



Citizenship and  
Immigration Canada

Citoyenneté et  
Immigration Canada

# ENF 8

## Deposits and Guarantees

**ENF 8 Deposits and Guarantees**

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## **ENF 8 Deposits and Guarantees**

### **Updates to chapter**

#### **Listing by date:**

##### **2007-02-01**

Changes have been made to Section 7. 8 and a paragraph has been deleted. In addition, the title of the Minister of Public Safety and Emergency Preparedness has been changed to Minister of Public Safety.

##### **2005-11-08**

Changes have been made throughout chapter ENF 8 to reflect the change in responsibilities as a result of the CIC/CBSA transition. All previous versions should be discarded.

Of particular note are the following modifications:

- changes have been made throughout this chapter to reflect accurate officer titles within the CBSA and CIC.
- section 4, Instruments and delegations, outlines specific roles and authorities of CIC and CBSA personnel.

##### **2004-11-04**

Editorial modifications have been made throughout this chapter. All previous versions should be discarded.

##### **2004-01-15**

The chapter's name has been changed to "Deposits and Guarantees" to better reflect the terminology of IRPA and its Regulations.

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### 1. What this chapter is about

The aim of this chapter is to provide functional guidance and direction to Citizenship and Immigration Canada (CIC) and the Canada Border Services Agency (CBSA) officers, managers and others with the delegated authority to impose the payment of deposits and the posting of guarantees with respect to permanent residents and foreign nationals who are the subject of a report, an admissibility hearing or, in Canada, a removal order.

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### 2. Program objectives

The objectives of the Canadian immigration program concerning the use of deposits and guarantees are:

- to impose the payment of a deposit or the posting of a guarantee on foreign nationals and permanent residents within Canada to ensure compliance with any conditions that may be imposed under the *Immigration and Refugee Protection Act* and the *Immigration and Refugee Protection Regulations* (herein referred to as the Act and Regulations), consistent with the *Canadian Charter of Rights and Freedoms*; and
- to allow the release of a person held in immigration detention, based on that person's agreement to abide by any conditions of release, to ensure compliance with the Act and Regulations.

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### 3. The Act and Regulations

<b>The Act - Deposits and guarantees</b>	<b>Section</b>
The authority to make Regulations imposing conditions and Regulations governing deposits or guarantees of the performance of obligations imposed	A14(2) A14(2)(d) A14(2)(f)
Authority for a CIC or CBSA officer or the Immigration Division to impose conditions including the payment of a deposit or posting of a guarantee for compliance with conditions imposed by a CIC or CBSA officer or the Immigration Division on a permanent resident or foreign national who is the subject of a report, an admissibility hearing or, in Canada, a removal order	A44(3)
Authority for a CBSA officer to order the release from detention of a permanent resident or foreign national on payment of a deposit or posting of a guarantee, if required, for compliance with the conditions imposed	A56
Conditions of release imposed by the Immigration Division on a permanent resident or foreign national pertaining to the payment of a deposit or the posting of a guarantee for compliance with the conditions	A58(3)
Monies that a person has agreed to pay as a deposit or guarantee of performance is a debt due to the Crown	A145(1) A145(1)(b)
Certification for debts due that have not been paid, if either the Minister of Citizenship and Immigration (C&I) or the Minister of Public Safety is of the opinion that the person liable for the amount is attempting to avoid payment, or on the expiration of 30 days after the default	A146(1) A146(1)(a) A146(1)(b)
Certificate, when filed and registered in the Federal Court, has the same force and effect, and all proceedings may be taken, as if the certificate were a judgment obtained for a debt of the amount specified in the certificate plus interest to the day of payment	A146(2)

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Cost of registering the certificate are recoverable	A146(3)
Power to garnish all or part of a debt due to the Crown, if the Minister is of the opinion that another person is liable to make a payment to subject of guarantee	A147

