



## National Association of Surety Bond Producers

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### NASBP TESTIFIES AT CONGRESSIONAL HEARING ON HOW H.R. 3534 HELPS PROTECT THE VIABILITY OF SMALL CONSTRUCTION BUSINESSES

**WASHINGTON— MARCH 6, 2012—**In testimony before the Subcommittee on Courts, Commercial and Administrative Law of the U.S. House of Representatives' Committee on the Judiciary, Mark H. McCallum, Chief Executive Officer of the National Association of Surety Bond Producers (NASBP), called for Congress' support of H.R. 3534, the "Security in Bonding Act of 2011", introduced by U.S. Representative Richard Hanna (NY-24<sup>th</sup> District) and co-sponsored by U.S. Representatives Mick Mulvaney (SC-5<sup>th</sup> District), Trey Gowdy (SC-4<sup>th</sup> District), and Jared Polis (CO-2nd District), as a critical means to protect small construction businesses and to assure the integrity of surety bonds on federal contracts when issued by individuals using a pledge of assets.

Noting that there have been recent problems associated with individual surety bonds on federal projects, Mr. McCallum informed Congress that a statutory solution was needed. "NASBP believes that the current regulations pertaining to use of individual sureties on federal construction projects are fundamentally flawed, allowing gamesmanship by unlicensed persons acting as sureties," McCallum said, adding, "Such existing requirements need to be superseded by the statutory approach delineated in H.R. 3534."

H.R. 3534 requires individual sureties to pledge assets that are public debt obligations that are unconditionally guaranteed by the U.S. Government and to provide those assets to the federal contracting authority, ensuring that pledged assets are sufficient, readily convertible to cash, and in the physical custody and control of the federal government. "Subcontractors and suppliers furnishing labor and materials on federal construction projects need to know that their payment bond remedies are secure and have confidence that the assets backing those bonds will be sufficient to pay them should they go unpaid for their efforts," remarked McCallum.

Janette Wellers, President and CFO of JBlanco Enterprises, Inc., Sheridan, Colo., testified that small businesses like hers performing as subcontractors on federal construction projects rely on the integrity of the payment bond to ensure that they have a means of recovering monies when they go unpaid. Wellers said in her testimony, "I nearly lost my business as a result of a deficient individual surety bond placed on a federal project that later proved to have no assets behind it." She explained that the prime contractor had secured a bond from an unlicensed individual surety, not from a certified corporate surety approved and listed on U.S. Department of the Treasury Circular 570. She stated that the assets pledged to back the payment bond apparently did not exist. "The inability to recover our payment bond claim was a severe financial hardship for JBlanco Enterprises, endangering our business viability," Wellers said.

Robert E. Little, Jr., an attorney, who had spent many years in government service addressing procurement matters, described how Congress' support of H.R. 3534 would provide much needed certainty to a very contentious area of federal construction contracts—the acceptability of bid, performance, and payment bonds issued by individual sureties. “Since December of 2004 when this problem first came to my attention, I have reviewed and provided opinions on more than several dozen assets pledged by individual sureties,” Little said. “I have not seen a valid asset.”

Kristen McDonough, Director of Legislative Affairs of the National Electrical Contractors Association (NECA), said, “The testimonies of Mr. McCallum, Ms. Wellers, and Mr. Little yesterday underscore how H.R. 3534, the ‘Security in Bonding Act of 2011,’ is good common sense, and Congress passing this bill will help to protect the funds of taxpayers and small businesses’ owners, like NECA contractors.”

H.R. 3534 is supported by the following national organizations:  
American Insurance Association (AIA), American Subcontractors Association, Inc. (ASA), Associated Builders & Contractors, Inc. (ABC), Associated General Contractors of America (AGC), Mechanical Contractors Association of America (MCAA), National Association of Minority Contractors (NAMC), National Association of Surety Bond Producers (NASBP), National Electrical Contractors Association (NECA), Property Casualty Insurers Association of America (PCI), Sheet Metal and Air Conditioning Contractors’ National Association (SMACNA), and Surety & Fidelity Association of America (SFAA).

Additional hearing testimony is available at  
[http://judiciary.house.gov/hearings/Hearings%202012/hear\\_03052012.html](http://judiciary.house.gov/hearings/Hearings%202012/hear_03052012.html).

*Founded in 1942, the **National Association of Surety Bond Producers (NASBP)** is the association of and resource for surety bond producers and allied professionals. NASBP members specialize in providing surety bonds for construction contracts and other purposes to companies and individuals needing the assurance offered by surety bonds. NASBP members engage in contract and commercial surety production throughout the United States, Puerto Rico, Guam, and a number of countries. They have broad knowledge of the surety marketplace and the business strategies and underwriting differences among surety companies. As trusted advisors, professional surety bond producers act in many key roles to position their clients to meet the underwriting requirements for surety credit.*

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