The Surety & Fidelity Association of America

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December 6, 2012

Mr. David J. Cotney
Commissioner of Banks
Massachusetts Division of Banks
1000 Washington Street, 10th Floor
Boston, MA 02118-6400

Re: Comments on proposed Amendments to 209 CMR 18.00 on debt collectors

Dear Commissioner,

The Surety & Fidelity Association of America (SFAA) is a trade association of approximately 450 members licensed to write surety and fidelity bonds. SFAA members collectively write the vast majority of surety and fidelity bonds in the United States. We are writing to comment on the new bonding requirement that is contained in the proposed amendments to the regulation of debt collectors. Although we commend the Division of Banks for including a bond requirement to support its regulatory efforts, as proposed, the obligation to be bonded and the amount of the is bond unclear. It will be difficult for sureties to respond to this bond requirement.

As proposed, 209 CMR 18.03(2) states that the Commissioner "may require" a licensee to furnish a surety bond if the licensee fails to demonstrate and maintain a positive net worth. This provision provides the Commissioner discretion to require that only certain licensees, presumably licensees with weak qualifications or financial strength, to furnish this surety bond. This new bond is in addition to the $25,000 license bond that debt collectors already are required to have in place under M.G.L. 93, sections 24A, 25 and 26.

The two primary purposes of the required license bond are: 1) to prequalify the license applicants who will comply with the statutory obligations for a license, and in so doing, prevent losses; and 2) to provide reimbursement for losses, up to the penal sum of the bond, if the licensee defaults on its obligations. Surety companies check the credentials of potential license holders before they can do business to ensure that they are qualified. Sureties review the applicants' experience, financial stability, and rely on local agents' recommendations before issuing bonds. With a license bond, the surety provides the regulatory entity with the pre-qualification of license applicants who will perform as required, and the added benefit of the bond amount being available for payments if the licensee fails to perform.

We are uncertain what the additional bond will do that the license bond does not. What additional obligation to the Commissioner is intended to be bonded? The additional bond requirement in the proposed regulations also may not even be required if the Commissioner finds that a licensee meets certain financial criteria. This judgment is only at a certain point in time and does not guarantee that the licensee will never engage in noncompliant activities. Limiting the bond requirement to a small pool of "bad actors" significantly undercuts the availability of the bond. When a bond requirement applies generally, the surety is able to spread its risk of loss, and risk levels are capable of being underwritten prudently. If only "bad actors" must provide the bond, the risk of loss is concentrated and significantly increased. A surety may find the level of risk associated with the bond requirement unacceptable and choose not to provide this type of bond. To similarly obtain the prequalification benefit of a surety bond and to assure the broadest financial protection, we suggest that the additional bond requirement be applicable to all licensees.

In addition, proposed 209 CMR 18.03(2) states only that the bond shall be based on the licensee's volume of collections and shall run to the state treasurer. We recommend that the regulation should include greater specificity regarding the amount of the bond and the scope of coverage. Part of the surety's consideration in determining whether to write a specific type of bond is the scope of the obligation. Setting forth the scope of the obligation will facilitate the Commissioner's task in developing a bond form.

For the Commissioner's consideration, we offer the following points regarding the relationship between specific terms of the bond and the extent to which the bond is available in the market.

1. The amount of the bond should provide adequate coverage to the Commissioner, but be reasonably available in the market. Unlike other forms of insurance, in the event the surety must pay a loss, it has the right to seek indemnity from the principal. Therefore, part of the surety's underwriting involves a financial assessment of the principal. The surety will require a certain threshold of financial strength relative to the bond amount – the higher the bond amount, the higher the threshold.

2. The obligation that is being secured by the bond should be clear and reasonable. Typically, the obligation being secured by a bond in connection with a licensing requirement is compliance with the laws and regulations related to the license

requirement. Alternatively, the obligation could be the honest handling of funds held by the debt collector.

3. The bond should be continuous regardless of the number of license renewals. That is the bond continues through all license periods until cancelled. (Thus, the bond terms should permit the surety to cancel the bond upon a certain number of days prior written notice.)

4. The bond terms should be clear that the surety's maximum aggregate liability, regardless of the number of license periods or the number of claims is the penal sum of the bond. We suggest the following language: "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 aggregate liability under the bond shall not exceed the penal sum of the bond."

Lastly, proposed 209 CMR 18.03(2) also requires that the surety bond be provided by a surety company approved by the Commissioner. This additional level of qualification is not necessary. Sureties, like all other insurance companies, are subject to substantial state financial and market conduct regulation. To issue a bond in any state, the surety must be licensed in the state and subject to the regulation of the state insurance department, which includes minimum capital and surplus requirements, financial reporting and market conduct and financial exams, among many other types of regulation. We suggest that the regulations should be revised to state that the surety providing the bond must be licensed by the Massachusetts Division of Insurance to write surety bonds.

Relying on the Division of Insurance would be the most effective way to assure the financial condition of the surety. The Division of Insurance would be in the best position to know the financial standing of the surety, and it would be the most readily accessible source of information regarding the surety's licensing status and financial condition or complaints that the Division of Insurance has received about the surety's business practices in the state.

We thank you for your consideration. We would be happy to work with the Division of Banks in developing reasonable bond terms.

Sincerely,

Lenore S. Marema