

|->

Title 22@ Social Security

|->

Division 1@ Employment Development Department

|->

Subdivision 1@ Director of Employment Development

|->

Division 1@ Unemployment and Disability Compensation

|->

Part 2@ Disability Compensation

|->

Chapter 6@ VOLUNTARY PLANS

|->

Section 3258-2@ Letter of Credit

3258-2 Letter of Credit

(a)

An irrevocable standby letter of credit may be accepted by the Director of the Employment Development Department (Director) as all or part of the security deposit for a voluntary plan employer (employer). An irrevocable standby letter of credit is a letter of credit that represents an obligation on the part of the issuing bank to a designated beneficiary contingent upon the failure of the issuing bank's customer to perform under the terms of the underlying contract with the beneficiary. The letter of credit obligates the bank to guarantee or stand as surety for the benefit of a third party. The employer shall be responsible to accurately complete and sign a form, the same or similar to, the "Model, Letter of Credit", herein incorporated by reference.

(b)

Irrevocable letters of credit shall be issued by and payable at any branch of the issuing bank or savings institution in the continental United States, Alaska or Hawaii. The issuing bank or savings institution may be: (1) A State of California chartered bank 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 institutions.

(1)

A State of California chartered bank 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 institutions.

(c)

The Director shall provide a standard format and language in a document titled "Model, Letter of Credit" incorporated by reference and referred to above in subsection (a) that will meet the requirements for acceptance by the Department.

The letter of credit shall include, but not be limited to, the following provisions: (1)

The letter of credit will be automatically extended without amendment for an additional one year from the expiration date or any subsequent expiration date unless at least 60 days before the expiration date, the Director is notified in writing by the bank or savings institution that the letter of credit will not be renewed. (2)

The letter of credit can be called by the Department if any of the following events occur. The employer: (A) Fails to pay its voluntary plan liabilities; (B) Files bankruptcy; (C) Fails to provide proof of renewal or acceptable substitute security with the Employment Development Department by 30 days prior to the expiration date of the letter of credit; (D) Fails to renew or substitute acceptable security for the six quarter period following the withdrawal of a self-insured plan pursuant to Section 3254(g) or Section 3255(g) of the code, or upon termination of a plan pursuant to Section 3262-1 of these regulations. (3) The letter of credit is not subject to any qualification or condition by the issuing or confirming bank or savings institution and the bank or savings institution's individual obligation is in no way contingent upon reimbursement. (4) Payment of any amount under the letter

of credit shall be made only by wire transfer in the name of "The Employment Development Department in Trust for (the legal name of the employer)" to an account of the State Treasurer, State of California, at a designated bank. (5) All letters of credit 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. (6) Letters of credit shall be subject to the Uniform Customs and Practice for Documentary Credits, 1993 Revision ICC Publication No. 500, herein incorporated by reference and a reference to this publication will be included within the text of the letter of credit. (7) Wire transfer fees and discrepancy fees, if any, shall be payable by the employer.

(1)

The letter of credit will be automatically extended without amendment for an additional one year from the expiration date or any subsequent expiration date unless at least 60 days before the expiration date, the Director is notified in writing by the bank or savings institution that the letter of credit will not be renewed.

(2)

The letter of credit can be called by the Department if any of the following events occur. The employer: (A) Fails to pay its voluntary plan liabilities; (B) Files bankruptcy; (C) Fails to provide proof of renewal or acceptable substitute security with the Employment Development Department by 30 days prior to the expiration date of the letter of credit; (D) Fails to renew or substitute acceptable security for the six quarter period following the withdrawal of a self-insured plan pursuant to Section 3254(g) or Section 3255(g) of the code, or upon termination of a plan pursuant to Section 3262-1 of these regulations.

(A)

Fails to pay its voluntary plan liabilities;

(B)

Files bankruptcy;

(C)

Fails to provide proof of renewal or acceptable substitute security with the Employment Development Department by 30 days prior to the expiration date of the letter of credit;

(D)

Fails to renew or substitute acceptable security for the six quarter period following the withdrawal of a self-insured plan pursuant to Section 3254(g) or Section 3255(g) of the code, or upon termination of a plan pursuant to Section 3262-1 of these regulations.

(3)

The letter of credit is not subject to any qualification or condition by the issuing or confirming bank or savings institution and the bank or savings institution's individual obligation is in no way contingent upon reimbursement.

(4)

Payment of any amount under the letter of credit shall be made only by wire transfer in the name of "The Employment Development Department in Trust for (the legal name of the employer)" to an account of the State Treasurer, State of California, at a designated bank.

(5)

All letters of credit 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.

