

 Department of Human Resources 311 West Saratoga Street Baltimore MD 21201	FIA ACTION TRANSMITTAL
Control Number: FIA/OPR 98-48	Effective Date: Upon Receipt Issuance Date: May 27, 1998

**TO: DIRECTORS, LOCAL DEPARTMENTS OF SOCIAL SERVICES
 DEPUTY/ASSISTANT DIRECTORS FOR FAMILY INVESTMENT
 FAMILY INVESTMENT SUPERVISORS**

Kevin Mahon for
FROM: KEVIN MAHON, EXECUTIVE DIRECTOR, FIA

RE: AFFIDAVITS OF SUPPORT ON BEHALF OF IMMIGRANTS

**PROGRAM AFFECTED: FOOD STAMP PROGRAM AND TEMPORARY CASH
 ASSISTANCE**

ORIGINATING OFFICE: OFFICE OF POLICY AND RESEARCH

SUMMARY

On September 30, 1996 President Clinton approved enactment of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996. A section of this Act provides that an individual is inadmissible as an immigrant if likely to become a public charge.

To overcome the ground of inadmissibility, the immigrant must be the beneficiary of an affidavit of support. This new affidavit of support (I-864) is a legally enforceable contract between the sponsor and the federal government for the benefit of the sponsored immigrant and of any federal, state, or local government agency or private entity that provides means-tested public benefits with some exceptions. The most notable exceptions are emergency medical care, disaster relief, school lunches, foster care, student loans, and Head Start.

The new affidavit of support is required for all applications for immigrant visas or adjustment of status filed on or after December 19, 1997.

By executing form I-864, the sponsor agrees to provide the financial support necessary to maintain the sponsored immigrant at an income that is at least 125% of the federal poverty line, unless the obligation has terminated. The sponsor also agrees to reimburse any agencies that provide a means-tested public benefit to a sponsored immigrant.

If the sponsored immigrant obtains a means-tested public benefit, with certain exceptions, the agency providing the benefit may, after first making a written request for reimbursement, sue the sponsor in federal or state court to recover the unreimbursed costs of the benefit including the cost of collection and legal fees.

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This policy change will have limited effect initially because of the 5-year bar on most federal means-tested benefits for most immigrants and because we do not plan to apply the policy to state means-tested benefits without State regulation changes and notice to the public.

PRIOR POLICY

Under prior law, the sponsor's and sponsor's spouse's income was deemed for Temporary Cash Assistance (TCA), food stamps, and SSI. Deeming occurred for only a three-year period that began on the immigrant's entry to the U.S. as a legal permanent resident or an adjustment in status while in the U.S. The prior law took into consideration that not all of a sponsor's income could be made available to the sponsored immigrant. Therefore, a portion of the income was allocated to the sponsor and the sponsor's family, and the rest of the sponsor's income was counted as available to the sponsored immigrant.

This policy continues to apply to immigrants who entered the U.S. under the old affidavit of support.

Although old deeming rules remain in force for those using the old affidavit of support, they affect only a small number of people, because many were already made ineligible under other provisions of the federal welfare reform.

NEW POLICY

The new sponsor deeming rules apply to federally funded Medical Assistance, TCA, and food stamps. In most cases this will make the sponsored immigrant ineligible. The rules will apply to state funded TCA and food stamps only after the Code of Maryland Regulations is changed.

Count all the resources and income of the sponsor and the sponsor's spouse in determining the eligibility of a sponsored immigrant who was sponsored under the new affidavit of support.

Immigrants who are sponsored under the new affidavit of support are subject to deeming until they naturalize or have earned 40 qualifying quarters in covered employment.

EXCEPTIONS:

- Refugees and asylees

Because refugees and asylees do not need to overcome the public charge grounds for exclusion or submit affidavits of support when they adjust to permanent status, they are exempt from the deeming provisions.

- Legal permanent residents who have earned or can be credited with 40 qualifying quarters.

As explained in Action Transmittal 98-20, legal permanent residents (LPR) may be credited with the quarters of their spouse or parents, provided that they are not credited with any quarter after 12/31/96 during which federal means-tested benefits were received.

- **Battered spouses and children**

The IIRIRA provides another exception from sponsor deeming for certain battered spouses and children. It allows for a one-year exception from the deeming provisions for LPR spouses and children who have been battered or subjected to extreme cruelty in the United States by their spouses or parents, or by another family member residing in the household who was allowed to commit the acts. The battery or cruelty must have a substantial connection to the need for the public benefits. The spouse or child subjected to cruelty must not be living with the person who committed the abusive acts.

