

THE SURETY & FIDELITY ASSOCIATION OF AMERICA

MEMORANDUM

TO: Government Affairs Advisory Committee
FROM: Daniel Wanke
RE: Federal and State Regulatory Report—Commercial Surety
DATE: November 11, 2009

The following is a report on rules affecting commercial surety that were recently proposed or adopted. Regulations summarized in previous reports are marked (♦) for your convenience. The status of these regulations is updated in this report.

FEDERAL

Department Circular 570: Department of the Treasury Financial Management Service—Fiscal Service

The U.S. Department of the Treasury (Department) published revisions to the 2009 edition of *Circular 570*. The Department has terminated the certificates of authority as an acceptable surety on Federal bonds for the following companies: Excelsior Insurance Company; Peerless Indemnity Insurance Company; Consolidated Insurance Company; Indiana Insurance Company; The Netherlands Insurance Company and The Midwestern Indemnity Company. The terminations were effective on October 8, 2009. Bonds already issued and in effect from these companies will be allowed to expire, and bonds that are continuous will not be renewed.

29 CFR Part 501: Department of Labor

Miscellaneous Bond: Temporary Agricultural Employment of H-2A Aliens

PROPOSED: 09/04/2009
STATUS:
09/04/2009 Proposed Rule
POSITION: Support

The U.S. Department of Labor (Department) has proposed revisions to the existing regulations for farm labor contractors that would continue the bond requirement but revise the amount. Currently, the contractor must post a surety bond in connection with hiring temporary nonimmigrant laborers (H-2A workers) to ensure the employer's compliance with his or her contractual obligations to the employees and with the certification requirements of the existing rules. The bond is payable to the Administrator for the Wage and Hour Division of the Department (Administrator) and must be in the following amounts: \$5,000 for 25 or fewer employees, \$10,000 for 25 to 49 employees, and \$20,000 for 50 employees or more. There is no

prescribed bond form. In response to a previous rule, SFAA had developed a form that the Department advised would be acceptable. The proposed rules would add two tiers to this bonding requirement for contractors with 75 employees or more. Under the proposal, the existing \$20,000 bond would be for contractors employing 50 to 74 employees. A \$50,000 bond would be required for contractors with 75 to 99 employees, and a \$75,000 bond would be required for contractors employing 100 workers or more. Of note, current regulations allow for an increase in the bond amount with notice and a hearing, if the Administrator demonstrates that the bond is insufficient to meet potential liabilities. The proposal notes the Department's continued support for the bond requirement as it "permits the Department to ensure labor contractors can meet their payroll and other obligations contained in the terms of the job order and the H-2A program obligations." The Department notes in the proposal that comments are specifically desired concerning the proposed increase.

Current regulations provide that the surety's aggregate liability is limited to the face amount of the bond. The surety is obligated to pay any sums owed to the Administrator for wages and benefits that are owed to H-2A and U.S. workers based on the Department's final decision finding that the contractor had violated the rules concerning the labor certification that the bond is intended to cover. The bond covers liability incurred during the period indicated in the labor certification that the contractor listed in his or her application. The Department has proposed to require the bond to remain in force for not less than two years from the date on which the labor certification expires. If the Wage and Hour Division has commenced any enforcement actions against the employer prior to that date, the bond must remain in force until the conclusion of the action and any appeal or related litigation. The rules also would increase the notice period for cancellation from 30 to 45 days.

SFAA had commented to Department staff on a previous rule that the proposed regulations should require that the executed bond form be provided to the Department. The regulations only require that information concerning the bond (name of surety, address, etc.) be submitted.

AGENCY CONTACT:

For further information on 20 CFR part 655, contact William L. Carlson, PhD, Administrator, Office of Foreign Labor Certification, ETA, U.S. Department of Labor, 200 Constitution Avenue, NW, Room C-4312, Washington, DC 20210

ALABAMA

◆440-X-3-.03: Board of Heating and Air Conditioning Contractors License Bonds

PROPOSED: 06/30/2009

ADOPTED: 09/02/2009

The Alabama Board of Heating and Air Conditioning (Board) adopted rules to implement HB 184 (2009), which increased the amount of the bond for certified heating and air conditioning contractors from \$10,000 to \$15,000. The new law subjects refrigeration contractors to the bond requirement and it makes the bond requirement applicable to all "active" contractors. The rules

implement the new law exactly, so SFAA did not comment.

AGENCY CONTACT:

Kathy S. LeCroix, Executive Director, 630 Union St, Ste 630, Montgomery, AL 36130,
334-242-5550

**560-X-13-.02: Medicaid Agency
Durable Medical Equipment and Medical Supply Providers**

PROPOSED: 10/30/2009

STATUS:

11/03/2009 Proposed Rule

POSITION: Support

The Alabama Medicaid Agency has proposed rules to implement a requirement that durable medical equipment and medical supply providers in the State Medicaid program must post a \$50,000 surety bond for each of the provider's locations.

AGENCY CONTACT:

William O. Butler, III, Administrative Secretary, Medicaid Agency, 501 Dexter Ave, PO Box 5624 Montgomery, AL 36103-5624

ARKANSAS

**◆216.00.09: Lottery Commission
Lottery Retailers**

PROPOSED: 07/08/2009

ADOPTED: 09/14/2009

The Arkansas Lottery Commission (Commission) has adopted rules to implement HB 1002/SB 26 (2009), which requires lottery retailers to post a surety bond or other security in an amount not to exceed the average ticket sales during the prior two billing periods. The rules require the lottery retailer to post a bond from an insurance company acceptable to the Commission. Because the rules implement the new law exactly, SFAA did not comment.

AGENCY CONTACT:

Bridgette Frazier, Arkansas Lottery Commission, 501-682-1875

**214.00.09: Securities Department
License Bonds—Mortgage Professionals**

PROPOSED: 09/11/2009

STATUS:

09/11/2009 Proposed Rule

POSITION: Support

The Arkansas Securities Department has proposed new rules to implement HB 1881 (2009), which revised the existing bond requirements for mortgage bankers, brokers and servicers. Prior law required mortgage bankers and servicers to post a surety bond in the amount of \$100,000. Mortgage brokers had to post a bond for \$50,000. The new law directs the Securities Commissioner to prescribe the amount required through regulations or orders. The bond amount must be based on the mortgage banker, broker or servicer's loan activity in the previous year and it cannot be in an amount less than \$100,000. The new law provides that the bond must cover the loan officers that a banker, broker or servicer employs, securing the officer's faithful performance of his or her duties and be for the State's benefit for claims against the officer.

For mortgage bankers and mortgage brokers, the surety bond would have to be in the amount of \$100,000 if the amount of loans originated or funded secured by Arkansas residential property was no more than \$5 million in the prior calendar year; \$125,000 if the amount of loans was greater than \$5 million by not more than \$10 million; \$150,000 if the amount of loans was greater than \$10 million but not more than \$25 million; and \$200,000 if the amount of loans or funded secured by Arkansas residential property was greater than \$25 million in the prior calendar year. The same schedule of bond amounts and dollar thresholds would apply to mortgage servicers, but the amount of mortgage loans secured by Arkansas residential real property held in the mortgage servicer's portfolio would be used to determine the required bond.

Further, the proposed rules provide that all bonds would have to "remain in effect for a minimum of five years after lapse or termination of coverage of the bond in order to satisfy possible claims for failure to faithfully fulfill obligations during the term of the bond." The current bond form already contains a five-year tail.

AGENCY CONTACT:

Arkansas Securities Dept, 201 E Markham St, Little Rock, AR 72201, 501-324-9260

COLORADO

**◆3 CCR 701-9, FCD2: Division of Banking
Application Procedure for a Charter**

PROPOSED: 07/22/2009

ADOPTED: 09/17/2009

The Colorado Division of Banking eliminated its rules for obtaining a charter as a foreign capital depository. Prior regulations required the officers and employees of the applicant to be bonded. The form and amount of the surety bond was determined by the State Bank Commissioner. The Division repealed the entire charter application procedure, including the bond requirement. Because the regulations eliminated the entire application procedure, SFAA did not comment.

AGENCY CONTACT:

Diana S. Gutierrez, Banking Board Secretary, diana.gutierrez@dora.state.co.us, 303-894-7584

**◆4 CCR 725-3: Department of Regulatory Agencies
License Bond—Mortgage Loan Originators**

PROPOSED: 04/13/2009

ADOPTED: 07/27/2009

The Colorado Division of Real Estate (Division) adopted rules to implement the new law under HB 1085 (2009), which reclassified mortgage brokers as mortgage loan originators and applied a modified bond requirement to mortgage originators. Prior law required mortgage brokers to post a license bond or other security in the amount of \$25,000. The option of alternative security was eliminated, and the new law permits the Director of the Division to prescribe the amount of the bond through regulations. Under the new rules, individual mortgage loan originators may post a \$25,000 surety bond. Mortgage loan originators employed by a company that originates mortgage loans may use their employer's bond to meet the new requirements. The bond amount is based on the size of the company, where companies with fewer than 20 employees must have a bond for \$100,000, and a \$200,000 surety bond is required if the company has 20 or more employees. In all cases, the surety bond's coverage must be exclusive to the licensee's activities as a mortgage loan originator. SFAA provided guidance regarding the drafting of the revised form.

