

ARTICLE 3

Security Deposit Requirements

15210. Security Deposit.

(a) Public self insurers are not required to post or maintain a security deposit with the Director for workers' compensation liabilities.

(b) Individual Private self insurers shall post and maintain a security deposit, in accordance with the provisions of Labor Code Section 3701 and the requirements of Article 3 of this subchapter 2 and/or in accordance with Labor Code Section 3701.8 and Article 3.1 of this subchapter 2.

(c) The minimum required security deposit pursuant to Labor Code Section 3701 for existing, private self ~~insurer's~~ insurers shall be equal to:

(1) 135 percent of the individual private self insurer's estimated future liabilities for the payment of compensation for known claims, ~~adjusted by any previously documented reductions to known claim liability for specific excess insurance coverage pursuant to Section 15300(e) of these regulations;~~ and

(2) ~~a deposit, consisting of the average annual estimated future liability for the past five (5) years reported on the Self Insurer's Annual Report, posted in advance for liabilities of the current year;~~ An amount posted in advance for liabilities of the current year, consisting of the average annual estimated future liability over the past five (5) years reported on the Self Insurer's Annual Report; and

(3) An adjustment to reduce the liability ~~to be reported on individual claims due to any new~~ based on documentation of specific excess insurance ~~coverage not previously reported~~ pursuant to Section 15300(e) of these regulations.

The required deposit may be increased at the Director's discretion as set forth in Article 3 of these regulations. Said future liability may be ascertained from any relevant source.

(d) New individual private self insurers shall initially post a security deposit pursuant to Labor Code Section 3701 in an amount equal to the greater of the following:

(1) The prior three (3) years' incurred liability; or

(2) The statutory minimum required by Labor Code Section 3701(b); or

(3) A higher amount approved by the Director.

(e) The addition of a new subsidiary or affiliate private self insurer to the holder of an existing individual private Certificate to Self Insure shall initially post a security deposit pursuant to Labor Code Section 3701 in an amount equal to the greater of the following:

(1) The average one year incurred liability for the new subsidiary or affiliate self insurer based upon the prior three years' incurred liability; or

(2) A higher amount approved by the Director.

(f) Security deposit shall be posted in the form of:

(1) A surety bond executed on State issued bond and rider forms pursuant to Section 15212 of these regulations;

(2) An irrevocable letter of credit issued by a bank or savings institution or other financial institution pursuant to Section 15215 of these regulations;

(3) Approved securities in the form of government issued or corporate issued securities, meeting the requirements of Section 15213 of these regulations;

(4) Cash in trust deposited pursuant to requirements of Section 15214 of these regulations; or

(5) Any combination of one or more of the above four types of security deposit.

(g) Failure of an individual private self insured employer to maintain the required amount of deposit or to post an acceptable form of deposit as set forth in this Article shall be good cause for assessment of civil penalties pursuant to Labor Code Section 3702.9(a) by the Manager and/or, in the Director's discretion, revocation of the Certificate to Self Insure.

(h) Failure of an individual private self insured employer to post and maintain the required amount of security deposit for a period of 60 days shall be good cause for the Manager to summarily revoke a Certificate of Consent to Self-Insure. The summary revocation of the Self Insurer's Certificate of Consent will provide for a 15-day notice of termination, without a hearing.

(1) Notwithstanding subsection (h) above, the individual private self insured employer may still request a hearing on the Manager's Revocation Order before the Director as provided in Article 11 of this subchapter 2.

(2) An individual private self insurer requesting a hearing pursuant to subsection (h)(1) shall be required to provide proof of workers' compensation coverage under a policy from an admitted carrier for the period of time without security deposit or proof of compliance with the Manager's request to post security.

NOTE Authority cited: Sections 54, 55, 3701.8 and 3702.10, Labor Code. Reference: Sections 59, 3700, 3701, 3701.5, 3701.8, 3702, 3702.3, 3702.6, 3702.10 and 3740-3745, Labor Code.

§15210.1. Adjustments in the Amount of Security Deposit.

(a) ~~Pursuant to Labor Code Section 3701, Any amount of the security deposit required requirement of each individual private self insured employer pursuant to Labor Code Section 3701~~ shall be reviewed by the Manager at least annually following receipt of the private Self-Insurer's Annual Report.

