The Surety & Fidelity Association of America

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October 10, 2011

Via Electronic Mail

Karen V. Gregory
Secretary
Federal Maritime Commission
800 North Capitol Street, NW
Washington, DC 20573

Re: Notice of Proposed Rulemaking
Passenger Vessel Operator Financial Responsibility Requirements
Docket No. 11-16

Dear Secretary Gregory:

The Surety & Fidelity Association of America ("SFAA") is a trade association of approximately 450 companies that are licensed to write surety and fidelity bonds. SFAA members collectively account for the vast majority of surety bonds provided in the United States. We thank you for the opportunity to submit comments regarding the captioned Proposed Rulemaking.

Under 46 CFR 540.5, a Passenger Vessel Operator ("PVO") is required to furnish financial security in an amount not less than 110% of the highest unearned passenger revenue within the past two years. The amount of financial security is capped at $15 million. 46 CFR 540.9(j). The Proposed Rulemaking would amend 46 CFR 540.9(j) to increase the cap to $30 million (and in line with the CPI Index thereafter). SFAA does not support or oppose the increase. We write to provide guidance regarding the potential effect of the increase to bond availability. A surety bond secures one party's obligation (principal) owed to another party (obligee). A surety provides a bond only to those entities that, in the surety's estimation, can perform the obligation. 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. Thus, if a PVO is subject an increased bond requirement because of the increased cap, the PVO may need to demonstrate a greater financial strength. It is conceivable that PVOs that qualified for a bond at the $15 million cap may not be able to qualify for a bond at the $30 million cap. We ask that the Federal Maritime Commission ("FMC") consider the effect on bond availability relative to the increased cap.

The Proposed Rulemaking also revises section 540.9(j) to permit smaller PVOs to submit "alternative forms of financial protection." Specifically, if the PVO's unearned passenger revenue has not exceeded 150% of the cap for the two prior years, the PVO may request that the FMC accept alternative forms of security. We suggest that the FMC consider the services provided by a surety bond as it considers other forms of acceptable security. A surety bond provides two services. The first service is prequalification. As noted above, a surety provides a bond only to entities that, in the surety's estimation, can perform the obligation being secured. Thus, in the case of the financial security requirement for a PVO, the surety evaluates the operational and financial capabilities of the PVO to provide transportation and other services in accordance with the ticket contract and to pay sums for which the PVO is liable on account of its failure to perform. Second, the bond provides financial protection in the event the PVO defaults. If the FMC is to consider alternative security, it should consider whether the alternative security provides prequalification services and sufficient financial protection.

Thank you for your consideration. Please feel free to contact me if you have any questions or wish to discuss these issues further.

Sincerely,

Robert J. Duke