



# Chapter 3: Financial Management and Accounting

## Section 3.5 – Liabilities –Part 3.5.2 - Bond Liabilities

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## **Introduction**

This section of the Financial Management Policy Manual (FMPM) provides U.S. Immigration and Customs Enforcement (ICE) financial management policy on recording and reporting bond liabilities. This policy addresses the responsibilities of the Office of Financial Management (OFM) for accounting of bond liability financial transactions. This policy is in accordance with the Federal Accounting Standards Advisory Board (FASAB), Statements of Federal Financial Accounting Standard (SFFAS) No. 7, *“Accounting for Revenue and Other Financing Sources and Concepts for Reconciling Budgetary”* and Financial Accounting and other relevant accounting regulations.

This policy shall remain in effect until superseded.

## **Responsibilities**

The **ICE Chief Financial Officer (CFO)** establishes, oversees, and updates all financial management activities including, but not limited to, policy development, budget formulation, asset and facilities management, and internal controls consistent with the mission and strategic goals of the Department of Homeland Security (DHS).

The **Office of Financial Management** validates that bond liability financial transactions follow applicable laws and regulations, establishing internal controls over financial reporting for proper preparation and fair presentation of financial statements that are free from material misstatement.

The **Office of Enforcement and Removal Operations (ERO)** is responsible for uploading and providing accurate, complete, and timely information for all immigration bond financial transactions. ERO is also responsible for ensuring all forms and supporting documentation are provided to OFM to process bond financial transactions accurately and efficiently.

The **Office of the Principal Legal Advisor (OPLA)** supports ERO and OFM by providing legal advice on the performance of their functions in accordance with Federal law.

## **Policy**

### ***1. Immigration Bonds***

An immigration bond is a formal written guarantee by an obligor (an individual, entity, or surety company) posted as security for the amount noted on the face of the immigration bond. The bond assures ICE that the obligor will perform the obligations for the type of bond indicated on the bond immigration form (Form I-

352). The posting of immigration bonds can occur with the deposit of cash in the full principal amount of the bond, known as cash bonds; or by the posting of a surety bond, whereby a surety company and its agent agree to pay the amount of the bond if there is a substantial violation of the bond's terms and conditions. If the obligor substantially performs the conditions set forth in the bond, the bond will be cancelled. If the obligor substantially violates the conditions of the bond, the bond will be breached.

### **1-1. Types of Bonds**

The ICE agency has four types of immigration bonds:

- a. Delivery Bond – This is the most common type of immigration bond. A delivery bond is similar to a criminal bail bond and requires the obligor to surrender the non-citizen in response to a demand notice issued by ICE. The minimum amount for a delivery bond is \$1,500 in accordance with 8 United States Code (U.S.C) 1226(a)(2)(A).
- b. Voluntary Departure (VD) Bond – VD bonds require the non-citizen to leave the United States on or before the voluntary departure date set by the immigration judge (IJ) or the Board of Immigration Appeals (BIA) during the non-citizens immigration proceedings.
- c. Order of Supervision (OSUP) Bond – OSUP bonds are issued to require the non-citizen to comply with the terms of the order of supervision issued pursuant to 8 Code of Federal Regulations (C.F.R) 241.4, which deals with the detention and release of non-citizens beyond the removal period.
- d. Public Charge (PC) Bond – PC bonds applies when a bond is conditioned upon the non-citizen not becoming a public charge.

### **1-2. Immigration Bond Collateral Types**

Pursuant to 8 C.F.R 103.6(b), immigration bonds may be secured by a cash deposit (postal money orders, other money orders accepted at the discretion of the ERO, certified checks or cashier's checks, Fedwire, and ACH) or by a surety company authorized by the Department of the Treasury to post bonds on behalf of the Federal government.

- a. Cash Bonds – These are guaranteed by a "cash" deposit, which ICE maintains in a holding account until ERO reaches a final determination on the bond and issues a cancellation or breach determination. As required by the Department of the Treasury, ICE no longer accepts currency at its field offices, and instead accepts money orders, certified checks, cashier's checks, Fedwire, and ACH.
- b. Surety Bonds – These are similar to "promissory notes," whereby the

surety company, an insurance company authorized by the Department of Treasury to post bonds in favor of the United States, and its immigration bond agent (co-obligor) agree to pay the face amount of the bond if the bond is breached.

