

## Supporting Statement A

I-312 Designation of Attorney in Fact / I-312A Revocation of Attorney in Fact  
OMB No. 1653 - 0041

### A. Justification:

- 1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.**

Section § 103.6, the Immigration and Nationality Act (INA), provides for the posting of surety or cash bonds. All bonds posted in immigration cases shall be executed on Form I-352, Immigration Bond, and secured with some form of collateral by an Obligor. In the case of a cash bond, the Obligor will deposit with U.S. Immigration and Customs Enforcement (ICE) the face value of the bond. The Obligor can designate a third party as an Attorney in Fact to accept on their behalf the return of the collateral security deposited to secure the surety bond upon cancellation of the bond or performance of the Obligor. The Form I-312, Designation of Attorney in Fact, is the instrument used by the Obligor to officially designate their Attorney in Fact. Upon receipt of a properly executed Form I-312, ICE Financial Operations will remit to the Attorney in Fact either the principal and interest on the security deposit in the event of a bond cancellation, or the interest on the security deposit in the event of a bond breach. Immigration bonds might remain in place for years, and Obligors might choose to appoint a new Attorney in Fact as circumstances change. To ensure that ICE Financial Operations properly executes its fiduciary duties to the Obligor under the Form I-352 bond contract, ICE uses Form I-312A as the document by which the Obligor expressly indicates that a previously valid Form I-312 Attorney in Fact designation has been revoked.

- 2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.**

The data collected on Form I-312 is used by ICE to ensure that an Obligor presents ICE Financial Service Center - Burlington an official request for remittance of collateral security and/or accrued interest to a duly appointed Attorney in Fact for an Obligor when the Obligor chooses to invoke this option. Similarly, the data collected on Form I-312A is used by ICE to ensure that an Obligor's intent to expressly revoke a previously valid Attorney in Fact designation is properly documented.

ICE requests instructional updates to the I-312/I-312A information collection so that obligors and attorneys-in-fact are notified that attorneys-in-fact owe taxes on

any accrued bond interest and that on bond matters other than remittance of bond proceeds to attorney-in-fact ICE will only communicate with obligors.

- 3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.**

The use of these forms provides the most efficient means for collecting and processing the required data. In this case, ICE does not employ the use of information technology in collecting and processing this information.

- 4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.**

A review of the Forms Inventory Report revealed no duplication of effort, and there is no other similar information currently available which can be used for this purpose.

- 5. If the collection of information impacts small businesses or other small entities (Item 5 of OMB Form 83-I), describe any methods used to minimize burden.**

This collection of information does not have an impact on small businesses or other small entities.

- 6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.**

Sections 236 and 240B of the INA provide for the acceptance of bonds in certain cases to effect the release of aliens from ICE custody. These statutory provisions are implemented by 8 C.F.R. § 103.6. In the case of a cash bond, in which the Obligor deposits the face value of the bond with ICE, a cash bond might be in place for many years until final action is taken in an alien's immigration proceedings, and circumstances could change during these proceedings. ICE Financial Service Center -Burlington most effectively complies with its fiduciary duties to the Obligor by providing a mechanism for Obligors to efficiently and expressly indicate any appointment of an Attorney in Fact to receive any bond remittances, and to efficiently and effectively indicate any revocation of a previously valid Attorney in Fact appointment. Cash bonds are executed in approximately 90 percent of the cases in which aliens are released from ICE

custody, and therefore the proper management of cash bond security deposits is an integral part of the detention strategy.

**7. Explain any special circumstances that would cause an information collection to be conducted in a manner:**

- **Requiring respondents to report information to the agency more often than quarterly;**
- **requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;**
- **requiring respondents to submit more than an original and two copies of any document;**
- **requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years;**
- **In connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;**
- **requiring the use of a statistical data classification that has not been reviewed and approved by OMB;**
- **that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or**
- **requiring respondents to submit proprietary trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.**

The special circumstances contained in item 7 are not applicable to this information collection.

**8. If applicable, provide a copy and identify the data and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.**

**Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.**

**Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years -- even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.**

On February 15, 2022, ICE published a notice in the Federal Register at 87 FR 8597, soliciting public review and comment for a 60-day period. On April 25, 2022, a follow up 30-day notice was published in the Federal Register at 87 FR 24326 with instructions that any comments should be sent directly to the Office of Management and Budget.

**9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.**

ICE does not provide payments or gifts to respondents in exchange for a benefit sought.

**10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.**

There are no assurances of confidentiality provided to the respondents of the information.

**11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to person's form whom the information is requested, and any steps to be taken to obtain their consent.**

There are no questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, or other matters that are commonly considered private included in this collection.

**12. Provide estimates of the hour burden of the collection of information. The statement should:**

- **Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated.**

Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.

- If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB Form 83-I.
- Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 14.

