February 13, 2020

Via Electronic Mail

Timothy E. Gribben
Commissioner, Bureau of the Fiscal Service
The Department of The Treasury,
Surety Branch, The Bureau of the Fiscal Service,
3201 Pennsy Drive, Building E,
Landover, MD 20785

Re: RIN 1530–AA20
Surety Companies Doing Business With the United States;
Request for Information
Docket No.: FISCAL–2019–0002

Dear Mr. Gribben:

The Surety & Fidelity Association of America (“SFAA”)\(^1\) appreciates the opportunity to respond to the Bureau of the Fiscal Service’s (the Bureau) Request for Information concerning Surety Companies Doing Business with the United States. To summarize our response, SFAA generally supports the current regulations of the Treasury Department, but notes, with respect to the credit for reinsurance analysis, SFAA members have differing views. More specifically, SFAA urges the Bureau to continue the following: (1) using its current methodology for valuing assets and liabilities in most respects (but as noted, SFAA members have different views to the extent these rules are affected by the Bureau’s treatment of credit for reinsurance), (2) evaluating applications from companies that are part of an insurance group’s pooling agreements in the manner currently used, (3) maintaining the certified and admitted company lists, (4) applying the 10% underwriting limit and its requirements for admissible and non-admissible assets, and (5) maintaining the current schedule and process for applications and renewals. As noted, given the diverse views held by stakeholders in the U.S. surety industry, SFAA is not able to provide consensus recommendations on the Bureau’s current approach on credit for reinsurance and therefore will not be making a recommendation in this regard. SFAA’s detailed response to all of the questions follow below.

\(^1\) SFAA is a trade association consisting of approximately 450 companies that are licensed to provide surety and fidelity insurance. Over 98% of bonds that secure public construction projects are provided by SFAA members. SFAA is also a licensed rating or advisory organization in all states and is designated by state insurance departments as a statistical agent for the reporting of premium and loss statistics for surety and fidelity.
1) Should Fiscal Service consider changing the approach or methodology it uses to value the assets and liabilities of a company applying to be certified as an insurer or reinsurer, or to be recognized as an admitted reinsurer? In particular, please consider commenting on the following items: (a) Admissible versus non-admissible assets; (b) capital requirements; (c) underwriting limitation; and (d) comparison to requirements imposed by relevant regulatory authorities.

SFAA supports the Bureau’s current approach and methodology for evaluating the assets and liabilities of a company applying to be certified as an (re)insurer or an admitted reinsurer. In addition, SFAA strongly supports the Bureau’s longstanding rules regarding admissible versus non-admissible assets, capital requirements, and underwriting limitations, but notes that to the extent these rules are affected by the Bureau’s analysis of credit for reinsurance, SFAA members have diverging views, as more fully explained in SFAA’s response to question 3.

As the owner of risks running to the federal government, the Bureau of the Fiscal Service plays a critical role in analyzing the companies that provide surety protection for federal assets. It is important that the Bureau maintain comprehensive oversight of companies permitted to (re)insure federal assets, including but not limited to maintaining a Treasury list of certified sureties (T-list). Furthermore, SFAA strongly supports the Bureau’s current rules with respect to its single risk underwriting limitation. These rules have helped to ensure federal projects are completed on time and per specifications, protect federal and taxpayer dollars, and sustain the current and historic stability of the surety industry.

Regarding the last portion of this question, subparagraph (d) which specifically references other requirements imposed by relevant regulatory authorities, SFAA addresses this topic in question 3 to the extent it relates to the credit for reinsurance analysis.

2) What different methodologies, if any, should Fiscal Service consider using when evaluating applications from companies that are part of an insurance group’s pooling agreement? Please provide your views on whether Fiscal Service should analyze such applicants’ financial condition at the group level rather than, or in conjunction with, analysis at the individual company level. Please address the benefits and risks to the federal government of performing the financial analysis at the group level.

SFAA supports the Bureau’s current methodology of evaluating an insurance entity’s individual companies rather than engaging in a financial analysis at the corporate group level. Given the focus of domestic U.S. insurance markets on legal entity supervision, we believe the Bureau should maintain its current approach. We acknowledge that the group solvency issue is being considered currently by the International Association of Insurance Supervisors (IAIS) and the National
Association of Insurance Commissioners (NAIC), but believe it is premature to comment at this time. SFAA would, however, be interested in commenting on any specific regulatory changes the Bureau is contemplating with respect to consideration of the financial condition of a (re)insurer at the group level.

