

Editorial Notes

AMENDMENTS

2006—Pub. L. 109-351, §901(c)(1), substituted “eligible obligations” for “Government obligations” in section catchline.

Subsec. (a). Pub. L. 109-351, §901(b), (c)(3), substituted “an eligible obligation” for “a Government obligation” in introductory provisions and amended par. (2) generally. Prior to amendment, par. (2) read as follows: “be in an amount equal at par value to the amount of the required surety bond; and”.

Subsecs. (b) to (e). Pub. L. 109-351, §901(c)(3), (4), substituted “an eligible obligation” for “a Government obligation” and “the eligible obligation” for “the Government obligation” wherever appearing.

Subsec. (f). Pub. L. 109-351, §901(c)(2), (3), substituted “eligible obligations” for “Government obligations” and “an eligible obligation” for “a Government obligation”.

2003—Subsec. (d)(1). Pub. L. 108-178 struck out comma after “sections 3131 and 3133 of title 40”.

2002—Subsec. (d). Pub. L. 107-217, §3(h)(9)(A), in introductory provisions substituted “sections 3131 and 3133 of title 40” for “the Act of August 24, 1935 (known as the Miller Act) (40 U.S.C. 270a-270d)” and “section 3133(a) of title 40” for “section 3 of the Act (40 U.S.C. 270c)”.

Subsec. (d)(1). Pub. L. 107-217, §3(h)(9)(B), substituted “sections 3131 and 3133 of title 40” for “the Act of August 24, 1935 (known as the Miller Act) (40 U.S.C. 270a-270d)” and “section 3133(b) of title 40” for “section 2 of the Act (40 U.S.C. 270b)”.

Subsec. (e)(2)(A). Pub. L. 107-217, §3(h)(9)(C), substituted “sections 3131 and 3133 of title 40” for “the Act of August 24, 1935 (known as the Miller Act) (40 U.S.C. 270a-270d)”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108-178 effective Aug. 21, 2002, see section 5 of Pub. L. 108-178, set out as a note under section 5334 of Title 5, Government Organization and Employees.

§ 9304. Surety corporations

(a) When a law of the United States Government requires or permits a person to give a surety bond through a surety, the person satisfies the law if the surety bond is provided for the person by a corporation—

- (1) incorporated under the laws of— (A) the United States; or (B) a State, the District of Columbia, or a territory or possession of the United States;

- (2) that may under those laws guarantee— (A) the fidelity of persons holding positions of trust; and (B) bonds and undertakings in judicial proceedings; and

- (3) complying with sections 9305 and 9306 of this title.

(b) Each surety bond shall be approved by the official of the Government required to approve or accept the bond. The official may not require that the surety bond be given through a guaranty corporation or through any particular guaranty corporation.

(Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 1047.)

Subsection (a) is substituted for 6:6(1st sentence) to eliminate unnecessary words and for clarity and consistency. Clause (3) is added for clarity.

In subsection (b), the words “Each surety bond” are substituted for “Such recognizance, stipulation, bond, or undertaking”; the words “official of the Government” are substituted for “head of department, court, judge, officer, board, or body executive, legislative, or judicial”; and the word “official” is substituted for “officer or person having the approval of any bond”, to eliminate unnecessary words and for clarity and consistency.

§ 9305. Authority and revocation of authority of surety corporations

(a) Before becoming a surety under section 9304 of this title, a surety corporation must file with the Secretary of the Treasury—

- (1) a copy of the articles of incorporation of the corporation; and (2) a statement of the assets and liabilities of the corporation signed and sworn to by the president and secretary of the corporation.

(b) The Secretary may authorize in writing a surety corporation to provide surety bonds under section 9304 of this title if the Secretary decides that—

- (1) the articles of incorporation of the corporation authorize the corporation to do business described in section 9304(a)(2) of this title; (2) the corporation has paid-up capital of at least \$250,000 in cash or its equivalent; and (3) the corporation is able to carry out its contracts.

(c) A surety corporation authorized under subsection (b) of this section to provide surety bonds shall file with the Secretary each January, April, July, and October a statement of the assets and liabilities of the corporation signed and sworn to by the president and secretary of the corporation.

- (d) The Secretary— (1) shall revoke the authority of a surety corporation to do new business if the Secretary decides the corporation is insolvent or is in violation of this section or section 9304 or 9306 of this title;

- (2) may investigate the solvency of a surety corporation at any time; and (3) may require additional security from the person required to provide a surety bond if the Secretary decides that a surety corporation no longer is sufficient security.

(e) A surety corporation providing a surety bond under section 9304 of this title may not provide any additional bond under that section if—

- (1) the corporation does not pay a final judgment or order against it on the bond; and (2) no appeal or stay of the judgment or order is pending 30 days after the judgment or order is entered.

(Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 1047.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Revised Section, Source (U.S. Code), Source (Statutes at Large). Row 1: 9304, 6:6.

Table with 3 columns: Revised Section, Source (U.S. Code), Source (Statutes at Large). Rows 1-4: 9305(a), 6:8; 9305(b), 6:9; 9305(c), 6:9; 9305(d).