Annual Reporting Burden, Form I-312:

a. Number of Respondents:	188
b. Number of Responses per each Respondent:	1
c. Total Annual Responses:	188
d. Hours per Response:	1
e. Total Annual Reporting Burden Hours:	188

Annual Reporting Burden, Form I-312A:

a. Number of Respondents:	5
b. Number of Responses per each Respondent:	1
c. Total Annual Responses:	5
d. Hours per Response:	1
e. Total Annual Reporting Burden Hours:	5

The projected hours per response for this collection of information were derived by first breaking the process into four basic components:

Learning about the Law and the Form:	10 Minutes
Completion of the Form:	10 Minutes
Assembling and Filing the Form:	10 Minutes
Obtaining Notary Seal	30 Minutes
Total Hours per Response:	60 Minutes

**Annual Reporting Burden, Form I-312**

**Total annual reporting burden hour is 188.** This figure was derived by multiplying the number of respondents (188) x frequency of response (1) x (1) hours per response.

**Annual Cost Burden, Form I-312**

**The estimated annual cost burden is \$6,204.** This estimate is based on [the number of respondents (188) x number of responses (1) x hours per response (1) x (\$33) average loaded hourly rate of all occupations for foreign born workers.<sup>1</sup>

**Annual Reporting Burden, Form I-312A**

**Total annual reporting burden hour is 5.** This figure was derived by multiplying the number of respondents (5) x frequency of response (1) x (1) hours per response.

**Annual Cost Burden, Form I-312A**

**The estimated annual cost burden is \$165.** This estimate is based on [the number of respondents (5) x number of responses (1) x hours per response (1) x (\$33) average loaded hourly rate of all occupations for foreign born workers.

**13. Provide an estimate of the total annual cost burden to respondents or record keepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14).**

- **The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life); and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.**
- **If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collection services should be a part of this cost burden estimate. In developing cost**

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<sup>1</sup> All occupation mean wage from Bureau of Labor Statistics (BLS) Occupational Employment Statistics September 2021 release, <https://www.bls.gov/bls/news-release/ecec.htm>. The average hourly loaded wage rate is calculated as \$37.24, using the percentage of wages and salaries to total compensation for private industry, as reported by BLS, Employer Costs for Employee Compensation, released December 16, 2021 for September 2021, [https://www.bls.gov/news.release/archives/ecec\\_12162021.htm](https://www.bls.gov/news.release/archives/ecec_12162021.htm). Foreign workers earn 88.5 percent of native born workers as reported by BLS from the Current Population Survey for 2021, in table 5 of the news release, [https://www.bls.gov/news.release/archives/forbrn\\_05182021.pdf](https://www.bls.gov/news.release/archives/forbrn_05182021.pdf), and was applied to the loaded wage estimated for all occupations, resulting in an hourly wage of \$32.96, which was rounded up to \$33.

**burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.**

- **Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government or (4) as part of customary and usual business or private practices.**

There are no capital or start-up costs associated with this information collection. The figure of \$8.25 as the maximum national average cost of obtaining a notary seal was derived in this fashion. First, the four states in which the largest number of illegal aliens have cash immigration bonds executed on their behalf are California, Texas, New York and Florida. For each of these states, the maximum fee allowed by statute for a notary seal was identified. California allows a fee of up to \$15, Florida allows a fee of up to \$10, Texas allows a fee of up to \$6, and New York, \$2. The maximum average cost across these four states was \$8.25. Importantly, these are maximum costs. Many financial institutions perform these services for their customers for free, and many notaries set their fees below the allowed maximums.

The maximum national average cost of obtaining a notary seal (\$8.25) x number of responses (188+5) = \$1,592

- 14. Provide estimates of annualized cost to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies also may aggregate cost estimates from Items 12, 13, and 14 in a single table.**

Annualized Cost Analysis:

a. Printing Cost:	\$1,740 <sup>2</sup>
b. Collecting and Processing:	\$27,020
c. Total Cost to Program:	\$28,760
d. Fee Charge:	\$0
e. Total Annual Cost to Government	\$28,760

### **Government Cost**

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<sup>2</sup> This figure is an approximation, as no exact amount was able to be determined. There was a 71% decrease in I-312 applications from the last Supporting Statement compiled. Therefore, a 71% reduction in printing costs was applied to the previous figure.

The estimated cost of the program to the Government is calculated by subtracting the Total Cost of Program from the Fee Charge. Total Cost of Program is calculated by the estimated number of respondents (193) filing the Designation of Attorney in Fact, multiplied by four (4.0) hours (Time required to collect and process) x \$35 (Suggested average hourly rate for clerical, officer, and managerial time with benefits, plus a percent for the estimated overhead cost for printing, stocking, distributing, and processing of this form).<sup>3</sup>

**15. Explain the reasons for any program changes or adjustments reporting in Items 13 or 14 of the OMB Form 83-I.**

ICE Bond Information Management System (BMIS) has reported a decrease for the bond program from previous years due to complications surrounding the COVID-19 pandemic. Enforcement and Removal Operations (ERO) has noted fewer individuals being arrested/detained and for those being arrested, ERO is releasing them on Own Recognizance (OR). Also, there have been fewer demands sent, and fewer breaches.

