



National Association of Surety Bond Producers

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2013 Government Relations Agenda of the National Association of Surety Bond Producers (NASBP)

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NASBP, located in Washington, D.C., is a national trade association whose membership includes firms employing licensed surety bond producers and brokers placing bid performance, and payments bonds throughout the United States and its territories for the Nation's construction projects.

NASBP is the only association focused solely on the bond producer—the agent or broker who stands as the “bridge” between the construction contractor and the surety. As professionals deeply invested in the health of the construction industry and its many contracting firms, bond producers apply their insight and knowledge of contractors' business opportunities and challenges with that of the surety market, the surety credit process and surety underwriting fundamentals so that contracting firms and surety companies understand what each seeks in successful surety relationships.

This Agenda describes important government relations activities and initiatives, grouping them in three categories: (1) top priorities, (2) emerging issues, and (3) “watch list” issues.

Government Relations Top Priorities

Priority: Advocate for the preservation and, where possible, expansion of existing federal, state, and local statutory bonding requirements:

- Educate public officials and legislators regarding the crucial public policy reasons underlying bid, performance and payment bond requirements in relation to private/public works and infrastructure projects.
- Monitor legislative and regulatory efforts to increase statutory bonding thresholds and oppose those that represent material increases.
- Oppose legislative and regulatory efforts to weaken or waive statutory bonding requirements.
- Oppose efforts to substitute alternative products for statutorily-required bonds.
- Monitor legislative and regulatory measures authorizing alternative project delivery methods to ensure incorporation of or reference to statutory bonding requirements.
- Advocate for reforms in the Federal Acquisition Regulation (FAR) to ensure sufficient oversight and transparency of any contracting officer's decision to reduce or waive surety bonds on federal construction projects.

Priority: Advocate for legislation, such as H.R. 3534, the “Security in Bonding Act,” that amended Title 31 USCA §9304 to ensure that assets pledged to back individual surety bonds on federal construction projects can be liquidated quickly and easily to pay valid claims.

- If H.R. 3534 pass not pass the 112th Congress, reintroduce similar legislation in the 113th Congress.
- Under 31 USCA § 9303 a contractor is permitted to pledge collateral directly to the government by posting an “eligible obligation” as security in lieu of a surety bond. An “eligible obligation” is defined as “any security designated as acceptable in lieu of a surety bond by the Secretary of the Treasury,” which most notably includes U.S. government backed securities.
- FAR 28.203 also permits federal contracting officers to accept bonds from individual sureties if the bond is secured by an “acceptable asset,” which are defined as stocks, bonds and real property owned in fee simple without any form of concurrent asset. This is a much broader category than what is required under § 9303.
- Stocks, bonds, and real estate should not be considered “acceptable assets,” to secure bonds due to the likelihood of their misrepresentation, volatility, and the difficulty of liquidating them in a timely manner to pay a bond claim. NASBP believes that assets pledged by an individual should be the same as required under § 9303, which permits persons and companies to submit “eligible obligations” in lieu of a surety bond.

Legislative Solution:

- Amend Title 31, USCA § 9304, to ensure that assets pledged to back bid, payment, and performance bonds on federal construction projects be an “eligible obligation” and be placed in the custody and control of the federal government, in order for it to be easily converted to liquid assets to pay valid bond claims.
- This statutory change would ease the current administrative burden placed on federal contracting officers in determining whether assets posted on federal construction projects are sufficient to protect subcontractors and suppliers who rely on the payment bond for their payment remedy in the event of a contractor default.

Priority: Advocate for legislation to exempt the Federal Miller Act from periodic threshold increases based on inflation under Title 41:

- Seek a champion to introduce legislation to amend Title 41 (Public Contracts) to exempt the Federal Miller Act from periodic inflation adjustments every 5 years similar to the Davis Bacon Act which protects the payment of wages for laborers on federal projects;
- Educate members of Congress that similar to the Davis Bacon Act, the Federal Miller Act is also a protective statute and should be exempted from threshold increases under Title 41;
- Educate members of Congress about the important protection the Miller Act offers and remind them that each adjustment increases the payment bond threshold so more small construction businesses acting as subcontractors and suppliers will not have payment bond protection on federal construction projects.

