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**FSRA is actively reviewing all FSCO regulatory direction, including but not limited to forms, guidelines and FAQs.**

**Until FSRA issues new regulatory direction, all existing regulatory direction remains in force.**

## Letters of Credit

Effective January 1, 2013, employers are able to use irrevocable and unconditional standby letters of credit issued by a financial institution which meets certain prescribed requirements. These letters of credit can only be used for solvency special payments that are due after January 1, 2013, to a maximum of 15% of the pension plan's solvency liabilities.

Letters of credit may be used by employers who sponsor pension plans that provide defined benefits that are required to make special payments under section 5(1) (e) or section 12(2) of [Regulation 909](#) , and that satisfy all prescribed requirements. Certain identified pension plans may not use letters of credit.

A Superintendent approved form has been adopted and the letter of credit and other required documents being filed with the Superintendent are to be accompanied by a completed [Form 11: Letter of Credit Certificate](#).

### The letter of credit must:

- contain certain information specified in the regulations;
- follow the restrictions on amending the letter of credit;
- be an irrevocable and unconditional standby letter of credit;
- be made payable to the pension fund trustee on demand, in trust, for the pension fund (it cannot be made payable to the employer);
- have an effective date that is on or before the date the first special payment is due under section 5(1)(e) of [Regulation 909](#) , or the date a payment under section 12(2) of Regulation 909 is due (as applicable); and
- have an expiry date no later than one year after its effective date.

The aggregate of all letters of credit cannot exceed 15 per cent of the plan's solvency liabilities. (Note that this excludes the liabilities described in sections 1(2)(a) to (h) in the definition of "solvency liabilities".)

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Fees and expenses related to obtaining, holding, amending or cancelling the letter of credit cannot be paid from the pension fund. However, fees and expenses associated with enforcement of the letter of credit may be paid from the pension fund subject to section 22.1 of the PBA.

## Demand for Payment

A trustee must submit a demand for payment to the issuer in numerous circumstances (which must be set out in the trust agreement). The major circumstances include:



- the letter of credit does not satisfy the requirements of the PBA and regulations, or the requirements of the [Income Tax Act \(Canada\)](#) 
- the pension plan administrator or the employer notifies the trustee that the employer intends to wind up the pension plan under subsection 68(1) of the PBA;
- the Superintendent issued an order under subsection 69 (1) of the PBA, which requires the wind up of the pension plan;
- the employer is subject to bankruptcy proceedings under the [Bankruptcy and Insolvency Act \(Canada\)](#) 
- an application or petition has been filed under the [Winding-up and Restructuring Act \(Canada\)](#)  by the employer or against the employer; or
- if the employer has not provided the pension fund trustee a renewed or replacement letter of credit at least 15 days before the letter of credit is to expire, unless the employer has paid an amount equal to the amount of the letter of credit into the pension fund. Note that the amount of the letter of credit may be reduced only if certain requirements are met.

## Employer Must Pay

If the issuer does not pay the letter of credit upon receiving the trustee's demand, the employer must immediately pay that amount into the pension fund. In addition, the employer must provide written notice to the Superintendent that the issuer has not paid the letter of credit, and that the amount has been paid into the pension fund.

## Distribution of Letters of Credit Documents

The employer is responsible for providing a copy of the letter of credit (or notice in the case of a renewal) to the pension fund trustees, in the following situations:

- when a letter of credit related to special payments under section 5(1)(e) of [Regulation 909](#)  is issued, at least 15 days before the day on which the first instalment to which the letter of credit relates is due;
- when a letter of credit related to special payments under section 12(2) of [Regulation 909](#)  is issued, at least 15 days before the payment is due;

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- when a letter of credit is being replaced, at least 15 days before the expiry of the letter of credit that is being replaced;
- when a letter of credit is being renewed, at least 15 days before the date it would otherwise expire; and
- when a letter of credit is being amended, at least 15 days before the amendment takes effect.

## Notice to the Superintendent

Within five days of receiving an initial, replacement, or amended letter of credit or notice of renewal, the pension plan administrator is responsible for providing the Superintendent with:

- a certified copy of the letter of credit or the notice of renewal, as applicable;
- a completed [Form 11: Letter of Credit Certificate](#); and,
- any other documents accompanying the Letter of Credit Certificate

## Inspection of the Letter of Credit

Copies of any letter of credit, any related trust agreement and any certificate filed by the pension plan administrator, must be made available for inspection to the pension plan's members and others as set out in section 29 of the PBA.

### [Questions and Answers to Letter of Credit Form 11: Letter of Credit Certificate User Guide](#)

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