



# RCRA Subtitle C Financial Assurance Instrument Fact Sheet

## LETTER OF CREDIT

**Instrument Summary:** A Letter of Credit (LC) is a document issued by a financial institution (e.g., a bank) that guarantees the payment of a customer's obligations up to a stated amount for a specified period of time.

For purposes of financial assurance, the owner/operator of a Subtitle C facility ("the Company") arranges with a financial institution to issue an LC. The LC provides assurance to the Regulator that closure and post-closure will be paid for as required by RCRA. Essentially, an LC substitutes the bank's credit for the Company's, eliminating much of the risk to the Regulator. Use of an LC also requires the Company to establish a standby trust fund.

To secure an LC, the Company likely will have to pay the financial institution a fee equal to a percentage of the value of the LC. This fee may range from 0.5 to 1.0 percent, depending on the Company's credit worthiness (or financial solvency). The better the Company's overall credit worthiness, the lower the fee the financial institution is likely to charge the Company. The financial institution often will also require the Company to set aside cash and/or non-cash collateral to secure the LC. In general, a financially healthy company will pay less to post an LC than a company facing possible financial distress.

If the Regulator determines that the Company has failed to perform closure/post-closure as required, or has not provided adequate alternative financial assurance, and therefore needs to draw on the LC to pay for these costs, the Regulator may direct the bank to deposit cash into the standby trust fund. Usually this is done as a lump sum draw on the total amount of the LC, but can sometimes be done as a partial draw (just paying current expenses as they are incurred). The Regulator directs payment of the requisite moneys from the standby trust fund to pay for closure/post-closure activities. The Regulator also will draw on the LC in certain instances where the issuing institution decides not to extend the LC (see §264.143(d)(10) and/or §264.145(d)(10)).

**Regulatory Requirements:** The RCRA hazardous waste regulations prescribe the requirements for the use of an LC by a Company demonstrating financial assurance for closure and post-closure at §264.143(d) and §264.145(d), respectively. Key regulatory requirements include:

- The Company must submit to the Regional Administrator an original signed LC that matches the federal regulatory wording specified in §264.151(d) or the authorized, equivalent state regulatory wording (see §264.143(d)(2) and/or §264.145(d)(2)).
- The LC must be: (see §264.143(d)(5) and/or §264.145(d)(5))
  - Issued for at least one year;
  - Irrevocable; and
  - Evergreen (i.e., automatically renewable). The issuing institution could decide not to extend the LC past the one year date of expiration and automatic renewal if the institution notifies the Company and the Regulator at least 120 days prior to that date (see §264.143(d)(5) and/or §264.145(d)(5)).
- The LC shall be accompanied by:
  - An original signed copy of the standby trust agreement, including all the necessary schedules and exhibits (see §264.143(d)(3) and/or §264.145(d)(3)); and
  - A letter from the Company that: (see §264.143(d)(4) and/or §264.145(d)(4))

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### Regulatory Resources:

- [Code of Federal Regulations, Title 40, Volume 22, Chapter 1, Part 264](#)
- [Code of Federal Regulations, Title 40, Volume 22, Chapter 1, Part 265](#)
- [Federal Register](#)

### EPA Resources:

- [RCRA Financial Assurance Training Module](#)
- [RCRA Financial Assurance for TSDFs](#)
- [RCRA Online: Financial Assurance](#)



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## LETTER OF CREDIT

- f* Refers to the LC by number;
- f* Lists the issuing institution and date;
- f* Provides the facility's EPA identification number;
- f* Lists the name and address of the Company; and
- f* Lists the amount of funds secured by the LC.

- The face value of the LC must be at least equal to the current closure/post-closure cost estimate. Whenever the closure/post-closure cost estimate increases to an amount greater than the value of the LC during the operating life of the facility, Companies must increase the value of the LC to an amount at least equal to the current cost estimate or obtain alternate financial assurance using one or more of the financial assurance mechanisms allowed to cover the increase (see §§264.143(d)(6) and (d)(7) and/or §§264.145(d)(6) and (d)(7)).
- To draw upon the LC, the issuing institution requires a “sight draft” bearing reference to the LC (see §264.151(d)).
- The Company must maintain accurate and current cost estimates and are required to adjust cost estimates for inflation within 60 days prior to the anniversary of the establishment of the LC (see §264.142(b) and/or §264.144(b)).
- The financial institution issuing the standby trust fund must have the authority to act as Trustee and be regulated/examined by an appropriate federal or state agency (see §264.143(a)(1) and/or §264.145(a)(1)).