## **2. Immigration Bond Actions**

The following immigration bond actions apply to both cash and surety bonds unless otherwise specified. Each action requires ERO to send OFM information through an automatic interface and the Bond Management Information System (BMIS).

### **2-1. Issuance and Deposit of Bonds**

- a. When a cash or surety bond is issued, ERO must provide OFM with the following documentation:
  - 1) I-352 Immigration Bond Form.
  - 2) I-305 Receipt of Bond (only for cash bonds issued prior to the revised I-352 Immigration Bond Form).
  - 3) G-254 Schedule of Collection (only for cash bonds).
  - 4) SF-215 OTCNet Deposit Ticket (only for cash bonds which the payment type was in the form of a check or money order.
  - 5) CIR Deposit Report (only for cash bonds which the payment type was in the form of a Fedwire or ACH).
- b. The OFM is responsible for ensuring supporting documentation received from ERO contains the following information:
  - 1) Proper approvals.
  - 2) Obligor and non-citizen information.
  - 3) Dollar amount of the bond.
  - 4) Agency Location Code (ALC).
  - 5) Treasury Account Symbol (TAS).

Per SFFAS No. 7 paragraph 50, "cash collections should be based on amounts actually received during the fiscal period, including withholdings, estimated payments, final payments, and collections of receivables. Cash collections include any amounts paid in advance of due dates unless they are deposits."

OFM will post cash bonds in ICE's financial system through an automatic interface with BMIS (surety bonds do not trigger a financial event unless the bond is breached).

## 2-2. Cancellation of Bonds

- a. The ERO will cancel a bond upon the occurrence of a triggering event listed in the Terms and Conditions of the bond form (Form I-352). ERO cancels a bond by issuing a Notice - Immigration Bond Cancelled (Form I-391). A bond will be cancelled when:
  - 1) On a delivery bond, the non-citizen is surrendered on the date in the demand notice and ICE takes the non-citizen into custody;
  - 2) On a VD bond, ICE receives valid proof that the non-citizen left the United States on or before the voluntary departure date; or
  - 3) On an OSUP bond, the non-citizen complies with all requirements set forth in the order of supervision and ERO determines that the bond is no longer needed to ensure compliance with the order of supervision.
- b. Bonds are also cancelled when one of following events occurs:
  - 1) Death of the non-citizen (evidenced by a certified copy of a death certificate);
  - 2) ICE taking the non-citizen back into its custody (detaining the non-citizen for more than just a few hours);
  - 3) Removal of the non-citizen;
  - 4) Grant of permanent residence or citizenship to the non-citizen;
  - 5) Termination (but not administrative closure or stay or closure without prejudice) of removal proceedings;
  - 6) Voluntary departure of the non-citizen pursuant to a VD order as evidenced by valid proof of departure.
- c. When a cash or surety bond is cancelled, ERO must provide OFM with a completed Notice – Immigration Bond Cancelled (Form I-391).
- d. OFM is responsible for verifying the accuracy of information of the Notice – Immigration Bond Cancelled for the following information:
  - 1) Proper approvals.
  - 2) Obligor and non-citizen information.



3) Dollar amount of the bond.

A refund of a cash bond deposit to the obligor will be scheduled through the Department of Treasury's Secure Payment System (SPS). ICE's financial system will be updated through an automatic interface with BMIS. Since there is no transfer of funds for the issuance of a surety bond, there is no financial event when a surety bond is cancelled. Per SFFAS No. 7 paragraph 48, revenue for surety bonds is recognized when "a specifically identifiable, legally enforceable claim to resources arises, to the extent that collection is probable (more likely than not) and the amount is reasonably estimable;" that is, the surety bond has been breached.