DISTRICT OF COLUMBIA

**◆DCMR Title 26A, Chapter 11: Department of Insurance, Securities and Banking
Mortgage Lenders, Brokers and Loan Originators**

PROPOSED: 07/31/2009

ADOPTED: 09/11/2009

The District of Columbia Department of Insurance, Securities and Banking (Department) has adopted rules to implement Bill 133 (2009), which imposed a net worth requirement on mortgage brokers in addition to the license bond requirement under current law. The Act also permits the broker to pay into a recovery fund as the Commissioner of the Department prescribes in lieu of meeting the net worth and bonding requirements. SFAA successfully had Bill 133 amended to limit the surety's liability to the penal sum of the bond regardless of the number of years the bond remains in effect, the number of premiums paid, the number of renewals of the license, or the number of claims made. The new law also permits direct actions on the bond. The rules contain all of these provisions as well. The rules require the broker or lender's bond to cover all mortgage originators pursuant to the new federal requirements. The rules implement the new law exactly, including the limitation language SFAA had advocated.

AGENCY CONTACT:

Howard Amer, Associate Commissioner of Banking, Department of Insurance, Securities and Banking, 810 1st St NE, 7th Floor, Washington, DC 20002, howard.amer@dc.gov

DELAWARE

◆ State Lottery Office Sports Lottery

PROPOSED: 07/01/2009

ADOPTED: 08/24/2009

The Delaware State Lottery Office (Office) adopted rules to establish a sports lottery for professional and collegiate athletic events, excluding any collegiate event for a Delaware college or university. The rules require technology providers of sports lottery systems to be licensed and to post a surety bond or irrevocable letter of credit. The bond will be in an amount that the Office determines. Surety companies issuing the bond must be licensed to do business in the State and be approved by the State Insurance Commissioner.

AGENCY CONTACT:

State Lottery Office, 1575 McKee Rd, Ste 102, Dover, DE 19904

2 DAC 2287: Division of Motor Vehicles Public Carriers

PROPOSED: 09/01/2009

STATUS:

09/01/2009 Proposed Rule

POSITION: Neutral

The Delaware Department of Transportation (DOT) has proposed to specify the insurance requirements for public carriers' vehicles and drivers. The rules would require a general liability policy for \$1 million, or a \$100,000 surety bond. The bond would be conditioned for the payment of property damage and personal injuries sustained as a result of the public carrier's acts or failures to act.

AGENCY CONTACT:

Michael Harrell, Administrator, Department of Transportation, Division of Motor Vehicles, Transportation Services, PO Drawer E, Dover, DE 19903, 302-744-2730, fax 302-739-6299, michael.harrell@state.de.us

5 DAC 2101, 2201 and 2401: Office of the State Banking Commissioner Mortgage Loan Brokers and Lenders

PROPOSED: 10/01/2009

STATUS:

10/01/2009 Proposed Rule

POSITION: Support

The Delaware Office of the State Banking Commissioner has proposed rules to implement SB 73

(2009), which requires mortgage loan originators to be licensed and covered by a surety bond in an amount based on the dollar amount of the loans originated. For an initial license, the rules provide that a minimum \$25,000 bond is required. The new law permits loan originators that are employees or exclusive agents of a licensee subject to existing bond requirements to obtain coverage under the employer's bond to fulfill the bond requirements.

Current law requires mortgage brokers to post a \$25,000 bond and mortgage lenders to post a bond in an amount ranging from \$50,000 to \$200,000, which is based on loan volume. The new law requires the bond to provide coverage for all originators, and it directs the State Bank Commissioner to adopt rules to implement the bond requirements. The bond amount must reflect the volume of loans originated. The rules would provide the following schedule for the loan originators' bond:

Volume of Delaware Mortgage Loans	Minimum Bond Amount
not more than \$11,000,000	\$25,000
\$11,000,001 - \$23,000,000	\$50,000
\$23,000,001 - \$35,000,000	\$75,000
\$35,000,001 - \$47,000,000	\$100,000
\$47,000,001 - \$59,000,000	\$125,000
\$59,000,001 - \$71,000,000	\$150,000
\$71,000,001 - \$83,000,000	\$175,000
\$83,000,001 and over	\$200,000

The rules would permit the State Bank Commissioner (Commissioner) to require a larger bond based on the circumstances of the licensee, but the rules do not provide any guidance as to what these circumstances would be. The term of the bond would have to be either commensurate with the license or continuous. The rules also would provide for claims procedures, and most notably, the Commissioner would have two calendar years from the effective date of the insurer's cancellation or termination of the bond to make claims. Surety claims would have to be paid to the Commissioner within 90 days after receipt of the claim; otherwise interest would accrue under the proposal. The rules also provide that the aggregate liability of the surety could not exceed the amount of the bond, excluding any interest on claims that could accrue. SFAA determined the rules to be acceptable and did not comment.

AGENCY CONTACT:

Office of the State Bank Commissioner, 555 E Loockerman St, Ste 210, Dover, DE 19901

**2 DAC 2309: Department of Transportation— Division of Planning and Policy
Street and State Highway Access**

PROPOSED: 11/01/2009

STATUS:

11/01/2009 Proposed Rule

POSITION: Neutral—Advising DOT on Effect of Increasing Amount

The Delaware Department of Transportation has proposed to increase the amount of security

required for the construction of commercial entrances. Current regulations require a permit and a form of security in an amount equal to 100% of the construction cost estimate. The proposed rules would increase the amount to 150%. Surety bonds, among other financial instruments, are accepted to fulfill this requirement.

AGENCY CONTACT:

Theodore Bishop, Assistant Director of Planning, Delaware Department of Transportation, PO Box 778, Dover, DE 19903, 302-760-2122, fax 302-739-2251, theodore.bishop@state.de.us

FLORIDA

**◆FAC 18-21.001: Department of Environmental Protection
Sovereignty Submerged Lands for Aquaculture**

PROPOSED: 11/07/2008
ADOPTED: 08/12/2009

The Florida Department of Environmental Protection rewrote its rules concerning aquaculture leases. A performance bond was required under these rules to secure compliance with the regulations and the conditions of the lease. A bond, escrow account or letter of credit could have been used to satisfy the requirement. The rules provided that the bond had to be in an amount based on the cost of removing the structure of the aquaculture and restoring the site to pre-development conditions. Under the new program, there is no bond requirement for the aquaculture leases.

AGENCY CONTACT:

Mark Berrigan, Division of Aquaculture, 1203 Governor's Square Boulevard, 5th Floor, Tallahassee, FL 32301, 850-488-5471

**◆FAC 1T-1.001: Division of Cultural Affairs
Miscellaneous Bond—Cultural Facility Grants**

PROPOSED: 07/10/2009
ADOPTED: 10/07/2009

The Division of Cultural Affairs eliminated its regulations that required either a restrictive covenant or a surety bond from a Florida authorized insurer to be in place to ensure compliance with the terms of grants from the Cultural Facilities Program and the Regional Cultural Facilities Program. The current arts programs have been replaced by new art programs without such grants, and thus no bond requirement.

AGENCY CONTACT:

Donald R. Blancett, Division of Cultural Affairs, R. A. Gray Building, 3rd Floor, 500 South Bronough Street, Tallahassee, FL32399-0250

**◆ FAC 40B-1.704: Suwannee River Water Management District
Miscellaneous Bond**

PROPOSED: 09/25/2009
STATUS:
09/25/2009 Proposed Rule
POSITION: Support

The Suwannee River Water Management District has proposed to require a bond or other security in connection with environmental resource permits for projects involving the following activities: draining, developing, or subdividing property, construction of roads or bridges, commercial or industrial developments, and agricultural or forestry activities, including dredging or filling. The bond would secure the certification of completion of construction required under existing rules for these projects. The bond amount would be based on the size of the project area, as follows: for a project area less than one acre, \$1,000; for a project area less than 10 acres, \$2,000; for a project area less than 40 acres, \$3,000; for a project area less than 100 acres, \$4,000; project area less than 200 acres, \$5,000; and for a project area greater than or equal to 200 acres, \$10,000.