(b) The individual private self insurer shall post any annual increase in security deposit required pursuant to Labor Code Section 3701 indicated in the deposit calculations contained in the Self-Insurer's Annual Report or as determined by the Manager due to an audit, change in the self-insured employer's program or change in deposit rate. The deposit shall cover both prior known liabilities; plus an advance deposit for the current year liabilities based on an average estimated future liability of claims for the past 5 years; minus credit for liabilities above the retention level of specific excess workers' compensation insurance policies as reported on the current year annual report. This deposit posting is due no later than May 1 each year.

(c) ~~No At the request of any private self insurer for a reduction or where a decrease in security deposit is indicated in the deposit calculations on the annual report, no reduction of security deposit already posted shall be made without prior written authorization of the Manager. Self Insurance Plans~~ The Manager shall review each individual private certificate holder's annual report and the certificate holder's file no less frequently than annually to determine the extent to which a decrease in deposit, if any, may be authorized.

(d) For good cause, the Manager shall require the individual private self insurer to post and maintain additional security deposit or adjust the deposit rate for a specific private self insurer above the statutory minimum deposit set forth in Labor Code Sections 3701, 3701.7, and 3701.8. Good cause includes, but is not limited to, understated future liability of claims on the Self-Insurer's Annual Report; a pattern of understated liabilities in claim files audited in an audit; failure to report all claims; poor administration of claims or payment of benefits due injured workers found in the audit results of the Office of Benefits Audits and Enforcement in the Division of Workers' Compensation or audits by Self Insurance Plans; lack of an effective safety and health program as indicated by final citations issued by the Division of Occupational Safety and Health showing repeat or willful violation of safety and health regulations; impairment of financial condition of the self insurer; the result of evaluation of an application to self-insure; or to cover a period of unlawful self insurance; or being required to post security deposit in whole or part pursuant to Section 3701.8 of the Labor Code and Article 3.1 (commencing with Section 15220) of this subchapter 2.

(e) Whenever the Manager determines that a deposit increase is required, ~~to be posted by a self insurer,~~ the Manager shall send written notice to the individual private self insurer

pursuant to Labor Code Section 3701(b) and (j). Notice of the amount of deposit due ~~in order to~~ shall create a perfected security interest for the Self Insurer's Security Fund.

(f) Any increase in a ~~required self insurer's~~ the security deposit requirement for an individual private self insurer following the Manager's determination that estimated future due to understated liabilities had been understated on the private employer's Self Insurer's Annual Report, shall be reported to the Security Fund. The Security Fund shall be authorized to adjust the deposit assessment for the alternative composite deposit.

NOTE Authority cited: Sections 54, 55, 3701.8 and 3702.10, Labor Code. Reference: Sections 59, 3700, 3701, 3701.5, 3701.7, 3701.8, 3702, 3702.3, 3702.6, 3702.10, 3740, 3741, 3742, 6319(f), 6401.7, Labor Code.

§15210.2. Deposit Adjustment Upon Revocation of Certificate to Self Insure.

(a) As part of the revocation of a Certificate to Self Insure pursuant to Sections 15422 and 15423 of these regulations, the Manager shall determine the need for a special revocation audit of the claims of any individual private self insurer and the need for a deposit adjustment to secure future liabilities of the revoked private self insurer pursuant to Labor Code Section 3701 and/or Section 3701.8.

(b) The amount of deposit or deposit rate required by the Manager on a revocation of a private self insurer's certificate to self insure may be at an amount or rate above the minimum required by Labor Code Section 3701 and/or Section 3701.8. The Manager in his/her discretion shall adjust the rate of deposit or the amount of deposit down to the statutory minimum required to secure the remaining workers' compensation liabilities for a revoked self insurer as necessary over time as the liabilities of the remaining claims inventory are run off by the administrator.

NOTE Authority cited: Sections 54, 55, 3701.8 and 3702.10, Labor Code. Reference: Sections 59, 129, 3700, 3701, 3701.5, 3701.8, 3702, 3702.3, 3702.6, 3702.8, 3740-3745, Labor Code.

§15210.3. Insurance Coverage.

