



April 17, 2020

VIA ELECTRONIC MAIL

Hon. Governor Wanda Vazquez
Commonwealth of Puerto Rico
Avenida Juan Ponce de Leon
San Juan, PR 00901

Dear Hon. Governor Vazquez:

Thank you for your public service and for all you are doing during these unprecedented times. It is greatly appreciated.

The Surety Association of Puerto Rico (SAPR) is a local industry association that promotes the use of surety bonds and educates all stakeholders on the benefits of surety bonds. The Surety and Fidelity Association of America (SFAA) is the national association of our industry that advocates for the surety and fidelity business across all states and territories. I am sharing with you a Request for Emergency Action to require the acceptance of electronically executed and issued bonds (copies of Request for Emergency Action and related memo attached) that was sent by The Surety and Fidelity Association of America on April 2nd and again in a subsequent email from SFAA's CEO, Lee Covington.

The Nature of Surety Bonds and the Pandemic's Impact

The remote working arrangements and social distancing standards implemented to control the spread of COVID-19 have made the traditional execution of surety bonds unworkable. Therefore, it is vital that the Puerto Rico take emergency action to require the acceptance of electronic execution and delivery of legally required construction and commercial bonds due to the COVID-19 pandemic. Please note, the United States General Services Administration has already issued an Emergency Order for federal projects.

Why is this action vital to Puerto Rico?

- The continuation of allowed construction and occupational and professional licensing often requires bonding in order to proceed. Without allowing for electronic bonding, the social distancing requirements necessitated by the pandemic will often make it impossible for required bonds to be issued, thus largely making continuation of commerce challenging or even contrary to law or regulations.
- Also, importantly, the requested action will help keep business transactions going and help protect the livelihood of small business contractors, workers, other businesses and citizens in your state who are protected by these bonds.

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Surety Bonds are a vital element of effective governance in that they guarantee the performance of the firm or individual purchasing the bond. Construction surety bonds provide critical protections to taxpayers by guaranteeing the performance of contractors, in addition to guaranteeing the payment of small business sub-contractors and suppliers. Commercial Bonds offer the guarantee of the credibility of business practitioners thereby upholding federal, state, and local laws that protect consumers from financial harm.

Attached are responses to questions that you might have in hopes it will facilitate your consideration and quick action on this request. Please let me know if additional questions arise, and I will get you any requested information as quickly as possible.

SFAA's Request for an Emergency Order Requiring the Acceptability of Electronic Bonding

We would appreciate it if you could confirm the feasibility of the SFAA's requested Emergency Action. Such action would direct local government agencies with construction procurement authority and all other local agencies that issue commercial bonds to (1) accept all surety bonds and powers of attorney containing e-signatures and e-corporate seals affixed to each document and (2) to waive the requirement of a notary.

Allowing for the electronic acceptance of bonds will help ensure the safety of the people issuing these bonds, while also complying with shelter-in-place and other remote working requirements.

I would greatly appreciate a response by either you or the individual assigned to such matters. Please do not hesitate to contact me should you require any additional information or the SFAA directly as noted on the attached documents. Thank you so much for your consideration of this request.

Sincerely,



Nancy Cruz
President
Surety Association of Puerto Rico

cc: Lcdo. Rafael Cestero, Oficina del Comisionado de Puerto Rico

Common Questions About Surety Bonds and Electronic Bonding

Q: Where in our state laws and regulations are relevant provisions found on which you want the Governor to act?

A: Statutes and regulations could be found for any agency/board/commission with the authority to enter into construction contracts (e.g., departments of transportation, education, general services, school boards); entities with oversight for commercial activities (e.g., mining/drilling where reclamation bonds are at issue); court proceedings (e.g., guardianship/conservatorships, appeal bonds); and anywhere that occupational licensing requires bonding (e.g., plumbers, electricians). This isn't a complete list, but it shows how broadly bonds are used and how widespread the applicable governing statutes/regulations can be.

Q: Our state already allows use of e-notaries or e-signatures. Doesn't that take care of these concerns?

A: State law and regulations may allow for electronic bonding (or parts of it, like allowing digital signatures), but we are requesting that the Governor to require that electronic bonding not only be allowed – but, importantly, that it is required to be accepted. As an example, even if a surety uses a digital signature and is otherwise able to issue a bond remotely without a wet signature, raised seal, etc., we can't force a public official to whom the bond goes to accept it.

Q: Are you seeing issues arise in our territory?

A: We might not hear about individual situations. But by the time a bond isn't accepted and we learn about it, it's already too late. With occupational licensing bonds, there can be an indefinite delay until a license can be issued, leaving professionals without the ability to engage in their chosen profession and unable help consumers. It's particularly problematic for a construction project where the bidder can't secure a bond. If the contractor is the lowest bidder but can't be bonded due to electronic bonding constraints, the contractor may well lose the project -- and the state will have to enter into a contract with a more costly contractor. In addition, on a construction project, no producer/attorney-in-fact would likely risk submitting a bond in electronic form unless it was expressly permitted in the bid documents. Otherwise, the person risks the principal's bid rejection and a professional liability claim. As a result, there may not be many stories of electronic bonds being rejected, but that doesn't mean that there isn't a negative impact on commerce.

Q: Have any states issued useful orders addressing the concerns you raise?

A: Many states have laws on the books – or have issued orders – addressing parts of the issues we are concerned about. Two good examples are Michigan and Washington.

- Michigan issued an [Executive Order](#) providing that (1) a physical signature may not be required unless there is a law that mandates it, (2) “a signature will not be denied legal effect or enforceability solely because it is in electronic form...”, and (3) remote notarization is allowed by any notary currently holding the appropriate commission. The Order applies broadly to all state and local officials.
- Washington recently passed a change to its electronic signature law (UETA) in which the state changed the discretionary nature of that statute to require that an electronically executed agreement must be accepted. SFAA is seeking to have it become effective immediately rather than the delayed effective date of June 11.

While the above addresses some of our concerns, we believe they need to go further for the purpose of surety bond execution and acceptance. In addition to what is included in the Michigan Order, we need the notary requirement on surety bonds waived because notaries are unable to put in place the remote notarization process quickly enough. Remote online notarization would still necessitate an e-seal for the notary, while many of our agents -- who are often licensed as notaries -- have been using the traditional practice of a stamp or embosser. The new Washington law also fixes part of our issue in that it mandates acceptance of an electronic signature. However, it does not address the notary issue.