



**Privacy Impact Assessment Update  
for the  
Bond Management Information System**

**January 19, 2011**

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## Abstract

The Bond Management Information System (BMIS) is an immigration bond management database used primarily by the Office of Financial Management (OFM) at U.S. Immigration and Customs Enforcement (ICE).<sup>1</sup> The basic function of BMIS is to support the financial management of immigration bonds posted for the release of aliens in ICE custody. Among other things, ICE uses BMIS to calculate and pay interest to obligors who post cash immigration bonds. Under Internal Revenue Service (IRS) rules, interest payments to certain obligors are subject to backup withholdings where a percentage of the payment is withheld as tax and sent to the IRS. To begin to implement the backup withholding rules, ICE is modifying BMIS to collect additional information about obligors to determine whether a backup withholding is required. Because ICE is expanding the scope of information collected and the purposes for which BMIS information is being used, an update to the BMIS PIA is required.

## Introduction

BMIS is an immigration bond financial management database used to track the financial lifecycle of immigration bonds issued by ICE. ICE uses BMIS to, among other things, calculate and pay interest to persons who post cash bonds (obligors) with ICE. In early 2011, ICE will begin withholding income taxes from these interest payments for certain categories of obligors in order to comply with IRS backup withholding rules. System changes to BMIS are required before these backup withholdings can begin.

### *Backup Withholding Requirements*

IRS backup withholding rules require payers of interest, including federal agencies like ICE, to withhold a certain percentage of income tax when the recipient is not exempt from this withholding. When the interest payment recipient is a U.S. citizen or lawful permanent resident (LPR), the recipient generally is exempt from backup withholdings unless the recipient's Taxpayer Identification Number (TIN) is missing or incorrect. A recipient who is a non-resident alien generally is not exempt from backup withholdings at all, whether or not a valid TIN was provided. Payers of interest are required to provide the TIN to the IRS when reporting paid interest or withholding taxes. Payers of interest must request TINs from the interest recipients, and recipients must provide the TIN if they are U.S. citizens or LPRs. See 26 U.S.C. § 6109(a)(3), 26 CFR §§ 301.6109-1(b)(1) and (c).

### *Conducting Backup Withholding at ICE*

To comply with these IRS requirements, in early 2011 ICE will begin to withhold taxes from interest payments to obligors who are non-resident aliens or who have not provided a valid TIN. (For many individual obligors, the TIN is likely to be the Social Security Number (SSN)). Accordingly, ICE is modifying BMIS to collect information necessary to identify those obligors subject to backup withholdings and to carry out the withholding of taxes where required. With this change, ICE will now input in BMIS the tax status (U.S. citizen/LPR, or Foreign Person) of all cash bond obligors and whether they are subject to backup withholdings under IRS rules. For non-resident aliens only, BMIS will also

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<sup>1</sup> In previous PIAs, this system was referred to as the Bond Management Information System – Web Version (BMIS)



capture whether the United States has a tax treaty with their country of citizenship and if so the percentage of withholding authorized by the treaty.

ICE will use existing IRS forms that are specifically designed to collect this type information from income recipients for tax purposes. At the time the obligor is posting the bond at an ICE field office, ICE officers will provide the obligor with a "Notice to Cash Bond Obligors," which asks the obligor to complete and mail the appropriate IRS form to OFM.<sup>2</sup> The notice asks U.S. Citizens and LPRs to complete IRS Form W-9, "Request for Taxpayer Identification Number and Certification," and non-resident aliens to complete IRS Form W-8BEN "Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding."<sup>3</sup> It also explains why the information is being collected and provides a toll-free number to contact the IRS if the obligor has questions about the forms.

The stated purpose of the IRS Form W-9 is to have an income recipient establish that he/she is a U.S. citizen or LPR, and to have him/her provide the correct TIN to the person paying the income. The W-9 notifies the recipient of the mandatory nature of this disclosure and the authority under which it is mandated (Section 6109 of the Internal Revenue Code). The stated purpose of the IRS Form W-8BEN is to establish that an income recipient is *not* a U.S. citizen or LPR, and to allow him/her to claim a reduced rate of, or exemption from, backup withholdings as a resident of a foreign country with which the United States has an income tax treaty. Payers of income may rely on a properly completed W-8BEN to apply a reduced rate of withholding based on a tax treaty. The W-8BEN also provides notice that failure to complete the form may lead to a withholding at the standard backup withholdings rate.

