

Small Business Administration

§ 115.33

amount. If the increase in the Principal's fee is less than \$40, such increase is not due until all unpaid increases in the Principal's fee aggregate at least \$40. The Surety's check for payment of the increase in the Surety's guarantee fee, computed on the increase in the bond Premium, may be submitted in the ordinary course of business. Increases in the Surety's fee are not due until they aggregate at least \$40.

(3) *Decreases; refunds.* Whenever SBA is notified of a decrease in the Contract or bond amount, SBA will refund to the Principal a proportionate amount of the Principal's guarantee fee and rebate to the Surety a proportionate amount of SBA's Premium share in the ordinary course of business. If the amount to be refunded or rebated is less than \$40, such refund or rebate will not be made until the amounts to be refunded or rebated, respectively, aggregate at least \$40. Upon receipt of the refund, the Surety must promptly pay a proportionate amount of its Premium to the Principal.

§ 115.33 Surety bonding line.

A surety bonding line is a written commitment by SBA to a Prior Approval Surety which provides for the Surety's Execution of multiple bonds for a specified small business strictly within pre-approved terms, conditions and limitations. In applying for a bonding line, the Surety must provide SBA with information on the applicant as requested. In addition to the other limitations and provisions set forth in this part 115, the following conditions apply to each surety bonding line:

(a) *Underwriting.* A bonding line may be issued by SBA for a Principal only if the underwriting evaluation is satisfactory. The Prior Approval Surety must require the Principal to keep it informed of all its contracts, whether bonded by the same or another surety or unbonded, during the term of the bonding line.

(b) *Bonding line conditions.* The bonding line contains limitations on the following:

(1) The term of the bonding line, not to exceed 1 year subject to renewal in writing;

(2) The total dollar amount of the Principal's bonded and unbonded work on hand at any time, including outstanding bids, during the term of the bonding line;

(3) The number of such bonded and unbonded contracts outstanding at any time during the term of the bonding line;

(4) The maximum dollar amount of any single guaranteed bonded Contract;

(5) The timing of Execution of bonds under the bonding line—bonds must be dated and Executed before the work on the underlying Contract has begun, or the Surety must submit to SBA the documentation required under § 115.19(f)(1)(ii); and

(6) Any other limitation related to type, specialty of work, geographical area, or credit.

(c) *Excess bonding.* If, after a bonding line is issued, the Principal desires a bond and the Surety desires a guarantee exceeding a limitation of the bonding line, the Surety must submit an application to SBA under regular procedures.

(d) *Submission of forms to SBA—(1) Bid Bonds.* Within 15 business days after the Execution of any Bid Bonds under a bonding line, the Surety must submit a "Surety Bond Guarantee Underwriting Review" (SBA Form 994B) to SBA for approval. If that form is already on file with SBA and no new financial statements are required or have been received from the Principal, a "Surety Bond Guarantee Review Update" (SBA Form 994C) may be submitted instead. If the Surety fails to submit either form within this time period, SBA's guarantee of the bond will be void from its inception unless SBA determines otherwise upon a showing that a valid reason exists why the timely submission was not made.

(2) *Final Bonds.* Within 15 business days after the Execution of any Final Bonds under a bonding line, the Surety must submit a signed Prior Approval Agreement and a "Surety Bond Guarantee Underwriting Review" (SBA Form 994B) to SBA for approval. If that form is already on file with SBA and no new financial statements are required

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or have been received from the Principal, a “Surety Bond Guarantee Review Update” (SBA Form 994C) may be submitted instead. If the Surety fails to submit these forms together with the Principal’s payment for its guarantee fee within this time period, SBA’s guarantee of the bond will be void from its inception unless SBA determines otherwise upon a showing that the Contract is not in default and a valid reason exists why the timely submission was not made.

(3) *Additional information.* The Surety must submit any other data SBA requests.

(e) *Cancellation of bonding line—(1) Optional cancellation.* Either SBA or the Surety may cancel a bonding line at any time, with or without cause, upon written notice to the other party. Upon the receipt of any adverse information concerning the Principal, the Surety must promptly notify SBA, and SBA may cancel the bonding line.

(2) *Mandatory cancellation.* Upon the occurrence of a default by the Principal, whether under a contract bonded by the same or another surety or an unbonded contract, the Surety must immediately cancel the bonding line.

(3) *Effect of cancellation.* Cancellation of a bonding line by SBA is effective upon receipt of written notice by the Surety. Bonds issued before the effective date of cancellation remain guaranteed by SBA. Upon cancellation by SBA or the Surety, the Surety must promptly notify the Principal in writing.

§ 115.34 Minimization of Surety’s Loss.

(a) *Imminent Breach—(1) Prior approval requirement.* SBA will reimburse its guaranteed share of payments made by a Surety to avoid or attempt to avoid an Imminent Breach of the terms of a Contract covered by an SBA guaranteed bond only if the payments were made with the prior approval of OSG. OSG’s prior approval will be given only if the Surety demonstrates to SBA’s satisfaction that a breach is imminent and that there is no other recourse to prevent such breach.

(2) *Amount of reimbursement.* The aggregate of the payments by SBA to avoid Imminent Breach cannot exceed 10% of the Contract amount, unless the

Administrator finds that a greater payment (not to exceed the guaranteed share of the bond penalty) is necessary and reasonable. In no event will SBA make any duplicate payment pursuant to this or any other provision of this part 115.

(3) *Recordkeeping requirement.* The Surety must keep records of payments made to avoid Imminent Breach.

(b) *Salvage and recovery.* A Prior Approval Surety must pursue all possible sources of salvage and recovery until SBA concurs with the Surety’s recommendation for a discontinuance or for a settlement. The Surety must certify that continued pursuit of salvage and recovery would be neither economically feasible nor a viable strategy in maximizing recovery. See also § 115.17(b).

§ 115.35 Claims for reimbursement of Losses.

(a) *Notification requirements—(1) Events requiring notification.* A Prior Approval Surety must notify OSG of the occurrence of any of the following:

(i) Legal action under the bond has been initiated.

(ii) The Obligee has declared the Principal to be in default under the Contract.

(iii) The Surety has established a claim reserve for the bond.

(iv) The Surety has received any adverse information concerning the Principal’s financial condition or possible inability to complete the project or to pay laborers or suppliers.

(2) *Timing of notification.* Notification must be made in writing at the earlier of the time the Surety applies for a guarantee on behalf of an affected Principal, or within 30 days of the date the Surety acquires knowledge, or should have acquired knowledge, of any of the listed events.

(b) *Surety action.* The Surety must take all necessary steps to mitigate Losses resulting from any of the events in paragraph (a) of this section, including the disposal at fair market value of any collateral held by or available to the Surety. Unless SBA notifies the Surety otherwise, the Surety must take charge of all claims or suits arising from a defaulted bond, and compromise, settle and defend such suits.