Casey Elliott

From: comments
Sent: Friday, March 11, 2011 12:41 PM
To: greenfim@wulaw.wustl.edu; attyboris@aol.com
Subject: UDMSA comment 2

From: Jason Jenkins [mailto:JLJ@alphasurety.com]
Sent: Tuesday, February 22, 2011 5:17 PM
To: comments
Cc: mguimond@nationalpolicygroup.com
Subject: UDMSA Comments / Recommendations

Hello,

I was on the call today and have been a broker for bonds and some insurance for the credit counseling and debt settlement industries for almost ten years. I have been there since the initial laws of UT and CO and have some comments to make regarding the surety and insurance provisions. Note that my comments are more from the surety perspective from my 15 years experience and in a few days, we will submit additional comments from Cary White in my office that are more focused on the insurance provisions and his 20 years experience. I know some of these provisions are not the most critical points being addressed. My comments are in the interest of making it the best legislation possible.

1. Rating for Surety carriers – Right now you have this limited to A or better by A.M. Best. This is unreasonably high. An A.M. Best rating of A- is still an "Excellent" company. And I would be VERY surprised if every bond that UT, CO, DE, NV, RI and TN have accepted to date are all from A or better companies. I believe Mr. White will suggest that for insurance purposes, a rating of A- VII should be used because that indicates a financial size of $50 million or more of policyholder surplus. Because of the way surety bonds are underwritten, I do not think the financial size portion is necessary for surety bonds.
2. Section 14 Surety Bond Substitute – Page 21 (2) In my experience, there is precedent for a state accepting a bank Irrevocable Letter of Credit in lieu of a bond. However, in subsection (2) (b) I have never seen this in any state legislation that allows for Federal, State or Municipal Investment Bonds to be posted in lieu of a surety bond. There seems to be little guidance how that would even be possible to "be deposited and maintained by a bank". And at the very least to avoid confusion, I recommend adding the word "Investment" or "Debt" before the word (B) "...bonds or other obligations" on line 11.
3. The larger problem in my opinion with Section 14 is in Subsection (1) on page 21 line 1. The basic problems are:
    a. Section (1) (A) does not specify what type of insurance is even being requested. Section 11 (B) (5) addresses Fidelity Insurance coverage which is insurance against employee theft, so I assume that is not what is being requested. I also assume it is probably Errors & Omissions coverage since that is coverage for third parties against the Professional Acts of the Insured. The coverage being requested here really needs to be stated.
    b. Regardless of what that coverage is, no insurance policy is an adequate substitution for a bond. A surety bond is supposed to represent a reasonable barrier of entry that shows that a qualified third party company has reviewed the credit of the owner and the company as well as the financials for the business and probably the business owner. And a bond protects against the intentional misdirection of client funds as well as monies that are charged above the statutory stated maximums. Neither Fidelity nor E&O cover these risks.

I would be happy to discuss in more detail on any of the above. Good luck in your efforts.

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