

PROVIDING ASSURANCES

TYING UP LOOSE ENDS:

The newly-acquired ability of an organization to comply with the financial test can be quite a significant event. The organization will be able to avoid the costs associated with a letter of credit. More importantly, the organization's access to liquidity will likely be enhanced by the amount of any letter of credit that can be released.

What can sometimes be overlooked when switching from the letter of credit to the financial test are the loose ends that must be tied up. Even after the financial test package is submitted, the regulatory agency's approval to release the letter of credit must be obtained. Until the regulatory agency approves such a release, the letter of credit will remain in place. Fees associated with maintaining such collateral will continue to accumulate. More importantly, the organization's ability to access liquidity under its existing credit facilities will continue to be limited by the amount of the unreleased letter of credit.

A detail that is probably overlooked more often is terminating the standby trust. The continued existence of an unnecessary standby trust will not impact an organization's liquidity in the same way that an unreleased letter of credit will. However, financial institutions do charge fees to maintain such trusts in place. These fees will continue to accumulate until the trust is terminated.

A trust termination is necessary to terminate the standby trust. No regulatory template exists for such an agreement, and such an agreement need not be lengthy or complex. However, unlike the standby trust agreement, the regulatory authority is a party to, and therefore must execute, the trust termination agreement. Thus, the process of obtaining a fully-executed trust termination agreement can be quite a paper chase in its own right.

Tying up the loose ends after switching from a letter of credit to the financial test requires persistence, patience, and focus. Until these loose ends are tied up, the organization cannot realize the key benefits of using the financial test, which is the ability to use a cost-free means of demonstrating financial assurance and removing impediments to the organization's access to liquidity.

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