§ 694a. Definitions

The term “bid bond” means a bond conditioned upon the bidder on a contract entering into the contract, if he receives the award thereof, and furnishing the prescribed payment bond and performance bond.

The term “payment bond” means a bond conditioned upon the payment by the principal of money to persons under contract with him.

The term “performance bond” means a bond conditioned upon the completion by the principal of a contract in accordance with its terms.

The term “surety” means the person who (A) under the terms of a bid bond, undertakes to pay a sum of money to the obligee in the event the principal breaches the conditions of the bond, (B) under the terms of a performance bond, undertakes to incur the cost of fulfilling the terms of a contract in the event the principal breaches the conditions of the contract, (C) under the terms of a payment bond, undertakes to make payment to all persons supplying labor and material in the prosecution of the work provided for in the contract if the principal fails to make prompt payment, or (D) is an agent, independent agent, underwriter, or any other company or individual empowered to act on behalf of such person.

The term “obligee” means (A) in the case of a bid bond, the person requesting bids for the performance of a contract, or (B) in the case of a payment bond or performance bond, the person who has contracted with a principal for the completion of the contract and to whom the obligation of the surety runs in the event of a breach by the principal of the conditions of a payment bond or performance bond.

The term “principal” means (A) in the case of a bid bond, a person bidding for the award of a contract, or (B) the person primarily liable to complete a contract for the obligee, or to make payments to other persons in respect of such contract, and for whose performance of his obligation the surety is bound under the terms of a payment or performance bond. A principal may be a prime contractor or a subcontractor.

The term “prime contractor” means the person with whom the obligee has contracted to perform the contract.

(8) The term “subcontractor” means a person who has contracted with a prime contractor or with another subcontractor to perform a contract.


AMENDMENTS

2009—Par. (9). Pub. L. 111–5, § 508(c), (f), temporarily added par. (9) which read as follows: “Notwithstanding any other provision of law or any rule, regulation, or order of the Administration, for purposes of sections 694a, 694b, and 694c of this title the term ‘small business concern’ means a business concern that meets the size standard for the primary industry in which such business concern, and the affiliates of such business concern, is engaged, as determined by the Administrator in accordance with [the] North American Industry Classification System.” See Termination Date of 2009 Amendment note below.


TERMINATION DATE OF 2009 AMENDMENT


§ 694b. Surety bond guarantees

(a) Authority of Administration to guarantee surety against loss from principal’s breach of bond

(1) The Administration may, upon such terms and conditions as it may prescribe, guarantee and enter into commitments to guarantee any surety against loss resulting from a breach of the terms of a bid bond, payment bond, performance bond, or bonds ancillary thereto, by a principal on any total work order or contract amount at the time of bond execution that does not exceed $2,000,000.

(2) The terms and conditions of said guarantees and commitments may vary from surety to surety on the basis of the Administration’s experience with the particular surety.

(3) The Administration may authorize any surety, without further administration approval, to issue, monitor, and service such bonds subject to the Administration’s guarantee.

(4) No such guarantee may be issued, unless—

(A) the person who would be principal under the bond is a small business concern;
(B) the bond is required in order for such person to bid on a contract, or to serve as a prime contractor or subcontractor thereon;
(C) such person is not able to obtain such bond on reasonable terms and conditions without a guarantee under this section; and
(D) there is a reasonable expectation that such principal will perform the covenants and conditions of the contract with respect to which such bond is required, and the terms and conditions of such bond are reasonable in the light of the risks involved and the extent of the surety’s participation.

(5)(A) The Administration shall promptly act upon an application from a surety to participate in the Preferred Surety Bond Guarantee Program, authorized by paragraph (3), in accordance with criteria and procedures established in regulations pursuant to subsection (d) of this section.
(B) The Administration is authorized to reduce the allotment of bond guarantee authority or terminate the participation of a surety in the Preferred Surety Bond Guarantee Program based on the rate of participation of such surety during the 4 most recent fiscal year quarters compared to the median rate of participation by the other sureties in the program.