Once OFM receives the W-9 or W-8BEN, it will enter in BMIS the obligor's tax status, whether they are subject to backup withholdings, and the tax treaty status and withholding rate of any obligor that is a non-resident alien. OFM will file a scanned copy of the IRS form in another ICE OFM system known as File-On-Q, and securely destroy the paper copy. Using another ICE system known as the Federal Financial Management System (FFMS), ICE will withhold the taxes (as required) when the interest payment is being processed, and will deposit the taxes in a Treasury account. For taxes withheld on payments made to U.S. citizens or LPRs, on an annual basis ICE will report the interest paid and taxes withheld to the IRS using Form 945 and to the obligor using Form 1099-INT.<sup>4</sup> For taxes withheld on payments made to non-resident aliens, ICE will report the interest paid and taxes withheld to the IRS using Form 1042 and to the obligor using Form 1042-S.<sup>5</sup> When a backup withholding occurs, BMIS will also record the amount of taxes withheld.

The information maintained in and shared from BMIS is covered under the DHS/ICE-003 BMIS System of Records Notice (SORN), 74 FR 67891, December 21, 2009. The BMIS SORN is being

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Web). The Privacy Impact Assessment (PIA) for this system was originally published in August 2008.

<sup>2</sup> For more information about the process of posting a cash immigration bond, see the BMIS PIA (August 2008) and the BMIS PIA Update (November 2009).

<sup>3</sup> OMB No. 1545-1621.

<sup>4</sup> IRS Form 945, "Annual Return of Withheld Federal Income Tax," OMB No. 1545-1430; IRS Form 1099-INT, "Interest Income," OMB No. 1545-0122.

<sup>5</sup> IRS Form 1042, "Annual Withholding Tax Return for U.S. Source Income of Foreign Persons," OMB No. 1545-0096; IRS Form 1042-S, "Foreign Person's U.S. Source Income Subject to Withholding," OMB No. 1545-0096.



updated concurrently with the publication of this PIA Update to modify an existing routine use in order to clarify the disclosure of income tax-related information to the IRS.

## Reason for the PIA Update

This PIA is being updated to reflect additional information that ICE will collect and store in BMIS in order to carry out backup withholdings pursuant to IRS regulatory requirements. This update also provides notice to the public about ICE's initiation of backup withholdings as well as the expanded use of BMIS to support this new process.

## Privacy Impact Analysis

*In each of the below sections consider how the system has changed and what impact it has on the below fair information principles. In some cases there may be no changes and indicate as such.*

### **The System and the Information Collected and Stored within the System**

ICE will collect from obligors who are U.S. citizens and LPRs all information required on IRS Form W-9: name, address, business name and type (if the obligor is a business entity), and TIN (SSN or Employer Identification Number). ICE will collect from all other obligors the information required on IRS Form W-8BEN: name, permanent residence address, mailing address, organization name and type (if the obligor is a business, trust, etc.), foreign tax identification number, and U.S. TIN (SSN or Employer Identification Number). For tax treaty purposes the W8-BEN also requires the individual to provide the country of which they claim to be a resident, claimed rate of withholding, and reasons for treaty application.

From the information provided on the W-9 or the W-8BEN, ICE will update the bond record in BMIS to add the obligor's status (U.S. Citizen/LPR *or* Foreign Person) and whether they are subject to backup withholdings (Yes/No). For obligors whose tax status is foreign person, ICE will also update BMIS to indicate (Yes/No) whether the obligor's country of residence as reflected on the W-8BEN is a nation with which the United States has an income tax treaty. (The country of residence itself is not input into the system.) If the answer is "yes," ICE will also enter in BMIS the percentage of withholding authorized by that treaty. The other information provided on the IRS forms is not input into BMIS, but is retained in a scanned image of the form in File-On-Q.

### **Uses of the System and the Information**

With this change, the use of BMIS has expanded and the system is now used to help calculate, record, and execute backup withholdings of income tax on interest payments to bond obligors, as required by IRS rules.

ICE uses the TIN/SSN to provide withheld income tax to the IRS (if any) and to notify the IRS of the amount of interest paid to the obligor. The TIN is also used to complete the IRS Form 1099, which is sent to the obligor as a record of interest paid in the amount of \$600 or more annually for purposes of the obligor's income tax preparation.