<b>Regulations - Deposits and guarantees</b>	<b>Section</b>
Deposit or guarantee requirement of person seeking entry to Canada in order to guarantee compliance with conditions imposed	R45(1)
The amount of the deposit or guarantee must be substantial enough to have a meaningful impact, on the basis of:	R45(2)
<ul style="list-style-type: none"> <li>• financial resources of the person or group</li> </ul>	R45(2)(a)
<ul style="list-style-type: none"> <li>• obligations resulting from conditions imposed</li> </ul>	R45(2)(b)
<ul style="list-style-type: none"> <li>• costs likely to be incurred to locate and arrest person or group, detain them, hold an admissibility hearing and remove them from Canada</li> </ul>	R45(2)(c)
<ul style="list-style-type: none"> <li>• costs likely to be incurred to enforce a guarantee</li> </ul>	R45(2)(d)
Sum of money deposited is forfeited, and guarantee becomes enforceable on failure of person or any member of group to comply with any condition imposed	R49(4)
A person who pays a deposit or posts a guarantee:	R47(1)
<ul style="list-style-type: none"> <li>• must not have signed or co-signed another guarantee that is in default</li> </ul>	R47(1)(a)
<ul style="list-style-type: none"> <li>• must have the capacity to contract in the province where the deposit is paid or the guarantee is posted</li> </ul>	R47(1)(b)
A person who posts a guarantee must:	R47(2)
<ul style="list-style-type: none"> <li>• be a Canadian citizen or a permanent resident, physically present and residing in Canada</li> </ul>	R47(2)(a)
<ul style="list-style-type: none"> <li>• be able to ensure that the person or group of persons in respect of whom the guarantee is required will comply with the conditions imposed</li> </ul>	R47(2)(b)
<ul style="list-style-type: none"> <li>• present to a CIC or CBSA officer evidence of their ability to fulfill the obligation arising from the guarantee</li> </ul>	R47(2)(c)
Guarantee conditions:	R48(1)
<ul style="list-style-type: none"> <li>• provide address of guarantor and any change of address</li> </ul>	R48(1)(a)
<ul style="list-style-type: none"> <li>• appear at time and place required to comply with any obligation imposed</li> </ul>	R48(1)(b)
Deposit conditions:	R48(2)
<ul style="list-style-type: none"> <li>• provide address and change of address</li> </ul>	R48(2)(a)
<ul style="list-style-type: none"> <li>• appear at time and place required to comply with an obligation imposed</li> </ul>	R48(2)(b)
Money illegally obtained If a CIC or CBSA officer believes a sum of money offered as a deposit, or a sum of money that a person may be obliged to pay under a guarantee was, or would not be legally obtained, the CIC or CBSA officer shall not allow that person to pay a deposit or post a guarantee	R47(3)
Acknowledgment of consequences of failure to comply	R49(1)
Return of deposit paid after compliance with conditions imposed	R49(3)

### 3.1. Forms

All forms required for the processing of a deposit or a guarantee are listed below and all are accessible on CIC Explore under *Forms and Kits*.

<b>Title</b>	<b>Number</b>
Official Receipt	FIN 0007B

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Accounts Receivable Establishment / Guarantee, AAP or LINC Overpayment	FIN 0009B
Advanced Notification of Performing Artists	IMM 0060B
Security Deposit	IMM 0514B
Requisition for Refund / Forfeiture of Security Deposit	IMM 0709B
Guarantee <i>The Immigration and Refugee Protection Act</i>	IMM 1230E
Guarantee <i>The Immigration and Refugee Protection Act</i> (Where there are Co-Signers)	IMM 1259E
Acknowledgement of Conditions - <i>The Immigration and Refugee Protection Act</i>	IMM 1262E
Solemn Declaration of Solvency by Guarantor	IMM 1416B
Amendment to Guarantee for Compliance Issued	IMM 5071B
Guarantee of Compliance Enforcement Notice	IMM 5072B
Guarantee Log	IMM 5073B
Requisition for Enforcement of Guarantee <i>Immigration and Refugee Protection Act</i> and Regulations	IMM 5345B