(6)

Letters of credit shall be subject to the Uniform Customs and Practice for Documentary Credits, 1993 Revision ICC Publication No. 500, herein incorporated by reference and a

reference to this publication will be included within the text of the letter of credit.

(7)

Wire transfer fees and discrepancy fees, if any, shall be payable by the employer.

(d)

A syndicated letter of credit shall include all the language of the single bank issued letter of credit and, in addition: (1) Authorize all demands for payment to be presented at a designated branch ("agent bank") of one of the participating banks or savings institutions; (2) Include a draft to be presented for payment of all or part of the credit available under the letter of credit; (3) Permit any participating bank's portion of the total credit available to be drawn upon if the participating bank's credit rating falls below the acceptable credit rating level specified in subsection (e) of this section; and (4) State that the obligations of the banks or savings institutions issuing a syndicated letter of credit are several and not joint, and neither the agent bank or savings institution or any other participating bank or savings institution shall be responsible for or otherwise liable for the failure of any other participating bank or savings institution to perform its obligations under the syndicated letter of credit. The failure of any participating bank or savings institution to perform its obligations under the syndicated letter of credit shall also not relieve any other participating bank or savings institution of its obligations under the syndicated letter of credit.

(1)

Authorize all demands for payment to be presented at a designated branch ("agent bank") of one of the participating banks or savings institutions;

(2)

Include a draft to be presented for payment of all or part of the credit available under the letter of credit;

(3)

Permit any participating bank's portion of the total credit available to be drawn upon if the participating bank's credit rating falls below the acceptable credit rating level specified in subsection (e) of this section; and

(4)

State that the obligations of the banks or savings institutions issuing a syndicated letter of credit are several and not joint, and neither the agent bank or savings institution or any other participating bank or savings institution shall be responsible for or otherwise liable for the failure of any other participating bank or savings institution to perform its obligations under the syndicated letter of credit. The failure of any participating bank or savings institution to perform its obligations under the syndicated letter of credit shall also not relieve any other participating bank or savings institution of its obligations under the syndicated letter of credit.

(e)

The issuing bank(s) or savings institution(s) or the parent holding corporation of an unrated bank or savings institution issuing a letter of credit 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 savings institution in the current monthly edition 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 savings institution in the current quarterly edition or monthly supplement of "Financial Institution Ratings" prepared by Standard & Poors Corporation, New York; or (3) An "AAA", "AA+" or "AA" credit quality 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) Federally chartered instrumentalities of the United States operating under authority of the Farm Credit Act of 1971, as amended are not rated, but are acceptable.

(1)

An "Aaa", "Aa" or "A" long term certificate of deposit (CD) rating for the bank or savings institution in the current monthly edition 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 savings institution in the current quarterly edition or monthly supplement of "Financial Institution Ratings" prepared by Standard & Poors Corporation, New York; or

(3)

An "AAA", "AA+" or "AA" credit quality 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)

Federally chartered instrumentalities of the United States operating under authority of the Farm Credit Act of 1971, as amended are not rated, but are acceptable.

(f)

A letter of credit issued by a bank or savings institution or syndication of banks or savings institutions that does not meet the credit rating set forth in subsection (e) at the time of issuance shall be accepted by the Director with a confirming letter of credit issued by a bank or savings institution meeting the criteria of subsection (e). The confirming letter of credit shall state that the confirming bank or savings institution is primarily obligated to pay on demand the full amount of the letter of

credit regardless of reimbursement from the bank or savings institution whose letter of credit is being confirmed. NOTE: Advising letters of credit shall not be accepted in lieu of the confirmation requirement for the letter of credit bank with an unacceptable credit rating.

(g)

If a bank or savings institution's rating subsequent to the issuance of the letter of credit falls below the acceptance rating level as set forth in subsection (e), the Director shall, within 60 days of the publication of the lower credit rating, require the employer to: (1) Replace the letter of credit with a new letter of credit issued by a bank or savings institution with an acceptable credit rating; or (2) Confirm the letter of credit by a bank or savings institution with an acceptable rating. NOTE: At the end of 60 days, the Director shall draw upon the letter of credit bank's share of participation in the syndication if the affected letter of credit bank's portion of syndicated letter of credit has not been replaced or confirmed.

(1)

Replace the letter of credit with a new letter of credit issued by a bank or savings institution with an acceptable credit rating; or

(2)

Confirm the letter of credit by a bank or savings institution with an acceptable rating.

NOTE: At the end of 60 days, the Director shall draw upon the letter of credit bank's share of participation in the syndication if the affected letter of credit bank's portion of syndicated letter of credit has not been replaced or confirmed.