Generally, interest earned on bonds posted by non-resident alien obligors will have 30% of the interest withheld under the backup withholding rules. If, however, the obligor completes Form W-8BEN and claims that a lower rate of withholding applies based on a tax treaty, that information will be used to calculate the tax withholding amount, which will be sent to FFMS at the time interest is paid to the obligor. (Interest is paid only once at the time the bond is closed, breached, or cancelled.)

In the event the obligor does not provide a TIN, ICE will withhold 28% of the taxable annual interest equal to or above \$600 for obligors with a U.S. address, and 30% of any interest paid for obligors with a foreign address.<sup>6</sup>

## **Retention**

The retention period for BMIS is not changing as a result of this update. BMIS data is retained for six years and three months after the bond is closed, breached, or cancelled. The IRS Forms W-9 and W-8BEN are retained in File-On-Q for the same period as the BMIS data.

## **Internal Sharing and Disclosure**

Internal sharing and disclosure of BMIS information are not changed with this update.

## **External Sharing and Disclosure**

With this change, ICE will provide additional information to the IRS concerning income tax withheld from interest payments to obligors. Specifically, ICE will provide to the IRS Form 945 to report backup withholdings from interest payments to U.S. citizens and LPRs and Form 1042 to report backup withholdings for non-resident aliens during each calendar year. Using user accounts issued to ICE BFC personnel, ICE log on to the IRS FIRE System (Filing Information Returns Electronically) and transmit this information electronically to the IRS. ICE will pay the withheld taxes to the IRS based on the periodic reconciliation of BMIS Web Activity Reports and FFMS Standard General Ledger (SGL) withholding reports using Treasury's Electronic Federal Tax Payment System (EFTPS). At the time of payment of withholding taxes to the IRS, no obligor specific information is transmitted to the IRS; only the amount of the total tax payment is transmitted. The reconciliation between the tax liability and the tax payments will be completed during the annual filing of IRS Forms 945 and 1042 with the IRS and the issuance of the 1099INT and 1042S forms to the obligors. ICE electronically sends to the IRS the Form 1099INT and 1042S data, based on withholding information stored in BMIS Web, by logging on to the IRS FIRE (Filing Information Returns Electronically) system.

## **Notice**

At the time the obligor is posting the bond at an ICE field office, ICE officers will provide the obligor with a "Notice to Cash Bond Obligors," which asks the obligor to complete and mail the appropriate IRS form to OFM. The notice instructs obligors which IRS form to complete, why ICE is

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<sup>6</sup> Before withholding monies from the interest payment, ICE will attempt to obtain the TIN from the obligor at least two times by delivering a written notice to the obligor at the time the bond is posted and at the time the notice of cancellation or breach is sent to the obligor. If the obligor does not comply with either request, only then will ICE withhold monies from the interest payment. These procedures are required by and in compliance with IRS rules on backup withholdings.



collecting the information, and who to contact at IRS with questions about the forms. Both IRS forms also have instructions and privacy notices that explain the IRS's purposes and authorities for the collection of the information, as well as how the payer of the income will use the information provided on the form.

### **Individual Access, Redress, and Correction**

The IRS forms provide the individuals with information about what to do if their tax status or other information has changed, which may be relevant to the determination or calculation of backup withholdings. Specifically, individuals are instructed to file a new form with the payer of the information. Obligors would therefore be aware to refile the relevant IRS form with ICE should their information become out of date or should they become aware of an error.

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:

ICE FOIA Officer  
800 North Capitol Street, N.W.  
5th Floor, Suite 585  
Washington, D.C. 20528

Individuals may also submit requests by fax at 202-732-0310 or by email at [ice-foia@dhs.gov](mailto:ice-foia@dhs.gov). Please see the ICE FOIA Office's website for additional information (<http://www.ice.gov/foia/index.htm>). 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, S.W., Building 410, STOP-0550, Washington, D.C. 20528.

### **Technical Access and Security**

Technical access and security have not changed with this update.



## **Technology**

There are no associated technology changes with this update.

## **Responsible Official**

Lyn Rahilly  
Privacy Officer  
U.S. Immigration and Customs Enforcement  
Department of Homeland Security

## **Approval Signature**

Original signed and on file with the DHS Privacy Office

Mary Ellen Callahan  
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Department of Homeland Security