The battered spouse exception may extend beyond the initial one-year period, if either the INS, a judge, or an administrative law judge formally recognize that the battery or extreme cruelty occurred. The local department must also determine that the abuse continues to have a connection with the spouse or child's need for benefits.

- **Indigence**

The IIRIRA also added an "indigence" exception for LPRs who are abandoned by their sponsor or where the sponsor's contribution is so inadequate that the immigrant would otherwise go without food and shelter. This exemption lasts for one year after the agency makes the indigence determination.

TERMINATION OF SUPPORT OBLIGATION

- **The sponsor's support obligation terminates when the sponsored immigrant:**
 - **Becomes a citizen of the United States**
 - **Has worked, or can be credited with, 40 qualifying quarters of work, provided that the sponsored immigrant is not credited with any quarter beginning after December 31, 1996, during which the immigrant receives a federal means-tested public benefit**
 - **Ceases to hold the status of an alien lawfully admitted for permanent status and has departed the U.S., or**
 - **Dies.**
- **The sponsor's support obligation also ends if the sponsor dies.**
- **The termination of the support obligation does not relieve the sponsor or the sponsor's estate of any reimbursement obligation that accrued before the support obligation terminated.**

QUESTIONS AND ANSWERS

The Food and Nutrition Service provided the following questions and answers about the attribution of a sponsor's income and resources and requirements for a sponsor's affidavit of support.

- Q1. To which noncitizens does deeming apply?
- A1. Deeming applies to all noncitizens sponsored by individuals. Very few sponsored noncitizens will be eligible for food stamps. Refugees, asylees, and deportees do not need to be sponsored. Deeming does not apply to noncitizens sponsored by groups. Deeming ends when a noncitizen has 40 quarters. Therefore, deeming will apply only to those who qualify under the military service provisions.
- Q2. Are battered noncitizens exempt from the deeming provisions?
- A2. If the battered noncitizen lives in the same household as the batterer, there is no exemption. If the battered noncitizens is not living in the same household, battered noncitizens and noncitizens whose child or parent has been battered may be exempt for the deeming provisions for a 12-month period. There must also be a substantial connection between the need for federal food stamps and the battery.
- Q3. For situations involving a sponsor's income, if the 3 years have passed and the new affidavit has not been signed is the sponsor's income still counted?
- A3. For noncitizens whose sponsors signed the old affidavit, deeming ends after 3 years. Current sponsors will not be required to sign a new affidavit. Follow current policy for these noncitizens.
- Q4. When will the newly legally binding affidavit of support be used?
- A4. The new affidavits of support will be required for applications for immigrant visas or for adjustments to permanent resident status filed on or after December 19, 1997. The deeming and other sponsored noncitizen provisions contained in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 apply.
- Q5. What if a sponsor or the required documents cannot be located?
- A5. The noncitizen is ineligible until all necessary facts are obtained. Determine the eligibility of any remaining household members by considering the income and resources of the ineligible noncitizen, excluding the deemed income and resources of the noncitizen's sponsor and sponsor's spouse. The department of Justice is developing a computer database that will contain the names of the sponsored noncitizens and the names and addresses of the sponsors. We will be able to get this information through the G-845 Supplement.

- Q6. If a sponsor is receiving public assistance or SSI, should the assistance be counted as available to the sponsored noncitizen?
- A6. Yes.
- Q7. Is there a time limit during which sponsored indigent noncitizens can be exempted from the full deeming provisions?
- A7. Yes, if the local department determines that a sponsored noncitizen would, in the absence of the assistance provided by the agency, be unable to obtain food and shelter. To make this determination, the local department must take into account the noncitizen's own income, plus any cash, food, housing, or other assistance provided by other individuals, including the sponsor. The amount that is deemed from the sponsor is the actual amount provided for a period beginning on the date of the determination and ending 12 months after this date.
- Q8. Instead of certifying sponsored immigrants and then trying to collect from the sponsor, can the local department just determine that the immigrants are not eligible to begin with?
- A8. No. If the sponsored immigrants meet the qualified criteria and the specific food stamp or TCA criteria, they must be certified and then we must request repayment from the sponsors.
- Q9. How should requests for reimbursement be handled?
- A9. They will be handled as household-caused error claims, but the sponsor will be billed. The procedures have not been developed. We will send further guidance when the process is finalized.