AGENCY CONTACT:

Linda Welch, Rules Coordinator, Suwannee River Water Management District, 9225 CR 49, Live Oak, FL 32060, 386-362-1001

GEORGIA

**GAC 560-10-30-.15: Department of Revenue
Salvage and Assembled Vehicle Inspection**

PROPOSED: 08/20/2009
ADOPTED: 09/29/2009

The Georgia Department of Revenue has adopted rules to require non-governmental inspectors of salvage and assembled vehicles or motorcycles to post a \$50,000 surety bond.

AGENCY CONTACT:

Department of Revenue, 1800 Century Blvd, Ste 15300, Atlanta, GA 30345, 404-417-2100

**GAC 80-1-5-.01: Department of Banking and Finance
License Bond—Mortgage Loan Originators**

PROPOSED: 09/09/2009
ADOPTED: 09/09/2009

The Georgia Department of Banking and Finance has adopted rules without an opportunity to comment to implement HB 312 (2009), which requires mortgage originators to be licensed and bonded. Existing law requires mortgage brokers to post a \$50,000 surety bond and mortgage

lenders to post a \$150,000 bond. The new rules do not include changes to the existing regulations concerning mortgage lender and mortgage broker bonds. The new law requires mortgage loan originators to be covered by a surety bond, either by posting one, or using the bond of their employer if the originator is the employee or exclusive agent of a person subject to the bond requirements for brokers and lenders. The new law requires the lender or broker's bond to provide coverage for all loan originators in an amount that reflects the dollar amount of loans originated.

Under the new rules, mortgage loan originators that have to post their own bond must post a \$10,000 surety bond if their total loan originations are \$10 million or less, and a \$15,000 surety bond is required if the total loan originations are greater than \$10 million. The new rules for mortgage originator bonds mirror the existing regulations for mortgage lender and broker bonds with respect to the nature of the bond and cancellation. The bond is continuous in nature and 30 days notice is required to cancel the bond. Of note, mortgage loan originators operating under the employer's bond must be covered continuously under his or her name of record under the Nationwide Mortgage Licensing System and Registry and must ensure that the bond is in effect during the time that the originator is engaged in making Georgia mortgage loans for that employer.

AGENCY CONTACT:

Department of Banking and Finance, 2990 Brandywine Rd, Ste 200, Atlanta, GA 30341-5565, 770-986-1633

IDAHO

**IDAPA 03.01.01: State Athletic Commission
Promoter's Bond**

PROPOSED: 08/17/2009

ADOPTED: 08/17/2009

STATUS:

08/17/2009 Proposed Rule

08/17/2009 Temporary Rule Adoption - Concurrently Proposed

POSITION: Neutral

The Idaho State Athletic Commission has adopted temporary rules to implement HB 32 (2009), which permits alternative forms of security to be posted in lieu of the surety bond required under existing law for promoters of boxing, kickboxing, wrestling and mixed martial arts matches. The rules implement the new law exactly. These rules have been proposed for permanent adoption.

AGENCY CONTACT:

Tana Cory, State Athletic Commission, Bureau of Occupational Licenses, 1109 Main St, Ste 220, Boise, ID 83702, 208-334-3233, fax 208-334-3945

**IDAPA 08.01.11: Board of Education
Miscellaneous Bond—Postsecondary and Proprietary Schools**

PROPOSED: 08/28/2009
ADOPTED: 08/28/2009

STATUS:
08/28/2009 Proposed Rule
08/28/2009 Temporary Rule Adoption - Concurrently Proposed
POSITION: Neutral

The Idaho Board of Education adopted temporary rules to amend the existing regulations for proprietary schools. The amendments implement SB 1012 (2009), which eliminated the bond required for proprietary school agents and instead required the school to obtain a single bond to cover the agents. The school's bond indemnifies students for losses resulting from the school's closure and must indemnify students for losses resulting from fraud or misrepresentation in a solicitation for enrollment in the course of study. The new law requires the bond to be in the amount that the State Board of Education establishes by rule.

The temporary rules provide that the bond must be in an amount equal to the total tuition and fees charged by the school during the previous registration year. Of note, the rules also provide that the bond must provide "extended coverage clauses" to remain in effect for 120 days after the date of closure. The rules have been proposed for permanent adoption as well and are open for comment.

AGENCY CONTACT:

Tracie Bent, Chief Planning, Board of Education, 650 W State St, PO Box 83720, Boise, ID 83720-0037, 208-332-1582, fax 208-334-2632

ILLINOIS

**◆83 IAC 454.10 through 454.140: Commerce Commission
License Bond—Retail Electric Agents**

PROPOSED: 10/10/2008
ADOPTED: 10/23/2009

The Illinois Commerce Commission (Commission) adopted rules to implement SB 1366 (2007), which established requirements for licensure and bonding of agents, brokers, or consultants engaged in the procurement or sale of retail electricity supply on behalf of a third party. The new law contains financial responsibility requirements, including the posting of an appropriate performance bond.

The new rules require that those seeking a license as an agent, broker, or consultant must post a \$5,000 surety bond in favor of the "People of the State of Illinois." The bond is conditioned upon the full and faithful performance of all duties and obligations as an agent, broker, or consultant.

Of note, the rules provide that the bond has to be issued by a “qualifying surety” or insurance company authorized to transact business in the State of Illinois. The rules define a “qualifying surety” as a “surety or insurer that is authorized by the U.S. Department of the Treasury pursuant to 31 U.S.C. 9305.”

AGENCY CONTACT:

Conrad S. Rubinkowski, Commerce Commission, 527 E Capitol Ave, Springfield, IL 62701, 217-785-3922

INDIANA

**808 IAC: State Athletic Commission
Unarmed Combat Match Promoters**

PROPOSED: 10/28/2009

ADOPTED: 10/28/2009

The Indiana Athletic Commission (Commission) has adopted emergency rules concerning unarmed combat matches. The rules implement SB 160 (2009), which authorized the Commission to regulate such matches. The emergency rules require match promoters to post a license bond of not less than \$10,000. Existing law already gives the Commission authority to require license bonds for boxing and sparring match promoters. The rules also authorize the Commission to require the promoter to provide an additional surety bond for individual events. This bond must be in an amount equal to a good faith estimation of the total ticket tax for that event. The bonds are conditioned on compliance with the promoter's financial and tax obligations, and the surety's aggregate annual liability cannot exceed the amount of the bond.

Separately, the Commission also adopted emergency rules concerning boxing matches under its existing authority. The new rules include bonding requirements for boxing match promoters that are identical to the unarmed combat match promoter bond requirements described above.

AGENCY CONTACT:

State Athletic Commission, 101 W. Washington Street, East Tower, Suite 1600, Indianapolis, IN 46204

IOWA

**IAC 187, Chapter 19.1 to 19.15: Department of Commerce—Division of Banking
License Bonds—Mortgage Loan Originators**

PROPOSED: 08/26/2009

ADOPTED: 09/30/2009

The Iowa Banking Division adopted new rules to implement SB 355 (2009), which requires mortgage originators be covered by a surety bond as the Superintendent of Banking determines through regulations in an amount reflecting the dollar amount of loans originated. Under the new law, if the originator is the employee or the exclusive agent of a mortgage broker, mortgage

banker, industrial lender or a consumer lender, which are subject to bond requirements under existing law, then the employer's bond may be used to fulfill this requirement.

The rules require mortgage loan originators to be covered by a surety bond that reflects the dollar amount of loans originated, processed, or underwritten on an annual basis. Mortgage loan originators would be permitted to use an employer's bond to meet the requirement pursuant to the new law. The rules specify that a mortgage loan originator not covered by a company's bond must post its own bond based on the volume of residential mortgage loans originated, processed, and underwritten during the preceding calendar year. The schedule is as follows:

Loans	Bond Amount
\$0 - \$5,000,000	\$25,000
\$5,000,001 - \$20,000,000	\$50,000
\$20,000,001 - \$50,000,000	\$75,000
\$50,000,001 - \$100,000,000	\$100,000
Over \$100,000,000	\$150,000

AGENCY CONTACT:

Superintendent of Banking, Banking Division, Department of Commerce, 200 E Grand Ave, Ste 300, Des Moines, IA 50309, 515-281-4014

**IAC 191-58.1 to 58.20: Department of Commerce—Insurance Division
Third-party Administrators**

PROPOSED: 09/09/2009

STATUS:

09/09/2009 Proposed Rule

POSITION: Neutral

The Iowa Insurance Division has proposed revisions to its current regulations for third-party administrators. The proposed rules would eliminate alternative forms of security when the third-party administrator cannot obtain the surety bond required. Thus, under the proposed rules, a bond would be the only acceptable form of security. Currently, a surety bond in an amount equal to 10% of the administrator's average daily client account balance during the preceding calendar year is required. The bond cannot be less than \$50,000 and is capped at \$1 million. Further, the proposal makes the bond requirement only applicable to resident third-party administrators, consistent with the premise that a regulator cannot place burdens on out of state agents.