I-312 Revisions

	Current	Revision
Line 1	Returns of cash or United states bonds or notes.	Returns of cash deposited
Lines 1 and 2	Secure an immigration bond upon cancellation of the bond for performance by Obligor	Secure immigration bond and interest accrued upon final action being taken by ICE on the bond
Lines 3 and 4	...as principal have made, constituted, and appointed, and by these presents of make, constitute, and appoint (Attorney in Fact) of ...in my name, place, and stead to receive a refund of the deposit of cash or government obligation in the penal sum of ...	...am obligor on bond No. _____. As obligor and principal on this bond, I designate (Attorney in Fact) ...and in my stead...and interest that has accrued.
Lines6-9 (old) 4-7 (new)	Formal language granting attorney to act as if principal were there in person.	Simplifies formal language regarding attorney's authority to perform acts necessary to receive proceeds of the bond.
Paragraph 2	No paragraph 2.	Discusses the obligor's requirements under the bond agreement, including updating their address with ICE, and the responsibility for paying any tax due on the interest accrued on the bond. The designation is not valid unless properly notarized and the original form is returned to FSC-Burlington, where its validity will be confirmed and entered into an ICE database. If the designation is deemed invalid, the Bonds Section will return it with an explanation as to why it is being returned.  Requires a person to be provided for making the designation of attorney.
Signature Line	Taxpayer ID	TIN or SSN

<sup>3</sup> Hourly wage rate for a federal employee GS-07 step 07, \$21.66, [https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2021/GS\\_h.pdf](https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2021/GS_h.pdf). The average hourly loaded wage rate is calculated as \$31.35, using the percentage of wages and salaries to total compensation for civilian workers, as reported by BLS, Employer Costs for Employee Compensation, released December 16, 2018 for September 2021, [https://www.bls.gov/news.release/archives/ecec\\_12162021.htm](https://www.bls.gov/news.release/archives/ecec_12162021.htm). Overhead rate of 12 percent was added to the loaded wage to arrive at an hourly rate of \$35; the 12 percent overhead reflects indirect expenses as reported in OMB Circular A76, [https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A76/a76\\_incl\\_tech\\_correction.pdf](https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A76/a76_incl_tech_correction.pdf)

ICE requests the following proposed instructional changes –  
**Form I-312**

Page 1 currently states: “Further, I recognize that as the obligor I am responsible for any tax due on the interest accrued on this bond.”

1st Proposed change (Page 1): “Further, I recognize that the Attorney in Fact will be responsible for any tax due on the interest accrued on this bond.”

Page 2: Insert clarifying instruction under, “Additional Information” heading.

ICE maintains privity of contract with Obligors on immigration bonds even if the Obligor designates an Attorney in Fact to receive the proceeds of the bond once ICE has taken action on it. ICE will not contact Attorneys in Fact, and instead will communicate only with Obligors unless Attorneys in Fact have questions about the issuance of U.S. Department of the Treasury checks for bond proceeds remittances. This condition applies even if an Obligor and an Attorney in Fact have a private agreement between themselves that passes any property interest an Obligor has in the bond proceeds to the Attorney in Fact. ICE is not in a position to ascertain whether such agreements are valid under applicable state law, and it therefore will give such agreements no effect in its management of immigration bonds.

**Form I-312A**

Page 2: Insert clarifying instruction under, “Additional Information” heading.

ICE maintains privity of contract with Obligors on immigration bonds even if the Obligor designates an Attorney in Fact to receive the proceeds of the bond once ICE has taken action on it. ICE will not contact Attorneys in Fact, and instead will communicate only with Obligors unless Attorneys in Fact have questions about the issuance of U.S. Department of the Treasury checks for bond proceeds remittances. This condition applies even if an Obligor and an Attorney in Fact have a private agreement between themselves that passes any property interest an Obligor has in the bond proceeds to the Attorney in Fact. ICE is not in a position to ascertain whether such agreements are valid under applicable state law, and it therefore will give such agreements no effect in its management of immigration bonds.

There is no change to the previously reported burden.

- 16. For collections of information whose results will be published, outline plans for tabulation, and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.**

ICE does not intend to employ the use of statistics or the publication thereof for this collection of information.

- 17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.**

ICE will display the expiration date for OMB approval of this information collection.

- 18. Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submission," of OMB 83-I.**

ICE does not request an exception to the certification of this information collection.