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For Immediate Release

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SFAA Strongly Opposes the Use of Indexing for Payment Bonds

September 2, 2020, WASHINGTON, DC – The Surety & Fidelity Association of America (SFAA) issued a comment letter on August 31, 2020 in strong opposition to the Federal Acquisition Regulation (FAR) proposed increase of the threshold, under The Miller Act, of construction payment bonds. The amount of a payment bond and performance bond should not be subject to indexing for the following reasons:

1. As the FAR previously asserted, Congress never intended for insurance requirements to be "acquisition related," and surety payment bonds are a regulated insurance product;
2. Increasing bond thresholds has no impact on the Congressional intent for and objective of indexing, which is to eliminate onerous, red tape requirements preventing small businesses from doing business with the federal government;
3. The payment bond requirement is remedial and protective in nature—as recognized by the Supreme Court–which is inherently different from the red-tape, government requirements Congress was trying to reduce; and
4. Indexing the payment bonds will work counter to the very purpose for which indexing was adopted — to help small businesses.

"We will continue to strongly oppose any categorization of these payment bonds and performance bonds as 'acquisition-related threshold' goods or services," said SFAA Vice President of Policy & General Counsel, Julie Alleyne. "Doing so is not consistent with the original Congressional intent and will unnecessarily put businesses and taxpayer money at risk," continued Alleyne.

Several members from the Construction Industry Procurement Coalition, including the American Subcontractors Association, the Associated General Contractors of America, the National Association of Surety Bond Producers, and others, are also strongly advocating against these changes.

Payment bonds provide essential protections for small businesses on public jobs by guaranteeing the payment of sub-contractors, suppliers, and workers. Surety bonds are often the only form of financial protection that small businesses have if the general contractor defaults.

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The Surety & Fidelity Association of America (SFAA) *is a trade association of more than 425 insurance companies that write 98 percent of surety and fidelity bonds in the U.S. SFAA is licensed as a rating or advisory organization in all states and it has been designated by state insurance departments as a statistical agent for the reporting of fidelity and surety experience.* *www.surety.org*