ACTION REQUIRED

Step 1: When legal permanent residents sponsored under the new affidavit of support apply for TCA, Medical Assistance or food stamps, if they do not meet one of the exceptions to deeming, determine eligibility for the federal benefits based on their immigration status. As stated above, most are not eligible because of the 5-year bar on receipt of federal means-tested benefits.

Step 2: Determine if the household will meet eligibility requirements for the benefit based on reported information. For example, if a household owns a resource that would make it ineligible, further verification of immigration status and sponsor's income is not necessary.

Step 3: If they would be eligible for the benefits, verify immigration status and the income and resources of the sponsor and or sponsor's spouse (if the spouse is living with the sponsor). The G-845 Supplement has a section in which INS can enter the sponsor's address.

Step 4: Determine eligibility. If sponsored under the old affidavit of support, deem the sponsor's income using the old rules. If the immigrant is sponsored under the new affidavit of support and does not meet one of the exceptions, include all the income and resources of the sponsor in the calculations.

CARES:

Following is the procedure for allocating the income and resources of sponsors of immigrants who are sponsored under the new affidavit of support *and* who do not meet any of the exception:

- If the sponsor (and/or sponsor's spouse) has earned income, on the Head of Household screen:
 - Enter the employer name on the ERN1 screen as "Sponsor Income" (No special valid value needed on the ERN1 screen to signify "sponsor's income". Information will be put in as if it belonged to the immigrant. Worker will need to narrate in dictation whose income it really is.)
 - Enter the *entire* earned income on the ERN2 screen (use the frequency that corresponds to the frequency of the pay i.e. weekly, biweekly, monthly, etc.)
- If the sponsor (and/or sponsor's spouse) has unearned income, enter the *entire* income on the UINC screen for the Head of Household.
- If the sponsor (and/or sponsor's spouse) has resources, enter *all* resources on the AST screen(s) for the sponsored immigrant.

If the immigrant is sponsored under the new affidavit of support and *does* meet one of the four exceptions to the sponsor's income being deemed, then include no income from the sponsor for the length of time that policy dictates.

If the immigrant was sponsored under the "old" affidavit of support, apply prior policy whereby a portion of the sponsor's income and resources is deemed to the sponsored immigrant for a period of three years.

Please place the attached pages Food Stamp Manual.

ACTION DUE

The policy is effective upon receipt of this transmittal.

INQUIRIES

Please direct questions to Kay Finegan at (410) 767-7939.

cc: FLA Management Staff Constituent Services OIM Help Desk CTF

121.1 Definitions.

- A. "Sponsored immigrant" means those lawfully admitted for permanent residence to the United States. The old deeming rules apply to immigrants sponsored under an affidavit of support filed before December 19, 1997. The new deeming rules are applied to immigrants sponsored under the new affidavit of support (Form I-864) filed on or after December 19, 1997.
- B. "Sponsor" means a person who executed an affidavit(s) of support or similar agreement on behalf of an immigrant as a condition of the immigrant's entry or admission into the United States as a permanent resident.
- C. "Date of entry" or "Date of admission" means the date established by the Immigration and Naturalization Service as the date the sponsored immigrant was admitted for permanent residence.

121.2 Deeming of a Sponsor's Income and Resources for Immigrants Admitted under the Affidavit of Support in effect Prior to December 19, 1997.

- A. Deem portions of the gross income and the resources of a sponsor and the sponsor's spouse (if living with the sponsor) to be the unearned income and resources of a sponsored immigrant for three years following the immigrant's admission for permanent residence to the United States. Count the spouse's income and resources even if the sponsor and spouse were married after the signing of the agreement.
- B. Calculate the portion of monthly income of the sponsor and the sponsor's spouse to be considered that of the immigrant in the following manner:
 - (1) Look at the total monthly earned and unearned income of the sponsor and the sponsor's spouse at the time the household containing the sponsored immigrant member applies or is re-certified for food stamp participation.
 - (2) Subtract 20 percent any earned income of the sponsor and the sponsor's spouse.
 - (3) Subtract the monthly gross income eligibility limit for a household equal in size to the sponsor, the sponsor's spouse, and any other person who claimed by the sponsor or sponsor's spouse as a dependent for federal income tax purposes.
 - (4) Do not include money paid to the immigrant by the sponsor unless the amount paid actually exceeds the amount deemed as unearned income to the immigrant.

