will serve staggered 3-year terms, and must agree not to run for a seat on the Council while serving, or for one year after serving, on the Nominating Committee.

6.04 A sitting Board member may run for President or Treasurer without vacating his/her Board term. Should said individual win the election for President or Treasurer, at the end of the annual meeting, s/he shall assume the newly elected position and must vacate the years remaining on the original Board term. Should it be necessary to fill that member's Board seat, the Board appointment will occur at the Council meeting immediately following the conference in accordance with 4.04. Individuals are not permitted to simultaneously run for Board and President or Board and Treasurer.

6.05 In addition to preparing the slate, the Nominating Committee will be responsible for identifying an election timeline, soliciting and receiving nominations, preparing the ballots for inclusion on the website, and working with the webmaster so that the election process proceeds smoothly. The chair of the Nominations Committee will be responsible for announcing the election results.

ARTICLE 7 MEETINGS

7.01 An annual membership meeting shall be held in conjunction with each conference for the transaction of Organizational business and the introduction of new Council members. All meetings referenced or required under these Bylaws or applicable written NCTA policies may be held in-person or through the use of a remote, synchronous, virtual meeting platform that incorporates live video and audio to enable all participants to see and hear each other.

ARTICLE 8 COMMITTEES AND APPOINTED POSITIONS

8.01 To assist the Council, Committees and appointed positions shall be organized within Divisions to promote collaboration and management control.

8.02 Committees shall be either (1) standing committees, those of a permanent nature, or (2) ad hoc or temporary committees, those formed to work on a specific issue as needed. Ad hoc

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committees may report to the Council through the President, President-Elect/Past President, or NCTA Division head.

8.03 Each Division shall be led by a Board member. Except for individuals elected through a Treasurer election, new Board members shall be assigned to a Division by the individual who will be serving as President at the start of the Board member's term.

8.04 Committee chairs are proposed by the Division chair and approved by a majority of the Council.

8.05 The Council shall determine the Divisional structure including the number of committees, their specific types and functions, and their rotational schedules.

8.06 The Divisional and Committee structure shall be posted on the website.

ARTICLE 9 PARLIAMENTARY AUTHORITY

9.01 The rules contained in the current edition of Robert's Rules of Order, Newly Revised, shall govern the Association in all cases to which they are applicable and in which they are not inconsistent with these bylaws, the standing rules, the special rules of order, and the policies of the Association.

ARTICLE 10 REMUNERATION AND REIMBURSEMENT

10.01 No Council member or member of any committee of the Organization, including Executive Committee members and committee chairs, shall be entitled to compensation for services rendered to the Organization in the course of his/her duties. The Council may authorize reasonable compensation for services of value to the Organization performed by an NCTA member independent of his/her office.

10.02 No Council member or committee member shall promise remuneration for services to the Organization without prior approval of the Council.

10.03 Reimbursement for direct expenses relating to the operation of the Organization may be made if authorized in advance. Reimbursement for travel to Council meetings will be allowed in accordance with the Travel Reimbursement Policy established by the Council.

ARTICLE 11 CONTRACTS, CHECKS, DEPOSITS, AND FUNDS

11.01 In addition to individuals authorized by these Bylaws, the Council may authorize any NCTA employee or designated agent(s) of NCTA to enter into any contract in the name of, and on behalf of, the Organization. Such authority may be general or confined to specific instances but must be placed in writing in all instances.

11.02 All checks, drafts, endorsements, notes, and evidence of indebtedness of the Organization shall be signed by such employees or agents of the Organization and in such a manner as the Council from time to time may determine. Endorsements for deposits to the credit of the Organization shall be made in such manner as the Council from time to time may determine.

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11.03 All funds of the Organization not otherwise employed shall be deposited in such banks, trust companies, or other reliable depositories as the Council may determine.

ARTICLE 12 BOOKS AND RECORDS

12.01 The Organization shall keep correct and complete records of accounts and shall also keep minutes of Council meetings.

12.02 Financial records will be submitted to an accountant at the end of each calendar year for tax reporting purposes.

ARTICLE 13 FISCAL YEAR

13.01 The fiscal year of the Organization shall begin on the first (1st) day of July and end on the thirtieth (30th) day of June the following year.

ARTICLE 14 MEMBERSHIP DUES

14.01 The Council may establish the annual membership dues and make special assessments, but the amount of such dues or assessments and of any increases in them shall be approved by a majority of the Council. All proposals involving dues and assessments shall be accompanied by financial reports in justification of same.