AGENCY CONTACT:

Rosanne Mead, Assistant Insurance Commissioner, Insurance Division, 330 Maple St, Des Moines, IA 50319, fax 515-281-3059

**IAC 661-276.1 to 276.6: Department of Public Safety
Licensing of Fire Protection System Installers**

PROPOSED: 09/23/2009

STATUS:

09/23/2009 Proposed Rule

POSITION: Support Adoption of a License Bond

The Iowa Department of Public Safety (Department) has proposed rules to implement a new law enacted under HB 2646 (2008), which requires fire sprinkler installers and maintenance workers to be licensed and obtain public liability insurance and a surety bond in an amount that the Department will determine by rule. Cancellation notices must be issued 15 days prior to the effective date for surety bonds and insurance policies under the new law. Although the law mandates insurance and a bond and the Department indicates intent to adopt bonding requirements in the proposal's introduction, the actual proposed rules only provide for insurance requirements. SFAA will inquire as to why the Department proposal does not include the statutorily required bond and recommend that rules be adopted to do so.

AGENCY CONTACT:

Agency Rules Administrator, Dept of Public Safety, 215 E 7th St, Des Moines, IA 50319, 515-725-6185, admrule@dps.state.ia.us, fax: 515-725-6195

KANSAS**◆K.A.R. 17-24-6 and 75-6-31: Bank Commissioner
Loan Originators****PROPOSED:** 07/02/2009**ADOPTED:** 09/17/2009

The Kansas State Bank Commissioner (Commissioner) adopted amendments to the current regulations for mortgage brokers and loan originators to implement SB 240 (2009), which requires the Commissioner to promulgate the bond amount for mortgage brokers. Under the law, the bond cannot be less than the \$50,000.

The new rules require a surety bond in connection with licensure as a broker or a lender. Licensees maintaining a bona fide office in Kansas must post a \$50,000 bond or a \$75,000 bond if the licensee originated more than \$50 million in Kansas mortgage loans in the previous calendar year. Licensees without an office must post a \$100,000 bond if the licensee originated up to \$50 million in Kansas mortgage loans during the previous year and a \$125,000 bond if licensee originated more than \$50 million in such loans. Current law already based the amount of the bond on the existence of an office in the State. The additional amounts based on loan origination will satisfy a new requirement under federal law concerning mortgage broker bond amounts.

Further, the bond required for supervised loan licenses has been altered under the new rules. Existing regulations require a \$250,000 bond for the first licensed place of business, plus \$25,000 for each additional location if the licensee makes loans secured by an interest in real property or contracts for deed. Under the new rules, such licensees making more than \$50 million in these loans in Kansas during the previous calendar year must post a \$300,000 bond.

SFAA staff determined that the bond amounts are reasonable and so staff did not comment when the rules were proposed.

AGENCY CONTACT:

Donna Martin, Office of the State Bank Commissioner, 700 SW Jackson, Ste 300, Topeka, KS 66603, donna.martin@osbckansas.org

MARYLAND

**COMAR 11.04.06.01 and 11.04.06.02: Department of Transportation
Residential Entrance Permits**

PROPOSED: 10/23/2009

STATUS:

10/23/2009 Proposed Rule

POSITION: Neutral—Advised DOT on Effects of Increased Bond Amount

The Maryland State Highway Administration has proposed to increase the amount of the bond required in connection with residential access permits. Such permits are required under existing regulations for the construction of an entrance from a state roadway to a roadway that serves a private residence. Currently, a performance bond is required in the amount of \$1,000 per entrance. Existing regulations permit a letter of credit or certified check to be furnished. Instead, the rules would require a bond, letter of credit, or certified check for 150% of the estimated construction costs for each entrance.

AGENCY CONTACT:

Linda Singer, COMAR Coordinator, State Highway Administration, C-412, 707 N Calvert St, Baltimore, MD 21202, 410-545-0362, fax 410-209-5015, lsinger@sha.state.md.us

MASSACHUSETTS

**209 CMR 41.00 and 42.00: Division of Banks
License Bonds—Mortgage Loan Originators**

PROPOSED: 10/02/2009

ADOPTED: 10/02/2009

STATUS:

10/02/2009 Proposed Rule Notice

10/02/2009 Emergency Rule Adoption

POSITION: Support

The Massachusetts Division of Banks has adopted emergency rules to implement HB 4178 (2009), which requires mortgage loan originators to be covered under a surety bond in an amount based on the loans originated. Under the new law, licensees that are the employee or exclusive agent of a person subject to the existing bond requirements for mortgage brokers or lenders could use the employer's bond to fulfill this requirement, so long as the bond provides coverage for the

originator and is based on the employer's loan originations. Current regulations require mortgage brokers to post a \$75,000 license bond. Mortgage lenders must obtain a bond in an amount not less than \$100,000 under current regulations. The bond amount must be based on the lender's aggregate loans. The bond is capped at \$500,000. The new law authorizes the Commissioner of Banks (Commissioner) to promulgate regulations to implement the bond requirement. The emergency rules require the mortgage loan originator to submit evidence of "sufficient surety bond coverage in such form and with such sureties" as the Commissioner determines.

The Division subsequently issued a revised Regulatory Bulletin 5.2-101, which amended the requirements to address bonding for loan originators. An individual originator must post a \$25,000 surety bond under the amended bulletin. An originator may also be covered under the broker or lender's bond. If the originator works for an exempt entity, the exempt entity may post a bond in amounts ranging from \$100,000 to \$500,000 based on the number of originators.

The emergency rule has been proposed simultaneously for permanent adoption. The comment period has expired. SFAA determined the rules to be acceptable and did not comment.

AGENCY CONTACT:

Division of Banks, 1 S. Station, Boston, MA 02110

MISSISSIPPI

◆ **Subpart 3, Chapter 10, Subchapter 02, Section 204.01: Department of Agriculture and Commerce
Financial Responsibility Requirements—Aerial Applications of Pesticides**

PROPOSED: 04/28/2009

ADOPTED: 08/27/2009

The Mississippi Department of Agriculture eliminated its regulations concerning aerial applications of pesticides for which a license and evidence of financial responsibility was required. Surety bonds were used to fulfill this requirement, among other financial instruments. Since the proposal repealed the entire regulation and not just the bond requirement, SFAA did not comment on the proposal.

AGENCY CONTACT:

John Campbell, Department of Agriculture and Commerce, PO Box 5207, Mississippi State, MS 39762, 662-325-8789, johnca@mdac.state.ms.us

◆ **MH-2009-01: Department of Insurance
Installation Inspection Program**

PROPOSED: 06/30/2009

ADOPTED: 10/06/2009

The Mississippi Commissioner of Insurance (Commissioner) has adopted rules for manufactured

home installers to implement HB 1388 (2008), which authorized the Commissioner to adopt regulations to establish bonding and/or insurance requirements in connection with the licensure of manufacturers, distributors, retailers, and transporters or installers of factory built homes. The rules require installers to be licensed and post a \$10,000 surety bond or obtain a general liability insurance policy with a minimum limit of coverage in the amount of \$500,000. The insurance or bond covers the cost of repairing all damage to the home and its supports caused by the installer during the installation up to and including replacement of the home.

AGENCY CONTACT:

Kimberly Causey, SAAG, Department of Insurance, 501 N West St, Ste 1001, Jackson, MS 39205, 601-359-3577, kim.causey@mid.state.ms.us

NEVADA

**◆ NAC 624: Contractors' Board
License Bond—Contractors**

PROPOSED: 09/17/2009

STATUS:

09/17/2009 Proposed Rule

POSITION: Neutral

The Nevada State Contractor's Board (Board) has proposed new rules to revise the bond requirement for contractors provided in existing law. The law requires a bond or cash deposit in an amount that the Board will fix based on the contractor's financial and professional responsibility and the magnitude of his or her operations. According to the law, the bond cannot be for less than \$1,000 or more than \$500,000. The rules propose a schedule consistent with the existing law's range, based on the existing monetary limits of contractors' licenses, as follows:

Monetary License Limit	Required Bond or Deposit
\$5,000 or less	\$1,000
\$5,001 to \$25,000	\$5,000
\$25,001 to \$50,000	\$20,000
\$50,001 to \$100,000	\$30,000
\$100,001 to \$250,000	\$50,000
\$250,001 to \$500,000	\$60,000
\$500,001 to \$1,000,000	\$80,000
\$1,000,001 or higher	\$100,000

The proposed rules would require the schedule for the bond amount to take effect for license renewals occurring after July 1, 2010. SFAA staff concluded that the amounts are reasonable and did not comment.

