



## SURETY BOND PROGRAM STATUTORY AUTHORITY

- § 411(a)(4) to  
§ 411(b)
- (3)<sup>4</sup> The Administration may authorize any surety, without further Administrative approval, to issue, monitor, and service such bonds subject to the Administration's guarantee. § 411(b) preferred surety bond guarantee program
- (4) No such guarantee may be issued, unless—
- (A) the person who would be principal under the bond is a small business concern;
- (B) the bond is required in order for such person to bid on a contract, or to serve as a prime contractor or subcontractor thereon;
- (C) such person is not able to obtain such bond on reasonable terms and conditions without a guarantee under this section; and
- (D) there is a reasonable expectation that such principal will perform the covenants and conditions of the contract with respect to which such bond is required, and the terms and conditions of such bond are reasonable in the light of the risks involved and the extent of the surety's participation.

(5)<sup>5</sup> (A) The Administration shall promptly act upon an application from a surety to participate in the Preferred Surety Bond Guarantee Program, authorized by paragraph (3), in accordance with criteria and procedures established in regulations pursuant to subsection (d).

(B) The Administration is authorized to reduce the allotment of bond guarantee authority or terminate the participation of a surety in the Preferred Surety Program [sic] Guarantee Program based on the rate of participation of such surety during the 4 most recent fiscal year quarters compared to the median rate of participation by the other sureties in the program.

(b) Subject to the provisions of this section, in connection with the issuance by the Administration of a guarantee to a surety as provided by subsection (a), the Administration may agree to indemnify such surety against a loss sustained by such surety in avoiding or attempting to avoid a breach of the terms of a bond guaranteed by the Administration pursuant to subsection (a): Provided, however Indemnification.

(1) prior to making any payment under this subsection, the Administration shall first determine that a breach of the terms of such bond was imminent;

<sup>4</sup>Section 207 of P.L. 100-590 (102 Stat. 3009) provided for an expiration date of September 30, 1991 "or the last day of the third full fiscal year after the date of enactment of this Act, whichever is later," for paragraph 411(a)(3). Expiration date of this paragraph changed to September 30, 1994, by § 216(a) of P.L. 101-574, approved Nov. 15, 1990 (104 Stat. 2823). Expiration date changed to Sept. 30, 1995, by § 302 of P.L. 103-403, approved Oct. 22, 1994 (108 Stat. 4188). Expiration date changed to Sept. 30, 1997, by § 7 of P.L. 104-36, approved Oct. 12, 1995 (109 Stat. 297). Expiration date changed to Sept. 30, 2000, by § 503 of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2624). Changed again to Sept. 30, 2003, by § 805(b) of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2763A-706). Section 207 of P.L. 100-590 was repealed by § 204(c) of P.L. 108-447, approved Dec. 8, 2004 (118 Stat. 2809-658). [Section 206 of P.L. 100-590, approved Nov. 3, 1988, as amended by § 216(b) of P.L. 101-574, requires the Comptroller General of the U.S. to report on the success of this provision not later than March 1, 1994, and cover the period Oct. 1, 1990, through Sept. 30, 1993.]

<sup>5</sup>Paragraph 411(a)(5) added by § 206(a) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-738). Section 206(b) of P.L. 104-208 provides that "[t]he amendments made by subsection (a) shall apply with respect to applications received (or pending substantive evaluation) on or after October 1, 1995."

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(2)<sup>6</sup> a surety must obtain approval from the Administration prior to making any payments pursuant to this subsection unless the surety is participating under the authority of subsection (a)(3); and

(3) no payment by the Administration pursuant to this subsection shall exceed 10 per centum of the contract price unless the Administrator determines that a greater payment should be made as a result of a finding by the Administrator that the surety's loss sustained in avoiding or attempting to avoid such breach was necessary and reasonable.

In no event shall the Administration pay a surety pursuant to this subsection an amount exceeding the guaranteed share of the bond available to such surety pursuant to subsection (a).<sup>7</sup> Limitation.

(c)<sup>8</sup> Any guarantee or agreement to indemnify under this section shall obligate the Administration to pay to the surety a sum—

(1) not to exceed 90<sup>9</sup> per centum of the loss incurred and paid by a surety authorized to issue bonds subject to the Administration's guarantee under subsection (a)(3);

(2) not to exceed 90 per centum of the loss incurred and paid in the case of a surety requiring the Administration's specific approval for the issuance of such bond, but in no event may the Administration make any duplicate payment pursuant to subsection (b) or any other subsection;

(3) equal to 90 per centum of the loss incurred and paid in the case of a surety requiring the Administration's specific approval for the issuance of a bond, if—

(A) the total amount of the contract at the time of execution of the bond § 411(c)(4) to § 411(g)(2) bonds is \$100,000 or less, or

(B) the bond was issued to a small business concern owned and controlled by socially and economically disadvantaged individuals as defined by section 8(d) of the Small Business Act or to a qualified HUBZone small business concern (as defined in section 3(p) of the Small Business Act<sup>10</sup>; or

<sup>6</sup>Section 411(b)(2) was rewritten by § 203(a) of P.L. 100-590, approved Nov. 3, 1988 (102 Stat. 3008), which deleted existing paragraph 411(b)(3), inserted new paragraph (2), and renumbered existing paragraph (2) as paragraph (3). For prior version, see § 111 of P.L. 95-507, approved Oct. 24, 1978 (92 Stat. 1758).

<sup>7</sup>Last sentence in § 411(b) added by § 203(a)(5) of P.L. 100-590, approved Nov. 3, 1988 (102 Stat. 3008).

