

Informational Bulletin: Letter of Credit

California Labor Code Section 3701 permits deposit of an Irrevocable Letter of Credit as an alternative security deposit. However, Office of Self Insurance Plans (OSIP) retains discretion under California Code of Regulations, Title 8, Section 15215 to determine in each particular case if a Letter of Credit, as written, is acceptable deposit and if the bank posting it is acceptable.

Section 15215 requires an irrevocable letter of credit to be issued by:

1. A State of California chartered or savings institution; or
2. A federally chartered bank or savings institution; or
3. Any other foreign or domestic bank or savings institution; or
4. A group (syndication) of domestic or foreign banks or savings institution; or
5. A federally chartered or State of California chartered credit union

The irrevocable letter of credit must be issued by and payable at a branch in the continental United States, Alaska, or Hawaii. The issuing branch or financial institution, in any event, shall have at the time of issuance of the letter of credit an acceptable credit rating as set forth below:

1. An "Aaa," "Aa.," or "A" long term certificate of deposit (CD) rating for the bank or financial institution in the current monthly addition of *Moody's Statistical Handbook* prepared by Moody's Investors Service, Inc., New York; or
2. An "AAA," "AA," or "A" long term certificate of deposit (CD) rating for the bank or financial institution in the current quarterly edition or monthly supplement of *Financial Institutions Ratings* prepared by Standard and Poor's Corporation, New York; or
3. An "AAA," "AA+," or "AA" credit rating for the issuing financial institution along with a CD/Debt Credit Limit Code above the dollar amount of the letter of credit, as well as a Credit Limit Maturity Code of "a, b, c, or d" in the current annual edition of *GFI Credit Ratings* or the latest monthly *GFI Bank Letter* supplement thereto.
4. If applicable, be backed by federally chartered instrumentalities of the United States operating under authority of the Farm Credit Act of 1971, as amended, or be a state or federally chartered credit union whose shares are insured by the National Credit Union Share Insurance Fund.

If a bank's or financial institution's rating subsequent to the issuance of the letter of credit falls below the acceptable rating level, the Chief of Office of Self Insurance Plans shall require the letter of credit to be replaced or confirmed by a bank with an acceptable rating within 60 days of the publication of the lower credit rating.

Letters of credit issued by a financial institution or syndication of financial institutions that does not

meet the credit rating level set forth above at the time of issuance shall be accepted by the Chief with a confirming letter of credit issued by a financial institution meeting the credit rating criteria. The confirming letter of credit shall state the confirming financial institution is primarily obligated to pay on demand the full amount of the letter of credit regardless of reimbursement from the financial institution whose letter of credit is being confirmed. Advising letters of credit will not be accepted.

Section 15215 requires the letter of credit to include the following provisions:

1. The letter of credit will be automatically extended without amendment for an additional one year from the expiry date of any future expiry date, unless at least 45 days before the expiry date the Chief is notified in writing by the financial institution that the letter of credit will not be renewed.
2. The letter of credit can be called if the self insurer fails to pay its workers' compensation liabilities; or the self insurer files bankruptcy; or the self insurer fails to renew or substitute acceptable security by ten day prior to the expiry date of the letter of credit; or any combination of these events;
3. The letter of credit is not subject to any qualification or condition by the issuing or confirming financial institution and is the financial institution's individual obligation which is in no way contingent upon reimbursement;
4. Payment of any amount under the letter of credit shall be wire transfer to an account of the State of California, Department of Industrial Relations at a designated bank:
5. All letters of credit issued by financial institutions shall include a statement that if legal proceedings are initiated by any party with respect to the payment of any letter of credit, it is agreed that such proceedings shall be subject to the jurisdiction of California courts and administrative agencies and subject to California law; and
6. Letters of credit will be subject to the Uniforms Customs and Practice for Documentary Credits, UCP 600, 2007 Revision, ICC Publication No. 600.