**2-3. Substantial Violation of Bond Conditions Resulting in a Breach**

- a. The breach of a bond occurs when ERO determines that the obligor has substantially violated conditions established in the bond. ERO is responsible for all notifications to the obligor and must issue a breach determination and provide a copy of the Notice – Immigration Bond Breaches (Form I-323) in a timely manner in accordance with the Bond Management Handbook. When a bond is breached, the bond proceeds are deposited into the Breached Bond Detention Fund (BBDF) once the breach is administratively final. A breach determination becomes administratively final when the time period for filing an appeal has expired and no appeal has been filed, or if a timely appeal is filed, after the United States Citizenship and Immigration Services (USCIS) Administrative Appeals Office (which adjudicates appeals) issues a decision dismissing or rejecting the appeal.
- b. OFM is responsible for verifying the accuracy of information between the Notice – Immigration Bond Breached (Form I-323) and immigration bond form for the following:
  - 1) Proper approvals.
  - 2) Obligor and non-citizen information.
  - 3) Dollar amount of the bond.

Since an obligor's liability for the bond amount is contingent upon an administratively final breach of obligation by the obligor, ICE will not recognize revenue until the breach occurs. If no timely administrative appeal is received for a breach determination the breach will be finalized 60 days after the breached bond notice was received. The obligor has 33 days from the mailing of the breach determination to appeal the breach. OFM will create the financial transaction through an automatic interface with BMIS once the breach is considered final.

## **2-4. Bonds Closed in Trust**

- a. The OFM manages the trust account for ICE. The trust account consists of unclaimed and/or abandoned funds of \$25.00 or more, which ICE has been unable to return to the obligor. Multiple reminders to the obligor will be sent requesting any documentation needed before bond proceeds can be returned (if needed). OFM is responsible for placing the cancelled cash bonds funds in a “closed in trust” status through an automatic interface between ICE financial system and BMIS.
- b. *Trust Account Reconciliation.* A monthly reconciliation is completed to confirm that the amounts posted to the trust account agree with the transactions posted in the ICE financial system and the transaction detail recorded in the bonds database, BMIS (for further guidance please review the Bond Liability Standard Operating Procedures (SOP)).

## **2-5. Appeals of Bond Breach Determinations**

By regulation, bond obligors have the right to appeal bond breach determinations. Obligor appeal bond breach determinations by filling out an appeal form. The obligor has 33 days from the date of the breach notice was mailed to file an appeal in accordance with 8 C.F.R. § 103.3(a)(2)(i) and 8 C.F.R. § 103.8(d).

## **2-6. Reopening a Breach Determination**

If ERO determines that a breach determination should not have been issued, it may rescind the breach determination and reopen the bond by issuing Form 71-042 Notice of Bond Breach Reconsideration Decision (known as a “motion to reopen” or MTR). OFM is responsible for reviewing the MTR to ensure it is properly completed and approved by ERO. Approval of the MTR results in ICE’s financial system being updated through an automatic interface with BMIS to reinstate the breached bond.

# **3. Financial Reporting**

## **3-1. Bond Liability Classification**

According to SFFAS Appendix E: “Consolidated Glossary”, current liabilities are defined as “amounts owed by a federal entity for which the financial statements are prepared, and which need to be paid within the fiscal year following the reporting date”. To comply with FASAB standards, OFM must perform a quarterly analysis to identify which portion of the liability account is current versus non-current to report on the financial statements.

## **3-2. Bond Liability Materiality Assessment**

A bond liability materiality assessment is produced annually by OFM in accordance with Generally Accepted Accounting Principles (GAAP) and other applicable financial management laws/regulations. The materiality assessment is used by OFM to analyze the financial reporting impact and quantify the risk from any transactions that may have been recorded in the incorrect period due to timing differences. OFM uses Government Accountability Office (GAO) Financial Audit Manual (FAM) guidelines to determine the materiality threshold.

For financial transaction types that exceed the materiality threshold and pose a potential risk of misstatement, OFM will develop the following solutions:

- a. Compensating controls, and/or
- b. Update the process activities related to recording the financial transactions.

For these higher risk areas, OFM will create and implement agreed-upon processes and controls with the process owners to mitigate the financial risk posed by financial transaction types recognized in the improper period



## **Procedures & Internal Controls**

The ERO is responsible for providing accurate, complete, and timely information to OFM for the recording and reporting of all immigration bond financial transactions. For further guidance please review the Bond Liability SOP.

