

IMMIGRATION BOND INFORMATION

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What is an Immigration Bond and How Do I Obtain One?

The bond refers to money paid to secure a detained foreign national's release that serves as a guarantee to the government that, once out of detention, the bonded individual will attend all immigration court hearings. After ICE detains a foreign national, ICE sets the bond amount, assuming the person is eligible for a bond. The bond amount is based on a "risk classification assessment," which measures the risk to public safety and the risk of flight posed by the particular individual. If the foreign national can afford to pay the bond amount set by ICE, the individual will be released upon payment. If the individual cannot afford to pay the bond amount set by ICE, he or she can request that the immigration judge review and lower the bond amount. 8 CFR §§ 236 and 1003.19(a).

The such review takes place in the context of a bond proceeding, which the regulations require to be "separate and apart" from the individual's removal proceedings. *Id.* § 1003.19(d); *see also Matter of Chirinos*, 16 I&N Dec. 276 (BIA 1977). The standard that applies during bond proceedings and that factors into the decision of whether the foreign national merits a lower bond is whether the foreign national's "release pending deportation proceedings will pose a danger to the safety of individuals or property and whether the alien is likely to appear for any scheduled proceeding." *Matter of Drysdale*, 20 I&N Dec. 815 (BIA 1994). In addition, the immigration judge must consider evidence establishing the significant implication of national security interests in cases involving foreign nationals seeking to enter the United States illegally. *Matter of D-J-*, 23 I&N Dec. 572, 575 (A.G. 2003).

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Who is an Obligor?

An obligor is the person who pays the bond and completes the paperwork with ICE at the closest ERO Field Office, which is commonly known as "posting the bond." Call the selected ICE ERO Field Office to ensure that the office accepts bond payment and to ask the preferred manner of payment. ICE ERO Field Office contact information is available [online](#). While a certified check from a bank or a money order in the amount of the bond made out to the Department of Homeland Security is the preferred method, some ICE ERO Field Offices require a money order from specific sources such the U.S. Post Office. No cash or personal checks are ever accepted.

Only someone who is 18 or older and has legal status can be a bond obligor. Generally, the ICE ERO Field Office requires that the obligor provides a valid Employment Authorization Document, a U.S. birth certificate or passport, an original Certificate of Citizenship or Certificate of Naturalization, or a Lawful Permanent Resident card. In addition to these, the obligor should also bring a state-issued driver's license. Upon posting the bond, ICE provides the obligor with ICE Form I-352, Immigration Bond, and ICE Form I-305, Receipt of Immigration Officer. The obligor should safeguard the receipt, ICE Form I-305, as it will be required for the bond refund process. Once the ICE ERO Field Office where the obligor posted the

bond communicates this completed transaction to the detention center holding the individual, the detention center will release the individual. Communication between the ICE Field Office and the detention center often takes hours, so the obligor will want to post the bond as soon as the office opens to increase the chances of the individual being released the same day.

What Happens to the Money

Once I Post the Bond?

Currently, about 91 percent of the immigration bonds issued each year are secured by cash, while the other 9 percent are issued by surety companies that are certified by the Treasury Department to post bonds on behalf of the federal government. ICE deposits any cash paid as security on cash bonds in a fund maintained by the Treasury Department, known as the Immigration Bond Deposit Account. These funds are held in trust for the obligor and earn the Treasury Department market-based rate effective on the date the obligor posted the bond. Per regulation, from 1971 to June 16, 2015, the interest rate was set at three percent per year. When ICE issues the bond refund, the check should reflect the bond amount paid plus the interest as set by the Treasury Department.

How Does the Obligor Get the Bond Refund?

Fast-forward to perhaps a year or more

after release on bond, and the individual has obtained legal status or he or she has been deported. Either of these outcomes meets the conditions of the bond and triggers a bond refund via its cancellation. Upon its cancellation, ICE sends the ICE Form I-391, Notice Immigration Bond Cancelled, to the DHS Debt Management Center in Vermont and to the obligor at the address he or she provided. For this reason, if the obligor moves after posting the bond, he or she should inform ICE of the new address via ICE Form I-333, Obligor Change of Address. Otherwise, the obligor will not receive notice due to ICE sending it to an incorrect address. In practice, the obligor should affirmatively contact the ICE Field Office to initiate this process, instead of waiting for the ICE Field office to send the ICE Form I-391.

When the obligor obtains Form I-391, Notice Immigration Bond Cancelled, the obligor should send it along with Form I-305, Receipt of Immigration Officer, and a cover letter with a request for the refund to the following address:

Debt Management Center
Attention: Bond Unit
P.O. Box 5000
Williston, VT 05495-5000

If the obligor has questions about immigration bond refunds, it is better to call the Financial Operations of the DHS Debt Management Center at (802) 288-7600 and select option 1 to speak with someone.

What if the Obligor Lost the Form I-305?

If the obligor has misplaced Form I-305, Receipt of Immigration Officer, the obligor can execute a notarized ICE Form I-395, Affidavit in Lieu of Lost Receipt of United States ICE for Collateral Accepted as Security, as a substitute. Ensure the use of the most current version, as these forms, like USCIS forms, expire. For example, the ICE Form I-305 will expire on March 31, 2016.

Because of the requirement that the obligor have legal status, the obligor is often a family friend or acquaintance, rather than an immediate family member of the detainee. This often poses a hurdle in recuperating the bond refund, as the obligor may lose touch with the family of the bonded individual. Unfortunately, even though the obligor merely posted the bond instead of providing the actual funds, the bond will be refunded to the obligor absent a prior assignment by the obligor authorizing someone else to receive the refund. This reality has led to unscrupulous individuals taking advantage of vulnerable foreign nationals and to, for example, the Texas Office of the Attorney General bringing a permanent injunction against such unscrupulous individuals who are commonly known in the immigration legal field as “notarios” or unauthorized practitioners of immigration law.