AGENCY CONTACT:

Contractor's Board, 2310 Corporate Cr, Ste 200, Henderson, NV 89074, 702-486-1100, fax 702-486-1190

NEW JERSEY

◆NJAC 3:25-2.4: Department of Banking and Insurance Debt Adjustment and Credit Counseling

PROPOSED: 06/15/2009

ADOPTED: 09/24/2009

The Department of Banking and Insurance amended the current license bond amounts for debt adjusters and credit counselors. Under existing regulations, the bond must be \$50,000 for the first office and \$25,000 for each additional office. In 2005, the law was amended under SB 1722 to require the Commissioner of Banking and Insurance to factor in the number of debtors that are serviced at each location and how much money is held in a licensee's trust account to determine the bond amount requires. The new rules implement this statutory change.

Under the new rule, the current amount (\$50,000 for the first office and \$25,000 for each additional office) applies if there are up to 250 debtors that are serviced at any office and there is up to \$250,000 in the licensee's trust account. In addition to these base amounts, the bond must be increased by \$25,000 for each additional 250 New Jersey debtors or portion thereof served at each office. The bond also must be increased by \$25,000 for each additional \$250,000, or portion thereof, in additional funds that the licensee held in his or her trust account, based on the average of the highest daily balance each month. The rules provide the following example to explain the calculation:

"[I]f a licensee had three offices and serviced 800 debtors at the first office, 300 at the second and 180 at the third and had an average trust account balance of \$400,000, the bond would be increased by \$125,000, comprised of \$75,000 for the first office, \$25,000 for the second office and zero additional for the third office, and by \$25,000 for the increased trust account balance."

AGENCY CONTACT:

Robert J Melillo, Chief, Office of Legislative and Regulatory Affairs, Department of Banking and Insurance, 20 W State St, PO Box 325, Trenton, NJ 08625-0325, fax 609-292-0896, legsregs@dobi.state.nj.us

NEW YORK

◆Title 3 NYCRR 418, Supervisory Procedure MB 109: Banking Department License Bond—Mortgage Loan Servicers

PROPOSED: 10/07/2009

ADOPTED: 10/07/2009

The New York Banking Department (Department) has adopted emergency rules again for mortgage loan servicers to implement a new law enacted under SB 8143 (2008). Rules were adopted previously this year on an emergency basis. The emergency rules require registration and compliance with financial responsibility requirements, including a surety bond and a fidelity bond. The new law authorizes the Superintendent of Banks (Superintendent) to adopt regulations

for the registration of mortgage loan servicers, but does not mention any financial responsibility requirements.

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 specify mandatory language for the bond, which requires the proceeds of the bond to become a trust fund for the Superintendent to reimburse wrongfully collected consumer fees, to pay past due examination costs to the Department and other penalties owed. This provision would be triggered in the event of the servicer's insolvency, liquidation or bankruptcy, or the surrender or revocation of the servicer's registration, or where the Superintendent takes possession of the servicer.

SFAA submitted comments regarding the problems with the bond requirement when the emergency rules were first adopted. SFAA staff asserted that payment from the surety is triggered too easily by a demand from the Superintendent as these rules are written. The surety is not provided an opportunity for an investigation of the claim or to dispute the occurrence of a default. We suggested that the bond's obligation be defined by a legal standard such as the business conduct and consumer protection regulations contained in this rule. SFAA urged the Department to delay the implementation of the bond requirement until a standard is developed. We also submitted a revised bond form demonstrating our proposals. The second round of emergency regulations do not reflect SFAA's comments.

Further, the servicer must file a fidelity bond and evidence of errors and omissions (E&O) coverage. The fidelity bond must cover 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 bond must be from a bonding company or insurance company licensed in the State. 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:

Bond Amount and E&O Coverage	Aggregate \$ amount of NY loans serviced
\$300,000	\$100,000,000 or less
plus .15%	of the next \$500,000,000
plus .125%	of the next \$400,000,000
plus .100%	of the amount over \$1 billion

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 authorize the Superintendent to reduce, waive, or modify the bond requirements for persons "engaged in the business of servicing mortgage loans" which services the lesser of 12 mortgage loans or an aggregate amount of loans not exceeding \$5 million and which also does not collect money for paying taxes or insurance for the mortgage loan, and "in other cases, for good cause shown."

The rules exempt certain persons, financial institutions and other entities that are regulated by the State or the federal government from the registration requirements, but subject them to New York's surety bond and the fidelity bond requirements if they service mortgage loans. Servicers

can be exempted from the fidelity bond and the E&O coverage if the servicer complies with a comparable requirement in another state, provided that the bond or E&O coverage are available for the protection of the Superintendent and residential mortgage consumers located in the New York.

SFAA also commented on the fidelity bond rule as it confuses terminology associated with the fidelity bond and an E&O insurance policy by treating them as one product. We explained that the bond and the insurance policy cover different obligations and that the rules should reflect this difference and that two different insurance products likely are needed to meet the requirement. The second emergency adoption of these regulations did not implement our comments on the differences between fidelity bonding and E&O coverage.

AGENCY CONTACT:

Sam Abram, Esq., Secretary to the Banking Board, Banking Department, 1 State St, 6th Fl, New York, NY, 10004, 212-709-1658, sam.abram@banking.state.ny.us

NORTH CAROLINA

04 NCAC 03M .0206: Department of Commerce—Office of the Commissioner of Banks License Bonds—Mortgage Professionals

PROPOSED: 11/02/2009

STATUS:

11/02/2009 Proposed Rule

POSITION: Neutral—High Bond Amounts Required By Law

The North Carolina Office of the Commissioner of Banks has proposed to amend its current regulations concerning mortgage professionals to implement HB 1523 (2009), which adopted revised license bond requirements for residential mortgage lenders to comply with a new federal law. Current regulations require that lenders post a minimum \$25,000 surety bond and mortgage brokers post a \$50,000 surety bond. The rules would be revised to require compliance with the new law.

The new law requires each mortgage loan originator to be covered by a surety bond through employment with a licensed mortgage lender, broker or servicer. The minimum bond amount for mortgage brokers is \$75,000. If the amount of loans originated is in excess of \$10 million, but less than \$50 million, the bond amount must be \$125,000. For total loans originated in excess of \$50 million in a 12-month period, the bond amount is a minimum of \$250,000.

The minimum bond amount for mortgage lenders is \$150,000. If the amount of loans originated is in excess of \$10 million, but less than \$50 million, the bond amount must be \$250,000. For total loans originated in excess of \$50 million in North Carolina, the bond amount is a minimum of \$500,000. The new law provides that the lender, broker or servicer's bond must cover all the originators that the licensee employed and the bond amount based on the amount of loans that the mortgage lender or broker originated in North Carolina in a 12-month period.

The new law also addresses the regulation of individuals (natural persons) who currently are licensed as a mortgage originator and who would be covered by their employer's bond. If such an individual now wants a mortgage broker's license and they are not an employee of a mortgage broker or lender, they may be licensed as an "exclusive mortgage broker." Such persons can act as an agent for only one lender or broker. They can sell only fixed term mortgages with substantially equal monthly payments. They either have to provide a bond in an amount required of mortgage brokers or they have to be covered by a bond provided by the lender or broker for whom they are an exclusive mortgage broker. The bond amount provided by the lender or broker must be the lesser of \$5 million or an amount equal to the sum of the bond amounts of all the exclusive mortgage brokers that the lender or broker supervises.

SFAA and AIA worked on the mortgage lender and broker bond requirements during the legislative session and we were able to achieve reduced bond amounts for mortgage brokers compared to the amounts initially introduced. Since the rules would implement the new law exactly, SFAA did not comment.

AGENCY CONTACT:

Daniel Garner, Office of the Commissioner of Banks, 4309 mail Service Center, Raleigh, NC 27699-4309, 919-733-4662, 919-733-6918, dgarner@nccob.gov

NORTH DAKOTA

**NDAC 43-02-03: Industrial Commission—Oil and Gas Division
Financial Assurance—Carbon Dioxide Storage**

PROPOSED: 09/16/2009

STATUS:

09/16/2009 Proposed Rule

POSITION: Neutral

The North Dakota Industrial Commission (Commission) has proposed rules for the geologic storage of carbon dioxide in underground injection wells for which performance bonds would be required. First, a performance bond that covers the surface facility would be required. The Commission would determine the amount required, which would have to be sufficient to provide financial assurance covering the abandonment of the project or remediation of any facility leaks if the operator failed to perform or ceased to exist. The bond would have to be maintained for ten years to cover the closure period of the site. The proposed rules outline the requirements for the proper closing of the project site to ensure the integrity of the storage units. The bond would be released once these requirements had been met. Second, a performance bond would be required for each CO2 injection and subsurface observation well. This bond would have to be in an amount sufficient to provide financial assurance to cover the plugging of the wells or the remediation of the wells should the operator fail to perform or cease to exist.

