**Section 1104.80 Letters of Credit Qualified Under Section 1104.60**

a) The letter of credit must be clean, irrevocable and unconditional and issued or confirmed by a qualified U.S. financial institution as defined in Section 173.1(3)(A) of the Code. 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 also indicate that it is not subject to any condition or qualifications outside of the letter of credit. In addition, the letter of credit itself shall not contain reference to any other agreements, documents or entities, except as provided in subsection (i)(1). As used in this Section, "beneficiary" means the domestic insurer 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 successor in interest to the named beneficiary, then the named beneficiary includes and is limited to the court appointed domiciliary receiver (including conservator, rehabilitator or liquidator).

b) 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 the information is for internal identification purposes only.

c) The letter of credit shall contain a statement to the effect that the obligation of the qualified U.S. financial institution under the letter of credit is in no way contingent upon reimbursement of the letter of credit.

d) The term of the letter of credit shall be for at least one year and shall contain an "evergreen clause" that prevents the expiration of the letter of credit without due notice from the issuer. The "evergreen clause" shall provide for a period of no less than 30 days' notice prior to the expiration date or nonrenewal.

e) The letter of credit shall state whether it is subject to and governed by the laws of this State or the "ICC Uniform Customs and Practice for Documentary Credits" (ICC Publication No. 600, July 2007) (UCP 600) or the "International Standby Practices of the International Chamber of Commerce" (ICC Publication No. 590, January 1999) (ISP98) (ICC Publishing, Inc., 1212 Avenue of the Americas, New York NY 10036 (no later amendments or editions)), and all drafts drawn under the letter of credit shall be presentable at an office in the U.S. of a qualified U.S. financial institution.

f) If the letter of credit is made subject to the UCP 600 or ISP98, 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 36 of UCP 600 occur.

g) The letter of credit shall be issued or confirmed by a qualified U.S. financial institution authorized to issue letters of credit, pursuant to Section 173.1(3)(A) of the Code.

h) If the letter of credit is issued by a nonqualified financial institution and is confirmed by a qualified U.S. financial institution as described in subsection (a), then the following additional requirements shall be met:

1) The issuing financial institution shall formally designate the confirming qualified U.S. financial institution as its agent for the receipt and payment of the drafts; and

2) The "evergreen clause" shall provide for not less than 60 days' notice of nonrenewal prior to the expiration date.

i) Reinsurance Agreement Provisions

1) The reinsurance agreement in conjunction with which the letter of credit is obtained must 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 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 those 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. The amount shall include, but not be limited to, amounts for policy reserves, claims and losses incurred (including losses incurred but not reported) and unearned premium reserves;

iv) To pay any other amounts the ceding insurer claims are due under the reinsurance agreement; and

v) To pay existing liabilities between the insurer and the reinsurer upon commutation of one or more reinsurance contracts.

C) All of the foregoing provisions of this subsection (i)(1) should be applied without diminution because of insolvency on the part of the ceding insurer or assuming insurer.

2) Nothing contained in subsection (i)(1) 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 subsection (i)(1)(B)(iii); and/or

B) The return of any amounts drawn down on the letters of credit in excess of the actual amounts required under subsection (i)(1) or, in the case of subsection (i)(1)(B)(iv), 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, when it is customary practice to provide a letter of credit for a specific purpose, then the reinsurance agreement may, in lieu of subsection (i)(1)(B), require that the parties enter into a trust agreement that 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 required to be 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. Further, the reduction for the letter of credit may be up to the amount available under the letter of credit but no greater than the specific obligation under the reinsurance agreement that the letter of credit was intended to secure.

(Source: Amended at 43 Ill. Reg. 14133, effective November 19, 2019)