(b) Indemnification of surety against loss from avoiding breach
Subject to the provisions of this section, in connection with the issuance by the Administration of a guarantee to a surety as provided by subsection (a) of this section, the Administration may agree to indemnify such surety against a loss sustained by such surety in avoiding or attempting to avoid a breach of the terms of a bond guaranteed by the Administration pursuant to subsection (a) of this section: Provided, however—

(1) prior to making any payment under this subsection, the Administration shall first determine that a breach of the terms of such bond was imminent;
(2) a surety must obtain approval from the Administration prior to making any payments pursuant to this subsection unless the surety is participating under the authority of subsection (a)(3) of this section; and
(3) no payment by the Administration pursuant to this subsection shall exceed 10 per centum of the contract price unless the Administrator determines that a greater payment should be made as a result of a finding by the Administrator that the surety’s loss sustained in avoiding or attempting to avoid such breach was necessary and reasonable.

In no event shall the Administration pay a surety pursuant to this subsection an amount exceeding the guaranteed share of the bond available to such surety pursuant to subsection (a) of this section.

(c) Limitation of liability
Any guarantee or agreement to indemnify under this section shall obligate the Administration to pay to the surety a sum—

(1) not to exceed 70 per centum of the loss incurred and paid by a surety authorized to issue bonds subject to the Administration’s guarantee under subsection (a)(3) of this section;
(2) not to exceed 90 per centum of the loss incurred and paid in the case of a surety requiring the Administration’s specific approval for the issuance of such bond, but in no event may the Administration make any duplicate payment pursuant to subsection (b) of this section or any other subsection;
(3) equal to 90 per centum of the loss incurred and paid in the case of a surety requiring the administration’s specific approval for the issuance of a bond, if—
(A) the total amount of the contract at the time of execution of the bond or bonds is $100,000 or less, or
(B) the bond was issued to a small business concern owned and controlled by socially and economically disadvantaged individuals as defined by section 637(d) of this title, or to a qualified HUBZone small business concern (as defined in section 632(p) of this title); or
(4) determined pursuant to subsection (b) of this section, if applicable.

(d) Regulations
The Administration may establish and periodically review regulations for participating sureties which shall require such sureties to meet Administration standards for underwriting, claim practices, and loss ratios.

(e) Reimbursement of surety; conditions
Pursuant to any such guarantee or agreement, the Administration shall reimburse the surety, as provided in subsection (c) of this section, except that the Administration shall be relieved of all liability if—

(1) the surety obtained such guarantee or agreement, or applied for such reimbursement, by fraud or material misrepresentation,
(2) the total contract amount at the time of execution of the bond or bonds exceeds $2,000,000,
(3) the surety has breached a material term or condition of such guarantee agreement, or
(4) the surety has substantially violated the regulations promulgated by the Administration pursuant to subsection (d) of this section.

(f) Procedure for reimbursement
The Administration may, upon such terms and conditions as it may prescribe, adopt a procedure for reimbursing a surety for its paid losses billed each month, based upon prior monthly payments to such surety, with subsequent adjustments after such disbursement.

(g) Audit
(1) Each participating surety shall make reports to the Administration at such times and in such form as the Administration may require.
(2) The Administration may at all reasonable times audit, in the offices of a participating surety, all documents, files, books, records, and other material relevant to the Administration’s guarantee, commitments to guarantee, or agreements to indemnify any surety pursuant to this section.
(3) Each surety participating under the authority of paragraph (3) of subsection (a) of this section.

1 So in original. Probably should be capitalized.
section shall be audited at least once every three years by examiners selected and approved by the Administration.

(h) Administrative provisions

The Administration shall administer this part on a prudent and economically justifiable basis and establish such fee or fees for small business concerns and premium or premiums for sureties as it deems reasonable and necessary, to be payable at such time and under such conditions as may be determined by the Administration.

(i) Powers of Administration respecting loans

The provisions of section 693 of this title shall apply in the administration of this section.

(2008—Subsec. (a)(1). Pub. L. 110–590, § 203(b), added subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “Any guarantee or agreement to indemnify under this section shall obligate the Administration to pay to the surety a sum not to exceed (1) in the case of a breach of contract, 90 percent of the loss incurred and paid by the surety as the result of the breach; or (2) in a case in which subsection (b) of this section applies, the amount determined under subsection (b) of this section.”

1988—Subsec. (b). Pub. L. 100–590, § 203(c), added pars. (3) and (4).

1986—Subsecs. (a), (e)(2). Pub. L. 99–272 substituted “$1,250,000” for “$1,000,000”.