### 4. Instruments and delegations

	Delegated authority
The CBSA officer	<ul style="list-style-type: none"> <li>imposes a deposit or guarantee on a foreign national or permanent resident who is the subject of a report, admissibility hearing, or, in Canada, a removal order;</li> <li>allows the release from detention, pending admissibility hearing, removal or a continuation of examination, of a foreign national or permanent resident for whom the payment of a deposit or the posting of a guarantee has been made;</li> <li>orders the release from detention of a person who was the subject of a deposit or guarantee;</li> <li>extends the duration of a deposit or a guarantee.</li> </ul>
The CIC officer	<ul style="list-style-type: none"> <li>imposes a deposit or guarantee on a foreign national or permanent resident who is the subject of a report, admissibility hearing, or, in Canada, a removal order;</li> <li>extends the duration of a deposit or a guarantee.</li> </ul>
The hearings officer	<ul style="list-style-type: none"> <li>recommends to a member of the Immigration Division that a foreign national or permanent resident in detention provide a deposit or a guarantee, or any combination thereof, to allow the release of that person.</li> </ul>
A member of the Immigration Division at detention review	<ul style="list-style-type: none"> <li>imposes a deposit or a guarantee, or both;</li> <li>allows the release from detention, pending admissibility hearing, removal or a continuation of examination, of a foreign national or permanent resident for whom the payment of a deposit or the posting of a guarantee has been made.</li> </ul>
A member of the	<ul style="list-style-type: none"> <li>imposes a deposit or a guarantee, or both</li> </ul>

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Immigration Division at the admissibility hearing	<ul style="list-style-type: none"><li>orders the release from detention of a person who was the subject of a security deposit or guarantee.</li></ul>
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### 5. Departmental policy

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#### 5.1. Deposits and guarantees

The CIC or CBSA officers may request the payment of a deposit or the posting of a guarantee, or both, under the following circumstances:

- At a port of entry, a CBSA officer may require a person or group of persons seeking to enter Canada to pay a deposit or post a guarantee, or both, for compliance with any conditions imposed [R45(1)]. (For the purpose of this section a group of persons refers to a group of persons such as an entertainment group coming to Canada for the same purpose. This section is not meant to apply to several different individuals believed to be part of an organized smuggling ring. In scenarios such as this, the requirement for a security deposit or guarantee should be assessed on an individual basis.)
- At a port of entry or inland office, a CIC or CBSA officer may impose conditions and require a permanent resident or foreign national who is the subject of a report or admissibility hearing to pay a deposit or post a guarantee. A CIC or CBSA officer may also require a deposit or guarantee where the permanent resident or foreign national is in Canada and is the subject of a removal order [A44(3)].
- Where a permanent resident or foreign national has been detained pursuant to the Act or Regulations and a CBSA officer orders their release before the first detention review by the Immigration Division, the CBSA officer may impose conditions and require that they pay a deposit or that a guarantee be posted [A56].

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**Note:** Only the CBSA officers are delegated the authority to release a permanent resident or foreign national before the first detention review by the Immigration Division.

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- At a detention review or admissibility hearing, a CBSA officer may request the Immigration Division to impose conditions, including the requirement to pay a deposit or post a guarantee, on a foreign national or permanent resident prior to ordering they be released from detention [A58(3)].

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#### 5.2. General requirements and procedures

The following requirements and procedures apply to deposits and guarantees:

- It is the CIC or CBSA officer's responsibility to ensure that the regulatory requirements for guarantors are met. The CIC or CBSA officers should thoroughly assess any potential guarantor that offers to post a guarantee and, where the guarantor does not satisfy the regulatory requirements, they should not be permitted to post a guarantee.
- It is imperative that the CIC and CBSA officers ensure that the subject of the deposit or guarantee and the guarantor understand the conditions of the deposit or guarantee and the repercussions for violating the conditions. Pursuant to the Regulations, the person paying the deposit or posting the guarantee must acknowledge in writing that they have been informed of the conditions imposed and that non-compliance with any of the conditions will result in forfeiture of the deposit or enforcement of the guarantee.

