



## **Surety Eligibility Requirements: The “A” Rated Surety Issue**

When a new law is passed requiring bonding, sometimes the legislature or public entity that the bond will protect wants to set criteria for the surety that will issue the bond. Sometimes, a requirement that the surety be “A” rated by one of the nationally recognized rating agencies—AM Best’s, Fitch, Moody’s and Standard and Poor’s-- will be considered as part of a new bonding requirement.

The Surety & Fidelity Association of America (SFAA) supports the intent of such proposals to assure that a financially sound surety issues the bond guaranteeing the principal’s land lease or special permit obligations. SFAA believes, however, that there are better ways to accomplish this, and that such eligibility requirements for a surety may unnecessarily limit the available market for the required bond.

Sureties, like all other insurance companies, are subject to substantial state financial and market conduct regulation. To issue a bond in any state, the surety must be licensed in the state and subject to the regulation of the state insurance department, which includes minimum capital and surplus requirements, financial reporting and market conduct and financial exams, among many other types of regulation. To write a surety bond that is permitted or required under federal law, sureties also must be listed on the U.S. Treasury Department’s list of approved sureties. Before listing a surety, the Treasury Department carefully scrutinizes the financial condition of the surety.

The primary criteria for the surety company issuing a required state bond should be that it is licensed and in good standing with the state insurance department, which is the state agency that is charged by state law with regulatory oversight of the surety industry. Since a required state bond will be written for the benefit of another state agency, it makes sense for state agencies to be referring to and relying on each other.

Relying on the state insurance department also would be the most effective way to assure the financial condition of the surety. Any surety writing bonds required by the state would have to be licensed in the state. The state insurance department would be in the best position to know the financial standing of the surety, and it would be the most readily accessible source for any other state agency for questions about the surety’s licensing status and financial condition or complaints that the insurance department has received about the surety’s business practices in the state.

While the practices of most state agencies is to rely on each other, there are some instances of state requirements for the surety to be Treasury listed as well, so that the public entity requiring the surety bond is relying on both the state and federal entities charged by law to regulate sureties. While many SFAA members are listed on the U.S. Department of Treasury list, the

sureties that do not write bonds permitted or required by the federal government would not need to be on that list. Most sureties on the Treasury list write contract bonds on federal construction projects. Sureties that write primarily commercial (non-construction) surety bonds may not be Treasury listed, so that such a requirement may needlessly limit the market for many types of bonds, such as license and permit, sales tax and motor vehicle bonds. States requiring Treasury listing may be eliminating some of their domestic surety companies from the market.

SFAA also believes that the option of an “A” rating from a nationally recognized rating agency may further limit the availability of some required bonds. There is no standard rating system followed by the private entities publishing ratings of insurance companies. An “A” rating in one entity can be a much higher qualification than an “A” in another entity. An A- rating from A.M. Best’s, for example, still is considered as an “excellent” rating. Yet, a surety with an A- rating from Best’s could be disqualified from writing a bond for which an “A” rating is required. This makes little sense because the state insurance departments already take into consideration the surety’s rating from private entities as one element in its overall financial analysis of an insurance company, and ratings from nationally recognized rating companies are based in part on information from the state insurance departments.

Incorporating the requirement of an “A” rating into a statute also requires that the statute be updated to reflect the changing practices of the nationally recognized rating organizations. What if one of the rating agencies moves away from an alphabetical rating system? Will all the sureties that use that organization be disqualified from writing any bond requiring an “A” rating??

The requirement of an “A” rating may needlessly eliminate some financial sound sureties from the market for a bond.