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121.2 Deeming of a Sponsor's Income and Resources for Immigrants Admitted under the Affidavit of Support in effect Prior to December 19, 1997. (continued)

- (5) Resources of the sponsor and sponsor's spouse to be considered as that of the immigrant is the total amount of their resources (as defined in the Food Stamp Manual section 200) reduced by \$1,500.
- (6) If a sponsored immigrant can demonstrate that the sponsor also sponsors other immigrants, divide the deemed income and resources by the number of sponsored immigrants that apply for or are participating in the Program.
- (7) INS reports that sponsors frequently claim to have given up sponsorship responsibilities. Although, there is no requirement for the immigrant to obtain another sponsor, the deeming requirements of the law are not waived. Deem the income and resources of the sponsor and the sponsor's spouse for the purpose of determining eligibility whether or not the income and resources are actually available to the alien.

C. Exceptions - Deeming of the sponsor's income does not apply to:

- (1) An immigrant who is participating in the Food Stamp program as a member of his or her sponsor's household;
- (2) An immigrant who is sponsored by an organization or group as opposed to an individual;
- (3) An immigrant who is not required to have a sponsor under the Immigration and Nationality Act, such as, but not limited to, a refugee, a parolee, one granted asylum, and a Cuban or Haitian entrant.

121.3 Deeming of a Sponsor's Income and Resources for Immigrants Admitted on or after December 19, 1997 under the New Affidavit of Support.

- A. The new affidavit of support (I-864) is a legally enforceable contract between the sponsor and the federal government for the benefit of the sponsored immigrant and of any federal, state, or local government agency or private entity that provides means-tested public benefits with some exceptions. The most notable exceptions are emergency medical care, disaster relief, school lunches, foster care, student loans, and Head Start.
- B. The new affidavit of support is required for all applications for immigrant visas or adjustment of status filed on or after December 19, 1997.

121.3 Deeming of a Sponsor's Income and Resources for Immigrants Admitted on or after December 19, 1997 under the New Affidavit of Support. (continued)

- C. By executing Form I-864, the sponsor agrees to provide the financial support necessary to maintain the sponsored immigrant at an income that is at least 125% of the federal poverty line, unless the obligation has terminated. The sponsor also agrees to reimburse any agencies that provide a means-tested public benefit to a sponsored immigrant.
- D. If the sponsored immigrant obtains a means-tested public benefit, with certain exceptions, the agency providing the benefit may, after first making a written request for reimbursement, sue the sponsor in federal or state court to recover the unreimbursed costs of the benefit including the cost of collection and legal fees.
- E. Count all the resources and income of the sponsor and the sponsor's spouse in determining eligibility of a sponsored immigrant who was sponsored under the new affidavit of support.
- F. Immigrants who are sponsored under the new affidavit of support are subject to deeming until they naturalize or have earned 40 qualifying quarters in covered employment.
- G. Exceptions to sponsor deeming:
 - (1) Refugees and asylees
 - (2) Legal permanent residents who have earned or can be credited with 40 qualifying quarters.
 - (3) Battered spouses and children
 - (a) An exception from sponsor deeming for certain battered spouses and children is allowed for a one-year.
 - (b) This exception is for LPR spouses and children who have been battered or subjected to extreme cruelty in the United States by their spouses or parents, or by another family member residing in the household who was allowed to commit the acts.
 - (c) The battery or cruelty must have a substantial connection to the need for the public benefits.
 - (d) The spouse or child subjected to cruelty must not be living with the person who committed the abusive acts.

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121.3 Deeming of a Sponsor's Income and Resources for Immigrants Admitted on or after December 19, 1997 under the New Affidavit of Support. (continued)

- (e) The battered spouse exception may extend beyond the initial one-year period, if the INS, a judge, or an administrative law judge formally recognize that the battery or extreme cruelty occurred. The local department must also determine that the abuse continues to have a connection with the spouse or child's need for benefits.

(4) Indigence

- (a) The indigence exception is for LPRs who are abandoned by their sponsor or where the sponsor's contribution is so inadequate that the immigrant would otherwise go without food and shelter. This exemption lasts for one year after the agency makes the indigence determination.
- (b) To make this determination, take into account the noncitizen's own income, plus any cash, food, housing, or other assistance provided by other individuals, including the sponsor. The amount that is deemed from the sponsor is the actual amount provided for a period beginning on the date of the determination and ending 12 months from this date.