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- R48 requires that, in addition to any other conditions imposed, the following conditions are imposed on a person or a group of persons in respect of which a guarantee or deposit is required:
  - ◆ where a guarantee is being posted, to provide the applicable Department taking the deposit with the address of the person posting the guarantee;
  - ◆ to advise the appropriate office before any change in that address;
  - ◆ where a deposit is being paid, to provide the applicable Department taking the deposit with their address;
  - ◆ to advise the appropriate office before any change in that address;
  - ◆ to present themselves at the time and place that a CIC or CBSA officer or the Immigration Division requires them to appear to comply with an obligation imposed on them under the Act.
- If a CIC or CBSA officer has reasonable grounds to believe that a sum of money offered as a deposit was not legally obtained, the CIC or CBSA officer shall not allow that person to pay a deposit or post a guarantee.
- Deposits are always preferred to guarantees, but a combination of both may be acceptable; the amount should be determined after examining the circumstances of the case. The amount of the surety should be sufficient to ensure compliance based on the circumstances of the person concerned and the financial resources available. A smaller surety may be appropriate when:
  - ◆ detention has been for a prolonged period;
  - ◆ prospects of conclusion of the case are very limited in the short term.

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### 5.3. Deposits

See the following table for details about deposits:

Item	Details
Sum of money	<ul style="list-style-type: none"> <li>• deposited to undertake compliance with any conditions imposed by an official under the Act;</li> <li>• may be provided either by the person who is the subject of the conditions or by a third party;</li> <li>• <b>deposits are always preferred to guarantees</b>, but a combination of both may be acceptable;</li> <li>• in inland offices, deposits must be in Canadian funds;</li> <li>• U. S. funds may be accepted at a POE only when depositor does not have sufficient Canadian funds. The CBSA officers should indicate in the IMM 0514B and FIN 0007B forms that U. S. currency was accepted. No other currencies may be accepted;</li> <li>• payment in cash, certified financial instruments (certified cheque, bank draft, money order) and debit card are the only acceptable means of payment;</li> <li>• credit cards are not acceptable as a means of payment;</li> </ul>



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	<ul style="list-style-type: none"><li>• no interest will be paid on the sum of money deposited.</li></ul>
Refund or forfeiture	<ul style="list-style-type: none"><li>• if any of the conditions have been defaulted or breached, the deposit will be forfeited to the Receiver General for Canada;</li><li>• after the conditions have been revoked or met, the deposit will be reimbursed;</li><li>• procedures must be in place at each office to review deposits for refund or forfeiture at the conclusion of the case before the file is sent to archives;</li><li>• both the CBSA and CIC can authorize the refund of deposits, regardless of which organization accepted the deposit, and the monies should be sent to Corporate Accounting, CBSA, NHQ.</li></ul>

### 5.4. Guarantees

The following applies to guarantees:

- A guarantee is a written undertaking by a third party that the person who is the subject of the guarantee will abide by the conditions imposed by a CIC or CBSA officer or a member of the Immigration Division.
- The guarantor and the subject of the guarantee must both agree to the conditions.
- A guarantor is not required to provide the sum of money, unless the subject of the guarantee does not comply with the conditions, hence, a guarantee is also referred to as a conditional bond.
- Proposed guarantors must be examined by a CIC or CBSA officer to determine if the person is:
  - ◆ liable for any outstanding guarantees;
  - ◆ able to exercise control and influence over the actions of the person concerned. If the proposed guarantor had knowledge of or harboured the person concerned while that person was illegally in Canada, they may not be a suitable guarantor;
  - ◆ a Canadian citizen or permanent resident. Guarantees are not to be accepted from persons who are not physically present and residing in Canada, due to the potential difficulty in enforcing a guarantee;
  - ◆ all parties to the contract must have the legal capacity to enter into a contract in the province or territory where the guarantee is taken, i.e., be of legal age and not suffer from a legal disability;
  - ◆ sufficiently financially solvent, i.e., have sufficient liquid assets, to meet the obligations of the guarantee should the subject of the guarantee not respect the conditions imposed.
- The CIC or CBSA officers should consider whether the subject of the guarantee will likely be removed from Canada within a reasonable time.
- If the subject of the guarantee defaults on or breaches any of the conditions, legal proceedings may be taken to enforce the guarantee.

