



NATIONAL ASSOCIATION OF SURETY BOND PRODUCERS

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September 12, 2016

Ms. Mary Frias
Office of Financial Assistance
Office of Capital Access
U.S. Small Business Administration (SBA)
409 Third Street, SW
Washington, DC, 20416

Re: RIN: 3245-AF85

Dear Ms. Frias:

On behalf of the National Association of Surety Bond Producers (NASBP), a national trade organization of trade association whose membership includes firms employing licensed surety bond producers placing bid, performance, and payment bonds throughout the United States and its territories, I am contacting you to express our support of the proposed rules that will continue to bolster the SBA Surety Bond Guarantee Program (Program) while providing greater opportunities for small and emerging contractors in obtaining bonding to bid on public construction projects and to grow their businesses. NASBP has a long history of supporting reforms of the Program, which included increasing the guarantee limit to \$6.5 million to align the Program with the simplified acquisition threshold and with the needs of other small business contracting programs, and vesting discretion with the SBA Administrator to determine the Program's liabilities.

Specifically, NASBP's comments will focus on: (1) the Threshold Change amounts set forth in §§ 115.19, 115.32, and 115.67; (2) the Quarterly Contract Completion Notification addressed in § 115.22; (3) the Quick Bond Guarantee Application and Agreement (SBA Form 990A) Increased Contract Limit authorized by 13 CFR 115.30(d)(2); and (4) the Preferred Surety Bond (PSB) Guarantee Program, which increases its guarantee percentage for bonds issued in the PSB from "not to exceed 70 per centum" to "not to exceed 90 per centum" authorized by section 874 of title VIII of Division A of the National Defense Authorization Act (NDAA), 2016, Public Law 114-92, 129 Stat. 726.

Threshold Change Amounts: Revisions to §§ 115.19, 115.32, and 115.67

NASBP supports the proposed change to eliminate the \$100,000 threshold to rely solely on the 25% increase to the contract or bond amount. This change would align the Program with current practices in the construction and surety industries as most construction contracts and bonds now

require the surety to waive notice of such insignificant changes. Furthermore, given that the contract size limit for the Program was raised from \$2 million to \$6.5 million and up to \$10 million if a federal agency's contracting officer certifies that the guarantee is necessary, as adopted through the NDAA of 2013, a \$100,000 threshold now seems to be extremely low. By eliminating the \$100,000 requirement and moving to a flat 25% threshold, the notice requirement would be in proportion to the contract amount, especially in those situations involving higher contract amounts. The only potential challenge might be for smaller projects. For example, a \$50,000 project with a \$13,000 change order would now require notice; however, under the previous rule, that same project would not have triggered a change order notice. Please keep in mind that the revised rule may become more time consuming for smaller contractors involved with smaller projects.

Quarterly Contract Completion Notification: Revisions to § 115.22

This may constitute an administrative burden for participating sureties, which may potentially risk surety participation. An alternative might be a requirement for contract completion reports every six months, rather than the proposed 45 days.

Quick Bond Guarantee Application and Agreement: Revision to 13 CFR 115.30(d)(2)

NASBP supports the proposed change as it aligns with current surety industry practice for quick/fast bond application limits. Please keep in mind that participating sureties may still want to review some financial information should a contractor have questionable credit history. The proposed change does make the approval process easier and faster and provides greater opportunity for small businesses.

Preferred Surety Bond Guarantee Program: Increase of Guarantee

NASBP supports this change and specifically advocated for it in the U.S. Congress. NASBP believes that increasing the guarantee will likely stimulate greater corporate surety and surety bond producer participation, providing access to the corporate surety markets to small businesses which otherwise do not qualify for surety credit in the standard market. These small businesses are often the ones that may turn to the alternative individual surety, where they can be duped by unscrupulous individual sureties seeking vulnerable businesses and offering surety credit to anyone, regardless of the firm's qualifications, financial wherewithal, or experience, and at rates many times higher than corporate surety markets.

Additional Comments for Consideration

In addition to the proposed revisions to the Program, NASBP would like to offer further suggestions, which we believe may create additional opportunities for small and emerging contractors to access the Program and may attract additional surety participation. Consideration should be given to reducing the fees paid by contractors and sureties to access the Program. Fees were increased previously, but the Program runs on a considerable surplus, and such fees should be revisited.

NASBP has a successful long-term working relationship with the SBA Office of Surety Guarantees and thoroughly believes that the Program provides a valuable service to those emerging contractors who may otherwise fail to qualify for surety credit in the standard market.

NASBP believes these proposed reforms as a whole, offer a continued enhancement to the Program, and to the opportunities of small and emerging businesses.

Thank you for your consideration and the opportunity to participate in the rulemaking process. If you have any questions regarding our comments, please feel free to contact me directly at 202-464-1217 or at lleclair@nasbp.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Lawrence E. LeClair". The signature is written in a cursive style with a large initial "L".

Lawrence E. LeClair
Director, Government Relations