

NATIONAL ASSOCIATION OF SURETY BOND PRODUCERS

Testimony of Joshua Etemadi
On behalf of NASBP

Before the U.S. Senate Committee on Small Business & Entrepreneurship

On

Creating Jobs and Growing the Economy: Legislative Proposals to Strengthen the
Entrepreneurial Ecosystem



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1140 19th Street, NW, Suite 800
Washington, DC 20036
Phone: 202-686-3700; Fax: 202-686-3656
Website: www.nasbp.org

The National Association of Surety Bond Producers (NASBP) is a national trade organization of professional surety bond producers, whose membership includes firms employing licensed surety bond producers placing bid, performance, and payment bonds throughout the United States and its territories.

Joshua Etemadi
Sales Manager, Construction Bonds, Inc., A Division of Murray Securus
Chair, Small & Emerging Business Committee
National Association of Surety Bond Producers (NASBP)

Introductory Remarks

NASBP wishes to extend its appreciation to Chairman Landrieu and Ranking Member Snowe and to the members of the Committee for the opportunity to provide written and oral testimony on issues of importance concerning the U.S. Small Business Administration's (SBA) Surety Bond Guarantee Program (Program).

My name is Joshua Etemadi, and I am a licensed bond producer with the firm of Construction Bonds, Inc., a Division of Murray Securus. I am Chair of the NASBP Small and Emerging Business Committee, which was created to advocate for resources to and educational programs for small and emerging businesses, so they may be positioned to qualify for surety credit. My career has been dedicated to helping small construction firms obtain and increase their bonding capacity and grow and mature their businesses, with the goal of moving them from the non-standard surety market (SBA program) into the standard surety market (corporate surety programs).

As examples, my firm assisted a local contractor to obtain its first bond through the SBA Surety Bond Guarantee Program in 2008 for \$150,000.00. Within three years, that contractor had grown, obtaining nearly \$13 million in surety credit. The use of the Program also was vital in helping another local small construction firm acquire its first bond of \$400,000.00 in 2008. Four years later, that construction firm is in the standard surety market with an aggregate bond line of \$6 million. These are dramatic success stories, and not all contractors using the program necessarily will equal such successes, but these examples give resounding testament to the fact that the Program does achieve its objectives and is important to the business wellbeing and maturity of small, and particularly emerging, construction firms.

My testimony this morning will focus on S.3442, the "SUCCESS Act," specifically Title V—Access to Government Contracting, Subtitle A—Bonds, Section 511, which amends Section 411(a)(1) and (e)(2) of the Small Business Investment Act of 1958. We support the intent of these changes, which is to increase the reach of the U.S. SBA Surety Bond Guarantee Program to assist more small businesses by increasing the contract limit of the Program. NASBP also believes that additional enhancements are needed.

Assist Small Businesses: Enhance the Program

The Program was created to ensure that certain small contractors, which, for various reasons, do not qualify in the standard surety market, have a means by which to gain access to surety credit. The Program provides guarantees, ranging from 70 to 90 percent, to participating surety companies as an inducement for them to extend surety credit to these construction firms. The construction firm and the surety company pay fees to access the Program.

The Program has been serving small construction businesses for decades and continues to be a necessary and needed federal program. In recent years, under the direction of its Director, Frank Lalumiere, the SBA Surety Bond Guarantee Program has undertaken important efforts to improve its functioning, for example, by streamlining its application processes, implementing a “fast track” application for bonds under \$250,000, quickly responding to claims, and expanding the Program’s reach to include design-build contracts. Furthermore, SBA has engaged in enhanced marketing and outreach efforts to surety companies, which has increased surety company participation.

NASBP applauds the SBA for taking these critical steps. In the opinion of NASBP, however, more can and needs to be done so the Program can fully realize its potential to assist small businesses. The amendments contained in the SUCCESS Act at Section 511 are important changes that Congress can make to assist the Program to realize its full potential. NASBP also believes additional changes are warranted.

Reforms to the Program included in ARRA

NASBP supported provisions included in the 2009 American Recovery and Reinvestment Act (ARRA), which increased the contract size guaranteed by the SBA from \$2 million to \$5 million, and up to \$10 million if a federal agency’s contracting officer certifies that the guarantee is necessary, and vested discretion with the SBA Administrator to determine the Program’s liabilities. NASBP supported these provisions; however, they expired on September 30, 2010. The current contract guarantee limit is \$2 million.

Those provisions, now expired, permitted the Program to enhance its reach. Beginning with the passage of ARRA on February 17, 2009 until the provisions expired on September 30, 2010, the SBA guaranteed 166 ARRA bid bonds valued at \$518 million and 52 final bonds valued at \$145.4 million with only one contractor default¹. While some may argue that increasing the contract size may place the federal government in greater risk regarding contractor default, this did not occur based upon the statistics compiled by the SBA. Based on these statistics, SBA continues to manage the risks undertaken in the Program very prudently.