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- When the conditions under which the guarantee was posted are revoked or met, the obligation under the guarantee becomes null and void.
- An immigration admissibility hearing is not terminated by the effect of a subject of a deposit or guarantee departing and seeking to re-enter Canada [*Ravinder Kaur v. Minister of Employment and Immigration*, FCA, Doc. No. A-295-84, September 25, 1984; *Harnek Singh Grewal v. Minister of Employment and Immigration*, FCA, Doc. No. A-42-80, May 7, 1980]:
  - ◆ a guarantee is valid if the person who is the subject of the guarantee has not violated any of the conditions; a guarantor may be liable for the amount of the guarantee;
  - ◆ should the subject of a guarantee leave Canada and seek to re-enter to attend the continuation of the immigration inadmissibility hearing, the CIC or CBSA officer at the POE should examine the person to determine whether a new report and guarantee would be required.

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### 5.5. Stay of removal order

#### Guarantees

A stay of removal from the Immigration Appeal Division has the effect of rendering the guarantee null and void. A guarantee should be left on file and no further action is to be taken unless the conditions were breached before the stay was ordered.

#### Deposits

A stay of removal from the Immigration Appeal Division has the effect of cancelling a deposit. Deposits are to be refunded unless the conditions were breached before the stay was ordered.

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### 5.6. Withdrawal, refund, enforcement and forfeiture of deposit or guarantee

- The signatory of a security deposit enters into an obligation to be liable for the forfeiture of the guarantee should the person concerned be found to be in default or breach of any of the conditions imposed.
- The CIC or CBSA officer must ensure that the person signing understands the importance of the undertaking and the responsibilities and consequences should the subject of the guarantee not respect any of the conditions imposed.
- The Act does not provide specific authority for refunds, but R49(3) provides the authority to return funds held in the Consolidated Revenue Fund to the depositor.
- Where a person fails to comply with any of the conditions imposed, the deposit will be declared forfeited or the guarantee will be enforced.
- The CBSA is normally responsible for the monitoring of compliance of conditions for deposits and guarantees. However, CIC is also delegated the authority to monitor compliance.

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### 6. Definitions

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Nil.

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### 7. Procedures

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#### 7.1. Taking a deposit

Procedures to take a deposit	Form
<b>The CIC or CBSA officer</b> <ul style="list-style-type: none"><li>• completes Security Deposit form after receiving sum of money;</li><li>• adds financial system (SAP/TEPS/CAS) document number to the Security Deposit form;</li><li>• gives copy 1 to the depositor;</li><li>• completes the Acknowledgement of Conditions form;</li><li>• ensures that the person concerned and a witness sign the Acknowledgement of Conditions form;</li><li>• If the depositor requests that the deposit be returned to another person, complete a power of attorney in a form acceptable by the Department of Justice. The recommended form is that supplied by Public Works and Government Services Canada;</li><li>• remits a copy of the Official Receipt for monies received to the depositor;</li><li>• if the conditions of the deposit require that the person leave Canada on or before a certain date, advises the person that failure to report to a CBSA officer for confirmation of departure may result in a delay of the refund or in the forfeiture of the deposit;</li><li>• in file notes, provides detailed reasons for recommendation that deposit be imposed;</li><li>• forward copy 2 of the IMM 0514B, and a photocopy of the local visitor control form, if applicable, to NHQ;</li><li>• forwards copy 2 of IMM 0514B to Corporate Accounting, CBSA, NHQ;</li><li>• complete SAP procedures.</li></ul>	IMM 0514B IMM 0514B IMM 0514B IMM 1262E IMM 0060B FIN 0007B
<b>The hearings officer</b> <ul style="list-style-type: none"><li>• submits to the member of the Immigration Division that, as a minimum condition of release, the conditions in the Acknowledgement of Conditions form should be imposed;</li><li>• provides detailed reasons in the file notes for the recommendation that a deposit be imposed.</li></ul>	IMM 1262E