AGENCY CONTACT:

Oil and Gas Division, 1016 E Calgary Ave, Bismarck, ND 701-328-8038

OHIO

◆OAC 4501-7-27: Department of Public Safety Miscellaneous Bond—Commercial Driver License Schools

PROPOSED: 04/03/2009

ADOPTED: 09/28/2009

The Ohio Department of Public Safety revised its rules concerning commercial driver training schools. Current regulations require the school to obtain a performance bond in an amount not less than \$100,000 to secure the reimbursement of students for training that they did not receive. The bond has to be in an amount sufficient to secure such payment. The rules reduce the minimum bond amount to \$50,000 and permit an escrow account to be used in lieu of the bond.

AGENCY CONTACT:

Krista Weida, Office of Legal Services, Department of Public Safety, 1970 W Broad St, Suite 531, PO Box 182081, Columbus, OH 43218-2081, 614-466-7014

◆OAC 5537-8-01: Turnpike Commission Electronic Tolling

PROPOSED: 07/08/2009

ADOPTED: 09/14/2009

The Ohio Turnpike Commission adopted rules for electronic toll collections through EZ Pass through a pre-paid account, or through a post-paid account if the user will incur at least \$1,000 in tolls annually. For such post-paid accounts, the account owner must post a surety bond in an amount equal to the tolls that the customer incurred for travel on the Ohio Turnpike during the three-month period preceding its application to open a post-paid account, subject to a minimum bond amount of \$3,000. SFAA determined that the rule is acceptable and did not comment when the rule was proposed.

AGENCY CONTACT:

Noelle Tsevdos, Turnpike Commission, 440-234-2081

3773-3-02: Athletic Commission Mixed Martial Arts

PROPOSED: 10/23/2009

STATUS:

10/23/2009 Proposed Rule

POSITION: Support

The Ohio Athletic Commission has proposed rules to implement HB 1 (2009), addressing the regulation of boxing, mixed martial arts and wrestling match promoters. Under the new law, promoters for mixed martial arts, kick boxing, tough man contests, tough guy contests, or any

other form of boxing or martial arts are subject to the bond requirement, while wrestling match promoters have been exempted. Further, the new law increased the bond amount from an amount not less than \$5,000 to not less than \$20,000, and it eliminated the cash alternatives to the surety bond. Finally, the new law applies to private competitions in addition to the public matches regulated under existing law.

The rules would implement the new law exactly, increasing the bond from an amount not less than \$5,000 to an amount not less than \$20,000, eliminating the alternative forms of security, and eliminating the wrestling match promoter's bond. Since the rules would implement the new law exactly, SFAA did not comment.

AGENCY CONTACT:

Bernie Profato, Athletic Commission, 242 Federal Plaza W, Suite 405, Youngstown, OH 44503, 330-797-2556, fax 330-797-2559, bernie.profato@aco.ohio.gov

OREGON

Board of Pharmacy

Registration Rules for Drug

PROPOSED: 11/01/2009

STATUS:

06/02/2009 Temporary Rule Adoption

11/01/2009 Proposed Rule

POSITION: Oppose

The Oregon Board of Pharmacy (Board) has published a notice of proposed rules. The notice states that the proposed rules would eliminate the requirements for a surety bond for a wholesale drug outlet that is accredited by the National Association of Boards of Pharmacy's Verified Accredited Wholesale Distributor (VAWD) program. The rules were adopted earlier this year as temporary regulations, which provide that wholesale drug distributors seeking a Class 1 registration either must be accredited through the VAWD program or post a \$100,000 surety bond if the accreditation has not yet been obtained. If posted, the bond secures the payment of administrative penalties and any fees and costs that the Board incurs in connection with the registration of the distributor that the registrant fails to pay. The rules now have been proposed for permanent adoption. The temporary rules expire December 23, 2009. SFAA submitted comments opposing the waiver.

AGENCY CONTACT:

Karen MacLean, Board of Pharmacy, 800 NE Oregon St, 150, Portland, OR 97232, 971-673-0001

Landscape Contractors Board

License Bond—Landscape Contractors

PROPOSED: 09/01/2009

STATUS:

09/01/2009 Proposed Rule

POSITION: Support

The Oregon Landscape Contractors Board has proposed to revise its current regulations on the license bond required for landscape contractors to implement the law enacted in 2005 under HB 2069, which revised the required bond amount. Existing law requires a \$3,000 license bond for landscape contractors, unless the licensee constructs fences, decks, arbors, driveways, walkways or retaining walls not in conjunction with landscaping work, in which case a \$10,000 bond is required. Under the new law, these amounts still apply, but a larger bond is required in some cases depending on the charges for a landscape job. If any contractor charges more than \$10,000 but less than \$25,000 for a job, then a \$10,000 bond is required. If any landscape contractor charges \$25,000 or more for a job, then a \$15,000 bond is required. The proposed rules would implement these amounts.

Further, the rules would provide language for a bond form and specify that 30 days notice is required for cancellation of the bond. The proposed rule also provides that the bond would have to be continuous until cancellation. The bond form provided in the proposed rule states that cancellation relieves the surety from further liability for work performed on contracts after cancellation, but it does not affect the liability of the surety on final orders for work performed prior to cancellation. The proposed rule also provides procedures for the restoration of the bond in the event of a claim. Further, the rule sets forth the information that would have to be on the bond form.

AGENCY CONTACT:

Kim Gladwell-Rowley, Landscape Contractors Board, Salem, OR 503-378-5909

TENNESSEE**◆Regulatory Authority****Miscellaneous Bond—Telephone Solicitation Regulations****PROPOSED:** 09/25/2008**ADOPTED:** 10/22/2009

The Tennessee Regulatory Authority adopted rules to regulate automatic dialing-announcing devices (ADAD), which are used to send recorded messages. Any person or company using an ADAD in Tennessee must register and obtain a permit. A surety bond in the amount of \$10,000 is required in connection with the permit from a surety company licensed in the State. Letters of credit are accepted in lieu of the bond.

AGENCY CONTACT:

J. Richard Collier, General Counsel, Tennessee Regulatory Authority, 460 James Robertson Pkwy, Nashville, TN 37243-0505, richard.collier@state.tn.us, 615-741-3191 x 170

TEXAS

◆ Department of Licensing and Regulation

Financial Assurance—Service Contract Providers and Administrators

PROPOSED: 07/13/2009

ADOPTED: 10/26/2009

The Texas Department of Licensing and Regulation adopted rules under its authority in existing law to do so for service contracts. The law requires a reimbursement insurance policy and a funded reserve account, as well as financial security in the form of a surety bond, a deposit of cash, securities, a letter of credit or another form of acceptable security. The financial security instrument must be in an amount not less than \$25,000 or 5% of the gross consideration the provider received from consumers from the sale of all service contracts issued and outstanding in the State, less any claims paid, whichever amount is greater. In lieu of such financial instruments, the provider or its parent company may maintain a net worth or stockholder's equity of at least \$100 million. The rules implement the law exactly, requiring the security deposit to be at or above the levels required under the new law. Of note for surety companies, the rules provide that 60 days notice is required to cancel the bond.

AGENCY CONTACT:

Caroline Jackson, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, PO Box 12157, Austin, TX 78711, fax 512-475-3032,
erule.comments@license.state.tx.us

7 TAC 4.80.A.80.1: Department of Savings and Mortgage Lending Mortgage Broker and Loan Officer Licensing

PROPOSED: 08/24/2009

ADOPTED: 10/19/2009

The Texas Department of Savings and Mortgage Lending adopted rules to repeal the surety bond requirement for mortgage brokers in order to implement HB 2774 (2009). The new law eliminated the existing \$50,000 license bond and \$25,000 net worth requirement for mortgage brokers and instead requires that the financial requirements for holding a mortgage broker or loan officer's license shall be met through participation in the mortgage broker recovery fund. Since the rules implemented the new law exactly, SFAA did not comment.

AGENCY CONTACT:

Douglas B Foster, Commissioner, Texas Department of Savings and Mortgage Lending, 2601 N Lamar, Ste 201, Austin, TX 78705, smlinfo@sml.state.tx.us

Department of Licensing and Regulation

Financial Assurance—Identity Recovery Service Contract Providers

PROPOSED: 08/24/2009

ADOPTED: 10/26/2009

The Texas Department of Licensing and Regulation adopted rules to implement SB 778 (2009), which established financial requirements for providers of identity recovery service contracts. The new law requires a reimbursement insurance policy and a funded reserve account, as well as financial security in the form of a surety bond, a deposit of cash, securities, a letter of credit or another form of acceptable security. The financial security instrument must be in an amount not less than \$25,000 or 5% of the gross consideration the provider received from consumers from the sale of all identity recovery service contracts issued and outstanding in the State, less any claims paid, whichever amount is greater. In lieu of such financial instruments, the provider or its parent company may maintain a net worth or stockholder's equity of at least \$100 million. The rules implement the new law exactly, requiring the security deposit to be at or above the levels required under the new law. Of note for surety companies, the rules provide that 60 days notice is required to cancel the bond.

