

Surety Provisions in the Economic Stimulus Legislation

After the Senate passed its version of HR 1, the House and Senate Small Business Committee staffs were charged to work out the differences between the small business provisions in the House and Senate versions of the economic stimulus bill. In the final bill that was sent to the President for his signature, the following surety provisions were included:

• Changes to the SBA Bond Program (all these changes expire on September 30, 2010)

--The limit on the SBA's bond guarantee is increased \$2 million to \$5 million and can be increased up to \$10 million if a federal agency's contracting officer certifies that the guarantee is necessary.

--The definition of a small business is the standard size for the primary industry in which that business is engaged, as determined in accordance with the North American Industry Classification System.

--The Administrator of the SBA is given discretion to pay a claim, in whole or in part, that could otherwise be denied under the conditions set forth in the law.

--The SBA shall not deny liability to a surety under bonds issued with the prior approval of the SBA based upon material information that was provided as part of the guarantee application.

• Funding for the SBA Bond Guarantee Program

--\$15 million in additional capital is added to Bond Program's revolving fund, which will remain there until expended.

• Study of the SBA Bond Guarantee Program

--The SBA Administrator is required to conduct a study of the current funding structure of the bond guarantee program, which shall include: (1) an assessment of whether the program's current funding framework and fees are inhibiting the program's growth; and 2) an assessment of whether surety companies and small business concerns could benefit from an alternative funding structure.

--The report is due no later than 180 days after the enactment of the stimulus legislation.

• Other Bond Assistance Programs

--\$20 million in funding is added for 2009 for the Minority Resource Center (Center) of the U.S. Department of Transportation (DOT) for its disadvantaged business enterprise bonding assistance program. Current law provides that the Center shall provide assistance in obtaining bid, payment, and performance bonds by disadvantaged business enterprises. The DOT program was created in 1983, but was not funded until 2005. Current authorizations for appropriations to the program only run through 2009. The stimulus funding would be in addition to Congress' regular appropriations process \$20 million for the DOT's bonding assistance program.

● ***3% Federal Withholding Tax***

--The effective date of the new 3% federal withholding tax on all federal contractors, which is December 31, 2010, was delayed one year.

● ***What's Not in the Stimulus Package?***

--Controversial provisions were removed that would have required any business receiving federal stimulus money to verify that their employees are legally authorized to work in the United States through E-Verify.

--There are no bond waivers in the bill.