Model Letter of Credit

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|--|-----------------------|--|----------------|
| Issuing Bank Name/Address: | | Irrevocable Standby Letter of Credit | Number: |
| Date and Place of Issue: Date: Place: | | Expiry Date and Place for Presentation of Documents: Expiry Date: Place for Presentation: | |
| Applicant Name/Address: | | Beneficiary: Office of Self Insurance Plans (OSIP) State of California 1750 Howe Avenue, Suite 215 Sacramento, CA 95825 | |
| Advising Bank Name/Address: | Reference No.: | Amount: U.S. \$ (spell out amount in U.S. dollars) | |
| Credit Available With: _____ by payment at sight against presentation of the documents detailed (name of bank) | | | |
| below and your draft(s) during normal business hours at: _____ (branch of bank) | | | |
| drawn on: _____ at the request and for the account of the following named parties: (name of bank) | | | |
| (enter legal name of self insurer to be covered) | | | |
| the undersigned issuing bank hereby establishes in your favor this irrevocable letter of credit in the amount of U.S. Dollars: \$ _____ | | | |
| payable within 3 business days (as hereinafter defined) after presentation to: _____ of demand(s) for payment in the form described above. (name/address of bank) | | | |
| Drawings honored by the issuing bank under this letter of credit shall not, in the aggregate, exceed the total amount of credit set forth above and each drawing honored by the issuing bank shall reduce the amount set forth pro tanto. Partial drawings are permitted. | | | |
| Documents Required: | | | |
| 1. A signed beneficiary's statement executed by the Director of the California Department of Industrial Relations and/or the Chief of Office of Self Insurance Plans that _____ has done any of the following: (name of self insurer) | | | |
| (A) failed to pay its worker's compensation obligations; | | | |
| (B) filed for bankruptcy; | | | |
| (C) failed to renew or substitute acceptable security for workers' compensation liabilities by ten (10) days before the expiration date of this letter of credit; and/or | | | |
| 2. A draft signed by the Director of the California Department of Industrial Relations and/or the Chief of Office of Self Insurance Plans for the amount of the drawing requested under this letter of credit and including a reference to the letter of credit number and original date of issue of this letter of credit; and | | | |
| 3. The original letter of credit documents and all amendments thereto and any confirming bank's original letter of credit document and all amendments thereto. | | | |
| <i>Note:</i> A draft accompanied by a statement indicating that named self insurer and/or subsidiaries listed in paragraph 1 under "Documents Required" has failed to renew or substitute acceptable security for workers' compensation liabilities by ten (10) days before the expiration date of this letter of credit may not be presented to the issuer of this letter of credit earlier than ten (10) calendar days before the expiration date of the letter of credit. | | | |

Extension of Expiration Date (Evergreen Clause):

The expiration date of this letter of credit will be automatically extended for an additional period of one (1) year from the present or each future expiration date, unless not less than forty-five (45) days prior to such date the issuing bank notifies beneficiary in writing sent by registered mail or overnight delivery service to the address above, the issuing bank elects not to so renew the credit.

Payment by Wire Transfer Only:

Payment of any amount under this letter of credit by the issuing or a confirming bank shall be made by wire transfer to Bank of America, Arden-Morse Branch, Sacramento, California for deposit to the account of the State of California, Department of Industrial Relations, Account No. 01482-80005.

Legal Proceedings:

If legal proceedings are initiated by any party with respect to the payment of the letter of credit, the issuing bank agrees that such proceedings shall be subject to the jurisdiction of California courts and administrative agencies and subject to California law.

Miscellaneous Provisions:

1. Except as stated herein, this Irrevocable Letter of Credit is not subject to any condition or qualification and is the issuing bank's individual obligation which is in no way contingent upon reimbursement.
2. We hereby issue this Documentary Credit in your favor. It is subject to the Uniform Customs and Practice for Documentary Credits, 2007 revision, ICC Publication No. 600, and engages us in accordance with the terms thereof. The number and the date of the credit and the name of our Bank must be quoted on all drafts required.

This document consists of _____ signed page(s).

Authorized countersignature

Authorized signature