Fighting Fraud in Transportation

1. **Why are TIA and OOIDA working together?**

Following our battles during the last several Congresses, TIA and OOIDA opened a dialog at the suggestion of Representative Peter DeFazio (D-OR), a senior member of the House Subcommittee on Highways and Transit, and a former sponsor of the TRUCC Act. What TIA and OOIDA found when we sat down together, was a common interest in finding solutions to shared problems. From that dialog, we agreed to attempt to find a legislative solution to address our common concerns. These common concerns center on marketplace fraud. TIA and OOIDA recognized that the members of both organizations need each other to survive and grow successful family businesses. For its part, TIA recognized that Rep. DeFazio was intent on re-introducing the TRUCC Act, which would have required brokers and forwarders to post their margins on every invoice. TIA and OOIDA also recognized that a protracted and expensive fight was not in the best interests of our members or the industry. By taking the step of finding common ground with OOIDA, we have sought to fight common problems. Brokers, forwarders, and owner-operators need each other, and by working together, we can fight industry fraud so that our members can continue to grow their family businesses.

2. **Why are TIA and OOIDA working with ATA?**

ATA shared many of the same concerns about fraud in the marketplace as TIA and OOIDA. Beginning in the fall of 2010, the three leading industry associations began working together to find common ground and common language for the legislation. The three organizations have transmitted this common legislative language to Senators Snowe and Klobuchar in the hopes of having it be introduced.

3. **Why increase broker responsibility?**

The broker bond requirement has not changed since the mid-1980's. While TIA maintains that having no bond requirement would better serve the industry since carriers would conduct extensive credit checks on brokers before accepting a load, this no-bond approach fell on deaf ears in Congress. All of the major transportation associations were calling for an increase in the broker bond, with some calling for escrow accounts and a bond of $500,000. The $100,000 bond was determined to be a reasonable compromise to prevent escrow accounts and the public disclosure of broker margins.

4. **Why have a bond requirement at all?**

While an argument can be made that having no bond requirement is the best approach, since carriers would no longer have a security blanket, such an argument is not acceptable to carrier organizations, shipper organizations, or in Congress where, following the bank bailout, Wall Street bailout, and the BP oil spill, Congress is looking to increase corporate responsibility. The argument that you should be able to handle hundreds of thousands of dollars of carrier money and not be able to afford a bond and insurance will fall on deaf ears. The elimination of a bond requirement, might also result in the unintended consequence of having shippers require shipper-specific bonds, a trend which would have a devastating effect on even the largest brokers.

5. **Why not have a sliding scale bond?**

While this sounds good at the outset, it is totally un-workable. We are in the position we are in, because DOT has not enforced the limited regulations that they are supposed to enforce. A sliding bond scale would put more responsibility on DOT for enforcement, and it would require brokers to report their income to DOT; something TIA has always fought against. A sliding scale bond could also lead to increased litigation against brokers with carriers or carrier interests suing brokers arguing that their bond should be higher.

6. **Why does TIA oppose escrow accounts?**

How would a broker account for the funds received on each shipment, when part goes to pay the motor carrier and the rest goes to pay the broker, and the amount of brokerage varies from load to load. Again, brokers would have to make their income totally transparent, and open themselves up to arguments about mingling funds, and the amount of margin taken; something TIA has always fought against. Brokers would need to have both a surety and a fiduciary bond if escrow accounts were required.

7. **Will small companies be able to qualify for a $100,000 bond?**

TIA already offers a $100,000 broker bond as part of our TIA Performance Certified program. TIA members of all sizes, therefore, can obtain the $100,000 immediately. Knowing that an increase in the bond is likely gives us time to prepare. Qualification for the current TIA Performance Certified $100,000 bond is based on underwriter point scoring, and while we're not going to give our secret sauce formula to our competitors, think about what could cause your company to fail: not enough working capital or improper insurance to withstand a major setback. With that in mind, here's what you need to do to prepare: (1) Improve your credit score – this is something you should be doing anyway, and TIA can help. (2) Keep your financial reports in good order and have a positive net worth of at least $200,000 depending on the size of your business and your insurance coverage. (3) Have proper insurance coverage including non-follow form contingent cargo, errors and omissions, contingent auto liability, and general liability. With these things in place, TIA members can get a $100,000 bond for a $10,000 trust deposit and less than $2,000 per year. Become TIA Performance Certified now—don't wait until the new law requires you to raise your security to $100,000.