Priority: Advocate for legislation/regulations, that encourage qualified small, disadvantaged, and minority contractors to participate in public construction markets:

- Support legislation that provides education and resource opportunities to small women, minority and veteran-owned construction companies to better position them to qualify for surety credit.

- Support bond guarantee programs that have been reviewed and analyzed for practicality and adhere to current industry practices.
- Support regulations and policies that curb the practice of improperly bundling smaller contracts into larger contracts that place such projects beyond the bonding capacity of most small contractors.
- Provide the Small Business Administration (SBA) the authority to oversee the current 13 federal agencies, which have mentor protégé programs, to establish greater clarity and standardization among those agencies as to what teaming arrangements are acceptable.
- Fund recruitment and training of federal procurement officials to provide the workforce needed to procure construction projects efficiently with the objective of improving the overall administration of procurements.

Priority: Advocate for legislative changes to the Small Business Administration's (SBA) Surety Bond Guarantee Program to make it more efficient and attractive:

Enhancements needed to reinvigorate the Program through the passage of statutory reforms which will attract greater surety bond producers and small contractor participation include:

- Reinstating enhancements made under the economic stimulus package in 2009 or as included in H.R. 4310, the "National Defense Reauthorization Act" as passed by the U.S. House of Representatives in 2013 that increased the contract size guaranteed by the SBA up to \$6.5 million and vested discretion in the Administrator to determine the Program's liabilities;
- Reducing or waiving fees paid by contractors and sureties in the Bond Guarantee Program, much like the SBA 504 and 7(a) programs are currently doing;
- Increasing the guarantee to 90% to sureties in all bond guarantee programs (this parallels changes made in the SBA loan program);
- Adopting electronic signature technology to expedite the Bond Guarantee application process by eliminating the "wet signature" requirements;
- Establishing a hearing and appeals process for sureties denied their bond guarantee (there is a process on the loan guarantee side but this is absent on the Bond Guarantee Program); and
- Amending the current program regulations so that they comport with, not conflict with, prevailing surety and construction industry practices.

Additional changes needed to the Program include:

- Offer assistance to state and local governments that are considering the development and funding of technical assistance programs so that small, emerging and minority contractors will be positioned better to qualify for surety credit.
- Work with industry partners to advocate for development and funding of technical assistance programs for the benefit of small, emerging and minority contractors.

Priority: Advocate for legislation, regulations, and policies that create an equitable risk environment for construction contractors and subcontractors:

- Educate public officials and legislators about the cost and performance benefits of equitable contract terms and conditions.

- Oppose inclusion of onerous or unrealistic contract requirements, such as long-term warranties, or excessive liquidated damages in public works contracts.
- Oppose legislative and regulatory efforts to impose contract performance penalties on contractors and subcontractors for compliance with immigration laws.
- Support legislation that reduces lengthy statutes of repose.
- Oppose legislative and regulatory efforts to treat construction services as commodities for purposes of procurement methods and contract terms.

Priority: Advocate for legislation and regulations that preserve governmental oversight of surety insurers:

- Advocate licensing or registration of all sureties in jurisdictions in which they conduct business to protect the interests of public owners and taxpayers.
- Provide adequate oversight and scrutiny of all sureties furnishing bonds on federal construction projects.

Government Relations “Emerging Issues List”

- **Sustainability & “Green Building” Requirements in Public Construction.** Federal, State and municipal governments increasingly have or are considering enacting laws and regulations mandating green building/sustainability requirements in public and private construction. Such legislation may include surety bonding requirements that place inappropriate risks on contractors and sureties. NASBP is an active participant in deliberations with the U.S. Green Building Council (USGBC) regarding federal, state and municipal jurisdictions that are considering or have enacted laws and regulations mandating green building/sustainability requirements in public and private construction that include surety bonding requirements that place inappropriate risks on contractors and sureties. NASBP will continue to monitor this evolving issue and will become actively involved with legislative or regulatory proposals that negatively impact the surety industry.
- **Unlicensed Surety.** Legislation was introduced in Maryland in 2011 that would have permitted an unlicensed individual to write bonds on private contracts without having to obtain a certificate of authority issued by the Maryland Insurance Commissioner. The bill was ultimately defeated in Committee. In 2012, legislation was enacted in Maryland that establishes penalties against individual sureties writing fraudulent bonds on private projects. NASBP will continue to seek opportunities to introduce similar legislation in other states where applicable.
- **Public-Private Partnerships.** Advocate that the use of public-private partnerships must include bond requirements for public works projects. There has been a great deal of activity at both the state and most recently the federal level where lawmakers are considering legislation to create an infrastructure bank that creates a government agency to help arrange financing for infrastructure projects using investments from private sources.