HISTORICAL AND REVISION NOTES—CONTINUED

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
9305(e)	6:11.	

In subsection (a), before clause (1), the words “Before becoming a surety under section 9304 of this title, a surety corporation must file” are substituted for “Every company, before transacting any business under sections 6 to 13 of this title, shall deposit” for consistency and as being more precise. In clause (1), the words “charter or” are omitted as being included in “articles of incorporation”.

Subsection (b) is substituted for 6:8(2d sentence) for clarity and consistency and because of the restatement.

In subsection (c), the words “A surety corporation authorized under subsection (b) of this section to provide surety bonds” are substituted for “Every such company” for clarity. The words “as is required by section 8 of this title” are omitted as unnecessary because of the restatement.

In subsection (d)(1), the word “shall” is substituted for “shall have the power, and it shall be his duty, to” to eliminate unnecessary words. The words “under sections 6 to 13 of this title” are omitted as unnecessary because of the restatement. The words “conducting its business” are omitted as surplus. In clause (3), the words “that . . . be given at any time” are omitted as surplus. The words “from the person required to provide a surety bond” are substituted for “by any principal” for clarity.

Subsection (e) is substituted for 6:11 to eliminate unnecessary words, for clarity and consistency, and because of the restatement.

§ 9306. Surety corporations acting outside area of incorporation and place of principal office

(a) A surety corporation may provide a surety bond under section 9304 of this title in a judicial district outside the State, the District of Columbia, or a territory or possession of the United States under whose laws it was incorporated and in which its principal office is located only if the corporation has a resident agent for service of process for that district. The resident agent—

(1) may be an official of the State, the District of Columbia, the territory or possession in which the court sits who is authorized or appointed under the law of the State, District, territory or possession to receive service of process on the corporation; or

(2) may be an individual who resides in the jurisdiction of the district court for the district in which a surety bond is to be provided and who is appointed by the corporation as provided in subsection (b)¹

(b) If the surety corporation meets the requirement of subsection (a) by appointing an individual under subsection (a)(2), the surety corporation shall file a certified copy of the power of attorney with the clerk of the district court for the district in which a surety bond is to be given at each place the court sits. A copy of the power of attorney may be used as evidence in a civil action under section 9307 of this title.

(c)(1) If a resident agent is removed, resigns, dies, or becomes disabled, the surety corporation shall appoint another agent as described in this section.

(2) Until an appointment is made under paragraph (1) of this subsection or during an absence

¹ So in original. Probably should be followed by a period.

of an agent from the district in which the surety bond is given, service of process may be made on the clerk of the court in which a civil action against the corporation is brought. The official serving process on the clerk of the court—

(A) immediately shall mail a copy of the process to the corporation; and

(B) shall state in the official’s return that the official served the process on the clerk of the court.

(3) A judgment or order of a court entered or made after service of process under this section is as valid as if the corporation were served in the judicial district of the court.

(Pub. L. 97–258, Sept. 13, 1982, 96 Stat. 1048; Pub. L. 106–113, div. B, § 1000(a)(9) [title V, § 5007], Nov. 29, 1999, 113 Stat. 1536, 1501A–594.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
9306	6:7.	

In subsection (a), before clause (1), the words “in a judicial district” are added for clarity. The word “outside” is substituted for “beyond the limits” to eliminate unnecessary words. The words “territory or possession of the United States” are substituted for “Territory” for consistency in the revised title. The word “resident” is added for consistency.

In subsection (b), the words “duly . . . and authenticated” are omitted as surplus. The words “in which a surety bond is to be given” are added for clarity and because of the restatement. The words “the court sits” are substituted for “where a term of such court is or may be held”, and the words “A copy of the power of attorney may be used as evidence in a civil action” are substituted for “which copy, or a certified copy thereof, shall be legal evidence in all controversies”, to eliminate unnecessary words and for clarity and consistency.

In subsection (c)(1), the words “a resident” are substituted for “any such” for clarity. The words “becomes disabled” are substituted for “become insane, or otherwise incapable of acting” to eliminate unnecessary words. The words “the surety corporation shall” are substituted for “it shall be the duty of such company to” to eliminate unnecessary words and for consistency. The words “in his place” are omitted as unnecessary.

In subsection (c)(2), before clause (A), the words “the district in which the surety bond is given” are substituted for “such district”, and the words “a civil action against the corporation” are substituted for “such suit”, for clarity and consistency. The words “with like effect as upon an agent appointed by the company” are omitted as unnecessary. The words “official serving” are substituted for “officer executing such” for consistency. Clause (2) is substituted for “state such fact in his return” for clarity.

In subsection (c)(3), the words “decree or” are omitted as being included in “order”. The words “and binding” are omitted as being included in “valid”. The words “as if the corporation were served in the judicial district of the court” are substituted for “on such company as if served with process in said district” for clarity and consistency.

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1999—Subsec. (a). Pub. L. 106–113, § 1000(a)(9) [title V, § 5007(1)], substituted “has a resident agent for service of process for that district. The resident agent—” and pars. (1) and (2) for “designates a person by written