3) *Should Fiscal Service consider changing the approach or methodology it uses to determine the credit allowed for reinsurance and, if so, what changes should it consider? Please address both reinsurance of federal surety bonds and of non-federal risks and provide the rationale for any proposed changes.*

Given the diverse views held by stakeholders in the U.S. surety industry, SFAA is not able to provide a consensus recommendation on changes to the Bureau’s current approach on credit for reinsurance. SFAA acknowledges that the changes taking place throughout the state departments of insurance\(^2\) and with recent international agreements reflect a new approach to solvency regulation that permits, in certain circumstances, the use of non-U.S. based reinsurance. SFAA understands that these changes have created regulatory differences between acceptable reinsurance under the state insurance system and the current processes followed by Treasury with respect to its analysis of sureties. However, different positions are held among SFAA’s membership on whether or how the Bureau should change its credit for reinsurance rules with respect to its analysis of sureties.

SFAA, nevertheless, recognizes the Bureau’s unique position as both the protector of federal government assets and the regulator of the surety protection provided for these federal government assets. The Bureau established the current underwriting limitation to provide a needed safeguard to ensure approved sureties do not assume risks they are not capable of insuring. SFAA cautions the Bureau that if it proceeds with any changes to these rules that such changes do not undermine the important role of the underwriting limitation. Finally, in this regard, SFAA reminds the Bureau of the important difference between traditional insurance products and surety and the obligations thereunder as it considers how to proceed. Most traditional insurance products generally expect high frequency, low severity losses, while surety expects infrequent losses with higher severity.

As a result of the diverging positions, SFAA is not able to make a recommendation on changes to the Bureau’s approach at this time, but we hope that the above comments will help guide the Bureau as it contemplates how to move forward with this issue. SFAA welcomes an opportunity to continue discussions with the Bureau on this issue on behalf of the industry.

\(^2\) Changes through the state insurance system are guided by the NAIC Model Law for Credit for Reinsurance and Regulation initially released in 2011 and recently modified in 2019. Some of these changes have been driven by international agreements, including the US-UK and US-EU Covered Agreements.
4) Should Fiscal Service consider changing any aspects of the approach or methodology it uses to determine recognition of a company as an admitted reinsurer? In your response, please address Fiscal Service’s treatment of both domestic and alien reinsurers and discuss the benefits and risks to the federal government of any proposed changes.

SFAA supports the Bureau’s current methodology for recognition of companies as an admitted reinsurer, but notes that SFAA members have differing views to the extent this methodology includes the credit for reinsurance analysis. At this point in time, SFAA is not providing any specific recommendations to change how the Fiscal Service reviews domestic or alien admitted insurer applications because there remains a difference amongst its members on the Bureau’s approach on credit for reinsurance as noted in question 3. SFAA would, however, be interested in commenting on any specific regulatory changes the Bureau is contemplating on how it evaluates domestic and alien admitted reinsurers.

5) Should Fiscal Service consider changing the permissible methods, as described in the program’s regulations and annual letters published on its website, for limiting risk in excess of a surety company’s underwriting limitation? In your response, please address permissible methods for limiting risk in excess of the underwriting limitation relative to both federal surety bonds and to non-federal risks.

SFAA strongly supports maintaining the Bureau’s current approach for limiting risk in excess of a surety company’s underwriting limit. As previously stated, the current underwriting limitation provides a needed safeguard to ensure approved sureties do not assume risks they are not capable of insuring. SFAA strongly encourages the Bureau to maintain its current 10% underwriting limitations.

6) Should Fiscal Service consider changing the schedule and the documentation required for issuing and renewing certificates of authority and, if so, what changes should it consider? As an example, but not a limitation on the scope of the foregoing question, should Fiscal Service consider issuing certificates of authority that are valid for more than one year based on a company’s financial condition? Please address the benefits and risks to the federal government of implementing such proposed changes, including issuing certificates of authority that are valid for more than one year.

SFAA supports the Bureau’s current schedule and the documentation required to renew an insurer’s certificate of authority. SFAA members already have built enterprise-wide processes that involve several stakeholders and time sensitive deadlines to meet the current Bureau schedule and processes. SFAA asks the Bureau not to make any changes, even minor tweaks, to its reporting requirements/timeline to avoid operational disruptions and unnecessary compliance.
costs to surety companies given our members do not see an obvious or material benefit to be gained.

Furthermore, the SFAA cautions against the Bureau issuing certificates of authority for greater than one year. An insurer’s solvency changes year by year and hence should be reviewed on an annual basis to ensure each company maintains its good standing with the Bureau.

7) **Please recommend any other revisions to the program regulations as addressed in 31 CFR part 223 or the annual letters published on Fiscal Service’s website that are consistent with protecting the federal government and provide the rationale for those revisions.**

SFAA does not have any further recommendations to offer the Bureau at this time in relation to 31 CFR part 223 or its annual letters. SFAA looks forward to continuing to work closely with the Bureau as a representative of the interests of the surety industry.

We appreciate the important work of the Treasury Department and the Bureau in this area and thank you for the opportunity to submit the above comments. SFAA remains available to discuss these matters further.

Respectfully submitted for your consideration,

[Signature]

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