(a) Any public self insurer or individual private self insurer shall be permitted to insure any part of its liability to secure the payment of compensation pursuant to Labor Code Section 3700 with a standard workers' compensation insurance policy issued by a carrier. Full coverage of a self insurer's workers' compensation liability under a standard workers' compensation insurance policy shall be good cause for revocation of the certificate to self insure.

(b) All public self insurers and individual private self insurers shall provide the Manager with information on any standard workers' compensation insurance policies, specific excess workers' compensation insurance coverage, and any aggregate excess (stop loss)

workers' compensation insurance coverage carried, as part of the Self Insurer's Annual Report or upon the request of the Manager. Evidence of any of these three types of insurance coverage shall also be provided to the Manager in the form of a Certificate of Insurance from the carrier, along with any changes, cancellations, revisions, or new policies.

(c) Upon the request of the Manager, any public self insurer or individual private self insurer shall provide a Certificate of Insurance or a copy of the workers' compensation insurance policy or policies maintained by the self insurer for any year or partial year in which claims have been reported.

(d) Specific excess workers' compensation insurance policies are not required to be purchased or maintained by any public self insurer or individual private self insurer. ~~A self insurer who elects to purchase an aggregate excess policy shall not be given any credit toward the security deposit to be posted due to aggregate excess insurance coverage.~~

~~EXCEPTION: Every Private group self insurer shall purchase and maintain specific excess workers' compensation insurance policy coverage as set forth in Section 15478 of these regulations.~~

(e) Any individual private self insurer who elects to purchase an aggregate workers' compensation excess policy shall not be given any credit by the Manager toward the security deposit to be posted due to aggregate excess insurance coverage.

NOTE: Authority cited: Sections 54, 55 and 3702.10, Labor Code. Reference: Sections 59, 129, 3700, 3701, 3701.5, 3702, 3740, 3743 and 3744, Labor Code.

§15211 Allocation of the Security Deposits for ~~Subsidiary and Affiliate~~ Private Individual Self-Insurers.

~~(a) With the approval of the Manager, any subsidiary or affiliate private self insurer may post a separate deposit for its workers' compensation liabilities as part of the total security deposit posted to secure the liabilities under any Certificate to Self Insure issued to any self insured program. When approved, each subsidiary or affiliate self insurer posting its own deposit shall report its workers' compensation liabilities on the self insurer's annual report as a separate reporting location. The security deposit of each private individual self insurer shall apply to all subsidiaries and affiliates included under the Master Certificate of Consent to Self Insure issued to that self insurer during its respective period of self insurance, and no portion of the overall security deposit for that self insured plan may be limited to any specific affiliate or subsidiary under the Master Certificate.~~

~~(b) Subsidiary and affiliated self insurers may be included in the security deposit of a holding corporation that has a certificate to self insure.~~

~~(4) For purposes of these regulations, Section 189 of the California Corporations Code shall be used to define "subsidiary corporation" and "holding corporation."~~

~~(2)-(c)~~ For purposes of these regulations, legal entities with common ownership are sufficient to qualify for a common security deposit and may be included as co-principals on the same surety bond, or as named entities on a letter of credit, or as co-trustors on securities or a cash deposit.

~~(e)-(d)~~ The Manager may require certification or other proof of stock ownership of the self insured subsidiary corporation or corporations before allowing a self insurer to be included in the deposit of another self insurer.

~~(d)-(e)~~ If the private holding or parent corporation loses its power to elect a majority of the directors of a subsidiary self-insured corporation or corporations, the holding corporation and subsidiary corporation or corporations shall notify the Manager within 30 days of the event.

~~(e)~~ Each type of security deposit posted by a private self insurer shall be applicable to the liabilities of all members of the group self insurer and shall be amended, if necessary, to include all new members added to the group self insurer.

NOTE: Authority cited: Sections 54, 55 and 3702.10, Labor Code. Reference: Sections 129, 3700, 3700(b), 3701, 3702, 3702.5, 3702.6, 3703, 3704, 3705 and 3740-3745, Labor Code; and Section 189, Corporations Code.

§15211.1. Appeals to Increase in Security Deposit Due to Impaired Financial Condition of Self Insurer.

