607, which enacted chapter 32 (§ 3101 et seq.) and sections 347d and 611a of Title 12, Banks and Banking, amended sections 72, 378, 614, 615, 618, 619, 1813, 1815, 1817, 1818, 1820, 1821, 1822, 1823, 1828, 1829b, 1831b, and 1841 of Title 12, and enacted provisions set out as notes under sections 36, 247, 601, 611a, and 3101 of Title 12. For complete classification of this Act to the Code, see Short Title note set out under section 3101 of Title 12 and Tables.

AMENDMENTS

1994—Subsec. (e)(1). Pub. L. 103–272 substituted ''section'' for ''subparagraph''.

EFFECTIVE DATE; PROMULGATION OF REGULATIONS

Section effective 270 days after Oct. 28, 1986, except that the Secretary of the Treasury and each appropriate regulatory agency shall publish for notice and public comment within 120 days after Oct. 28, 1986, initial implementing regulations to become effective as temporary regulations 210 days after Oct. 28, 1986, and as final regulations not later than 270 days after Oct. 28, 1986, see title IV of Pub. L. 99–571, set out as a note under section 78*o*–5 of Title 15, Commerce and Trade.

TRANSITIONAL AND SAVINGS PROVISIONS

For transitional and savings provisions of Pub. L. 99–571, see section 301 of Pub. L. 99–571, set out as a note under section 78*o*–5 of Title 15, Commerce and Trade.

CHAPTER 93—SURETIES AND SURETY BONDS

Sec.
9301. Definitions.
9302. Prohibition against surety bonds for United States Government personnel.
9303. Use of Government obligations instead of surety bonds.[1]
9304. Surety corporations.
9305. Authority and revocation of authority of surety corporations.
9306. Surety corporations acting outside area of incorporation and place of principal office.
9307. Civil actions and judgments against surety corporations.
9308. Civil penalty.
9309. Priority of sureties.

§ 9301. Definitions

In this chapter—

(1) ''person'' means an individual, a trust, an estate, a partnership, and a corporation.

(2) ''eligible obligation'' means any security designated as acceptable in lieu of a surety bond by the Secretary of the Treasury.

(Pub. L. 97–258, Sept. 13, 1982, 96 Stat. 1046; Pub. L. 109–351, title IX, § 901(a), Oct. 13, 2006, 120 Stat. 2007.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9301	6:15(10th, last sentences).	

In clause (1), the words after the semicolon are omitted as unnecessary because of the restatement.

Clause (2) is substituted for 6:15(last sentence) for consistency and to eliminate unnecessary words.

AMENDMENTS

2006—Par. (2). Pub. L. 109–351 amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''''Government obligation' means a public debt obligation of the United States Government and an obligation whose principal and interest is unconditionally guaranteed by the Government.''

§ 9302. Prohibition against surety bonds for United States Government personnel

An agency (except a mixed-ownership Government corporation) may not require or obtain a surety bond for a member of the uniformed services or an officer or employee of the United States Government in carrying out official duties. This section does not affect the personal financial liability of the member, officer, or employee.

(Pub. L. 97–258, Sept. 13, 1982, 96 Stat. 1046.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9302	31:1201.	June 6, 1972, Pub. L. 92–310, § 101, 86 Stat. 201.

The words ''agency (except a mixed-ownership Government corporation)'' are substituted for 31:1201(c)(words before last comma) and ''agency of the Federal Government'' because of section 101 of the revised title and for consistency. The words ''member of the uniformed services or an officer or employee of the United States Government'' are substituted for ''civilian employees or military personnel'' for consistency with other titles of the United States Code. The words ''in carrying out official duties'' are substituted for ''in connection with the performance of their official duties'' to eliminate unnecessary words and because of the restatement. The words ''to the Federal Government'' are omitted as surplus. The words ''member, officer, or employee'' are substituted for ''employees and personnel'' because of the restatement.

§ 9303. Use of eligible obligations instead of surety bonds

(a) If a person is required under a law of the United States to give a surety bond, the person may give an eligible obligation as security instead of a surety bond. The obligation shall—

(1) be given to the official having authority to approve the surety bond;

(2) as determined by the Secretary of the Treasury, have a market value that is equal to or greater than the amount of the required surety bond; and

(3) authorize the official receiving the obligation to collect or sell the obligation if the person defaults on a required condition.

(b)(1) An official receiving an eligible obligation under subsection (a) of this section may deposit it with—

(A) the Secretary of the Treasury;

(B) a Federal reserve bank; or

(C) a depositary designated by the Secretary.

(2) The Secretary, bank, or depositary shall issue a receipt that describes the obligation deposited.

(c) Using an eligible obligation instead of a surety bond for security is the same as using—

(1) a personal or corporate surety bond;

(2) a certified check;

(3) a bank draft;

(4) a post office money order; or

(5) cash.

[1] Section catchline amended by Pub. L. 109–351 without corresponding amendment of chapter analysis.