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#### 7.2. Altering or amending a deposit

A second deposit may be warranted if any of the conditions of the original deposit have been altered or amended.

Alteration or amendment of a deposit requires the consent of all parties involved in the original imposition of the deposit. If a CIC or CBSA officer or a member of the Immigration Division was

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signatory to the original deposit, the CIC or CBSA officer or the member of the Immigration Division must consent to its alteration or amendment. **Unilateral alteration of a deposit is a breach of the contract.**

The port of entry or inland office involved in the original imposition of the deposit must be advised of any alterations, amendments, extensions, and refunds.

<b>Procedures to increase the amount of the original deposit</b>	<b>Form</b>
<p>To increase the amount of the original deposit, the CIC or CBSA officer must:</p> <ul style="list-style-type: none"> <li>advise the depositor that an additional deposit is required;</li> <li>complete a second Security Deposit form to replace the original form;</li> <li>provide reasons for the increased amount of the deposit in the Remarks section;</li> <li>tick off 'Replaces previous security deposit no...' in the Official Receipt box, and add the previous deposit number;</li> <li>forward copy 2 of the IMM 0514B to Corporate Accounting, CBSA, NHQ.</li> </ul>	IMM 0514B
<b>Procedures to decrease the amount of the original deposit</b>	<b>Form</b>
<p>To decrease the amount of the original deposit the CBSA or CIC officer must:</p> <ul style="list-style-type: none"> <li>complete a Requisition for Refund / Forfeiture of Security Deposit form to request a partial refund of the original deposit;</li> <li>provide reasons for the decreased amount of the deposit in the Remarks section;</li> <li>forward copies 1 and 2 of the IMM 0709B to Corporate Accounting, CBSA, NHQ.</li> </ul>	IMM 0709B

### 7.3. Taking a guarantee

<b>Procedures</b>	<b>Form</b>
<p>To take a guarantee the CIC or CBSA officer must:</p> <ul style="list-style-type: none"> <li>complete the Solemn Declaration of Solvency by Guarantor form;</li> <li>complete the Guarantee form;</li> <li>complete the Guarantee (Where there are Co-signers) form, where applicable;</li> <li>complete the Guarantee Log form to maintain control of guarantees issued and for statistical purposes.</li> </ul>	<p>IMM 1416B</p> <p>IMM 1230E</p> <p>IMM 1259E</p> <p>IMM 5073B</p>
<p><b>The CIC or CBSA officer</b></p> <ul style="list-style-type: none"> <li>requires the subject of the guarantee to sign an Acknowledgement of Conditions form, which must be written in a clear and precise manner in order to render the guarantee enforceable, and must contain, as a minimum, the following conditions: <ul style="list-style-type: none"> <li>that (name of person concerned) shall keep the peace and be of good behaviour;</li> <li>that (name of person concerned) shall report when and where required to do so by a CIC or CBSA officer or member of the Immigration Division for all lawful purposes of</li> </ul> </li> </ul>	IMM 1262E

