



**NATIONAL ASSOCIATION OF SURETY BOND PRODUCERS**

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*Delivered via US mail and federal e-rulemaking portal: <http://www.regulations.gov>*

September 27, 2013

Ms. Barbara Brannan  
Management Analyst  
U.S. Small Business Administration (SBA)  
Office of Surety Guarantees  
409 Third Street, NW  
Washington, DC 20416

Re: RIN: 3245-AG56

Dear Ms. Brannan:

On behalf of the National Association of Surety Bond Producers (NASBP), a national 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 provide comments on the proposed rule, identified by RIN: 3245-AG56, which conforms the significant reforms enacted in the National Defense Authorization Act (NDAA) for Fiscal Year 2013 and offers additional regulatory changes. As a whole, NASBP believes these regulatory changes will have a salutary effect on the SBA Surety Bond Guarantee Program (Program), which, in turn, likely will increase the opportunities of small and emerging contractors, which otherwise do not qualify for bonding in the standard market, to obtain bonding to pursue award of construction contracts.

NASBP has a long history of supporting Program enhancements. Most recently, NASBP was among the organizations that advocated before the U.S. Congress for permanently increasing the guarantee limit to \$6.5 million to align the Program with the simplified acquisition threshold and with the needs of other SBA small business contracting programs, such as the 8a Minority Small Business and Capital Ownership Development Program.

NASBP also advocated 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 in all instances. This is an important statutory change accomplished in the passage of the NDAA that NASBP believes will help to attract greater surety company participation in the Program.

NASBP takes note of and is encouraged by the additional regulatory changes proposed in the rule that go beyond conforming existing regulations to the NDAA statutory changes. Many of

the additional changes appear to be efforts to modify existing regulations so they better comport with construction marketplace realities and prevailing surety practices. To that end, NASBP supports such efforts. NASBP supports the proposed changes to the regulations governing the Quick Bond Application and Agreement and to the allowable per day limit on liquidated damages.

NASBP also believes that the proposed increases to certain dollar thresholds are a step in the right direction. It is worth keeping in mind, however, that sureties may be required contractually to waive notice of changes in the contract amount and may not be in a position to seek the prior approval of or to notify the SBA when a change order exceeds a certain dollar threshold. If the threshold is reached and the surety fails to obtain approval or make notification, the regulations should make clear that the SBA is relieved of liability to the extent of the prejudice it suffers as a result of the material breach or violation. The NDAA statutory change permitting the Administrator to decide the liabilities of Program provides the Administrator with discretion. NASBP encourages the SBA to propose regulations which would address the use of such discretion in these circumstances.

Thank you for your consideration of our comments. If you have any questions regarding our comments, please feel free to contact me directly at 202-464-1217 or at [lleclair@nasbp.org](mailto:lleclair@nasbp.org).

Sincerely,

A handwritten signature in cursive script, appearing to read "Lawrence E. LeClair".

Lawrence E. LeClair  
Director, Government Relations