

Can We Increase the Bail Premium Rate?

By Dan Amato, Vice President
American Surety Company

I have been a licensed bail agent for 25 years. Starting as an agency employee, I progressed to being an agency owner, general agency manager, and insurance company officer and director. I have also served in various local, state, and national bail associations, as well as insurance department and regulatory board positions.

I mention this experience because throughout my career, and regardless of my capacity, a question frequently asked by others in the bail bond business has been, "Can we increase the bail premium rate?" To fully comprehend this issue, participants in commercial bail must consider the history and tradition, present practices, and future options relevant to bail premium rates. Only then can change be rationally considered, especially by the retail bail agents who will be statutorily bound to any change regardless of its initial effect on their business.

Since at least the 1950's, the premium rate for commercial bail bonds has been 10% of the amount of the bond. There are several theories concerning the origination of this rate. They include biblical references and Old English Common Law practices. My favorite, and the one most often heard, is that we bail agents aren't smart enough to compute anything more difficult! However the 10% rate came about it has stuck with us for the past 50 years. It should be noted four states do have a 15% rate and one has a rate less than 10% but the vast majority of commercial bail written is at 10%, so that is what I will address.

Like many bail agents, I spent long nights at the jails writing bonds for a \$10 minimum premium, and I was thrilled to get that! But even increases in the minimum premium rate have not kept pace with inflation and current economics. The long standing rate of 10% became so entrenched in the system that when "Public Bail Programs" were first considered in the early 1960's, they adopted that rate into their 10% deposit plans. Those plans were an early and sometimes fatal attack on commercial bail. Such plans still exist, and in the minds of the public and the criminal justice system they continue to link bail to a 10% rate. These historical and traditional views and usage of 10% bail rates could be very difficult and dangerous to overcome. Remember, one of the oldest arguments against paid sureties is that poor people cannot afford to bond out and thus languish in jail. We know that is not true, and studies have proven we are right but it is still a very emotional issue.

Presently, bail premium rates are established under various laws, rules, and regulations of the local, state, and federal governments. The filing and approval process for bail rates is the same as for other lines of surety and insurance. With few exceptions, the states require each surety insurance company to file a rate plan with its Insurance Department. The rate plan must be approved by the Insurance Department, and then every agent of the insurance company is bound to charge the rate as filed and approved. An Insurance Department will not approve a rate plan unless it can be shown that the rates are sufficient to allow the insurance company to properly conduct its business and pay its losses and loss expenses. Detailed audits of insurance company rates are conducted by Insurance Departments, the National Association of Insurance Commissioners, and other public and private entities. The intent of those audits is to ascertain that rates are sufficient but not so high as to provide the insurance company with windfall profits. Not many agents know that the insurance company must pay the cost of these audits, even when done by a government agency. This is like paying the IRS to audit your tax returns!

Although current rates have not included any increases during the past four or five decades, our industry has experienced a "stealth" increase in premium volume. This premium volume increase has come about because of the rise in the amount of the average bond. From the 1950's, into the early 1980's, most bonds were small. Bonds of \$50, \$100, and \$250 were common for most traffic and misdemeanor offenses. As many states eliminated Municipal Courts and it became politically correct to get tough on certain misdemeanors, these small bond amounts increased to a range of \$100 to \$5000. Felony offenses that once carried bonds of \$250 to \$5000 now range between \$1000 to \$10000. These increases have obviously raised the amount of the average bond underwritten. Whereas 20 to 30 years ago the average bond across the country was between \$750 to \$1000, it is now between \$1500 and \$2000. Some states, like California,

have average bond amounts in excess of \$5000. So even though the premium rate of 10% has remained the same, we have experienced an increase in premium volume.

The important question is, "Has the increase in premium volume kept pace with inflation or added to the profitability of the agents and the companies?" The answer is no. They are not any more profitable today than 20 to 30 years ago. Even with the "stealth" premium volume increase, inflation, business lost to Public Programs, and tougher judicial attitudes in both criminal and civil courts have actually decreased the profit margins for agents and companies.

What does the future hold? Some companies and associations are trying to sell the idea of new products rather than a rate increase. Some of these products are actually civil bonds and would require the agents to have full property and casualty insurance licenses. For those bonds, the companies would flip the commission split from the traditional 80% agent and 20% company to one where the company would get 80 – 90% and the agent 10 – 20%. I don't believe this would help the bail agent or enhance the future of bail. Instead, what we must do is find a way to increase the average premium on the bail bonds we write.

I believe the place to start is an increase in the minimum premium. Both the agents and the companies have fixed costs associated with underwriting a bond. Printing and shipping powers and supplies, providing 24 hour staff, posting reports, regulatory costs, premium taxes, and all the other overhead costs and expenses add up to the company's average cost per bond. Likewise, agents have company commissions, rent, phones, insurance, advertising, salary, dues, and a myriad of other expenses that comprise the agent's average cost to execute a bond. Presently, most agents and companies actually lose money when writing a minimum premium bond. The cost of production and execution exceeds the income. Would an increase in the minimum premium rate make a difference? Yes, it definitely would, for both the agents and the company. Granted, some agents would benefit more than others and in some states, like California, the increase may not mean much at all. But any increase is better than none. Regardless if a bond is \$100 or \$1,000, the same amount of time and expense goes into production and execution. The average cost per bond for both the agent and the company applies to either undertaking.

Presently, on bonds of \$100, \$250, or \$500 the gross premium is \$50. Most agents keep \$40 and pay the company \$10. Both lose money. Why should we lose money on these bonds? Remember, if it costs the same to underwrite a \$100 bond as a \$1000 bond, then the premium should be the same.

Will our industry see an increase in the bail premium rate? Unfortunately, I do not think so. The reasons stated earlier regarding history, tradition, and public and judicial mindset all would make it very difficult and dangerous to initiate an across the board increase. My 25 years of experience in all aspects of commercial bail lead me to believe our best chance of increasing the average premium is by raising the minimum rate to \$100. I firmly believe that such an increase could easily be justified to the regulators. I also believe that the public and criminal justice system would not overreact.

How much would an increase in the minimum premium mean to the average agent? An agency that writes 25 minimums per month would increase its annual gross premium by \$12,500. Even after subtracting the cost of production, the additional revenue would be meaningful.

So how does an increase come about? It must be agent - driven. Since the agents have the most direct contact with the public and the judicial system, the increase would certainly require their support. Convincing customers and others the increase is justified would largely fall upon the agents. Competitors who might still charge less could be a problem, but I believe it would be short-lived. Once they learned other agents were collecting a larger minimum, they would pressure their company to file a new rate. In the past, increases in the minimum were quickly filed by all other companies once the initial increase was approved.

There is no guarantee an increase in the minimum premium will occur, yet I think it could happen. This is an opportunity for ASC/USI agents to get involved and share their thoughts with the company. Please give this matter serious consideration and contact us to discuss your opinions.