§ 115.34 Minimization of Surety’s Loss.

(a) Imminent Breach—(1) Prior approval requirement. SBA will reimburse its guaranteed share of payments made by a Surety to avoid or attempt to avoid an Imminent Breach of the terms of a Contract covered by an SBA guaranteed bond only if the payments were made with the prior approval of OSG. OSG’s prior approval will be given only if the Surety demonstrates to SBA’s satisfaction that a breach is imminent and that there is no other recourse to prevent such breach.

(2) Amount of reimbursement. The aggregate of the payments by SBA to avoid Imminent Breach cannot exceed...
§ 115.35 Claims for reimbursement of Losses.

(a) Notification requirements—(1) Events requiring notification. A Prior Approval Surety must notify OSG of the occurrence of any of the following:
   (i) Legal action under the bond has been initiated.
   (ii) The Obligee has declared the Principal to be in default under the Contract.
   (iii) The Surety has established a claim reserve for the bond.
   (iv) The Surety has received any adverse information concerning the Principal’s financial condition or possible inability to complete the project or to pay laborers or suppliers.

(2) Timing of notification. Notification must be made in writing at the earlier of the time the Surety applies for a guarantee on behalf of an affected Principal, or within 30 days of the date the Surety acquires knowledge, or should have acquired knowledge, of any of the listed events.

(b) Surety action. The Surety must take all necessary steps to mitigate Losses resulting from any of the events in paragraph (a) of this section, including the disposal at fair market value of any collateral held by or available to the Surety. Unless SBA notifies the Surety otherwise, the Surety must take charge of all claims or suits arising from a defaulted bond, and compromise, settle and defend such suits. The Surety must handle and process all claims under the bond and all settlements and recoveries as it does on non-guaranteed bonds.

(c) Claim reimbursement requests. (1) Claims for reimbursement for Losses which the Surety has paid must be submitted (together with a copy of the bond, the bonded Contract, and any indemnity agreements) with the initial claim to OSG on a “Default Report, Claim for Reimbursement and Record of Administrative Action” (SBA Form 994H), within 1 year from the time of each disbursement. Claims submitted after 1 year must be accompanied by substantiation satisfactory to SBA. The date of the claim for reimbursement is the date of receipt of the claim by SBA, or such later date as additional information requested by SBA is received.

(2) The Surety must also submit evidence of the disposal of all collateral at fair market value.

(3) SBA may request additional information prior to reimbursing the Surety for its Loss.

(4) Subject to the offset provisions of part 140, SBA pays its share of the Loss incurred and paid by the Surety within 90 days of receipt of the requisite information.

(5) Claims for reimbursement and any additional information submitted are subject to review and audit by SBA, including but not limited to the Surety’s compliance with SBA’s regulations and forms.

(d) Status updates. The Surety must submit semiannual status reports on each claim 6 months after the initial default notice, and then every 6 months. The Surety must notify SBA immediately of any substantial changes in the status of the claim or the amounts of Loss reserves.

(e) Reservation of SBA rights. The payment by SBA of a Surety’s claim does not waive or invalidate any of the terms of the Prior Approval Agreement, the regulations set forth in this part 115, or any defense SBA may have against the Surety. Within 30 days of receipt of notification that a claim or any portion of a claim should not have been paid by SBA, the Surety must repay the specified amounts to SBA.