(d) When security is no longer required, an eligible obligation given instead of a surety bond shall be returned to the person giving the obligation. If a person, supplying labor or material to a contractor defaulting under sections 3131 and 3133 of title 40, files with the United States Government the application and affidavit provided under section 3133(a) of title 40, the Government—

(1) may return to the contractor the eligible obligation given as security (or proceeds of the eligible obligation given) under sections 3131 and 3133 of title 40 only after the 90-day period for bringing a civil action under section 3133(b) of title 40; and

(2) if a civil action is brought in the 90-day period, shall hold the eligible obligation or the proceeds subject to the order of the court having jurisdiction of the action.

(e) This section does not affect the—

(1) priority of a claim of the Government against an eligible obligation given under this section;

(2) right or remedy of the Government for default on an obligation provided under—

(A) sections 3131 and 3133 of title 40; or

(B) this section;

(3) authority of a court over an eligible obligation given as security in a civil action; and

(4) authority of an official of the Government authorized by another law to receive an eligible obligation as security.

(f) To avoid frequent substitution of eligible obligations, the Secretary may prescribe regulations limiting the effect of this section to an eligible obligation maturing more than one year after the date the obligation is given as security.

(Pub. L. 97–258, Sept. 13, 1982, 96 Stat. 1046; Pub. L. 107–217, § 3(h)(9), Aug. 21, 2002, 116 Stat. 1300; Pub. L. 108–178, § 4(f)(2), Dec. 15, 2003, 117 Stat. 2641; Pub. L. 109–351, title IX, § 901(b), (c), Oct. 13, 2006, 120 Stat. 2007.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9303(a)	6:15(1st sentence).	
9303(b)	6:15(3d sentence).	
9303(c)	6:15(2d sentence).	
9303(d)	6:15(4th, 5th sentences).	
9303(e)	6:15(6th, 8th sentences).	
9303(f)	6:15(7th, 9th, 11th sentences).	

In subsection (a), before clause (1), the words ''If a person is required under a law of the United States to give a surety bond, the person may give a Government obligation as security instead of a surety bond'' are substituted for ''Wherever by the laws of the United States or regulations made pursuant thereto, any person is required to furnish any recognizance, stipulation, bond, guaranty, or undertaking, hereinafter called 'penal bond', with surety or sureties, such person may, in lieu of such surety or sureties, deposit as security . . . United States Liberty bonds or other bonds or notes of the United States'' to eliminate unnecessary words and for consistency. The words ''The obligation shall be'' are added because of the restatement. Clause (3) is substituted for ''together with an agreement authorizing such official to collect or sell such bonds or notes so deposited in case of any default in the performance of any of the conditions or stipulations of such penal bond'' to eliminate unnecessary words.

In subsection (b)(1), before clause (A), the words ''An official receiving a Government obligation under subsection (a) of this section may deposit it with'' are substituted for ''The bonds or notes deposited hereunder, and such other United States bonds or notes as may be substituted therefor from time to time as such security, may be deposited with'' for clarity and consistency and to eliminate unnecessary words. Clause (A) is substituted for ''Treasurer of the United States'' because of the source provisions restated in section 321(c) of the revised title. In clause (C), the words ''duly'' and ''for that purpose'' are omitted as unnecessary.

Subsection (b)(2) is substituted for ''which shall issue receipt therefor, describing such bonds or notes so deposited'' to eliminate unnecessary words and for consistency.

In subsection (c), before clause (1), the words ''Using a Government obligation instead of a surety bond for security is the same as using'' are substituted for ''The acceptance of such United States bonds or notes in lieu of surety or sureties required by law shall have the same force and effect as'' to eliminate unnecessary words and for consistency. In clause (1), the word ''personal'' is substituted for ''individual'' for consistency.

Subsection (d) is substituted for 6:15(4th, 5th sentences) to eliminate unnecessary words and for consistency in the revised title and with other titles of the Code.

In subsection (e), before clause (1), the words ''This section does not'' are substituted for ''Nothing herein contained shall'' for clarity and consistency. The words ''or impair'' are omitted as being covered by ''affect''. Clause (1) is substituted for ''the bonds or notes deposited'' for clarity and consistency. In clause (2), the words ''of said penal bond'' are omitted because of the restatement. In clause (3), the words ''civil action'' are substituted for ''judicial proceedings'' for consistency. In clause (4), the word ''official'' is substituted for ''administrative officer'' for consistency.

In subsection (f), the words ''in order'' are omitted as unnecessary. The words ''Government obligations'' are substituted for ''securities'' and for ''bonds and notes of the United States'' for consistency. The words ''the Secretary may prescribe regulations limiting'' are substituted for ''such rules and regulations may limit'' for clarity and consistency. The words ''in appropriate classes of cases'' are omitted as unnecessary. The words ''the obligation is given'' are substituted for ''of deposit of such bonds'' for clarity and consistency. The text of 6:15(7th sentence) is omitted as executed. The text of 6:15(9th sentence) is omitted because of section 321 of the revised title.

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)''.

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.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9304	6:6.	

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

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9305(a), (b).	6:8.	
9305(c), (d).	6:9.	
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.