(a) Where the Manager has required an increase in security deposit due to the impaired financial status of the individual private self insurer and the self insurer wishes to appeal the Manager's decision, upon receipt of the written appeal, the Manager shall order a detailed, third-party financial evaluation of the private self insurer in order to determine the employer's financial strength. Such a third party financial evaluation shall include, but not be limited to, a Dun & Bradstreet Risk Assessment Report. The cost of the third party financial evaluation report shall be paid by the self insurer. ~~Upon receipt of the evaluation report, the appeal will be considered by the Manager.~~

(b) Upon receipt of the evaluation report, the appeal will be considered by the Manager, and if not resolved between the Manager and the self insurer, addressed pursuant to Article 11 of these regulations and Labor Code Section 3701.5(g).

NOTE: Authority cited: Sections 54, 55 and 3702.10, Labor Code. Reference: Sections 3701, and 3701.5(g), Labor Code.

§15211.2. Agreement of Assumption and Guarantee of Liabilities.

(a) At the discretion of the Manager, the workers' compensation liabilities of a public, a private individual, subsidiary, or affiliate self-insurer may be assumed and guaranteed in whole or part by any other legal entity or person.

(b) The agreement of assumption and guarantee of liabilities shall be written upon a form provided by the Manager (Form A4-3 (Rev. 11/97)). The form is available on the website of the Office of Self Insurance Plans at <http://sip.dir.ca.gov/>.

~~NOTE: The current Agreement forms are contained in Plate D of the Appendix following the last Article of these Subchapter 2 regulations.~~

(c) Regardless of whether an individual private affiliate or subsidiary or the self insurer's parent company's financial condition is relied upon to qualify a the subsidiary or affiliate for self insurance, the holding company, ultimate parent corporation, controlling partners, owner, or other controlling entity acceptable to the Manager shall execute private subsidiary or affiliate shall provide an agreement of assumption and guarantee of liabilities on behalf of the affiliate or subsidiary. executed by the owner, or controlling partners, or holding corporation or other entity acceptable to the Manager. In the event that the holding company, ultimate parent corporation, controlling partners, owner, or other controlling entity declines to execute an agreement of assumption and guarantee, the Manager may require an increase in the self insurer's security deposit requirement pursuant to Section 15203.1 of these regulations.

~~EXCEPTION: At the discretion of the Director, the parental assumption agreement may be waived, but if waived, the Manager shall require the self insurer to post and maintain a minimum of a 200% deposit rate, in lieu of the assumption agreement.~~

(d) A corporate guarantor shall provide a Board of Directors resolution which authorizes the assumption and guarantee of the liabilities of the affiliated or subsidiary company or public agency. ~~and~~ ~~†~~ The board resolution shall grant signature authority to the person or position title of the person signing the agreement.

Note 1: The assumption resolution may be worded in such a manner as to be applicable to only the specific applicants to self insure or the assumption resolution may list all present subsidiaries or affiliates and authorize the addition of future, unnamed additions to the assumption resolution as an attachment without execution of a new resolution.

Note 2:—The Manager shall provide an acceptable model resolution to any party upon request. The current model assumption resolutions are contained in Plate E of the Appendix following the last Article of these Subchapter 2 regulations.

(e) ~~When~~ In the event that a public self insurer or individual private self insurer reincorporates, merges, or changes its identity, the surviving entity shall execute a new Agreement of Assumption and Guarantee of Liabilities and a new assumption resolution to cover the liabilities of the prior self insurer as part of the reapplication process to continue self insurance of workers' compensation liabilities.

(f) A foreign entity (i.e. outside the United States) may execute a parental Agreement of Assumption and Guarantee of Liabilities for a subsidiary or affiliate self insurer provided such foreign entity:

(1) executes in the English language the Agreement of Assumption and Guarantee of Liabilities and the assumption resolution; and

(2) includes a statement in the Agreement of Assumption and Guarantee of Liabilities that, in the event of the Director's need to enforce the Agreement of Assumption executed by the foreign entity on behalf of a self-insured subsidiary or subsidiaries, the foreign entity will:

(A) become subject to the jurisdiction of California courts and administration agencies; and

(B) become controlled by California law in the resolution of any dispute under the assumption and guarantee agreement.

(g) Execution of an agreement of assumption and guarantee of liabilities shall not reduce the amount of security deposit required to be posted by any self insurer as set forth in Section 15210 and 15210.1.

