

SURFACE MANAGEMENT FINANCIAL GUARANTEE REQUIREMENTS

A. FINANCIAL GUARANTEES

A financial guarantee is given to provide assurance to one party that another party will fulfill an obligation it has undertaken to perform. Financial guarantees are not insurance. Under a financial guarantee, the principal or obligor on a financial guarantee is responsible to fulfill a contractual obligation. If the principal/obligor does not perform the contractual obligation, the financial guarantee may be collected.

A personal bond is a form of financial guarantee that is a contract directly between the obligor and the obligee. A surety bond is a form of financial guarantee written for the benefit of a third party, and is a three-way contract among the principal (owner of the bond), the surety (insurance company), and the obligee (the party to whom performance is promised). A financial guarantee may only be terminated or canceled with the consent of all parties to the financial guarantee.

B. TYPES OF FINANCIAL GUARANTEES

1. SURETY BOND

A corporate surety bond consists of a promise by a principal and surety to the United States and/or the State of [name of your state] that the surety will correct any default should the principal not do so, paying up to the limits of the amount of the bond. A surety bond is a three-way contract between the principal, the surety, and the United States/State of [name of your state].

When filing a surety bond with the BLM, the Surface Management Surety Bond form must be used. If filing a joint surety bond with [state agency name], their [appropriate form name(s) and number(s)] forms must be used.

Information required:

- a. A surety bond must be properly executed by principal, including display of corporate seal (if available). The relationship of the signatory to the principal is to be shown on the surety bond form itself or in an accompanying document.
- b. A surety bond must be properly executed by acceptable surety, with the seal of the corporate surety affixed, accompanied by the power of attorney (POA) showing proof of signing authority as the surety's representative. Surety bonds must be issued by a qualified surety (insurance company) approved by the Department of Treasury (see <http://www.fms.treas.gov/c570/index.html>).

- c. The surety bond must be at least for the required amount.
- d. The principal and the surety must be indicated in proper locations on the surety bond form.
- e. The dollar amount must be spelled out, for example, Ten Thousand and no/100 Dollars.
- f. The execution date on the surety bond must be completed and date must precede the date of filing of the surety bond.
- g. The Power of Attorney must show that person signing for the surety had authority to do so on the date the surety bond was executed. The date must be the same as or earlier than the date on which the surety bond was executed. There should be a completed certificate at the end of the POA indicating that the POA is still valid on the date the surety bond is executed.

2. PERSONAL BONDS

The principal (obligor) may furnish a personal bond in lieu of a surety bond to ensure compliance with all the terms and conditions of a plan of operations and/or notice(s) on public land.

The BLM accepts three forms of personal bonds: Cash Bond, Letter of Credit (LOC), and Certificate of Deposit (CD).

CASH BOND:

A cash bond must be submitted in the form of a **Cashier's Check or certified check**. A check posted with the BLM must be issued to the **"U. S. Department of the Interior-BLM"**; and the BLM Surface Management Personal Bond form must accompany the check.

If submitted to the [name of appropriate state agency], the check must be issued to the [name of appropriate state agency] and [name and number of appropriate state form(s)] form must be used.

LETTER OF CREDIT (LOC):

An irrevocable letter of credit issued by a bank organized to do business in the United States.

Required information:

- a. Financial institution must be **federally insured** or a Federal Reserve Branch bank.
- b. When posting the bond with the BLM, the bond must be payable to the “**U. S. Department of Interior-BLM**”; and the BLM Surface Management Bond form must accompany the LOC. The authorized officer for the BLM is [name, title, place of work of appropriate person for your state].

When filing a joint bond with the “[name of appropriate state agency]” and the “U.S. Department of the Interior-Bureau of Land Management” (USDOI-BLM), the bond must be payable to both agencies. If posting the bond with [name of state agency] their bond form [appropriate form name and number] must be used.

- c. Initial expiration of the LOC must be not less than 1 year after the date filing with BLM.
- d. LOC must contain the **automatic renewal provision** in at least one-year increments.
- e. LOC must contain provisions allowing collection by BLM for default of obligor and failure of obligor to replace bond if 90-day notice is given by bank that LOC will not be renewed.

CERTIFICATES OF DEPOSIT (CD):

Federally-insured certificate of deposit payable to the United States and/or the State of [your state name].

Required information:

- a. Financial institution must be **federally insured** or a Federal Reserve Branch bank.
- b. **CD must indicate** on the face of the certificate that “**The Secretary of the Interior-BLM must approve the redemption of the CD by any party.**”

On joint bonds the statement should be, “The Secretary of the Interior-BLM and [name of appropriate state agency] must approve the redemption of the CD by any party.”

- c. CD should be issued to the “**U. S. Department of the Interior-BLM**” (USDOI-BLM); and the BLM Surface Management Personal Bond form must accompany the CD. The authorized officer for the BLM is [name, title, place of work of appropriate person for your state].

When filing a joint bond with the [name of appropriate state agency] and the U.S. Department of the Interior-Bureau of Land Management (USDOI-BLM), the bond must be payable to both agencies. If posting the bond with [name of appropriate state agency] their [name and numbers of appropriate state forms] must be used.

If CD is issued to another person/company than BLM/[state agency], proof must be provided that the right to payment of the obligor under the CD has been assigned to BLM/[state agency], together with the proof that the bank has changed its records to show that only BLM/[state agency] may collect the amount of the CD. A written confirmation is recommended (Assignment form signed by obligor and confirmation form signed by financial institution.)

d. The operator/obligor must ensure that the CD can be redeemed prior to maturity. If there are any penalties for early redemption, such penalties will be paid out of the obligor's interest earned, not out of the principal amount of the CD. Otherwise CD must be increased.

e. There should be **no expiration date** for the CD which would restrict the right of the BLM/[state agency] to collect the principal at any time of default.

f. It must be clear that the deposit is for the sole and exclusive use of the Department of the Interior-BLM. On joint bond, deposit is for the use of the Department of the Interior-BLM and [state agency]. The financial institution must agree to not use the deposit to off-set any monetary default of the Obligor (Agreement not to off-set form).

POSTING THE FINANCIAL GUARANTEE WITH THE BLM:

Please contact [name of person and phone number], [state office branch or division], [state name] State Office, Bureau of Land Management, [state office address]. The authorized officer for the BLM is [name, title, place of work of appropriate person for your state]. If you are posting the bond with the BLM, the bond must be filed with the [state name] State Office.

POSTING THE FINANCIAL GUARANTEE WITH [STATE AGENCY NAME]:

Please contact [name and phone number of appropriate person], [name of appropriate state agency], [address of appropriate state agency].