## **Authorities and References**

### **Authorities**

SFFAS No. 5, Accounting for Liabilities of the Federal Government

8 U.S.C. § 1103(a)(3), Powers and duties of the Secretary, the Under Secretary, and the Attorney General

8 C.F.R. § 293.2, Interest Rate

### **References**

Bond Liability SOP

Bond Management Handbook

Revenue and Receivables SOP

SFFAS Appendix E: Consolidated Glossary

SFFAS No. 7, Accounting for Revenue and Other Financing Sources and Concepts for Reconciling Budgetary and Financial Accounting

8 C.F.R. § 103.3(a)(2)(i), Denials, appeals, and precedent decisions

8 C.F.R. § 103.6, Immigration Bonds

8 C.F.R. § 103.8(d), Service of decisions and other notices

8 U.S.C. § 1226, Apprehension and Detention of Aliens

8 C.F.R. § 241.4, Continued detention of inadmissible, criminal, and other aliens beyond the removal period

## **Glossary**

The following tables contain definitions of the acronyms and terms used in this policy.

<b>Acronym</b>	<b>Definition</b>
ALC	Agency Location Code
BBDF	Breached Bond Detention Fund
BIA	Board of Immigration Appeals
BMIS	Bond Management Information System
CFO	ICE Chief Financial Officer
CFR	Code of Federal Regulations
DHS	Department of Homeland Security
ERO	Office of Enforcement and Removal Operations
FAM	Financial Audit Manual
FASAB	Federal Accounting Standards Advisory Board
FMPM	Financial Management Policy Manual
GAAP	Generally Accepted Accounting Principles
ICE	Immigration and Customs Enforcement
IJ	Immigration Judge
MTR	Motion to Reopen
OFM	Office of Financial Management
OPLA	Office of Principle Legal Advisor
OSUP	Order of Supervision
PC	Public Charge Bond
SFFAS	Statements of Federal Financial Accounting Standard
SOP	Standing Operating Procedures
SPS	Secure Payment System
TAS	Treasury Account Symbol
USC	United States Code
USCIS	U.S. Citizenship and Immigration Services
VD	Voluntary Departure

<b>Term</b>	<b>Definition</b>
Cash Bonds	An immigration bond used when an Obligor posts cash payment in accordance with the conditions set forth in the bond contract.
Delivery bond	An immigration bond that requires the obligor to surrender the non-citizen in response to a demand notice issued by ICE.
Immigration Bond Form (I-352)	The immigration bond form that serves as support for financial information and bond conditions for immigration bonds.
Notice – Immigration Bond Breached (Form I-323)	An immigration bond breach occurs when an obligor has broken one or more of the conditions set forth in the bond.
Notice - Immigration Bond Cancelled (Form I-391)	An immigration bond cancellation occurs when an obligor has satisfied the conditions set forth in the bond.
Obligor	An individual, entity, or surety company that posts an immigration bond.
Order of supervision (OSUP) bond	An immigration bond that requires the non-citizen to abide by the terms of the order of supervision.
Surety Bond	An immigration bond posted by an obligor which agrees to pay the amount of the bond if the bond is breached.
Treasury’s Secure Payment System	Department of Treasury application that allows government agencies to create payment schedules in a secure fashion; with strictly enforced separation of duties.
Voluntary Departure bond	An immigration bond that requires the non-citizen to leave the United States on or before the voluntary departure date.

## **Summary of Changes**

Revision Type: Technical

Revision Date: July 27, 2023

Summary of Changes:

- Removed MS&D Bonds and added guidance on Public Charge Bonds [*Section 1-1, Types of Bonds*]
- Updated SFFAS 7 Paragraph 50 reference to include current authoritative language on cash collections [*Section 2-1, Issuance and Deposit of Bonds*]
- Updated SFFAS 7 Paragraph 48 reference to include current authoritative language on when revenue for a surety bond can be recognized [*Section 2-2, Cancellation of Bonds*]
- Removed language throughout policy that mentions “aliens” and replaced with “non-citizen”
- Removed Appendix A: *Breached Bond Procedures Memorandum* as the memorandum was archived and is no longer current/applicable
- Updated Authorities and References Section to reflect current regulatory standards applicable to the policy
- Updated policy throughout for consistency to the ICE FMPM Style Guide