AGENCY CONTACT:

Caroline Jackson, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, PO Box 12157, Austin, TX 78711, fax 512-475-3032, erule.comments@license.state.tx.us

**34 TAC 1.2.A.2.100: Comptroller of Public Accounts
Sports and Events Trust Funds**

PROPOSED: 09/03/2009

STATUS:

09/03/2009 Proposed Rule

POSITION: Support

The Texas Comptroller of Public Accounts has proposed new rules to provide for the creation of the Major Events Trust Fund (Fund) for sporting events to implement SB 1515 (2009). Such events include a Super Bowl, an NCAA Final Four tournament game, an NCAA Bowl Championship Series game, or an Olympic event, among other major sports events under existing law. State and local tax revenues would be deposited into the Fund for paying costs related to attracting, making preparations for, and conducting certain events within the State. The new law provides for special procedures for an agreement between the State and municipalities or counties for events that are expected to generate more than \$15 million in state and local tax revenue. For such events, State funds are deposited into the Fund in advance of the event. The agreement must include a performance bond or other security for repayment if the event is not held in the State under the new law. The rules would implement these requirements exactly.

AGENCY CONTACT:

Robert Wood, Director, Local Government Assistance and Economic Development, PO Box 13528, Austin, TX 78711

**1 TAC 4.74.74.1: Office of Secretary of State
Credit Services Organizations**

PROPOSED: 09/21/2009
STATUS:
09/21/2009 Proposed Rule
POSITION: Seeking Amendments

The Texas Office of the Secretary of State (Office) has proposed rules concerning credit services organizations under its existing statutory authority to do so. The rules would require the organization to be registered and post a \$10,000 surety bond from a surety company authorized to do business in Texas, or establish a “surety account” for the same amount. The bond would have to be maintained until the “second anniversary of the date on which the organization ceases operations at the location for which the surety bond was established.” The bond would be considered “maintained” under the proposed rules if the organization has a bond in place for the required amount and has filed the required information with the Secretary of State.

SFAA staff submitted suggested clarifications regarding the maintenance requirements in the proposed rules. SFAA believes the proposed rules suggest that the bond might respond to claims for liability that accrued after the organization’s operations had ceased. Staff explained that sureties likely would not cover this additional liability and that such bonds typically cover a license term and a period when operations were active. SFAA staff suggested that the rules should provide for a discovery period after the cancellation of the bond, rather than requiring that the bond be “maintained.” Our comments noted that bonds usually are cancelled after the principal’s operations cease. Staff offered a revised meaning for “maintained” where the bond is considered maintained if it “remains liable for defaults discovered no later than two years after the bond is cancelled.” Our comments also stated that there should be a cancellation provision in the bond form, which stated: “The surety shall be liable for any default occurring after the effective date of this bond and prior to the date of cancellation or expiration.” The default has to occur during the bond term, but can be discovered for up to two years after the bond is cancelled. SFAA staff offered to work with the Office to develop this rule and a bond form that would be available and offer protection of the State’s interests.

AGENCY CONTACT:

Leigh A. Joseph, Office of the Secretary of State, Corporations Section, PO Box 13697, Austin, TX 78711-3697

**16 TAC 4.72.72.1: Department of Licensing and Regulation
Staff Leasing Services Program**

PROPOSED: 09/28/2009
STATUS:
09/28/2009 Proposed Rule
POSITION: Support

The Texas Department of Licensing and Regulation has proposed amendments to its regulations

for the Staff Leasing Services program. The proposal would adopt financial requirements in connection with licensure as a staff leasing service. The rules would require the licensee to demonstrate its net worth, for which a surety bond could be used, among other financial instruments and/or financial documentation. Surety bonds would have to be issued by state licensed surety companies and would be payable to the Executive Director of the Department on behalf of persons who are injured because of a licensee's violation of the Texas Labor Code or the rules governing the licensee. Sureties would have to give 60 days notice to cancel the bond. SFAA determined the rules to be acceptable and did not comment.

AGENCY CONTACT:

Caroline Jackson, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, PO Box 12157, Austin, TX 78711, fax 512-475-3032, erule.comments@license.state.tx.us

UTAH

**R651-700: Department of Natural Resources—Division of Parks and Recreation
Real Property Management**

PROPOSED: 08/25/2009

STATUS:

08/25/2009 Proposed Rule

POSITION: Support—New Bonding Opportunity

The Utah Division of Parks and Recreation (Division) has proposed rules to outline its land management procedures under its existing statutory authority to adopt such rules. The new regulatory provisions would include procedures on the granting of rights-of-way (ROW), easements and special use permits, and other non-recreational use of Division lands for which security could be required. The Division would determine whether security is required if the use of the land could pose a risk to public safety. A surety bond would be accepted to fulfill this requirement, among other financial instruments. The bond would secure the payment of all monies, rentals, and royalties due to the grantor. The bond also would secure the payment of the costs of reclamation and for compliance with all other terms and conditions of an easement and all applicable rules.

AGENCY CONTACT:

Tammy Wright, Natural Resources, Parks and Recreation, Rm 116, 1594 N Temple, Salt Lake City, UT 84116-3154, 801-538-7359, fax: 801-538-7378, tammywright@utah.gov

VIRGINIA

**◆4 VAC 50-60: Soil and Water Conservation Board
Financial Assurance—Stormwater Management Regulations**

PROPOSED: 06/02/2009

ADOPTED: 10/07/2009

STATUS:

10/07/2009 Final Regulation
10/07/2009 Suspension of Regulatory Process
10/07/2009 Extension of Comment Period

POSITION: Neutral

The Virginia Soil and Conservation Board (Board) proposed to amend its rules concerning the Virginia Storm Water Management Program and the required permit for the discharge of water from construction activities. The proposed rules would authorize local self-administered programs to require a performance bond or "other financial surety" in connection with the storm water management program as authorized under existing law. The law provides that a performance bond, cash, letter of credit, any combination of these, or "such other legal arrangement acceptable to the permit issuing authority" is required to ensure that the authority may take action if the permit holder failed to initiate or maintain actions required under the permit conditions.

Similarly, for local programs that the Department of Conservation and Recreation (Department) administered, a performance bond or other financial surety also could be required to obtain a permit for storm water discharges from construction activities. The bond for installation of the storm water management facilities would have to be in an amount equal to the total estimated construction cost of the storm water management, plus 25%. The bond would have to contain forfeiture provisions for failure to complete the work within the time specified, or to initiate or maintain actions required in accordance with the approved storm water management plan.

SFAA reviewed the rule and the current law. The rules track the current law. With respect to the forfeiture provisions, staff determined that based on the law, the term does not necessarily mean that the entire bond amount must be surrendered. "Forfeiture" simply seems to refer to a triggering of the bond obligation. The law provides for the return of any unexpended or "unobligated" portion of the funds received from the bond. SFAA offered assistance to the Department in developing a bond form. The Board has suspended the adoption of these rules for further review and to receive more comments for reasons unrelated to the surety bond requirement.

AGENCY CONTACT:

David C. Dowling, Policy, Planning, and Budget Director, Dept of Conservation and Recreation, 203 Governor St, Suite 302, Richmond, VA 23219, 804-786-2291, fax: 804-786-6141, david.dowling@dcr.virginia.gov

WASHINGTON

◆ **Department of Ecology**
Wetland Mitigation Banking

PROPOSED: 07/13/2004

ADOPTED: 09/03/2009

The Washington Department of Ecology adopted rules for wetland mitigation banks, which are used in wetland preservation efforts. The rules require financial assurance in connection with the development of such sites, for which a surety bond will be accepted among other financial instruments. The financial assurance is required in connection with any necessary construction costs, monitoring and maintenance, and long-term management of the site. The financial assurance provided must be in an amount equal to the cost estimates for each of these activities.

AGENCY CONTACT:

Yolanda Holder, Department of Ecology, Shorelands and Environmental Assistance Program, PO Box 47600, Olympia, WA 98504-7600, 360-407-6861, fax: 360-407-6902, yhol461@ecy.wa.gov

WAC 208-660-005: Department of Financial Institutions—Division of Consumer Services License Bonds—Mortgage Professionals

PROPOSED: 09/22/2009

STATUS:

09/22/2009 Proposed Rule

POSITION: Support

The Washington Division of Consumer Services has proposed to amend its existing regulations for mortgage brokers to implement HB 1749 (2009), which revised the bonding requirements for mortgage brokers pursuant to new federal requirements. Prior law required a license bond in an amount between \$20,000 and \$60,000. The new law eliminated the existing bond amount, and provides that the Banking Commissioner shall promulgate the bond amounts based on the annual loan origination volume of the broker. The new law also eliminated other alternatives to bonding permitted under prior law. Under existing rules, a broker's initial bond must be sufficient to cover the number of licensed loan originators that the broker intends to employ in the first year of business. Instead, the proposal would require a \$30,000 bond for an initial license. The proposed rules would provide the following schedule for the bond amounts:

Loan Volume	Bond Amount
\$30 million or more	\$60,000
\$10 million to \$30 million	\$45,000
\$0 to \$10 million	\$30,000

Under the statute, if surety bonds under the new requirements are not available, then the Director of Financial Institutions shall waive the requirement and establish a mortgage broker recovery fund. SFAA determined the rules to be acceptable and did not comment. The comment period has expired for this rule.

