



NATIONAL ASSOCIATION OF SURETY BOND PRODUCERS

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Enforcement and Removal Operations
U.S. Immigration and Customs Enforcement (ICE)
500 12th Street SW
Washington, DC 20536

Delivered via <http://www.regulations.gov>

RE: DHS Docket No. ICEB-2017-0001

Proposed Rule: 8 CFR Part 103

Procedures and Standards for Declining Surety Immigration Bonds and Administrative Appeal Requirement for Breaches

Dear Ms. Jones:

On behalf of the National Association of Surety Bond Producers (NASBP), a national trade organization of agencies employing professional surety bond producers, who specialize in surety bonding, including issuing bid, performance, and payment bonds for federal, state, and private construction projects and other commercial purposes, I am contacting you to express NASBP's concerns with the Proposed Rule by the U.S. Department of Homeland Security (DHS) concerning immigration surety bonds. NASBP's specific concerns are, first, DHS would have the ability to reject *new bonds* from a surety certified by the U.S. Department of the Treasury, The Bureau of Fiscal Service (Treasury) to issue federal bonds (Treasury Listed). NASBP's second concern is that the administrative remedies set forth in the Proposed Rule remove adequate due process protection for sureties.

In accordance with 31 U.S.C. § 9304 & § 9305 and 31 CFR 223.16, Treasury is responsible for evaluating the financial viability of a surety to determine whether it qualifies for a certificate of authority to issue bonds for the federal government. Treasury has the authority to remove a surety from the Treasury List if the surety does not meet certain financial standards, among other factors.

DHS is the first agency with Proposed Rules that allow for the agency to hold the surety hostage for a dispute that has not been adjudicated, into a "final judgment." This unreasonable limit on judicial review would deny the surety the right to furnish future bonds, in an unfair process, an entirely inadequate due process. A surety with justifiable defenses would have the penalty of debarment held over its head by the DHS if it failed to pay the invoice issued by DHS. This would create a situation where the surety would be forced to pay invalid claims

without the protection of judicial review. However, apart from the improper execution or technical deficiency of the bond, DHS should not be afforded the discretion to prohibit a particular surety from providing *new bonds* simply because the surety is in a justifiable dispute with the agency. This authority should be left solely to Treasury. Otherwise, a government-wide situation may be engendered in which the same surety encounters disparate treatment among the various federal agencies.

In addition, the Proposed Rule impedes and/or shortens the due process of the surety by limiting the time frame (30 days) to file an administrative appeal. This arbitrary time constraint limits the sureties' ability to prepare evidence while mounting an adequate defense.

For these reasons, NASBP respectfully requests that DHS rely on the Treasury List to determine a surety authority to issue bonds for federal obligations and reconsider the sureties' right to proper due process when disputes arise from surety bond claims.

NASBP appreciates your consideration of our concerns and comments.

Respectfully submitted for your consideration,

A handwritten signature in black ink, appearing to read "Lawrence E. LeClair". The signature is fluid and cursive, with the first name "Lawrence" and last name "LeClair" clearly distinguishable.

Lawrence E. LeClair
Director, Government Relations