<sup>8</sup>Sec. 411(c) rewritten by section 203(b) of P.L. 100-590. For prior version, see § 115 of P.L. 96-302, approved July 2, 1980 (94 Stat. 833). Section 5(a) of P.L. 100-442, the Indian Financing Act of 1988, approved Sept. 22, 1988 (102 Stat. 1764) authorizes the Secretary of the Interior to provide a supplemental surety bond guarantee not to exceed 20% of any loss for any Indian individual or economic enterprise eligible for a surety guarantee under § 411 of the Small Business Investment Act. For text of P.L. 100-442, see the Related Provisions of Law section of this Handbook.

<sup>9</sup>Percentage changed from 70 to 90 by § 874(b) of P.L. 114-92, approved Nov. 25, 2015 (129 Stat. 941). Section 874(c) of that law provides: "The amendments made by this section shall take effect 1 year after the date of the enactment of this Act."

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(4) determined pursuant to subsection (b), if applicable.

(d) The Administration may establish and periodically review regulations for participating Regulations. sureties which shall require such sureties to meet Administration standards for underwriting, claim practices, and loss ratios.

(e)<sup>11</sup> REIMBURSEMENT OF SURETY; CONDITIONS.—Pursuant to any such guarantee or agreement, the Administration shall reimburse the surety, as provided in subsection (c) of this section, SBA not liable if-- except that the Administration shall be relieved of all liability (in whole or in part within the discretion of the Administration) if—

(1) the surety obtained such guarantee or agreement, or applied for such reimbursement, by fraud or material misrepresentation,

(2) the total contract amount at the time of execution of the bond or bonds exceeds \$6,500,000,

(3) the surety has breached a material term or condition of such guarantee agreement,  
or

(4) the surety has substantially violated the regulations promulgated by the Administration pursuant to subsection (d).

(f) The Administration may, upon such terms and conditions as it may prescribe, adopt a procedure for reimbursing a surety for its paid losses billed each month, based upon prior monthly § 411(g)(3) to payments to such surety, with subsequent adjustments after such disbursement.

§ 412(a) (g)<sup>12</sup> (1) Each participating surety shall make reports to the Administration at such times Reports to SBA. such form as the Administration may require.

(2) The Administration may at all reasonable times audit, in the offices of a participating surety, all documents, files, books, records, and other material relevant to the Administration's guarantee, commitments to guarantee, or agreements to indemnify any surety pursuant to this section.

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<sup>10</sup> Reference to “qualified HUBZone small business concern” added by § 604(d) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2633).

<sup>11</sup> Paragraphs 411(e)(3) and (4) added by § 203(c) of P.L. 100-590, approved Nov. 3, 1988 (102 Stat. 3008). “\$1,250,000” inserted in lieu of “\$1,000,000” per § 18014 of P.L. 99-272, approved April 7, 1986 (100 Stat. 370). “\$2,000,000” inserted in lieu of “\$1,250,000” per § 805(a)(2) of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2763A-705). Subsection 411(e) rewritten by § 508(b)(1) of P.L. 111-5, approved Feb. 17, 2009 (123 Stat. 158). Subsection 508(f) of P.L. 111-5 provides: “The amendments made by this section shall remain in effect until September 30, 2010.” The same language was added permanently by § 1695(b)(1) of P.L. 112-239, approved Jan. 3, 2013 (126 Stat. 2090).

<sup>12</sup> Paragraphs (1) and (3) of section 411(g) added by § 204 of P.L. 100-590, supra.

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(3) Each surety participating under the authority of paragraph (3) of subsection (a) shall be audited at least once every three years<sup>13</sup> by examiners selected and approved by the Administration. Audit of surety.

(h) The Administration shall administer this Part on a prudent and economically justifiable basis<sup>14</sup> and establish such fee or fees for small business concerns and premium or premiums for sureties as it deems reasonable and necessary, to be payable at such time and under such conditions as may be determined by the Administration. Fees.

(i) The provisions of section 402 shall apply in the administration of this section.

(j)<sup>15</sup> For bonds made or executed with the prior approval of the Administration, the Administration shall not deny liability to a surety based upon material information that was provided as part of the guarantee application.

(k)<sup>16</sup> [deleted]

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<sup>13</sup> Audit frequency changed from each year to every three years by § 202(b) of P.L. 108-447, approved Dec. 8, 2004 (118 Stat. 2809-658).

<sup>14</sup> The phrase “administer this program on a prudent and economically justifiable basis” added to the original § 411 by § 11(a) of P.L. 93-386, the Small Business Amendments of 1974, approved Aug. 23, 1974 (88 Stat. 742). Subsection (h), formerly (c), entirely rewritten by said section, to distinguish between fees payable by small concerns, and premiums paid by sureties, and to eliminate several sentences.

<sup>15</sup> New subsection 411(j) added by § 1695(b)(2) of P.L. 112-239, approved Jan. 3, 2013 (126 Stat. 2090). The same language was added as subsection 411(k) by § 508(b)(2) of P.L. 111-5, approved Feb. 17, 2009 (123 Stat. 158). Section 508(f) of P.L. 111-5 provides: “The amendments made by this section shall remain in effect until September 30, 2010.”

<sup>16</sup> New subsection 411(k) added by § 508(b)(2) of P.L. 111-5, approved Feb. 17, 2009 (123 Stat. 158). There is no 411(j). Section 508(f) of P.L. 111-5 provides: “The amendments made by this section shall remain in effect until September 30, 2010.” Text of subsection 411(k), as added by P.L. 111-5 follows:

(k) For bonds made or executed with the prior approval of the Administration, the Administration shall not deny liability to a surety based upon material information that was provided as part of the guaranty application.