8. **What are the regulations being placed on bond companies?**

One of the biggest problems in the market today are companies that offer broker trusts in violation of the current regulations to require full funding for those trusts. Treasury Department licensed bond companies and insurance companies can offer broker bonds at less than face value ($800 for a $10,000 bond), but banks and trust companies are required to collect and hold the full face amount ($10,000) before issuing the trust. Unfortunately, too many of these trust companies issue broker bonds based on receivables or for little or nothing down. Many of these companies then do not pay carrier claims. Or, they deduct their costs from the $10,000 before paying any carrier claims. Too many do not submit to DOT the list of carriers that were paid when a broker fails. The legislation addresses all of these issues. We believe these reforms are more important to carriers than the amount of the bond. Under the legislation, broker trust companies would be responsible for the face value of the bond. They will have to publish the list of payments on their website for all to see. They will have to pay claims on a pro-rata

basis so that everyone gets something. The surety will not be able to deduct its costs from the bond amount. Finally, broker bond and trust companies will have to be publically audited, with the audit posted on their website.

9. Why should companies register each year?

The industry is plagued with "churners" – those companies that come in and out of the industry. All three organizations recognized too, that neither DOT nor the companies in the industry know what companies are still in business. Requiring every licensed company (broker, forwarder, and carrier) to register their authority every year, and requiring DOT to cancel any authorities not re-registered will allow everyone to know what companies are still in business. Annual registration is not new. In many ways, this is what the Unified Carrier Registration Agreement (UCRA) is supposed to do, but the dots have not been connected. Every carrier, broker, and forwarder is supposed to pay an annual UCRA fee, the legislation will require DOT to tie authority to this, or another, existing requirement.

10. Why will brokers and forwarders have to have a qualified individual to obtain authority?

Again, this is a provision to catch the "churners" and "cheats". By requiring a qualified individual to be identified with each broker and carrier authority, it will make the job of tracking the bad guys much easier. Another benefit will be stronger companies entering the market since a principal in the company will have experience in the market.

11. What's the difference about the bond provision in the FIT Act versus the MCPA?

There are two main differences. The FIT Act removes the words "at least" from in front of the $100,000 surety requirement, but makes clear that DOT has the authority – as it does now – to review, and if necessary, raise the surety requirement in the future. The second change is to remove the statutory requirement for depositing at least $10,000 in cash to qualify for a surety. While many surety companies may require cash deposits as part of their underwriting procedures, others may not.

12. Why was the bond requirement expanded to include forwarders?

Motor carriers have generally disliked working with forwarders since they do not have a bond requirement. For that reason, many TIA members have both authorities or have a bond for their forwarder operation already, so we did not think it would be major issue.

13. How is motor carrier authority clarified?

The FIT Act clarifies that a motor carrier may provide transportation of property with self-propelled vehicles owned or leased by the motor carrier or through interchanges as permitted under regulation issued by DOT, provided that the originating carrier must physically transport the cargo at some point, and retains liability for the cargo and payment of interchanged carriers.

14. How will the legislation eliminate un-authorized re-brokering of freight?

The legislation addresses this problem through many means.

- Distinctive authority numbers will be issued for each authority, and for each shipment, the parties must declare under which authority they are participating in the transaction. In other words, a motor carrier taking the load, takes it as a motor carrier for the rest of the transaction. So, if a carrier takes the load as a carrier, they are a carrier for the entire transaction.

- The legislation would prohibit motor carriers from re-brokering freight no matter what they call it, without having a proper broker license and bond.

- Finally, those companies that enter the market, grab a load, flip it and then disappear without paying face unlimited freight bill liability if they do not have a proper broker license and bond. That means that if one of these bad guys runs up $300,000 in payables to carriers face a liability of $300,000 even if their personal assets must be liquidated. A properly licensed broker has their liability capped at the bond amount.

15. Is this legislation just a way for the big companies to get bigger?

This is not about big companies versus small companies as some will suggest. This legislation is about well run companies of all sizes that follow the rules against those that think they can skate on thin ice. The legislation will bring an end to bad bonding companies, carriers brokering without a license or bond, and scam artists that come in and out of the market to rip people off. It will create a competitive playing field for the legitimate industry. The legislation is not about regulating brokers or carriers; it is about fighting fraud in the trucking industry.

16. What is the likelihood of the legislation passing in 2011?

It is difficult to predict what will happen in Washington, and this year is no exception.

17. When would companies have to comply?

Existing companies would have four years from passage to comply, while new entrants would have to comply immediately.