



Surety & Fidelity

Weekly 

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SFAA's Miller Act Exemption Bill Introduced in Congress

One of the first bills Representative **Nydia Velazquez** (D-NY) introduced in the House this year was the surety industry's bill to exempt the federal Miller Act bond thresholds from federal indexing requirements for inflation. The bill will be sent to the House Small Business Committee, chaired by Rep. Velazquez. The House

Oversight and Government Reform (OGR) Committee also has subject matter jurisdiction, but has waived jurisdiction on the bill in the past. SFAA and NASBP will meet with Rep. Velazquez's office early next week to discuss next steps in advancing the bill through Congress.

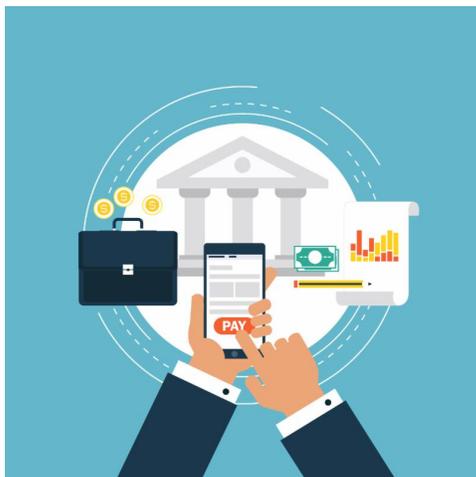
The federal Construction Industry Procurement Coalition legislation for this Congress also contains our provision eliminating the indexing of the Miller Act bond threshold. Senators **Rob Portman** (R-OH) and **Mazie Hirono** (D-HI) have been our bill sponsors in the Senate in past sessions. At SFAA's Congressional Act Day last year, Senator **Bob Menendez** (D-NJ) also signed on as a co-sponsor.

Surety Industry Pushes for 100% Bonding on P3s in Indiana

Last week, SFAA President & CEO **Lee Covington** and General Counsel **Rob Duke**, along with the Insurance Institute of Indiana and representatives from the NASBP, met with Indiana State Rep. Matt Lehman to advocate for 100% bonding on P3 projects in Indiana. Rep. Lehman's HB 1374 establishes surety bond requirements for public-private partnerships (P3s) at various levels. Currently, the bill gives the the public entity discretion to require payment and performance bonds at an amount set by the public entity. For projects exceeding \$25 million, but less than \$250 million, performance and payment bonds are required equal to 100% of the cost of the construction contract. For contracts exceeding \$250 million, bonds would be required in an amount not less than 50% of the construction costs. Covington, Duke and the other members of the industry coalition also met with other committee leaders who will be instrumental in passing this legislation.



The meetings were positive and constructive. Coalition members were able to debunk arguments raised by bill opponents that the bond requirement would prevent Indiana contractors from obtaining the construction contracts on P3s, given the reality that no Indiana contractors would act as the prime contractor on P3s. In fact, the lack of any bond requirement, particularly a payment bond, would be harmful to Indiana contractors, as they likely would participate as subcontractors. It is for this reason that the industry coalition was able to garner the support of the local contractors' association, Indiana Contractors, Inc, for 100% bonding. This is a significant development given ICI did not take a position during the last session. ICI also participated in the meetings. Rep. Lehman indicated his focus in pushing the bill forward will be the protection of subcontractors. Covington and Duke also pointed out that P3 bonding requirements are common. SFAA's compilation of the state P3 laws shows Kentucky, Indiana's neighbor, requires 100% bonding, and seven other surrounding states require bonding. SFAA is now working with our industry partners to prepare for a hearing on the bill.



SFAA Objects to Changes to Fidelity Bonds for Credit Unions

SFAA sent a comment letter last week to oppose a proposed requirement from the National Credit Union Administration (NCUA) that the fidelity bond allow the liquidating agent the option to purchase coverage in the event of an involuntary liquidation that extends the discovery period for two years for covered losses after liquidation. The proposed rules are for fidelity bond requirements for corporate credit unions and natural person credit unions. SFAA argued that the two-year discovery period is unreasonable because the fidelity bond typically is written on a discovery basis rather than an occurrence basis, effectively making the entire policy term a discovery period. Increasing the insurer's

exposure could reduce the bond's availability or increase the cost of the bond. SFAA also advised that the proposed requirements that the insurer to notify NCUA when the fidelity bond coverage is terminated as to an employee and when a deductible is increased above permissible limits likely would be impractical for the insurer to meet. The credit union is better able to provide this information so that these requirements ought to apply to the credit unions.

Direct Action on Public Official Bonds Defeated in New Hampshire

SFAA and APCIA defeated HB 194 and HB 217 in committee this week. Both bills would have permitted any private citizen that is damaged as a result of the failure of a public official to faithfully perform the duties of office or account properly for all money or property received, or through fraudulent or dishonest acts of officers, clerks and employees, to bring suit on the bond to recover. HB 194 applied to bonds for state officials, clerks, and employees. HB 217 would have permitted direct claims on bonds required for state,



county, and municipal officials, clerks, and employees. SFAA provided APCA with our talking points on the unintended consequences of the bills in diluting or depleting the protections of the bonds and the likelihood of the bonds not being widely available.



2019 Data Call for Statistics and Financial Statements

SFAA has issued its 2019 Call for Financial Statements. Included in the Call are requests to submit the following statutory documents:

- 2018 Annual Statement
- 2018 Insurance Expense Exhibit
- Quarterly Statements for Q1, Q2 and Q3 of 2019

The financial statements for all licensed companies in the U.S., both member and non-member companies, should be

submitted in response to this Call.

Please note that the method of submission has changed this year. Statements will no longer be accepted via email, but rather should be uploaded through the SFAA website. The portal will allow companies to submit larger files than they previously could via email, and creates a more secure method of sending statutory documents to the SFAA.

The Call for Statistics also was released. Data received through the Call for Statistics is validated and aggregated. The summary statistics, along with a list of companies filing statistics with the SFAA, are sent to the Department of Insurance for each state, D.C. and Puerto Rico, except for Texas. Ultimately, they are used as the foundation of SFAA's statistical plan reports, which include class code reports on a countrywide and state-by-state basis.

Submission of statistics is a benefit of SFAA membership and satisfies the requirement of all licensed insurers to file their property and casualty statistics with a licensed statistical agent. Questions about filing your company's surety and fidelity statistics with the SFAA should be sent to Ed O'Donnell at (202) 778-3632 or eodonnell@surety.org.

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www.surety.org

The Surety & Fidelity Association of America (SFAA) is a trade association of more than 425 insurance companies that write over 97 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.

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