

**WAC 296-15-121 Surety for a self insurance program.** (1) **What is surety?** Surety is the legal financial guarantee each self insurer must provide to the department for its self insured workers' compensation program. Failure to provide surety in the amount required by the department will result in the withdrawal of the self insurer's certification. If a self insurer defaults on (stops payment of) benefits and assessments, the department will use its surety to cover these costs.

(a) Surety must be provided on the department's form. The original will be kept by the department. Surety must cover all past, present and future self insurance liabilities.

(b) Surety may not be used by a self insurer to:

(i) Pay its workers' compensation benefits; or

(ii) Serve as collateral for any other banking transactions.

(c) Surety is not an asset of the self insurer and will not be released by the department if the self insurer files a petition for dissolution or relief under bankruptcy laws.

(d) The department will determine the amount of surety each self insurer must provide. The surety level may be increased or decreased to maintain its adequacy when necessary.

(2) **What types of self insurance surety will the department accept?** The department will accept the following types of surety:

(a) Cash, corporate or governmental securities deposited with a department approved escrow agent and administered by a written agreement L&I form F207-039-000 between the department, self insurer and escrow agent. Use L&I form F207-137-000 for any rider/amendment to the escrow account.

An escrow account may not be used by the self insurer to satisfy any other obligation to the bank which maintains the escrow account.

(b) A bond on L&I form F207-068-000 written by a company approved to transact surety business in Washington. Use L&I form F207-134-000 for any rider/amendment to the bond.

(c) An irrevocable standby letter of credit (LOC) on L&I form F207-112-000 if the self insurer has a net worth of at least 500 million dollars. Use L&I form F207-111-000 for any rider/amendment. LOCs are subject to acceptance by the department. Acceptance includes, but is not limited to, approval of the financial condition of the issuing or confirming bank.

(i) The issuing or confirming bank must have a location in Washington. The bank must provide the department with an audited financial statement or call report made to the banking regulatory agencies for the most recent fiscal year. An audited statement/call report is due at LOC issuance and annually while the LOC is in effect.

(ii) The self insurer must provide the department a memorandum of understanding on L&I form F207-113-000 showing the self insurer's agreement with the following conditions:

(A) The department will automatically extend an LOC for an additional year unless notified otherwise by registered mail at least sixty days prior to expiration.

(B) If the department is notified an LOC will not be replaced, and the self insurer fails to provide acceptable replacement surety within thirty days of notice:

(I) The department will draw the full value of the LOC. All proceeds of the LOC will be deposited with the department;

(II) Accrued interest in excess of the surety requirement will be returned semiannually to the self insurer; and

(III) If acceptable replacement surety is later provided, the proceeds of the LOC and accrued interest will be returned to the self insurer.

(C) If the self insurer defaults on the payment of workers' compensation benefits and has failed to provide acceptable replacement surety for an expired LOC:

(I) The title to the proceeds will be transferred to the department; and

(II) The proceeds and accrued interest will be used to pay the self insurer's workers' compensation benefits.

(D) If the self insurer defaults on the payment of workers' compensation benefits and has an LOC in force:

(I) The department will draw the full value of the LOC. All proceeds of the LOC will be deposited with the department; and

(II) The proceeds and accrued interest will be used to pay the self insurer's workers' compensation benefits.

(iii) If the self insurer provides another acceptable type of surety in the amount required by the department, the department's interest in the LOC will be released.

(iv) All legal proceedings regarding a self insurer's LOC will be subject to Washington laws and courts.

(3) **How often is each self insurer's surety requirement reviewed?** Each self insurer's surety requirement is reviewed annually based on the self insurer's annual report.

(4) **When could a self insurer's surety level change?**

(a) Surety will be maintained at the current level unless the department's estimate or an independent qualified actuary's estimate of the self insurer's outstanding claim liabilities changes by more than twenty-five thousand dollars.

(b) Surety changes are due by July 1 of each year.

(5) **How does the department determine the required surety level?** The department analyzes each self insurer's loss history using incurred development, paid development or other department approved actuarial methods of loss development. The following factors also may influence the surety determination:

(a) Pension claims.

(b) Reinsurance.

(c) Inconsistency in reserving practices.

(d) Independent qualified actuarial estimate.

(e) Surety cap.

(6) **What is considered reinsurance?** For the purposes of Title 51 RCW, excess insurance and reinsurance mean the same thing.

(7) **May a self insurer reinsure part of its liability?**

(a) A self insurer may reinsure up to eighty percent of its liability under Title 51 RCW.

(b) The reinsuring company and its personnel are prohibited from participating in the administration of the responsibilities of the self insurer.

(c) Reinsurance policies issued after July 1, 1975, must include endorsements which state (a) and (b) of this subsection.

(d) The self insurer must:

(i) Notify the department of the name of the insurance carrier, the extent and coverage period of the policy; and

(ii) Submit copies of all reinsurance policies in force including all modifications and renewal provisions.

(e) The department may accept a certificate of insurance on L&I form F207-095-000 in place of the policy if the certificate certifies

all coverage conditions and exceptions and that the reinsurance company and its personnel do not participate in the administration of the responsibilities of the self insurer under Title 51 RCW.

**(8) What if a self insurer ends its self insured workers' compensation program?** If a self insurer voluntarily surrenders certification or has its certificate involuntarily withdrawn by the department, the former self insurer must continue to do all of the following:

(a) Pay benefits on claims incurred during its period of self insurance. Claim reopenings and new claims filed for occupational diseases incurred during the period of self insurance remain the obligation of the former self insurer.

(b) File quarterly and annual reports as long as quarterly reporting is required. A former self insurer may ask the department to release it from quarterly reporting after it has had no claim activity with the exception of pension or death benefits for a full year.

(c) Provide surety at the department required level. The department may require an increase in surety based on annual reports as they continue to be filed. Surety will not be reduced from the last required level (while self insured) until three full calendar years after the certificate was terminated. A bond may be cancelled for future obligations, but it continues to provide surety for claims occurring prior to its cancellation.

(d) Pay insolvency trust assessments for three years after surrender or withdrawal of certificate.

(e) Pay all expenses for a final audit of its self insurance program.

**(9) When could the department consider releasing surety to a former self insurer or its successor?**

(a) The department may consider releasing surety to a former self insurer or its successor when all of the following have occurred:

(i) All claims against the self insurer are closed; and

(ii) The self insurer has been released from quarterly reporting for at least ten years.

(b) If the department releases surety, the former self insurer remains responsible for claim reopenings and new claims filed for occupational disease incurred during the period of self insurance.

[Statutory Authority: RCW 51.14.077, 51.14.120(7), 51.14.150(4), 51.14.160, 51.44.040(3), 51.44.070 and 51.44.150. WSR 99-23-107, § 296-15-121, filed 11/17/99, effective 12/27/99.]