ARTICLE 15 BYLAW AMENDMENTS

15.01 These Bylaws may be amended by a two-thirds affirmative vote of all members participating in the voting process. Notification of proposed bylaw amendments shall be sent to members for review no later than 15 calendar days prior to the start of the voting period.

ARTICLE 16 INDEMNIFICATION AND LIABILITY

16.01 DISCRETIONARY INDEMNIFICATION

Every person who is or was a Council member, employee or agent of the Organization or any other person connected with the mission of NCTA who the Council may designate in writing, may, in the discretion of the Council, be indemnified by the Organization against all liability and expenses actually and reasonably incurred by such person in connection with or resulting from any action, suit, or proceeding in which such person may become involved, as a party or otherwise, by reason of such person's being or having been a Council member, employee, or agent of the Organization or by reason of such person's connection with the mission of the Organization (including, without limitation, any suit brought by or in the name of the Organization to recover an advancement of expenses made by the Organization pursuant to an undertaking or otherwise), provided (a) that said action, suit, or proceeding is prosecuted to a final determination and such person defends successfully on the merits or otherwise or (b) in the absence of such a final determination in such person's favor, that the Council determines that such person acted in good faith and in a manner the individual reasonably believed to be in or not opposed to the best interests of the Organization, and, with respect to any criminal action or proceeding, that such person had no reasonable cause to believe the conduct was unlawful. The determinations

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contemplated by subclause (b) of the proviso clause of the foregoing sentence must be made (a) by the Council by a simple majority vote of the members of the Council not parties to such action, suit, or proceeding, even though less than a quorum, or (b) by a committee of such members of the Council designated by a simple majority vote of such members of the Council, even though less than a quorum, or (c) if such quorum is not obtainable, or, even if obtainable and a quorum of disinterested members of the Council so directs, by independent legal counsel in a written opinion. If a person meets the requirements set forth in the proviso clause of the first sentence of this Article 16.01 with respect to some matters in an action, suit, or proceeding, but not with respect to others, such person may be indemnified as to the former. The provisions of this Article 16.01 are in addition to, and not by way of limitation of, the provisions of Articles 16.02 and 16.03.

16.02 MANDATORY INDEMNIFICATION IN GENERAL

To the extent that a present or former Qualifying Person or any other present or former Council member, employee, or agent of the Organization or any person otherwise connected with the mission of the Organization, in each case whom the Council has designated as entitled to be indemnified pursuant to the provisions of this Article 16.02, has been successful on the merits or otherwise in defense of any action, suit, or proceeding of a type referred to in Article 16.01, or in defense of any claim, issue, or matter therein, or in any action, suit, or proceeding brought by such person to enforce a right to indemnification or to advancement of expenses hereunder, such person must be indemnified against expenses actually and reasonably incurred by such person in connection therewith. The provisions of this Article 16.02 are in addition to, and not by way of limitation of, the provisions of Articles 16.01 and 16.03.

16.03 MANDATORY INDEMNIFICATION OF QUALIFYING PERSONS

Every person who is or was a Qualifying Person of the Organization must be indemnified by the Organization against all liability and expenses actually and reasonably incurred by such person in connection with or resulting from any action, suit, or proceeding in which such person may become involved, as a party or otherwise, by reason of such person's being or having been a Qualifying Person, or by reason of such person's connection with the mission of the Organization, provided that the Council determines that such person acted in good faith and in a manner the individual reasonably believed to be in or not opposed to the best interests of the Organization and, with respect to any criminal action or proceeding, that such person had no reasonable cause to believe the conduct was unlawful. Notwithstanding the provisions of the foregoing sentence, except as provided in Article 16.02 with respect to actions, suits, and proceedings to enforce rights to indemnification or advancement of expenses, the Organization is required to indemnify a Qualifying Person in connection with an action, suit, or proceeding (or part thereof) initiated by such Qualifying Person only if such action, suit, or proceeding (or part thereof) was authorized by the Council. The determinations contemplated by the proviso clause of the first sentence of this Article 16.03 are made (a) by the Council by a simple majority vote of the members of the Council who are not parties to such action, suit, or proceedings, even though less than a quorum, or (b) by a committee of such members of the Council designated by simple majority vote of such members of the Council, even though less than a quorum, or (c) if such quorum is not obtainable, or, even if obtainable and a quorum of disinterested members of the Council so directs, by independent legal counsel in a written opinion. If a Qualifying Person meets the requirements set forth in the proviso clause of the first sentence of this Article 16.03 with respect to some matters in an action, suit, or proceeding, but not with respect to others, such person is entitled to indemnification as to the former. The provisions of this Article 16.03 are in addition to, and not by way of limitation of, the provisions of Articles 16.01 and 16.02.

