

11 NCAC 11C .0505 LETTERS OF CREDIT

(a) As used in this Rule:

- (1) "Beneficiary" means the entity for whose benefit the letter of credit has been established and any successor of the beneficiary by operation of law. If a court of law appoints a receiver as successor in interest to the named beneficiary, then the named beneficiary is the court-appointed domiciliary conservator, rehabilitator, or liquidator.
- (2) "Financial Institution" means a qualified United States financial institution as defined in G.S. 58-7-26(b).

(b) In order to qualify under G.S. 58-7-26(a)(3), a letter of credit must be clean, irrevocable, unconditional and issued or confirmed by a qualified United States financial institution as defined in G.S. 58-7-26(b). The letter of credit shall contain an issue date and date of expiration and shall stipulate that the beneficiary need only draw a sight draft under the letter of credit and present it to obtain funds and that no other document need be presented. The letter of credit shall indicate that it is not subject to any condition or qualifications outside of the letter of credit. The letter of credit itself shall not contain reference to any other agreements, documents, or entities, except as provided in Subparagraph (i)(1) of this Rule.

(c) The heading of the letter of credit may include a boxed section that contains the name of the applicant and other appropriate notations to provide a reference for the letter of credit. The boxed section shall be clearly marked to indicate that such information is for internal identification purposes only.

(d) The letter of credit shall contain a statement to the effect that the obligation of the qualified United States financial institution under the letter of credit is in no way contingent upon reimbursement with respect thereto.

(e) The term of the letter of credit shall be for at least one year and shall contain an "evergreen clause" which prevents the expiration of the letter of credit without due notice from the issuer. The "evergreen clause" shall provide for a period of not less than thirty 30 days' notice before the expiration or non-renewal date.

(f) The letter of credit shall state whether it is subject to and governed by the laws of this State or the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (Publication 400), and all drafts drawn thereunder shall be presentable at an office in the United States of a qualified United States financial institution.

(g) If the letter of credit is made subject to the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (Publication 400); then the letter of credit shall specifically address and make provision for an extension of time to draw against the letter of credit in the event that one or more of the occurrences specified in Article 19 of Publication 400 occur.

(h) The letter of credit shall be issued or confirmed by a qualified United States financial institution authorized to issue letters of credit, pursuant to G.S. 58-7-26(b).

(i) Reinsurance agreement provisions:

- (1) The reinsurance agreement in conjunction with which the letter of credit is obtained may contain provisions that:
 - (A) Require the assuming insurer to provide letters of credit to the ceding insurer and specify what they are to cover.
 - (B) Stipulate that the assuming insurer and ceding insurer agree that the letter of credit provided by the assuming insurer pursuant to the provisions of the reinsurance agreement may be drawn upon at any time, notwithstanding any other provisions in the agreement, and shall be utilized by the ceding insurer or its successors in interest only for one or more of the following reasons:
 - (i) To reimburse the ceding insurer for the assuming insurer's share of premiums returned to the owners of policies reinsured under the reinsurance agreement on account of cancellations of such policies;
 - (ii) To reimburse the ceding insurer for the assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer under the terms and provisions of the policies reinsured under the reinsurance agreement;
 - (iii) To fund an account with the ceding insurer in an amount at least equal to the deduction, for reinsurance ceded, from the ceding insurer's liabilities for policies ceded under the agreement (such amount shall include, but not be limited to,

- amounts for policy reserves, claims and losses incurred and unearned premium reserves); and
- (iv) To pay any other amounts the ceding insurer claims are due under the reinsurance agreement.
 - (C) All of the provisions of Subparagraph (1) of this Paragraph shall be applied without diminution because of insolvency on the part of the ceding insurer or assuming insurer.
 - (2) Nothing contained in Subparagraph (1) of this Paragraph shall preclude the ceding insurer and assuming insurer from providing for:
 - (A) An interest payment, at a rate not in excess of the prime rate of interest, on the amounts held pursuant to Subparagraph (1)(B)(iii) of this Paragraph; or
 - (B) The return of any amounts drawn down on the letters of credit in excess of the actual amounts required for the above or, in the case of Subpart (1)(B)(iv) of this Paragraph, any amounts that are subsequently determined not to be due.
 - (3) When a letter of credit is obtained in conjunction with a reinsurance agreement covering risks other than life, annuities, and accident and health, where it is customary practice to provide a letter of credit for a specific purpose, then the reinsurance agreement may, in lieu of Part (1)(B) of this Paragraph, require that the parties enter into a "Trust Agreement", which may be incorporated into the reinsurance agreement or be a separate document.
- (j) A letter of credit may not be used to reduce any liability for reinsurance ceded to an unauthorized assuming insurer in financial statements filed with the Department unless an acceptable letter of credit with the filing ceding insurer as beneficiary has been issued on or before the date of filing of the financial statement. The reduction for the letter of credit may be up to the amount available under the letter of credit but no greater than the specified obligation under the reinsurance agreement that the letter of credit was intended to secure.

History Note: Authority G.S. 58-2-40; 58-7-26;
Eff. February 1, 1996;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 20, 2015.