1980—Subsec. (c). Pub. L. 96–302 struck out “to or on behalf of the obligee, or to labor and materialmen, in fulfilling the terms of the contract” after “paid by the surety” in cl. (1).

1978—Subsec. (a). Pub. L. 95–507 amended subsec. (a) generally, striking out requirement that the Administration consult with the Secretary of Housing and Urban Development, and inserting authority to vary the terms and conditions of guarantees on the basis of experience with a particular surety and authority to guarantee bonds ancillary and conterminous with the other named bonds.

Subsec. (b). Pub. L. 95–507 substituted provisions relating to indemnification of a surety against loss sustained in attempting to avoid or avoiding breach for provisions relating to the extent of liability of the Administration for loss incurred by a surety.

Subsec. (c). Pub. L. 95–507 substituted provisions relating to the limitation of the Administration’s guarantee liability for provisions relating to the administration of the program and a study and report to Congress regarding the economic soundness of the program.

Subsec. (d). Pub. L. 95–507 substituted provisions relating to regulations for participating sureties for provisions relating to the application of section 693 of this title in the administration of this section.

Subsec. (e) to (l). Pub. L. 95–507 added subsecs. (e) to (l).

1974—Subsec. (a). Pub. L. 93–386, § 6(a)(3), substituted “$1,000,000” for “$500,000”.

Subsec. (c). Pub. L. 93–386, § 11, inserted provisions relating to the administration of the program on a prudent and economically justifiable basis and provisions requiring the Administration to publish the cost of the program to the Administration, to conduct a study of the program in order to determine what must be done to make the program economically sound, and to transmit a report to Congress of the findings, conclusions, and recommendations of the study.


AMENDMENTS

2009—Subsec. (a)(1). Pub. L. 111–5, § 508(a), (f), temporarily amended par. (1) by designating existing provi sions as subpar. (A), substituting “$5,000,000” for “$2,000,000”, and adding subpar. (B) which read as follows: “The Administrator may guarantee a surety under subparagraph (A) for a total work order or contract amount that does not exceed $10,000,000, if a con"
**§ 695c. Revolving fund for surety bond guarantees**

(a) There is created within the Treasury a separate fund for guarantees which shall be available to the Administrator without fiscal year limitation as a revolving fund for the purposes of this part. All amounts received by the Administrator, including any moneys, property, or assets derived by him from his operations in connection with this part, shall be deposited in the fund. All expenses and payments, excluding administrative expenses, pursuant to operations of the Administrator under this part shall be paid from the fund.

(b) Such sums as may be appropriated to the Fund to carry out the programs authorized by this part shall be without fiscal year limitation.

(1) [Provisions of this title set out as notes under section 694b of this title.]


**Amendments**

1988—Pub. L. 100–590 designated existing provisions as subsec. (a) and added subsec. (b).

1980—Pub. L. 96–302 repealed investment of idle funds provision, which is covered in section 694–2 of this title.

**Effective and Termination Dates of 1988 Amendment**


**Regulations**

Pub. L. 100–590, title II, § 209, Nov. 3, 1988, 102 Stat. 3010, provided that: "Except as otherwise provided in this title, the provisions of this title [amending this section and section 694c of this title and enacting provisions set out as notes under this section], shall become effective upon expiration of one hundred and eighty days after the date of its enactment [Nov. 3, 1988]."

**Effective Date of 1980 Amendment**


**Small Business Access to Surety Bonding Survey**

Pub. L. 102–366, title III, subtitle A, Sept. 4, 1992, 106 Stat. 1062–1065, known as the Small Business Access to Surety Bonding Survey Act of 1992, directed Comptroller General to conduct a comprehensive survey of business firms, from a statistically valid sample of business firms developed from the most recent list of construction firms maintained by Dun and Bradstreet Company and using a questionnaire with specifically designated questions, to obtain data on the experiences of such firms, and especially the experiences of small business concerns, in obtaining surety bonds from corporate surety firms and to submit a report to Congress, not later than 18 months after Sept. 4, 1992, which report was to contain a summary of responses of business firms to the survey and a description of any trends found by Comptroller General in such responses, which specific information on responses and trends of small business concerns, small business concerns owned and controlled by women, and small business concerns owned and controlled by socially and economically disadvantaged individuals.

**Evaluation of Preferred Surety Bond Guarantor Program; Report**