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General Principles for Regulations **DC Green Building Act**

The implementing regulations of the Green Building Act should contain the following characteristics, which should have a positive effect on bond availability:

- The bond requirement should be met by the party with the greatest control in attaining the required LEED standard –the developer. The regulations should state that the developer must furnish the bond.
- The regulations should provide for claims less than the full bond amount. That is, full forfeiture of the bond amount is not the only outcome.
- The regulations should address how a claim is quantified. That is, there should be a direct relationship between the amount of the claim and the estimated costs to remedy a default.
- The surety should have an opportunity to “fix” the default, if the LEED standard could be attained through some additional work. A financial payment by the surety should not be the only remedy in all cases.
- The surety must be conditionally liable. That is, the developer should be given an opportunity to respond to the default (either by curing the default or paying the required penalty) before a claim is made under the bond.
- Consider the relationship between the bond amount and the financial thresholds required by the surety. As a general matter, a bond at the maximum amount allowed by statute (\$3 million) will be more difficult to obtain than a bond set at a smaller amount. We suggest that the regulation should set the maximum amount at a lower level that is sufficient to provide the necessary financial protection to the District.
- The regulations should set forth the appeals process by which a developer can appeal a USGBC determination. Notice of appeal should be provided to surety.
- A “default” should be determined by objective measures rather than left to the discretion of the Department. The amount of the penalty assessed should be based on an objective standard.
- Developer obligations
 - “LEED certified” standard as is in place at the time of permitting (i.e. not a higher level of LEED standard)
 - Set forth in a Developer/Owner agreement
- The regulations should allow the developer to replace security.