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<p>the <i>Immigration and Refugee Protection Act</i>;</p> <ul style="list-style-type: none"> <li>• that (name of person concerned) shall advise a CBSA or CIC officer of any change of address 48 hours in advance of the move;</li> <li>• provides detailed reasons in the file notes for the recommendation that a guarantee be imposed.</li> </ul>	
<p><b>The hearings officer</b></p> <ul style="list-style-type: none"> <li>• submits to the member of the Immigration Division that, as a minimum condition of release, the following conditions be imposed on the subject and included in the Acknowledgement of Conditions form: <ul style="list-style-type: none"> <li>• that (name of person concerned) shall keep the peace and be of good behaviour;</li> <li>• that (name of person concerned) shall report when and where required to do so by a CIC or CBSA officer or member of the Immigration Division, for all lawful purposes of the <i>Immigration and Refugee Protection Act</i>;</li> <li>• that (name of person concerned) advise a CBSA officer of any change of address 48 hours before moving;</li> </ul> </li> <li>• provides detailed reasons in the file notes for the recommendation that a guarantee be imposed.</li> </ul>	IMM 1262E

### 7.4. Altering or amending a guarantee

<b>Procedures to alter or amend a guarantee</b>
<ul style="list-style-type: none"> <li>• Any unilateral attempt to alter or amend the conditions upon which a guarantee was posted shall not be enforceable. The original guarantee will remain valid and enforceable.</li> <li>• The conditions of a guarantee cannot be altered without the consent of all parties, e.g., a CIC or CBSA officer or a member of the Immigration Division, who were signatory to the guarantee.</li> <li>• When a person is released from detention under a guarantee to appear at an admissibility hearing, the guarantee becomes void after the appearance of the person at the admissibility hearing.</li> <li>• To avoid the necessity of having the co-signer of the guarantee appear at the admissibility hearing to co-sign a new guarantee should a member of the Immigration Division require the posting of a guarantee, the conditions of the guarantee should include the following wording: <ul style="list-style-type: none"> <li>◆ that (name of person concerned) shall appear at the time and place required for the purpose of scheduling an admissibility hearing under the <i>Immigration and Refugee Protection Act</i> for admissibility hearing, and at each subsequent sitting of such admissibility hearing, for removal, or whenever required.</li> </ul> </li> <li>• Each party to the guarantee must have knowledge of the conditions of the guarantee at the time of its execution, i.e., that the person concerned be required to appear whenever directed to by a CIC or CBSA officer or a member of the Immigration Division.</li> </ul>

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### 7.5. Withdrawal, refund and forfeiture of a guarantee

If a guarantee is rescinded or cancelled, another guarantee must be signed or the subject of the guarantee must be delivered into custody.

The onus is on the guarantor to produce the subject of a guarantee. Officials will not locate and arrest the subject of a guarantee so that a guarantor may be relieved of the obligation of the guarantee.

<b>Procedures for withdrawal</b>	<b>Form</b>
<ul style="list-style-type: none"> <li>• A guarantor or a co-signer of a guarantee may request to be released from the obligation of the guarantee.</li> <li>• Although the law does not prevent the release of a person who has signed a deposit or guarantee, a guarantor or a co-signer cannot be relieved of their obligation by merely stating the desire to be relieved, or by merely requesting it. The guarantor must apply to a CIC or CBSA officer, if a CIC or CBSA officer imposed the security deposit or guarantee, or to a member of the Immigration Division, if a member of the Immigration Division imposed the deposit or guarantee.</li> </ul>	Not Applicable
<b>Procedures for refunds</b>	<b>Form</b>
<ul style="list-style-type: none"> <li>• When the person who is the subject of a deposit or guarantee has complied with the conditions of the guarantee, a CIC or CBSA officer must cancel the guarantee or return any monies.</li> <li>• When it is determined that a person has complied with the conditions established in the Security Deposit form [IMM 0514B], an authorized CIC or CBSA officer must complete a Requisition for Refund/Forfeiture of Security Deposit form [IMM 0709B] and forward it for action to Corporate Accounting, CBSA, NHQ. If information becomes available to cause a CIC or CBSA officer to recommend that the deposit be refunded, rather than forfeited, after the forfeiture has been processed, the steps above will be repeated for refunds, detailing the reason for the reversal in the Remarks section.</li> </ul>	IMM 0709B
<b>Procedures for forfeiture</b>	<b>Form</b>
<ul style="list-style-type: none"> <li>• If the subject breaches any condition, a guarantee will be enforced.</li> <li>• Delegated CIC or CBSA officers should consider each case on its own merits.</li> <li>• A Convention refugee claim in Canada has no bearing on whether to enforce a guarantee.</li> <li>• The existence of a guarantee is not a determining factor in deciding whether or not a person should be allowed to withdraw voluntarily at a POE or to leave Canada. If a CBSA officer allows the person to withdraw voluntarily or to leave Canada, the normal course would be to refrain from taking action on the guarantee.</li> <li>• If a person who is the subject of a guarantee has breached any of the conditions, the CIC or CBSA officer processing the guarantee should review the circumstances of the breach, and recommend to the manager that action be taken to enforce the guarantee.</li> <li>• The manager, upon receiving a CIC or CBSA officer's recommendation for forfeiture or enforcement of the guarantee, shall:</li> </ul>	IMM 0709B

