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DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. ICEB-2011-0001]

Privacy Act of 1974; U.S. Immigration and Customs Enforcement,
DHS/ICE-004 Bond Management Information System (BMIS) System of Records

AGENCY: Privacy Office; DHS.

ACTION: Notice of amended Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security proposes to amend a U.S. Immigration and Customs Enforcement system of records titled DHS/ICE-004 Bond Management Information System (Dec. 21, 2009) to expand the categories of records and system purpose, and to modify an existing routine use. An existing category of records has been expanded to include records collected, created, or maintained for income tax purposes. The purpose has been updated to include the withholding of income taxes from payments made to bond obligors. A routine use has been modified to clarify the scope of disclosures made from the system to the U.S. Department of the Treasury.

DATES: The established system of records will be effective March 17, 2011. Written comments must be submitted on or before March 17, 2011.

ADDRESSES: You may submit comments, identified by ICEB-2011-0001 by one of the following methods:

Federal e-Rulemaking Portal: <http://www.regulations.gov>.

Follow the instructions for submitting comments.

Fax: 703-483-2999.

Mail: Mary Ellen Callahan, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

Docket: For access to the docket to read background documents or comments received go to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Lyn Rahilly, Privacy Officer, U.S. Immigration and Customs Enforcement, 500 12th Street, SW., Mail Stop 5004, Washington, DC 20536 (202-732-3300), or Mary Ellen Callahan, Chief Privacy Officer, Privacy Office, U.S. Department

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of Homeland Security, Washington, DC 20528 (703-235-0780).

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, the Department of Homeland Security (DHS) proposes to amend a U.S. Immigration and Customs Enforcement (ICE) system of records titled DHS/ICE-004 Bond Management Information System (74 FR 57891, Dec. 21, 2009) expand the categories of records, purposes, and an existing routine use. This system of records contains paper and electronic records maintained by ICE to support its immigration bond administration and financial management activities related to the immigration bonds that are posted for detained aliens.

Some of the information in this system of records is maintained in BMIS, an immigration bond management database used by the ICE Office of Financial Management to track the life cycle of immigration bonds from the time an individual posts the bond at an ICE Enforcement and Removal Operations (ERO) field office until the bond is considered closed. (BMIS was formerly known as BMIS-Web.) The BMIS PIA was recently updated to reflect the initiation of income tax withholding from interest payments made to individuals who post a cash immigration bond. These withholding payments are mandatory for foreign nationals, and in some cases may occur for U.S. citizens or lawful permanent residents. To properly implement and document these withholding requirements, ICE will also be collecting and/or reporting income tax-related information using various IRS forms. The BMIS PIA Update is available on the Department of Homeland Security (DHS) Privacy Office Web site at <http://www.dhs.gov/privacy>.

Accordingly, DHS is modifying the BMIS system of records in order to support and provide public notice in advance of the initiation of income tax withholdings and the associated changes to BMIS. An existing category of records has been expanded to include information ICE collects, creates or maintains for income tax purposes. The purpose of the system of records has been expanded and clarified to include the payment and reporting of interest income; calculation, withholding, and reporting of income taxes; and the collection or filing of associated income tax forms. Finally, routine use H has been modified to expand and clarify the information that ICE may disclose from the system of records to the U.S. Department of the Treasury.

II. Privacy Act

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses, and disseminates personally identifiable information. The Privacy Act applies to information that is maintained in a "system of records." A "system of records" is a group of any records under the control of an agency for which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass United States citizens and lawful permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals where systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors. Individuals may request access to their own records that are maintained in a system of records in the possession or under the control of DHS by complying with DHS Privacy Act regulations, 6 CFR part 5.

The Privacy Act requires each agency to publish in the Federal Register a description denoting the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system in order to make agency record keeping practices transparent, to notify individuals regarding the uses to

which personally identifiable information is put, and to assist individuals to more easily find such files within the agency. Below is the description of the BMIS system of records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this amended system of records to the Office of Management and Budget and to Congress.

System of Records
DHS/ICE-004.

System name:
Bond Management Information System (BMIS).

Security classification:
Unclassified.

System location:
Records are maintained at U.S. Immigration and Customs Enforcement (ICE) Headquarters in Washington, DC; ICE Office of Financial Management facilities in Williston, Vermont; and ICE field offices.

Categories of individuals covered by the system:
Categories of individuals covered by this system include: Individuals who post cash immigration bonds for aliens (known as obligors); aliens for whom an immigration bond is posted (known as bonded aliens); individuals who arrange for the posting of surety bonds for aliens (known as indemnitors); individual bond agents who post surety bonds; and notaries public and attorneys.

Categories of records in the system:
For the obligor: Name; Social Security Number/Tax Identification Number; address; phone number; U.S. citizenship or immigration status; and government-issued identification (type and number) shown at the time the bond is posted. Also, income tax-related information about the obligor, such as taxpayer status, rate of withholding, income taxes withheld, income reporting (interest paid), tax treaty status, foreign tax identification number, country of residence, and information collected or reported on various income tax forms, such as IRS Forms W-9, W-8BEN, 945, 1042, 1042-S, and 1099-INT.

For the bonded alien: Name; alien number; location (while in detention); address(es) and phone number of residence upon release; date and country of birth; nationality; and date and port of arrival.