(h) An Assumption and Guarantee Agreement executed pursuant to this section may be terminated upon receipt of a written notice of such termination, but except as provided in subsection (i), the termination shall not and take effect sooner than 30 days after receipt of the written termination notice.

NOTE: (i) The Director may approve an earlier termination date than provided in subsection (h) without 30 days' advance notice where in the event that a self-insurer is sold to a new owner and workers' compensation liabilities are either covered by an insurance policy or the new owner executes an Assumption and Guarantee Agreement effective on or before the date of the sale.

NOTE: Authority cited: Sections 54, 55 and 3702.10, Labor Code. Reference: Sections 59, 129, 3700, 3701, 3701.5, 3702, 3702.5, 3702.6, 3702.10, 3703, 3705 and 3740-3744, Labor Code.

§15215. Letters of Credit.

(a) An irrevocable standby letter of credit may be accepted by the Manager as all or part of the security deposit for a private self insurer. The Manager shall determine whether the letter of credit submitted is acceptable and if its language and format meets the requirements of this Section.

(b) Irrevocable letters of credit shall be issued by and payable at a branch in the continental United States, Alaska or Hawaii. The issuing bank or savings financial institution shall meet the requirements of this section and 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.
- (5) A federally chartered or State of California chartered credit Union

(c) The Manager shall provide a model letter of credit format and language that will meet the requirements for acceptance. 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 (1) year from the expiry date or any subsequent expiry date unless, at least 45 days before the expiry date, the Manager 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 if the self insurer fails to pay its workers' compensation liabilities; or the self insurer files bankruptcy; or the self insurer fails to renew or substitute acceptable security by ten days prior to the expiry date of the letter of credit; or any combination of these events;
- (3) The letter of credit is not subject to any qualification or condition by the issuing or confirming bank or savings financial institution and is the bank or savings financial institution's individual obligation which 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 Department of Industrial Relations In Trust For [the legal name of the self insurer]" to an account of the State Controller, 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; and
- (6) Letters of credit shall be subject to the Uniform Customs and Practices for Documentary Credits, ~~1993 Revision, ICC Publication No. 500,~~ current revision as most recently published by the ICC, which is hereby incorporated by reference, and a reference to this publication shall be included within the text of the letter of credit.

(7) Discrepancy fees, if any, shall be payable by the self insurer.

Note: A model single bank letter of credit (Revised 7/94) is contained in Plate 1 of the Appendix following the last Article in these Subchapter 2 regulations.

(d) A syndicated letter of credit shall include all the language of the single bank or financial institution issued letter of credit and in addition:

(1) Authorize all demands for payment to be presented at a designated branch ("agent bank" or "agent") of one of the participating banks or financial 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 or financial institution's portion of the total credit available to be drawn upon if the participating bank's or financial institution'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 financial savings institutions issuing a syndicated letter of credit are several and not joint, and neither the agent bank or financial savings institution or any other participating bank or financial savings institution shall be responsible for or otherwise liable for the failure of any other participating bank or financial savings institution to perform its obligations under the syndicated letter of credit. The failure of any participating bank or financial savings institution to perform its obligations under the syndicated letter of credit shall also not relieve any other participating bank or financial savings institution of its obligations under the syndicated letter of credit.

(e) The issuing bank(s) or financial savings institution(s) or the parent holding corporation of an unrated bank or financial 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", "A" long term certificate of deposit (CD) rating for the bank or financial 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 financial savings institution in the current quarterly edition or monthly supplement of "Financial Institutions Ratings" prepared by Standard & Poor's 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; or

(4) If applicable, be backed by Federally chartered instrumentalities of the United States operating under authority of the Farm Credit Act of 1971, as amended, or be a state or federally chartered credit union whose shares are insured by the National Credit Union Share Insurance Fund.

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

(g) If a bank or financial savings institution's rating subsequent to the issuance of the letter of credit falls below the acceptable rating level as set forth in subsection (e), the Manager shall, within 60 days of the publication of the lower credit rating, require the self insurer to:

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

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

NOTE: Authority cited: Sections 54, 55 and 3702.10, Labor Code. Reference: Sections 59, 3700, 3701, 3701.5, 3702, 3702.3, 3702.6, 3702.10, 3740, 3741 and 3742, Labor Code.