**Recommended Best Practices:** Note: The following best practices are not required under the regulations.

- LCs are cash instruments. The LC itself gives the Regulator access to the funds. The Regulator must present the original LC to direct payment from the LC into the standby trust fund. As such, it is important to place the original, signed document(s) in a safe place (e.g., a fire-proof safe) with no public access.
- Proofread all documents to ensure that the language conforms to the stipulated regulatory wording.
- Be aware of name changes due to mergers and acquisitions.
- Establish and maintain contact with the “LC department” of the financial institution issuing the LC. Note the federal regulations do not require that the LC and the standby trust fund be issued by the same institution.
- Financial institutions often increase or decrease the face value of an LC through an amendment to the LC which requires the Regulator’s acceptance or rejection of the submitted amendment. Although not a regulatory requirement, the Regulator should give notification of acceptance or rejection of the LC amendment to the financial institution upon receipt.
- Verify with the issuing institution that only the Regulator, and not the Company, is authorized to draw on or reduce the amount of the LC.
- Contact the financial institution to establish the form and format of the sight draft required for withdrawal.
- In cases where the Regulator needs to draw on the LC to pay for closure/post-closure costs, the Regulator should consider drawing on the entire face value of the LC. Partial withdrawal may trigger cancellation of the Company's LC and credit at that financial institution. Specifically, after partial withdrawal, the issuing institution could decide not to extend the LC past the one year date of expiration

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## LETTER OF CREDIT

and automatic renewal if the institution notifies the owner operator and the Regulator at least 120 days prior to that date (see §264.143(d)(5) and/or §264.145(d)(5)).

### Frequently Asked Questions:

**1. What if the financial institution changes its name?**

In the event the Company (or Issuing Institution) changes its name, experiences a merger, or is sold, the Regulator should contact the Company to ensure that the financial documents reflect the current legal name of both the Company and Issuing Institution.

**2. What if the financial institution decides not to extend the expiration date of the LC?**

In accordance with §264.143(d)(5) and/or §264.145(d)(5) the LC must be automatically renewable after the expiration date. However, if the issuing institution notifies both the Company and the Regulator in writing that it has decided not to extend the expiration date, the Company has 90 days from receipt of that notification to obtain alternate financial assurance using one or more of the financial assurance mechanisms allowed. If the Company does not establish alternate, approved financial assurance within 90 days, the Regulator should promptly draw on the LC and deposit the funds into the standby trust fund. If the Regulator does not act within 120 days after receiving notice, the LC may lapse and those funds may be unavailable to the Regulator (see §264.143(d)(9) and/or §264.145(d)(10)).

**3. What if the cost estimates change?**

If the cost estimates increase to an amount greater than the present value of the LC, the Company shall either: 1) increase the value of the LC, or 2) obtain alternate financial assurance using one or more of the financial assurance mechanisms allowed to make up the shortfall. This shall be done within 60 days of the change in cost estimates. If the cost estimates decrease, the Regulator may direct the bank to reduce the LC by an appropriate amount upon the Regulator's review and written approval (see §264.143(d)(7) and/or §264.145(d)(7)).

**4. What if the facility is sold or transferred?**

Changes in the ownership or operational control of a facility may be made as a Class 1 permit modification with prior written approval of the Regulator in accordance with §270.42. In the case of facility transfer, the LC does not automatically transfer to the new owner. The old Company will not be released from the financial assurance requirements until the successor company has provided alternate financial assurance using one or more of the available financial assurance mechanisms, is in compliance with §264 Subpart H, and the Regulator has notified the old Company that it no longer needs to provide financial assurance. The successor Company must demonstrate compliance within six (6) months of the date of the change in ownership or operational control of the Company (§§270.40, 270.72(a)(4)). If the old Company or Issuing Institution attempts to cancel the LC, the Regulator should draw on the LC and deposit it into the standby trust fund until such time as the successor Company complies with all applicable financial assurance requirements (see §§270.40(b) and 270.72(a)(4)).

**5. Who is responsible for paying administrative fees to the financial institution?**

While Section 9 of the Trust Agreement wording allows the Trustee to disburse funds directly from the Trust to pay for Trustee administrative fees (see §264.151(a)), all fees are the responsibility of the Company.

### For More Information:

- **U.S. Department of the Treasury**
  - [Comptroller of the Currency, Trust Division](#) regulates nationally-chartered commercial banks, nationally-licensed foreign banks, and Washington D.C. banks. [www.occ.treas.gov](http://www.occ.treas.gov)

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## LETTER OF CREDIT

- Office of Thrift Supervision regulates nationally-chartered savings and loans institutions, as well as nationally-chartered mutual savings banks. [www.ots.treas.gov](http://www.ots.treas.gov)
- National Credit Union Administration regulates nationally-chartered credit unions. [www.ncua.gov](http://www.ncua.gov)
- **Various State Authorities**
  - Regulate state-chartered financial institutions, including commercial banks, savings and loans, mutual savings banks, credit unions, and state licensed foreign banks.
- **Links to State Banking Agencies**
  - [http://dir.yahoo.com/Business\\_and\\_Economy/Finance\\_and\\_Investment/Banking/Government\\_Agencies/U\\_S\\_State\\_Agencies/](http://dir.yahoo.com/Business_and_Economy/Finance_and_Investment/Banking/Government_Agencies/U_S_State_Agencies/)
- **National Trade Associations/Organizations**
  - American Bankers Association [www.aba.com](http://www.aba.com)
  - Conference of State Bank Supervisors [www.csbs.org](http://www.csbs.org)
  - Links to other banking organizations  
[dir.yahoo.com/Business\\_and\\_Economy/Finance\\_and\\_Investment/Banking/Organizations/](http://dir.yahoo.com/Business_and_Economy/Finance_and_Investment/Banking/Organizations/)
- **Other Sources**
  - FDIC Bank Data <http://www.fdic.gov/bank/index.html>
  - National Information Center Bank Directory (<http://www.ffiec.gov/nicpubweb/nicweb/nichome.aspx>)

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