§ 223.11 Limitation of risk: Protective methods.

The limitation of risk prescribed in § 223.10 may be complied with by the following methods:

(a) Coinsurance. Two or more companies may underwrite a risk on any bond or policy, the amount of which does not exceed their aggregate underwriting limitations. Each company shall limit its liability upon the face of the bond or policy, to a definite specified amount which shall be within its underwriting limitation.

(b) Reinsurance. (1) In respect to bonds running to the United States, liability in excess of the underwriting limitation shall be reinsured within 45 days from the date of execution and delivery of the bond with one or more companies holding a certificate of authority from the Secretary of the Treasury. Such reinsurance shall not be in excess of the underwriting limitation of the reinsuring company. Where reinsurance is contemplated, Federal agencies may accept a bond from the direct writing company in satisfaction of the total bond requirement even though it may exceed the direct writing company’s underwriting limitation. Within the 45 day period, the direct writing company shall furnish to the Federal agency any necessary reinsurance agreements. However, a Federal agency may, at its discretion, require that reinsurance be obtained within a lesser period than 45 days, and may require completely executed reinsurance agreements in hand before making a final determination that any bond is acceptable. Reinsurance may protect bonds required to be furnished to the United States by the Miller Act (40 U.S.C. 270a through 270d) covering contracts for the construction, alteration, or repair of any public building or public work of the United States, as well as other types of Federal bonds. Use of reinsurance or coinsurance to protect such bonds is at the discretion of the direct writing company. Reinsurance shall be executed on reinsurance agreement forms (Standard Form 273 for Miller Act Performance bonds (formerly form No. TFS 6318), Standard Form 274 for Miller Act Payment bonds (formerly form No. TFS 6319), and Standard Form 275 for other types of Federal bonds (formerly form No. TFS 6319)). Federal bond-approving officers may obtain the forms by submitting a requisition in FEDSTRIP/MILSTRIP format to the General Services Administration regional office providing support to the requesting Government organization. In addition, the forms are available to authorized sureties and reinsurers from the Superintendent of Documents, Government Printing Office, Stop: SSMC, Washington, DC 20402.

(2) In respect to risks covered by bonds or policies not running to the United States, liability in excess of the underwriting limitation shall be reinsured within 45 days from the date of execution and delivery of the bond or policy with:

(i) One or more companies holding a certificate of authority from the Secretary of the Treasury as an acceptable surety on Federal bonds or one or more companies holding a certificate of authority as an acceptable reinsuring company on such bonds, or

(ii) One or more companies recognized as an admitted reinsurer in accord with § 223.12, or

(iii) A pool, association, etc., to the extent that it is composed of such companies, or

(iv) An instrumentality or agency of the United States which is permitted by Federal law or regulation to execute reinsurance contracts.

(3) No certificate-holding company may cede to a reinsuring company recognized under § 223.12 any risk in excess of 10 percent of the latter company’s paid-up capital and surplus.

(c) Other methods. In respect to all risks other than Miller Act performance and payment bonds running to the United States, which must be coinsured or reinsured in accord with paragraph (a) or (b)(1) of this section respectively, the excess liability may otherwise be protected:

(1) By the deposit with the company in pledge, or by conveyance to it in trust for its protection, of assets admitted by the Treasury the current market value of which is at least equal to the liability in excess of its underwriting limitation, or

(2) If such obligation was incurred on behalf of or on account of a fiduciary
holding property in a trust capacity, by a joint control agreement which provides that the whole or a sufficient portion of the property so held may not be disposed of or pledged in any way without the consent of the insuring company.


§ 223.12 Recognition as reinsurer.

(a) Application by U.S. company. Any company organized under the laws of the United States or of any State thereof, wishing to apply for recognition as an admitted reinsurer (except on excess risks running to the United States) of surety companies doing business with the United States, shall file the following data with the Assistant Comptroller for Auditing and shall transmit therewith the fee in accordance with the provisions of § 223.22(a)(2):

(1) A certified copy of its charter or articles of incorporation, and
(2) A certified copy of a license from any State in which it has been authorized to do business, and
(3) A copy of the latest available report of its examination by a State Insurance Department, and
(4) A statement of its financial condition, as of the close of the preceding calendar year, on the annual statement form of the National Association of Insurance Commissioners, signed and sworn to by two qualified officers of the company, showing that it has a capital stock paid up in cash of not less than $250,000, in the case of a stock insurance company, or has net assets of not less than $500,000 over and above all liabilities, in the case of a mutual insurance company, and
(5) Such other evidence as the Secretary of the Treasury may determine necessary to establish that it is solvent and able to keep and perform its contracts.

(b) Application by a U.S. branch. A U.S. branch of an alien company applying for such recognition shall file the following data with the Assistant Commissioner, Comptroller and shall transmit therewith the fee in accordance with the provisions of § 223.22(a)(2):

(1) The submissions listed in paragraphs (a) (1) through (5) of this section, except that the financial statement of such branch shall show that it has net assets of not less than $250,000 over and above all liabilities, and
(2) Evidence satisfactory to the Secretary of the Treasury to establish that it has on deposit in the United States not less than $250,000 available to its policyholders and creditors in the United States.

(c) Financial reports. Each company recognized as an admitted reinsurer shall file with the Assistant Commissioner, Comptroller on or before the first day of March of each year its financial statement and such additional evidence as the Secretary of the Treasury determines necessary to establish that the requirements of this section are being met. A fee shall be transmitted with the foregoing data, in accordance with the provisions of § 223.22(a)(4).


§ 223.13 Full penalty of the obligation regarded as the liability; exceptions.

In determining the limitation prescribed in this part, the full penalty of the obligation will be regarded as the liability, and no offset will be allowed on account of any estimate of risk which is less than such full penalty, except in the following cases:

(a) Appeal bonds; in which case the liability will be regarded as the amount of the judgment appealed from, plus 10 percent of said amount to cover interest and costs.

(b) Bonds of executors, administrators, trustees, guardians, and other fiduciaries, where the penalty of the bond or other obligation is fixed in excess of the estimated value of the estate; in which cases the estimated value of the estate, upon which the penalty of the bond was fixed, will be regarded as the liability.

(c) Credit will also be allowed for indemnifying agreements executed by sole heirs or beneficiaries of an estate releasing the surety from liability.