

request. The BRT may conduct site inspections upon providing notice to the bank sponsor to evaluate NRD restoration bank performance.

C. The restoration bank plan must provide for a monitoring period that is sufficient to demonstrate that the NRD restoration bank has met its restoration objectives and performance criteria. Upon a determination that the NRD restoration bank has achieved its objectives and performance criteria, the BRT may reduce or waive the remaining monitoring requirements. Conversely, the BRT may extend the original monitoring period upon a determination that performance criteria have not been met or the bank is not on track to meet them. The BRT may also revise monitoring requirements when corrective action is required.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.5.2.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Coastal Protection and Restoration Authority, LR 43:1359 (July 2017).

§125. Financial Assurance Requirements

A. General Provisions

1. Financial assurance in accordance with this Section is required for NRD restoration banks under the NRD restoration banking program, except that financial assurance is not required for an NRD restoration bank proposed by a government agency that is exempt from the requirement to provide financial assurance under federal law.

2. The sponsor shall establish and maintain financial assurance in accordance with this Section.

3. The sponsor shall establish and maintain financial assurance in the form and amount approved by the BRT, until the BRT determines that the NRD restoration bank has satisfied all applicable performance criteria and other requirements of the restoration banking instrument.

4. Financial assurance that meets the requirements of this Section shall be provided at least 30 days prior to undertaking restoration activities approved under a restoration banking instrument.

5. The amount of financial assurance shall be based on an itemized estimate provided by an independent contractor and shall include the following:

a. construction costs, equal to 100 percent of the estimated cost of completing the creation, restoration, or enhancement;

b. maintenance costs, equal to 100 percent of the estimated cost of monitoring and maintaining the site, to meet the performance criteria and other requirements of the restoration banking instrument;

c. corrective action or adaptive management costs, equal to 10 percent of the estimated cost of construction, unless otherwise determined by the BRT to meet the requirements of this Section;

d. an independent contractor is defined here as a licensed contractor with no existing business relationship with the sponsor. The contractor must be approved by the BRT.

6. The sponsor shall update the face value of its financial assurance on the anniversary date of the instrument to reflect adjustments for inflation. On the fifth anniversary of the financial assurance instrument, the sponsor shall update the amount of financial assurance based on updated itemized estimates pursuant to Paragraph 5 of this Subsection.

7. The BRT shall require additional financial assurance if additional construction or monitoring is required to ensure success of the NRD restoration bank.

8. The portion of the financial assurance required under Subparagraph 5.a of this Subsection above shall be released upon the BRT determination that construction (including grading and planting) of the NRD restoration bank has been successfully completed in accordance with the restoration banking instrument.

9. The portion of the financial assurance required under Subparagraphs 5.b and c of this Subsection above shall be released when the BRT determines that the NRD restoration bank has met its restoration objectives and performance criteria, as applicable, or the BRT approves in writing the sponsor's request to permanently cease banking activities.

10. The sponsor may request, and the BRT may approve, the substitution of a financial assurance instrument. The form and content of any financial assurance instrument must be approved in advance by the BRT before a substitution can be used to satisfy the financial assurance obligations of this Section.

11. Acceptable forms of financial assurance shall comprise one or more of the following financial instruments:

a. a fully funded trust fund in accordance with §125.B below;

b. a letter of credit in accordance with Subsection C of this Section below;

c. a surety bond in accordance with Subsection D of this Section below; and/or

d. other forms of financial assurance, other than self-insurance or self-guarantee, as determined by the BRT to meet the requirements of this Section.

B. Financial Assurance Instrument—Fully Funded Trust Fund

1. A sponsor who chooses to establish a fully funded trust fund as financial assurance shall submit to the BRT chair the trust fund agreement evidencing that the trust fund is fully funded. The trust fund agreement shall:

a. be executed by an entity that has the authority to act as trustee, is an FDIC-regulated financial institution, and whose trust operations are regulated and examined by the state;

b. include any applicable file number and the name, street address, lot, block, municipality, and parish of the NRD restoration bank;

c. specify that the fully funded trust fund cannot be revoked or terminated without the prior written approval of the executive director of CPRA, or his/her designee;

d. specify that the trustee may only disburse funds with the written approval of the executive director of CPRA, or his/her designee;

e. specify that the funds shall be used solely for the purposes of conducting the NRD restoration bank as approved by the BRT;

f. specify that CPRA may access the fully funded trust fund to pay for the cost of the NRD restoration bank, pursuant to LAC 43:XXXI.127.B.2 below; and

g. identify CPRA as the sole beneficiary of the fully funded trust fund.

2. Any sponsor responsible for operating an NRD restoration bank that uses a fully funded trust fund to satisfy

the requirements of this Chapter shall annually, at least 30 days prior to the anniversary date of when that sponsor was obligated to establish the financial assurance instrument, submit to the executive director of CPRA (or his/her designee) a written statement from the trustee confirming the value of the trust in the amount that the BRT has approved, and confirming that the trust shall continue for the next consecutive 12-month period.