The obligor can designate someone else to receive the bond refund via a notarized ICE Form I-312, Designation of Attorney in Fact. This document is the equivalent of a “power of attorney” in

the specific transaction of accepting on the “obligor’s behalf the return of cash or United States bonds or notes deposited to secure an immigration bond upon cancelation of the bond for performance by obligor.” The person whom the obligor wishes to designate does not have to be an attorney. The attorney or Board of Immigration Appeals representative can be designated to receive the bond refund. However, keep in mind ethical obligations, in particular a conflict of interest, if representing the previously detained foreign national. It is advised that soon after the obligor posts the bond that he or she assign a close member of the bonded individual’s family to ensure that the refund returns to the appropriate individual regardless of the whereabouts of the obligor.

In much the same manner that the obligor can designate someone to receive the bond refund, the obligor can revoke that designation using a notarized ICE Form I-312. If the revocation is deemed invalid, the ICE Financial Operations Bonds Unit will return ICE Form I-312 with an explanation of why it is not acceptable. Since the obligor has broad powers over the bond refund, it is advised that the family of a bonded individual choose the obligor carefully before entrusting the person with this responsibility and power. If the family does not know many LPRs or U.S. citizens to serve as the obligor and therefore is limited to one or two people whom the family may not know well, it is advised that the family execute proper signed documents proving that the family provided the obligor with the money to post the bond.

What if the Bonded Individual Fails to Comply with the Bond Conditions of Appearing in Immigration Court or at an ICE Check-In?

If the bonded individual fails to appear at an immigration court hearing or at an ICE ERO appointment and thereby becomes a fugitive, that individual will be in breach of the bond terms. When this happens, ICE sends the obligor an ICE Form I-340, Notice to Obligor to Deliver Alien, via certified mail, return receipt requested. The notice demands that the obligor present the bonded alien at the ICE Field Office at a specific date and time, usually in the morning. The date will likely be within a few weeks after receipt of the notice, so the obligor will have limited time to find and make arrangements with the bonded individual. If the obligor fails to present the bonded individual at the requested date and time, ICE will send an ICE

What if the Bonded Individual Returns to His or Her Country without Completing the Removal Proceedings?

If the obligor finds after receiving ICE Form I-323, Notice of Immigration Bond Breached, that the bonded individual has self-deported, it is possible to obtain the bond refund. The obligor will seek rescission of the bond breach, reinstatement of the bond, and then bond cancellation. The obligor will require proof that the bonded individual has departed, such as travel confirmation, boarding passes and a stamped passport. The bonded individual should also report to the U.S. Embassy

Form I-323, Notice of Immigration Bond Breached. In this case the obligor will not receive a bond refund.

For those who were not detained but received a voluntary bond, the bond serves the same purpose – security that the foreign national will depart per the voluntary departure terms. The ICE Form I-210, Voluntary Departure and Verification of Departure Form, documents the foreign national's agreement to voluntarily depart from the United States. Prior to leaving the United States, the foreign national and ICE sign the printed form and ICE provides a copy. Upon returning to his or her home country, a State Department official at a U.S. consulate or embassy completes the remainder of the form and sends it to DHS/ICE Headquarters Office, showing that the foreign national did depart. ICE then uploads the form to its Bond Document Repository, an electronic storage for bond-related documents.

or consulate in his or her home country and request an ICE Form I-210, Voluntary Departure and Verification of Departure, to be sent to DHS/ICE Headquarters Office. Although the bonded individual did not technically receive voluntary departure from the immigration judge, the "Verification of Departure" part of the form is the relevant piece. The bonded individual should request a copy of this document and submit a copy to the obligor.

What is Bond?

After ICE has taken a foreign national into detention prior to removal proceedings, the foreign national can ask the immigration judge for [bond](#). This is a certain amount of money that they pay to the court in exchange for being released until the resolution of the proceedings. If the foreign national shows up for hearings and complies with any court orders, the bond money will be returned at the conclusion of the proceedings. If they do not, the bond money is forfeited to the government.

The person who posts the bond money, known as the obligor, is usually not the foreign national who is in removal proceedings. You must be a U.S. citizen or hold legal status in the U.S. to post bond. Most often, a family member or friend of the foreign national will post bond.

Getting Back the Bond Money

Once the proceedings have concluded, ICE will send a notice of immigration bond cancellation to the obligor if the foreign national has met the conditions of the bond. It also will send this notice, known as Form I-391, to the Debt Management Center at the Department of Homeland Security (DHS). You should be aware that ICE may send Form I-391 to your old address if you move during the course of the proceedings. Getting the bond money back involves sending

Form I-391 and your original immigration bond receipt, known as Form I-305, to the Debt Management Center. If you have Form I-352, which is the original copy of the bond contract, you should include it in your mailing.

Debt Management Center Forms

In order to receive their bond refund, an obligor should send the following forms to the Debt Management Center at DHS:

1. 1 Form I-391
2. 2 Form I-305 or [Form I-395](#)
3. 3 Form I-352, if available

Sometimes the obligor will not be able to locate their immigration bond receipt. If this happens, you can print and complete Form I-395, which is an Affidavit in Lieu of Lost Receipt of United States ICE for Collateral Accepted as Security. You will need to sign this form in the presence of a notary public. Then, you can send it with the I-391 notice and Form I-352 to the Debt Management Center.

The Debt Management Center should refund you for not only the original amount of the bond but also any interest that has accrued during the course of the proceedings. You might receive this money a few months after the end of the proceedings.