**THE SURETY & FIDELITY ASSOCIATION OF AMERICA**

**MEMORANDUM**

**TO:** Government Affairs Advisory Committee

**FROM:** Daniel Wanke

**RE:** Federal and State Regulatory Report—Fidelity Bonds

**DATE:** October 23, 2014

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**The following is a report on rules affecting fidelity bonds that recently were proposed or adopted. For your convenience, the report is organized by regulations that have been finalized, pending regulations on which SFAA has commented and newly proposed regulations that SFAA is reviewing. If SFAA members want additional information or copies of the regulations summarized in this report, please do not hesitate to contact us. Going forward, these reports will be distributed monthly. We appreciate your feedback on whether these monthly reports are informative and useful to you.**

## ADOPTED REGULATIONS

| Jurisdiction | Agency | Citation | Recent History | Issue | SFAA Summary |
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| Federal | Department of the Treasury | 31 CFR Part 223 | 10/16/14 Final Rules | Surety Regulation | The U.S. Department of the Treasury has finalized regulations regarding the authority of federal agencies to refuse to accept a bond from a surety company that is Treasury-certified. The revised regulations authorize agency officials to decline a bond from a Treasury-certified surety "for cause," which includes but it not limited to the surety's failure to pay or satisfy an administratively final bond obligation that is due to the agency. Agencies may decline a bond "for cause" so long as it is defined under existing regulations or regulations that the agency develops and the |

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| | | | | | decision is consistent with the agencies' authority.<br><br>Prior to declining a bond, a federal agency must give the surety company advance written notice of the intent to decline the bond along with the reasons or cause. The surety must be given an opportunity to rebut the reasons or cause, as well as an opportunity to cure. Finally, the procedures for declining a bond must be established by regulations developed by each agency. The regulations are subject to existing rule adoption procedures that include notice and an opportunity to comment.<br><br>The Treasury regulations also amend existing provisions whereby a federal agency may submit a complaint to the Treasury Department to request that the surety's certificate be revoked. Treasury states that the final rules clarify existing procedures for adjudicating complaints based on these bond obligations. The final rule specifies that the Treasury's authority to review the complaint would be to review the reasonableness of the agency's administratively final decision. Treasury is required to notify the surety company of the facts or conduct indicating a failure to comply with the regulations and law and provide the surety company an opportunity to respond. The certificate will be revoked if the company does not respond in a satisfactory manner, or if it fails to demonstrate or achieve compliance. |
| Illinois | Corrections, Criminal Justice, and Law Enforcement | Ill. Admin. Code Title. 20, § 801.70 | 09/19/14 Adopted Rules | Fidelity Bond | The Illinois Department of Corrections repealed its regulations on secure residential youth care facilities because the legislation on which the regulations are based was found unconstitutional. With the repeal of the regulations, the fidelity bond required from the governing body of an incorporated facility was eliminated. |

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| Maryland | Department of Housing and Community Development | COMAR 05.04.15.01, et seq. | 09/19/14 Adopted Regulations | Fidelity Bond—Escrow Accounts | The Maryland Department of Housing and Community Development adopted regulations with the requirements for grants under the Accessible Homes for Senior Homeowners Grant Program. For housing project grant disbursements, the new regulations provide that the grant funds must be held in a non-interest-bearing account established by the local grant administrator. If the funds are held in an escrow account or an attorney's trust account held and managed by an escrow agent, the agent must cover his or her employees who have access to the account with a fidelity bond, or insured with employee dishonesty liability insurance, in an amount not less than $100,000. |
| New York | Banking Department | 3 NYCRR 418.12; 3 NYCRR 418.13 | 09/17/14 Emergency Regulations | License Bond—Mortgage Servicers | The New York Banking Department (Department) has re-adopted emergency rules for mortgage loan servicers, which require registration and surety bond and fidelity bond requirement. The rules require servicers to register and post a surety bond in an amount not less than $250,000 from an insurance company licensed in the State. The rules provide that institutions whose deposits are insured by the Federal Deposit Insurance Corporation and are at least adequately capitalized as defined in the Federal Deposit Insurance Act are exempt from the net worth and surety bond requirements.<br><br>Further, the servicer must file a fidelity bond and evidence of errors and omissions (E&O) coverage for losses resulting from fraud, embezzlement, misplacement, forgery and any similar events. The amount required is based on the volume of the servicer's business. The fidelity bond and the E&O policy may provide for a deductible amount not to exceed the greater of $100,000 or 5% of the face amount of the bond. The amounts required are as follows: |

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| | | | | | **Bond Amount and E&O Coverage** — **Aggregate $ amount of NY loans serviced**<br>$300,000 — $100,000,000 or less<br>plus .15% — of the next $500,000,000<br>plus .125% — of the next $400,000,000<br>plus .100% — of the amount over $1 billion<br><br>For both the surety bond and the fidelity bond, the Superintendent may double the bond amount as a penalty for servicers "engaged in a pattern of conduct resulting in bona fide consumer complaints of misconduct." The rules also set forth additional parameters for exemptions from and modifications to the bonding requirements at the Superintendent's discretion. |
| Oregon | Workers' Compensation Division | OAR 436-050-0175; OAR 436-050-0270; OAR 436-050-0280 | 09/01/2014 Adopted Regulations | Fidelity Bond—Workers' Compensation Plans | The Oregon Workers' Compensation Division has revised its regulations to implement the new statutory requirements for workers' compensation self-insurance plans concerning the handling of defaults and securities. Prior regulations required the group administrator to obtain a fidelity bond. The revised regulations allow the group to obtain a comprehensive crime policy and require the self-insured employer group to file a copy of the fidelity bond or the comprehensive crime policy that the group has obtained by March 1 of each year. |

## NEWLY PROPOSED REGULATIONS

| Jurisdiction | Agency | Citation | Recent History | Issue | SFAA Summary |
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| Maryland | Department of Housing and Community Development | COMAR 05.13.01.03, et seq. | 10/03/14 Proposed Rules | Fidelity Bond—Community Lending Program | The Maryland Department of Housing and Community Development (Department) has proposed rules that would require entities applying to administer microenterprise loans under the Neighborhood Business Development Program to obtain a fidelity bond or employee dishonesty liability |

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| | | | | | insurance in an amount that the Department would determine. Comments are due November 3, 2014. |
| North Dakota | Commissioner of Insurance | ND ADC 45-05-09-01, 02, 03, 04 | 10/11/14 Proposed Rules | Fidelity Bond—Coverage Requirements | The North Dakota Commissioner of Insurance has proposed rules concerning the types of insurance policies would be permitted to have defense expenses included in the limit of liability. Fidelity bonds are among the lines included for the defense within limits provisions. Comments are due December 1, 2014. |