16.04 ACTIONS BY OR IN THE RIGHT OF THE ORGANIZATION

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In the case of any action, suit, or proceeding by or in the right of the Organization: (a) no indemnification is made with respect to any claim, issue, or matter as to which the person seeking indemnification has been adjudged to be liable to the Organization unless, and only to the extent that, the court in which such action or suit was brought has determined upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for reasonable expenses as such court deems proper; and (b) indemnification extends only to expenses and specifically does not extend to any liability.

16.05 ADVANCES OF EXPENSES

The Organization may allow advances against expenses on terms fixed by the Council subject to an obligation to repay if indemnification proves unwarranted. Expenses actually and reasonably incurred by a person in defending any action, suit, or proceeding in which such person is involved as a party or otherwise by reason of such person's being or having been a Qualifying Person must be paid by the Organization in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such person to repay such amounts if it is ultimately determined that such person is not entitled to be indemnified by the Organization.

16.06 APPLICABILITY

The indemnification provided by this section of the Bylaws is not exclusive of any other rights to which any person seeking indemnification may be entitled under any bylaw, agreement, vote of disinterested members of the Council, or otherwise, both as to action in an official capacity and as to action in another capacity while holding such office; it continues after such a person has ceased to hold the office and it inures to the benefit of the heirs, executors, and administrators of such a person. This section of the Bylaws must not be construed to authorize indemnification in any case or for any liability or expense where such indemnification would not be lawful. This section of the Bylaws applies to actions, suits, or proceedings made or commenced after the adoption hereof, whether arising from acts or omissions to act occurring before or after the adoption hereof.

16.07 INSURANCE

The Organization may purchase and maintain insurance on behalf of any person who is or was a member of the Council, employee, or agent of the Organization against all liability and expenses incurred by such person in any such capacity, or arising out of such person's status as such, whether or not such person may have a right to be indemnified by the Organization against such liability and expenses under this section of the Bylaws. The Organization must maintain at least the liability insurance required by applicable law.

16.08 CERTAIN DEFINITIONS

For the purposes of this section of the Bylaws: (a) "expenses" includes, but is not limited to, fees and disbursements of legal counsel; (b) "liability" includes amounts of any judgment, fine, or penalty, and reasonable amounts paid in settlement; (c) "action, suit, or proceeding" (unless otherwise limited) includes every claim, action, suit, or proceeding, whether civil or criminal, derivative or otherwise, administrative or investigative, and any appeal relating thereto, and any reasonable apprehension or threat of any such action, suit, or proceeding; (d) references to "other enterprises" includes employee benefit plans, references to "fines" includes any excise taxes assessed on a person with respect to any employee benefit plan, references to "serving at the request of the Organization" includes any service as a member of the Council, employee or agent of the Organization which imposes duties on, or involves services by, such member of the Council, employee, or agent with respect to an employee benefit plan, its participants or beneficiaries, and a person who acted in good faith and in a manner such person reasonably believed to be in the

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interest of the participants and beneficiaries of an employee benefit plan is deemed to have acted in a manner “not opposed to the best interests of the Organization;” (e) “Qualifying Person” is defined as the President, President Elect, Immediate Past President, Secretary, Treasurer, CEO, any other officers of the Organization elected or appointed by the Council or the membership, and members of advisory bodies created pursuant to the Bylaws who have been approved by the Council; and (f) the termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, does not, of itself, create a presumption that the conduct of the person seeking indemnification did not meet the standard of conduct set forth the proviso clauses of the first sentences of Articles 16.01 and 16.03.

16.09 SEVERABILITY

If any clause, provision or application of this section of the Bylaws is determined to be invalid, the other clauses, provisions or applications are not affected but remain in full force and effect.

ARTICLE 17 WRITTEN POLICIES OF NCTA

17.01 The Council may adopt written policies for NCTA that may refine and augment, but not supersede or contradict provisions contained in either the NCTA Articles of Incorporation or these Bylaws, which take priority in such order. The Council has the exclusive authority to draft and amend NCTA written policies in accordance with the Bylaws and procedures established in writing by the Council.

ARTICLE 18 DISSOLUTION OF ORGANIZATION

18.01 Upon the dissolution of the Organization, assets shall be distributed for one or more exempt purposes within the meaning of reaction 501(c)(3) of the Internal Revenue Code or corresponding section of any future federal tax code.