Government Relations “Watch List”

- **Resident Agent Countersignature Requirements.** State and local procurement officials continue to require resident agents countersign bidding documents on behalf of non-resident agents even though resident agent countersignature requirements have been eliminated in all the states and have found to be

unconstitutional because they unfairly discriminate between licensed non-resident agents and licensed resident agents. Address such instances as they arise or are discovered.

Implementation Strategy

Five components are key to the successful execution of this government relations program: a **grassroots network**, **strategic alliances**, **industry partners**, **leveraging our SuretyPAC resources** and the annual Legislative Fly-in.

Grassroots Network. NASBP's primary vehicle for advocacy is its grassroots network of activist members. The existing grassroots network is being strengthened through regular government relations communications, such as *Focal Point*, and by use of more robust grass-roots tools on the NASBP web site.

Strategic Alliances. To bolster the work of the NASBP grassroots network and to gain "the ear" of federal, state and local legislators and officials, NASBP has entered into and will continue to enter into strategic alliances with key contractor and subcontractor constituency organizations, such as the American Subcontractors Association, the Associated Specialty Contractors, Inc., the Mechanical Contractors Association of America, the Sheet Metal and Air Conditioning Contractors' National Association and the Associated General Contractors of America, to partner on government relations issues of mutual interest and concern. NASBP's government relations efforts will be complimented and supported by efforts and initiatives undertaken in NASBP's industry relations area. NASBP will continue to identify other opportunities with whom to work.

For example, in 2012, NASBP created a coalition of 14 organizations whose mission was to enact federal legislation, H.R. 3534, the "Security in Bonding Act," to protect small businesses and the federal government from fraudulent bonds being proffered on federal construction projects. Those 14 organizations including those mentioned above and VetForce, the National Association of Minority Contractors, Women Construction Owners & Executives and the Construction Financial Management Association, just to name a few.

Industry Partners. NASBP has enjoyed and will continue to enjoy close working relationships with its historic industry partners—the Surety & Fidelity Association of America and the American Insurance Association—to advocate and to seek progress on issues of critical importance to the surety industry. In 2012, NASBP and SFAA jointly lobbied for H.R. 3534 and for legislation to address Title 41 to prohibit periodic threshold increases to the Federal Miller Act. In 2013, similar joint lobbying efforts are anticipated.

SuretyPAC. In 2012, NASBP undertook a SuretyPAC solicitation campaign to increase the funds available to the SuretyPAC during its regional meetings. During the 2012 General Election, SuretyPAC contributions were made to those Congressional candidates who supported NASBP's Federal Legislative Agenda which included among others Representatives Howard Coble (R-NC), Bobby Schilling (R-IL), and Tom Griffin (R-AR). In 2013, NASBP staff will continue to identify and foster relationships with members of Congress who they believe will have an impact on the industry and will distribute PAC

contributions and attend political fundraisers accordingly. A funding campaign also will be launched to solicit contributions to the SuretyPAC for the 2013-2014 cycle.

Annual Legislative Fly-in. In 2009, NASBP hosted its first Legislative Fly-in after nearly a decade. In 2010, 2011, and 2012 NASBP continued to build upon the momentum achieved in 2009, by attracting more participants to its Policy Briefing Program the morning of the Fly-in which included presentations by federal elected officials and policy decision makers. The Legislative Fly-in plays an important advocacy role in NASBP's Government Relations Program, because it allows NASBP staff to engage in policy discussions with Congressional offices that may otherwise not be possible without its member's active involvement.

For Further Information

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