



**NATIONAL ASSOCIATION OF SURETY BOND PRODUCERS**

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November 20, 2007

General Services Administration  
FAR Secretariat (VIR)  
1800 F Street, NW, Room 4035  
Washington, DC 20405

Re: Notice of request for public comments regarding an extension to an existing OMB clearance (OMB Control No. 9000-0001, Standard Form 28, Affidavit of Individual Surety), published at 72 FR 56337, October 3, 2007

Dear FAR Secretariat:

On behalf of the National Association of Surety Bond Producers (NASBP), a national trade association of professional surety bond producers, representing over 5,000 personnel who specialize in surety bonding, issuing bid, payment and performance bonds for the Nation's construction projects, I am writing you to express our recommendation that the Office of Management and Budget (OMB) approve an extension to the current information collection requirement which provides that, in order to qualify as a surety, individuals wish to so serve must complete and furnish contracting officers with Standard Form 28, Affidavit of Individual Surety. NASBP also wishes to furnish suggestions for the purpose of enhancing the quality, utility, and clarity of the information to be collected through the use of Standard Form 28 (SF 28).

This information collection requirement serves to position the contracting officer with necessary information to evaluate the individual wishing to serve as surety and the assets pledged to back that surety's bond obligations on federal construction projects. SF 28 was revised significantly in 1989 to "strengthen procedures governing individual sureties," as federal officials then were confronted with "widespread evidence of systematic problems" regarding methods of handling individual sureties (see *53 Federal Register 44564-01 (1988)*) and concerns that problems with individual sureties were compromising payment protections for subcontractors and small businesses providing labor and materials on federal construction projects (see report on Senate Hearing 100-384 before the Subcommittee on Federal Spending, Budget and Accounting of the Committee on Governmental Affairs entitled *Personal Sureties Under the Miller Act: Inadequate Payment Protection for Small Business Construction Subcontractors*). Legal articles written at that time also echo these observations and concerns (see, e.g., "Christine S. McCommas, *New Developments in Fighting Individual Surety Bond Fraud* 1990-Jan. Army Law. 56). In the background section of the proposed rule published at 53 Fed. Reg. 44564 on November 3, 1987, it is stated that "[e]xperience has shown that the information contained on the SF 28 is inadequate." This section continues: "[t]he frequent result is that bonds submitted by individual sureties are uncollectable to the detriment of the Government and suppliers under Government contracts." To that end, SF 28 was revised to reflect new requirements imposed on

individual sureties. The final rule, published on November 28, 1989 at *54 Federal Register 48978*, put in place the following:

“This final rule is issued to make revisions to the FAR procedures governing the use of individual sureties in support of a bonding requirement. Among other things, the revisions would:

1. Require individual sureties to pledge specific assets to support a bond.
2. Identify and limit the types of assets which are acceptable for pledge based upon a standard of identifiable value and ready marketability.
3. Require objective evidence of asset ownership and unencumbered value.
4. Require a Government security interest in the pledged assets by means of a lien or real property or the establishment of an escrow account for acceptable personal property.
5. Provide for the Governmentwide suspension or debarment of sureties who commit serious improprieties.”

Although improvements were made through incorporation of revisions to SF 28, the present edition of SF 28 still would benefit from greater specificity on the information required of individual sureties regarding pledged assets, especially information relating to assets other than real estate. For example, the instructions on the front, in the form of parenthetical information, of SF 28 pertaining to Section 7(b), “assets other than real estate,” are not sufficiently explicit or directive. The need for such information is underscored by the issuance by the Surety Bond Branch, Financial Management Service, US Department of the Treasury, of a “Special Informational Notice to All Bond-Approving (Contracting) Officers,” dated February 3, 2006, and posted as of the date of this letter and accessible to the public on the “Surety Bonds” section of the web site of the Financial Management Service under “Quick Links.” Of particular interest, the Informational Notice states: “Recently, FMS has been made aware of instances where individual sureties are listing corporate debenture notes and other questionable assets on their “Affidavit of Individual Surety”, Standard Form 28.” The Informational Notice continues by recounting FAR requirements pertaining to acceptable assets, unacceptable assets, and the necessity of the Government being given a security interest in acceptable assets.

Certainly, greater specificity in SF 28 would assist both contracting officers and individual sureties to understand what constitutes acceptable assets under the Federal Acquisition Regulation (as delineated in FAR 28.203-2) and what constitutes “certified evidence thereof.” To that end, SF 28 could contain areas on the form in which the individual surety checks off (1) the exact asset or assets that the surety is pledging that conform to the listing of assets deemed acceptable under FAR 28.203-2; (2) identifies the extent of the ownership interest of the individual surety in the asset or the legal right giving the individual surety the ability to pledge such asset to the United States and certified evidence of such; (3) identifies the name, address, phone number, and the contact person employed by the federally insured financial institution which holds such asset in escrow; and (4) requires the attachment of a certified copy of the written escrow agreement with the federal insured financial institution, evidencing its exact terms and conditions, and showing the contracting agencies unrestricted access to such asset. Collection of this information would expedite the verification procedures undertaken by contracting officers to ensure the sufficiency, accessibility, and marketability of pledged assets.

Consideration also should be given to collecting additional information on SF 28 which would assist contracting officers in their efforts to assess the acceptability of an individual surety. Interestingly, the State of Maryland recently enacted a law permitting use of individual sureties on state public works projects. The Maryland law requires the use of a state equivalent form to SF 28. As a companion to the

State of Maryland's own "Affidavit of Individual Surety" form, the State of Maryland developed and adopted an "Attachment B," titled "Surety Affidavit," which provides the contracting officer with sworn affirmations concerning any convictions and debarments. For purposes of information and reference, "Attachment B" is provided with this letter.

For these reasons, we urge OMB in the strongest terms to approve an extension of this critical collection of information requirement and to consider ways in which to strengthen the collection of information through this important form.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark H. McCallum", with a long horizontal flourish extending to the right.

Mark H. McCallum  
General Counsel & Director of Government Relations

cc: Richard A. Foss, NASBP