Since the passage of ARRA, NASBP has modified its position to support an increase in the guarantee limit from \$5 million to \$6.5 million to align the Program with the simplified acquisition threshold and with the needs of other small business contracting programs, such as the 8a Minority Small Business and Capital Ownership Development Program. Raising the guarantee limit provided by the SBA to \$6.5 million will allow small contractors to obtain assistance at higher bond amounts. As a result, increasing the Program’s limit would increase opportunities for small businesses to compete for more federal contracts, especially those from contracting authorities, such as the Department of Defense (DoD), where the average size of construction contracts awarded to small businesses for fiscal year 2010 exceeded \$5.9 million – nearly triple the size for which

¹ Robert Jay Dilger, SBA Surety Bond Guarantee Program. Congressional Research Service, 7-5700, R42037, pg. 20 (Oct. 6, 2011)

SBA can provide bonding support². Subsequently, the increased contract limit to \$6.5 million will allow the Program to better serve the needs of the DoD and other federal contracting authorities as well as small federal contractors.

NASBP believes that it is imperative that the SBA Administrator be provided with statutory discretion to determine liabilities assumed by the Program, so that a denial of a guarantee to a surety company can be partial, reflecting only the amount of the prejudice suffered by the government, and not a complete denial of the entire guarantee. This, again, was an important change temporarily made under ARRA. Restoring this change will act as an additional inducement to attract greater participation by surety companies, which will understand that the value of bond guarantees are solid and not provided on an “all or nothing” basis. Congress needs to ensure inclusion of such a change in its statutory enhancements of the Program.

Additional Reforms to Enhance the Program

Given the current economic climate, NASBP believes that Congress can and should do more to support the U.S. SBA Surety Bond Guarantee Program. These suggestions for additional enhancements, made below, are for the purpose of improving access by small construction firms and increasing participation by surety companies.

Construction firms, particularly those that are small and emerging, still face an exceedingly difficult construction market for the foreseeable future. The construction industry as a whole has been especially hard hit, exhibiting some of the highest unemployment figures of any industry. Congressional consideration should be given to reducing the fees paid by contractors to access the Program. Such a reduction in fees could be taken on a limited time basis to help small construction firms weather the current, difficult economic environment.

Other Congressional considerations should be focused on increasing surety company participation in the Program. The Program currently offers a range of guarantee percentages to participating surety companies, depending on the way the company interfaces with the Program. Recent SBA efforts have improved surety company participation, but NASBP believes that greater surety company participation could be realized by offering a uniform and higher guarantee percentage, such as a guarantee of 90 percent. Such a guarantee would permit more sureties to make the internal business case for underwriting emerging firms through the Program.

Finally, Congress needs to evidence support and funding for an internal SBA effort to coordinate the SBA Bond Guarantee Program and other SBA small business programs, such as those relating to loan guarantees and business assistance. NASBP believes that SBA should facilitate the services needed by a small business through an internal, coordinated effort among the various SBA programs and services. This would involve a “case approach” by SBA to a small business contacting one of its existing programs. For example, when a small business applies to any of the SBA programs in any of the SBA

² Challenges to Doing Business with the Department of Defense: Findings of the Panel on Business Challenges in the Defense Industry, House Committee on Armed Services, March 19, 2012, pg. 21.

offices, a case file should be opened and communications should be opened between all SBA programs that can provide assistance to the contractor. The needs of a small business should be reviewed so that it can be connected to the proper SBA program, i.e. loan, bond or other programs administered by the SBA. This should not delay any SBA program from providing the small business the specific assistance sought. If the business is a small and emerging contractor, for example, the SBA Surety Bond Guarantee Program should proceed to provide a bond guarantee while other SBA programs review the contractor for capital needs or other business assistance. It is our understanding that SBA is, in fact, working toward this approach. Such an effort likely will require additional resources and certainly deserves Congressional support.

NASBP believes that the above, delineated enhancements to the Program as well as adopting the provisions included in Section 511 of the "SUCCESS Act," albeit at a higher dollar contract limit of \$6.5 million, would create significant opportunities for small and emerging construction businesses and additional incentives for more sureties to assist small firms, which otherwise do not qualify for surety credit in the standard market, to obtain their first bonds, placing them on the right road to business success and eventual entry into the standard surety market.

NASBP appreciates the opportunity to address the Senate Committee on Small Business & Entrepreneurship to raise awareness about important issues and enhancements to the SBA Surety Bond Guarantee Program. NASBP hopes its testimony proves beneficial to the deliberations of the Committee regarding S.3442 and welcomes any inquiries concerning the matters raised in this testimony or on other matters pertinent to small businesses and surety bonding.