C. Financial Assurance Instrument—Letter of Credit. A sponsor who chooses to provide a letter of credit as financial assurance to guarantee the availability of funds shall submit to the BRT chair the originally signed and certified letter of credit. The letter of credit shall:

1. be issued by an entity that is FDIC-regulated and licensed to transact business in the state;
2. include an applicable file number and the name, street address, lot, block, municipality, and parish of the NRD restoration bank;
3. specify that the letter of credit is irrevocable and issued for a period of at least one year, and that it will be automatically extended thereafter for a period of at least one year;
4. specify that, if the issuer of the letter of credit decides not to extend the letter of credit beyond the then current expiration date, the issuer shall notify the sponsor providing the letter of credit and the executive director of CPRA (or his/her designee) by certified mail of that decision at least 120 days before the current expiration date, beginning from the date of receipt by executive director of CPRA (or his/her designee) as shown on the signed return receipt;
5. specify that CPRA may access the letter of credit to pay for the cost of the restoration bank pursuant to LAC 43:XXXI.127.B.2; and
6. identify CPRA as the sole beneficiary of the letter of credit.

D. Financial Assurance Instrument—Surety Bond. A sponsor who chooses to provide a surety bond as financial assurance to guarantee the availability of funds pursuant to this Section shall submit to the BRT chair the originally signed and certified surety bond. The surety bond shall:

1. be issued by an entity that is licensed to transact business in the state, is listed as an approved surety on Department Circular 570 of the U.S. Department of the Treasury, and maintains a financial strength rating of at least BBB+ or equivalent assigned by a nationally recognized statistical rating organization;
2. include any applicable file number and the name, street address, lot, block, municipality, and parish of the NRD restoration bank;
3. specify that, if the issuer of the surety bond decides not to extend the surety bond beyond the then current expiration date, the issuer shall notify the sponsor providing the surety bond, and shall separately notify the executive director of CPRA (or his/her designee), by certified mail of that decision at least 120 days before the current expiration date, beginning from the date of receipt by the executive director of CPRA (or his/her designee) as shown on the signed return receipt; and
4. specify that CPRA may access the surety bond to pay for the cost of the NRD restoration bank pursuant to LAC 43:XXXI.127.B.2.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.5.2.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Coastal Protection and Restoration Authority, LR 43:1360 (July 2017).

§127. Compliance

A. General

1. It is the sponsor's obligation to comply with the terms of NRD restoration bank certification as set forth in the restoration banking instrument. If the BRT believes that a sponsor is out of compliance with a restoration banking instrument, it must notify the sponsor in writing and set forth the corrective actions that the sponsor must undertake to bring a bank in compliance and the time within which the sponsor must perform such actions.

2. If the sponsor fails to come into compliance in the period specified in the BRT's written notice, the BRT may suspend the sale of restoration credits to bring an NRD restoration bank in compliance with the terms and conditions of the restoration banking instrument. If the BRT suspends the sale of restoration credits, restoration credits may not be debited until the BRT lifts the suspension and notifies the sponsor in writing that the sale of credits may be resumed.

3. If the BRT is made aware of any action to suspend or bar the sponsor from participation in any other regulatory program, the BRT may in its discretion suspend the sponsor from the sale of credits for the duration of the non-conformity with the other program, or such shorter time as it deems appropriate.

4. Suspension of the sale of restoration credits under Subparagraphs 2 or 3 of this Subsection above does not preclude CPRA from exercising its rights secured by financial assurances issued under §126 above.

B. Financial Assurance

1. If the BRT determines that the sponsor responsible for restoration and providing financial assurance has failed to complete an NRD restoration bank, including satisfying restoration objectives and performance criteria, as required by the restoration banking instrument, the BRT chair shall:

- a. provide written notice of this determination to the sponsor; and
- b. require that the NRD restoration bank be brought into conformance with the restoration banking instrument within 30 days of receipt of the notice, unless the timeframe is otherwise extended by the BRT.

2. No sooner than 30 days from the date the sponsor receives notice under Subparagraph 1.a of this Subsection above, CPRA may, at its discretion, complete the NRD restoration bank by drawing on the funds available in the financial assurance instrument(s).

3. In the event CPRA draws on the funds available in the financial assurance instrument(s) and accomplishes the objectives and performance criteria of the NRD restoration bank, the BRT may award restoration credits for sale, use, or transfer by the sponsor in a quantity that reflects the objectives and performance criteria achieved as a result of BRT intervention, net of administrative expenses incurred by the BRT to complete the NRD restoration bank.

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HISTORICAL NOTE: Promulgated by the Office of the Governor, Coastal Protection and Restoration Authority, LR 43:1361 (July 2017).