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SFAA's Top Two Surety Issues in the New Congress

When Congress convened for a new session on January 3, SFAA, NASBP and other members of the federal Construction Insurance Industry Procurement Coalition were active in congratulating the newly sworn-in Members of Congress and used the opportunity to promote a procurement bill that the Coalition will pursue this year.



The two surety provisions in the bill would:

- Exempt the Miller Act bond threshold from the required indexing for inflation; and
- Require any construction performed under a P3 built on real property owned by the federal government

to be deemed as construction of a public building or public work that needs to be bonded under the Miller Act

Some of the contractors' associations want to reduce the ten percent retainage withheld under federal construction contracts to five percent as that is the requirement in most states. Therefore still under consideration is a provision for the Coalition bill that would limit retainage in an amount not more than 5% in contracts greater than the Small Acquisition Threshold and to not more than 3.5% for projects under the threshold. This provision does not necessarily limit retainage to 5%. The amount of retainage cannot be more than 5% or 3.5% so that any amount under these maximums would be permitted. If the goal is a 5% limit, the bill instead could require that the amount not be less than 5% or just set the rate at 5%.

The Coalition bill also provides that the six-year limitation in the Federal Acquisition Regulation (FAR) for claims against the contractor or by the contractor against the federal government under federal construction contracts is determined from the date of the final payment made to the contractor, unless a longer period is expressly provided in a warranty from the contractor.

SFAA's Government Affairs Advisory Committee, P3 Working Group and Contract Surety Committee are reviewing the Coalition bill.



Indiana Bill Would Update Bonding Requirements for P3 Projects

SFAA expects legislation to be introduced soon in Indiana that would include a clear requirement for payment and performance bonds in each of the state's three P3 laws as follows:

- For projects under \$25 million, the contracting entity determines the amount of the bonds;
- For projects between \$25 million and \$250

million, the bond amounts must be equal to the cost to design and construct the project;

- For projects in excess of \$250 million, the bonds must be in amount not less than 50% of the cost to design and construct the project;

Earlier this year SFAA provided the National Conference of Insurance Legislators (NCOIL) with a full briefing on P3 bonding issues at the request of Indiana legislators. SFAA, in partnership with the Insurance Institute of Indiana and NASBP, will be meeting with the bill sponsor later this month and determining next steps to pass this bill.

SFAA's P3 Working Group and Government Affairs Advisory Committee are reviewing the bill drafts.

Governors Appoint New Insurance Commissioners

As new governors take office, new insurance commissioners also may be appointed. In Wisconsin, Democratic Governor **Tony Evers** named **Mark Afable**, a veteran property-casualty insurance industry professional. New Republican Tennessee Governor

Bill Lee announced that Commissioner **Julie McPeak** will continue to serve as insurance commissioner. Connecticut Insurance Commissioner **Katie Wade** resigned, effective December 19th. **Paul Lombardo**, an actuary in the insurance department, is serving as acting commissioner until the new governor appoints a new insurance commissioner. New York Governor **Andrew Cuomo** nominated **Linda Laceywell**, his current Chief of Staff to be the next Superintendent of Financial Services. She will become Acting Superintendent on February 1, pending her confirmation. **Colin Hayashida** has been named as the new insurance commissioner of Hawaii. He was previously the rate and policy analysis manager for the insurance department.



Four new elected insurance state commissioners will take office in January:

- Democrat **Ricardo Lara**, a state senator, is the new California Commissioner;
- In Georgia, Republican **Jim Beck**, an experienced insurance industry professional and former chief of staff in the insurance department, now is the commissioner.
- Republican **Vicki Schmidt**, a pharmacist and former state senator, is the new insurance commissioner in Kansas
- Oklahoma's new insurance commissioner is Republican **Glen Mulready**, the chair of the House Insurance Committee.



SFAA Welcomes Bill Heinbokel as Director of Fidelity and Regulatory Compliance

SFAA is pleased to announce that it has hired **Bill Heinbokel** as Director of Fidelity and Regulatory Compliance. Bill will be responsible for all issues regarding the Fidelity line of business, including maintaining SFAA's library of standard fidelity forms. Bill also will lead SFAA's compliance function and relationships with state

insurance departments. Bill was previously CNA's product leader for the Fidelity and Kidnap, Ransom & Extortion lines. Bill will officially join the SFAA staff during the week of January 14, 2019.

Robert Duke, SFAA's General Counsel and Senior Vice President of Policy said the hiring is a big win for SFAA and its members. "Hiring an expert fidelity professional dedicated to SFAA's forms and compliance issues allows SFAA to take its services as an Advisory Organization to an even higher level. We want to continue to provide our members fidelity and crime forms that are responsive to their needs," said Duke.

Bill has over 30 years of experience in the fidelity and crime lines of business. Bill has a BA in Economics and Business Administration from Ursinus College.

2017 Statistical Reports Available at Surety.org

The final versions of the 2017 statistical plan reports have been posted on the SFAA website. The reports are based on statistics collected through the SFAA Statistical Plan and represent approximately 85-90% of the surety industry experience and approximately two-thirds of the fidelity aggregate (i.e. the monoline fidelity portion of the industry aggregate).

The final reports include supplemental submissions and corrections made subsequent to the posting of the preliminary versions. While the final version report data for any specific class code or state amount may vary somewhat or even widely from the preliminary version, in terms of overall figures, these revised reports contain few changes of significance when compared to the first reports. One significant change was the correction of an overstated reserve filing in fidelity class code 780, resulting in a \$25 million reduction in losses incurred for this class code.

Any questions about these reports or any other SFAA statistical plan or financial statement report should be directed to Ed O'Donnell at (202) 778-3632 or eodonnell@surety.org.



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The Surety & Fidelity Association of America
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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