H. Termination of the support Obligation.

- (1) The sponsor's support obligation terminates when the sponsored immigrant:
 - (a) Becomes a citizen of the United States;
 - (b) Has worked, or can be credited with, 40 qualifying quarters of work, provided that the sponsored immigrant is not credited with any quarter beginning after December 31, 1996, during which the immigrant receives a federal means-tested public benefit;
 - (c) Ceases to hold the status of an alien lawfully admitted for permanent status and has departed the U.S.; or
 - (d) Dies.
- (2) The sponsor's support obligation also ends if the sponsor dies.
- (3) The termination of the support obligation does not relieve the sponsor or the sponsor's estate of any reimbursement obligation that accrued before the support obligation terminated.

121.4 Steps for Determining Eligibility

Step 1: When sponsored legal permanent residents apply for food stamps, if they do not meet one of the exceptions to deeming, determine eligibility for the federal or State benefits based on their immigration status. Most are not eligible for federal benefits because of the 5-year bar on receipt of federal means-tested benefits.

Step 2: Determine if the household will meet eligibility requirements for the benefit based on reported information. For example, if a household owns a resource that would make it ineligible, further verification of immigration status and sponsor's income is not necessary.

Step 3: If they would be eligible for the benefits, verify immigration status and the income and resources of the sponsor and or sponsor's spouse (if the spouse is living with the sponsor). The G-845 Supplement has a section in which INS can enter the sponsor's address.

Step 4: Determine eligibility. If sponsored under the old affidavit of support, deem the sponsor's income using the old rules. If the immigrant is sponsored under the new affidavit of support and does not meet one of the exceptions, include all the income and resources of the sponsor in the calculations.

121.5 Verification

- A. The sponsored immigrant and his/her spouse are responsible for providing the State agency with any information or documentation necessary to determine eligibility.
- B. The local department shall obtain from the immigrant or immigrant's spouse the following information:
 - (1) The income and resources of the sponsor and the sponsor's spouse at the time of the immigrant's application for food stamp assistance.
 - (2) For immigrants sponsored under the affidavit of support in effect prior to December 19, 1997, the number of other immigrants from whom the sponsor has signed an affidavit of support of similar agreement and the number of dependents for Federal income tax purposes of the sponsor and the sponsor's spouse.
 - (3) The provision of the Immigration and Nationality Act under which the immigrant was admitted.
 - (4) The date of the immigrant's entry or admission as a lawful permanent resident as established by INS.
 - (5) The immigrant's date of birth, place of birth and alien registration number.

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121.5 Verification. (continued)

- (6) The name, address, and phone number of the immigrant's sponsor.
- C. If the above information is not received or verified on a timely basis, the sponsored immigrant and spouse are ineligible until all necessary facts are obtained. Determine the eligibility of any remaining household members. Consider as available all the income and resources of the ineligible immigrant in determining the eligibility and benefit level of the remaining household members. If the information or verification is subsequently received, act on the information as a reported change in household membership.

121.6 Overissuance Due to Incorrect Sponsor Information.

- A. The sponsored immigrant and any sponsor are both jointly and separately liable for repayment of any overissuance of coupons as a result of incorrect information provided by the sponsor. If the immigrant's sponsor had good cause or was without fault for supplying the incorrect information, the immigrant's household is solely liable for repayment of over issuance. The State agency may chose to establish claims against both parties at the same time or to establish a claim against the party it deems most likely to repay first.
- B. If a claim is established against the immigrant's sponsor first, ensure that a claim is established against the immigrant's household whenever the sponsor fails to respond to a demand letter within 30 days or receipt.
- C. Initiate collection action against a sponsor by sending a written demand letter which informs the sponsor of the amount owed, the reason for the claim, and how the claim may be paid.
- D. Inform the sponsor that he or she is not liable for repayment of the claim if there is good cause or if the sponsor was without fault for the incorrect information having been given to the local department.
- E. When a sponsor does not respond to demand letters, the local department may use other collection methods to obtain payments or claims.
- F. Terminate collection action when the sponsor cannot be located or when the cost of further collection is likely to exceed the amount that can be recovered.
- G. Collection of claims from sponsors shall be in accordance with procedures specified in section 490, Claim against Households.

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121.6 Overissuance Due to Incorrect Sponsor Information. (continued)

H. When collecting claims against the household of a sponsored immigrants all procedures concerning determination of intentional program violation or inadvertent client error and all procedures regarding the collection of claim, as outlined in section 490 are to be followed.

121.7 Reimbursement for Benefits Paid to an Immigrant Sponsored under the Affidavit of Support Effective on or After December 19, 1997.

RESERVED