## ENF 8 Deposits and Guarantees

<ul style="list-style-type: none"><li>◆ review the circumstances of the case for a deposit;</li><li>◆ forward a completed Requisition for Refund/Forfeiture of Security Deposit form [IMM 0709B], and forward it for action to Corporate Accounting, CBSA, NHQ.</li><li>◆ inform the CIC or CBSA officer of the decision;</li><li>◆ notify the person in writing of the reason that action is being taken to forfeit the deposit or enforce the guarantee.</li></ul> <ul style="list-style-type: none"><li>● If information becomes available to cause a CIC or CBSA officer to recommend that the deposit be refunded rather than forfeited, after the forfeiture has been processed, the steps above will be repeated, detailing the reason for the reversal in the Remarks section.</li></ul>	
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### 7.6. Request for information

Local offices should not refer requests from clients for information about forfeiture or refunds directly to National Headquarters.

A local office may contact Corporate Accounting, CBSA, NHQ, at 613-948-9313, on behalf of a client.

For any financial coding or SAP/TEPS/CAS transactional issues, the CIC or CBSA officers should contact their regional headquarters.

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### 7.7. Power of attorney and assignment

A person entitled to request a refund of a deposit may give power of attorney to another person to act on the requester's behalf. In order to refund monies on deposit to an individual who is not the depositor, either a validly executed power of attorney or a Consent form is required. Consent forms are available upon request from Corporate Accounting, CBSA, NHQ.

Pursuant to the *Financial Administration Act*, a Crown debt, i.e., a deposit or guarantee, is not assignable. To assign a deposit or guarantee to another person, the original deposit or guarantee must be refunded, and then replaced by a second one.

The evidence of a power of attorney of a deposit or guarantee is a written document under seal. The original copy of the document, not a photocopy, must be forwarded to Corporate Accounting, CBSA, NHQ, before a deposit can be reimbursed to an attorney.

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### 7.8. Deposit or guarantee given by a third party

The rules of procedural fairness require that a CIC or CBSA officer not recommend forfeiture of a deposit or realize a guarantee executed by a third party until that person is given an opportunity to make a written representation concerning the decision to be made.

CIC and CBSA managers and officers have discretionary power to decide whether a breach of conditions is severe enough to warrant the forfeiture of the deposit or the guarantee. However, CIC as well as CBSA managers and officers do not have discretionary power to reduce or otherwise alter the amount of the deposit or guarantee.

When a breach of conditions occurs that will result in forfeiture of a deposit or action to realize on a guarantee, the depositor or guarantor must be informed in writing of the breach and the possible forfeiture or enforcement action, and be granted an opportunity for written representation. If the final decision is to forfeit the deposit or guarantee, the depositor or guarantor will be held accountable for the entire amount of the deposit or guarantee.

## **ENF 8 Deposits and Guarantees**

When the guarantor refuses or is unable to honour a commitment in a guarantee, CIC or CBSA officers should refer the matter to the regional office of the Justice Department for civil prosecution.