For the indemnitor: Name; address(es); and phone number.

For the bonding agent: Name; Tax Identification Number; address(es); and phone number.

General bond information, including: Bond number; bond amount; securities pledged; bond types; bond status; location and date of posted bond; dates for bond-related activities, such as declaration of breach; names and titles of DHS officials that approve, cancel, or declare breaches of bonds; names and contact information for notary public and attorney in fact; information such as dates, forms, status and outcome, concerning motions to reconsider a breach or cancellation of bonds; and information such as dates, forms, status and outcome, about bond-related appeals.

Authority for maintenance of the system:
Sections 103, 213, 236, 240B, and 293 of the Immigration and Nationality Act, as amended (8 U.S.C. 1103, 1183, 1226, 1229c, and 1363, respectively).

Purpose(s):
The purpose of this system is to maintain records related to the administration and financial management operations of ICE's

immigration bond program. Immigration bond administration includes the issuance, maintenance, cancellation, and revocation of bonds. Financial management operations include collection, reimbursement or forfeiture of the bond principal; calculation, payment and reporting of interest income; calculation, withholding, and reporting of income taxes; and the collection or filing of associated income tax forms.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice or other federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body, when (1) DHS or any component thereof; (2) any employee of DHS in his/her official capacity; (3) any employee of DHS in his/her individual capacity where DOJ or DHS has agreed to represent the employee; or (4) the United States or any agency thereof, is a party to the litigation or has an interest in such litigation; and DHS determines that the records are both relevant and necessary to the litigation and the use of such records is compatible with the purpose for which DHS collected the records.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration or other federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. ICE suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. DHS has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) that rely upon the compromised information, or harm to the individual; and

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To an appropriate federal, state, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To the U.S. Department of the Treasury and its bureaus to carry out financial transactions and any debt-or tax-related reporting, withholding, collection, and/or processing activities required or permitted by federal law, regulation, or policy.

I. To the Department of Justice, the U.S. Treasury Department, other appropriate federal agencies, state insurance regulators, credit bureaus, debt collection agencies, legal representatives for surety companies and bonding agencies, and insurance investigators to provide information relevant to (1) investigations of an agent or bonding agency that posts surety bonds, or (2) activities related to collection of unpaid monies owed to the U.S. Government on immigration bonds.

J. To agencies, individuals, or entities as necessary to locate individuals who are owed money or property connected with the issuance of an immigration bond.

K. To an individual or entity seeking to post or arrange, or who has already posted or arranged, an immigration bond for an alien to aid the individual or entity in (1) identifying the location of the alien, or (2) posting the bond, obtaining payments related to the bond, or conducting other administrative or financial management activities related to the bond.

L. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with legal counsel, when there exists a legitimate public interest in the disclosure of the information or when disclosure is necessary to preserve confidence in the integrity of DHS or is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Disclosure to consumer reporting agencies:

Pursuant to 5 U.S.C. 552a(b)(12), disclosures may be made from this system to consumer reporting agencies in accordance with 31 U.S.C. 3711(e).

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locked door. The records are stored on magnetic disc, tape, digital media, and CD-ROM.

Retrievability:

Records may be retrieved by any of the following: bond number, Social Security or Tax Identification Numbers (SSN/TIN), alien name, alien number, obligor name, surety company name, or location and date bond was posted.

Safeguards:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DHS automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer systems containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions. The system maintains a real-time auditing function of individuals who access electronic records. Additional safeguards may vary by component and program.

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Retention and disposal:

Under the existing retention schedule, information is retained for

six years and three months after the bond is closed or cancelled and the collateral is returned to the obligor. Copies of the Form I-352 (Immigration Bond) are placed into the alien's A-File and maintained for the life of that file (75 years).

System Manager and address:

Director, Financial Systems Modernization, 800 K Street, NW., Washington, DC 20536; Chief, Bond Management Unit, Office of Enforcement and Removal Operations, 500 12th Street, SW., Washington, DC 20536.

Notification procedure:

Individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the component's FOIA Officer, whose contact information can be found at <http://www.dhs.gov/foia> under ``contacts.' ' If an individual believes more than one component maintains Privacy Act records concerning him or her the individual may submit the request to the Chief Privacy Officer, Department of Homeland Security, 245 Murray Drive, SW., Building 410, STOP-0655, Washington, DC 20528.

When seeking records about yourself from this system of records or any other Departmental system of records your request must conform with the Privacy Act regulations set forth in 6 CFR part 5. You must first verify your identity, meaning that you must provide your full name, current address and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty or perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Director, Disclosure and FOIA, <http://www.dhs.gov> or 1-866-431-0486. In addition you should provide the following:

An explanation of why you believe the Department would have information on you,

Identify which component(s) of the Department you believe may have the information about you,

Specify when you believe the records would have been created,

Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records,

If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without this bulleted information the component(s) will not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

Record access procedures:

See ``Notification procedure' ' above.

Contesting record procedures:

See ``Notification procedure' ' above.

Record source categories:

Information is obtained from individuals, entities, indemnitors, surety companies, and bonding agencies and agents.

Exemptions claimed for the system:

None.

Dated: January 19, 2011.

Mary Ellen Callahan,
Chief Privacy Officer, Department of Homeland Security.
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