AGENCY CONTACT:

Elizabeth Hampton, Division of Consumer Services, PO Box 41200, Olympia WA 98504-1200, fax 360-56-5068, elizabeth.hampton@dfi.wa.gov

**Department of Financial Institutions—Division of Consumer Services
Consumer Loan Act**

PROPOSED: 09/22/2009

STATUS:

09/22/2009 Proposed Rule

POSITION: Support

The Washington Division of Consumer Services has proposed rules to implement HB 1621 (2009), which requires consumer loan companies and mortgage loan originators to be licensed. Under the law, lenders must be bonded and the loan originators must be covered by their employer's bond. The new law revises the license bond requirements for lenders. Prior law and regulations required a \$100,000 surety bond per location, for up to five branches, and \$10,000 for each additional branch. Bankers making loans secured by real property had to maintain a bond of at least \$400,000 under prior law and regulations.

Under the new law, the minimum amount of the bond is \$30,000, and the bond amount must be based on the annual dollar amount of loans originated. Under the law and regulation, the bond must be issued by a surety company authorized to do business in the State as a surety and the aggregate liability of the surety is limited to the penal sum of the bond. The rules would set forth the following schedule of bond amounts based on loan origination volume:

Loan Origination Volume	Bond Amount
Up to \$5 million	\$30,000
\$5 million - \$15 million	\$50,000
\$15 million - \$30 million	\$100,000
\$30 million or more	\$150,000

The comment period has expired for this rule.

AGENCY CONTACT:

Elizabeth Hampton, Division of Consumer Services, PO Box 41200, Olympia, WA 98504-1200, fax 360-586-5068, elizabeth.hampton@dfi.wa.gov

**◆ WAC 284-38-005: Office of Insurance Commissioner
License Bond—Discount Plan Organizations**

PROPOSED: 07/22/2009

ADOPTED: 11/02/2009

The Washington Office of the Insurance Commissioner (Office) has adopted rules to implement SB 5480 (2009). The new law regulates discount plan organizations that provide such plans to consumers for health care services, and it requires a surety bond in an amount not less than \$35,000. In lieu of a bond, cash, securities, or other financial instruments may be deposited in the same amount. The rules provide that the bond must name the State as the obligee, but the bond

will be for the benefit of the Washington members who have purchased the discount plan.

SFAA submitted comments suggesting a number of improvements to the rule. SFAA staff asserted that the rule lacks enough specifications for surety companies to make a proper underwriting assessment. Staff noted that the rules should specify the exact amount required. Such amount should be an amount that will be widely available. The Commissioner did not amend the rule to address this concern, noting that companies can plan based on the minimum amount of \$35,000. The Commissioner also stated that it is the surety's responsibility to make underwriting assessments concerning risks. The response also noted that there are alternatives to the bond.

In its comments, staff also explained that a better definition of the surety's obligation is needed. The law requires the bond to protect the financial interest of the members of the discount plan. The rules provide no direction regarding what is meant by "protecting the financial interest." SFAA staff suggested that the bond secure something concrete such as compliance with the applicable law and regulations. In response to our comments, the Commissioner did amend the rule to clarify the surety's obligation under the bond. Specifically, the final rules provide that the bond secures the provision of all terms of the discount plan membership to Washington consumers, including refunds.

Further, staff commented that the rules should provide details on the term of the bond, such as a cancellation clause, a limitation of liability to the penal sum of the bond and a claims period. SFAA explained that these could be covered in a standard bond form, and we offered our assistance to develop one. The Commissioner noted there already is a standard bond form that the Office uses for all businesses required to post a bond so a separate form was not necessary.

AGENCY CONTACT:

Donna Dorris, Office of the Insurance Commissioner, PO Box 40258, Olympia, WA 98504-0258, 360-725-7040, fax: 360-586-3109, donnad@oic.wa.gov

WISCONSIN

**DFI-Bkg 40 to 47: Department of Financial Institutions—Division of Banking
License Bonds**

PROPOSED: 08/31/2009

ADOPTED: 11/14/2009

EFFECTIVE: 01/01/2010

The Wisconsin Division of Banking adopted rules to implement SB 62 (2009), which changed the existing license bond requirements for mortgage brokers and bankers to comply with the new federal requirements for mortgage professional licensing and bonding. Under prior law, there was a dual bonding requirement for mortgage brokers and bankers based on the existence of a bona fide office in the State. Mortgage bankers maintaining an office in the State had to post a surety bond in the amount of \$25,000, and a bond in the amount of \$300,000 was required if no office was maintained. For mortgage brokers, prior law required a bond in the amount of \$10,000

if the broker maintained a bona fide office in the State, and \$120,000 if no office was maintained. The new law requires a bond in the amount of \$120,000 for all mortgage brokers and \$300,000 for all mortgage bankers regardless of whether a bona fide office is maintained in the State. The rules implement the new law exactly with respect to the base amount of the bond. The new rules also contain an additional provision that requires the bond to be increased by \$10,000 per branch office for every branch in excess of five locations.

The new law also establishes licensing and regulatory standards for mortgage loan originators, including a bond requirement. The bond requirement is modeled after legislation that the Conference of State Banking Supervisors developed, requiring all mortgage loan originators to be covered by a surety bond in an amount based on the volume of loan originations. The new law provides that the amount required will be determined through regulations. If the originator is the employee or agent of a person subject to existing bond requirements for mortgage brokers and bankers, then that bond may be used to fulfill the loan originator's bond requirement. These regulations do not address the bond requirement for loan originators. We worked with the AIA in the rulemaking process to address this matter, but it does not appear that our suggestions were included in the final rule.

AGENCY CONTACT:

Mark Schlei, Deputy General Counsel, Department of Financial Institutions, Office of the Secretary, PO Box 8861, Madison, WI 53708-8861, 608-267-1705, mark.schlei@wisconsin.gov

WYOMING

◆ Chapters 1 and 7: Secretary of State Corporations

PROPOSED: 05/12/2009

ADOPTED: 08/25/2009

The Wyoming Secretary of State (Secretary) repealed the requirements for Wyoming corporations that transfer to another jurisdiction including a \$50,000 deposit or surety bond. The bond had to be in place for six months. Since the rules repealed the requirements in their entirety, SFAA did not comment.

AGENCY CONTACT:

Jeanne Sawyer, Secretary of State's Office, The State Capitol, Cheyenne, WY 82002, 307-777-5334

Chapters 1 through 5: Division of Banking License Bonds—Mortgage Loan Originators

PROPOSED: 09/23/2009

STATUS:

09/23/2009 Proposed Rule

POSITION: Support

The Wyoming Division of Banking (Division) has proposed rules to implement HB 169 (2009), which requires all organizations that are licensees under the state Uniform Consumer Credit Code to obtain a surety bond to cover individual mortgage loan originators employed or under contract with the licensee. Under the law, mortgage loan originators must be licensed and covered under their employer's bond. The bond must be in amount based on residential mortgage loan volume as determined by regulations. The proposed rules would require a \$25,000 bond for an initial license starting on January 1, 2010. Upon renewal of the license, the bond amount will be based on loan volume as follows: \$25,000 if the total Wyoming loan volume is \$3 million or less; \$50,000 if the total Wyoming volume is greater than \$3 million but less than \$10 million; and \$100,000 if the total Wyoming loan volume is \$10 million or more. The bond amounts apply to both mortgage brokers and mortgage lenders.

The law provides that the surety's aggregate liability is limited to the face amount of the bond and must be issued by a surety authorized to do business in Wyoming. When a consumer is damaged by a violation of the law by a licensee or one of its employees, the bond must be forfeited to the State for the benefit of any person damaged in an amount to satisfy the violation or in its entirety if the violation exceeds the amount of the bond. The bond must remain in effect until released in writing by the State or it shall expire two years after the surrender, revocation or expiration of the license. The regulations implement the new law exactly, so SFAA did not comment.

AGENCY CONTACT:

Marlene Aitchison, Division of Banking, 122 West 25th St (Herscher Building, 3 East), Cheyenne, WY 82002, 307-777-7792, maitchison@wyaudit.state.wy.us