

<b>DEPARTMENT OF HUMAN RESOURCES FAMILY INVESTMENT ADMINISTRATION</b>	<b>FOOD SUPPLEMENT PROGRAM MANUAL</b>	
CITIZENSHIP AND IMMIGRATION STATUS – SPONSORED IMMIGRANTS	Section 121	Page 1

## 121.1 Definitions

- A. A “sponsored immigrant” is an immigrant for whom a person (sponsor) has executed an affidavit of support (I-864 or I-864A) on behalf of the immigrant.
1. The affidavit of support (I-864 or I-864A) 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.
  2. The affidavit of support is required for all applications for immigrant visas or adjustment of status filed on or after December 19, 1997.
  3. By executing Form I-864 or I-864A, 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.
- B. A “sponsor” is a person who executed an affidavit of support (I-864 or I-864A) on behalf of the 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 Bureau of Citizenship and Immigration Services (BCIS) 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

- A. Only a portion of the income and resources of a sponsor and sponsor's spouse (if the spouse has executed INS I-864 or I-864A) will be counted in the calculation of the immigrant's Food Supplement Program (FSP) benefit eligibility and FSP benefit level.
- B. Calculate the portion of monthly income of any sponsor to be considered that of the immigrant in the following manner:
1. Look at the total monthly earned and unearned income of any sponsor at the time the household containing the sponsored immigrant member applies or is re-certified for FSP participation.

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## 121.2 Deeming of a Sponsor's Income and Resources for Immigrants Admitted under the Affidavit of Support (continued)

2. Subtract 20 percent any earned income of any sponsor.
3. Subtract the amount of the monthly gross income eligibility limit for a household equal in size to the sponsor, the sponsor's spouse, and any other person who is 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.
5. Resources of a sponsor to be considered as that of the immigrant is the total amount of any resources (as defined in the FSP 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.

Example: Mr. and Mrs. A signed an affidavit of support (I-864) on behalf of Mrs. B and her 2 children. Mr. A has earnings of \$2,500 per month. He has a bank account that totals \$3,000. Mr. and Mrs. A have no other dependents and do not sponsor any others.

Countable Resource: The local department will count \$1,500 (\$3,000-\$1,500) of the bank account as a resource to Mrs. B's household.

Countable Income: Total income	\$2,500
20% earned income deduction	<u>- 500</u>
	\$2,000
Gross income limit for household of 2	<u>\$1,726</u>
Countable unearned income for Mrs. B	\$ 274

### C. Sponsored immigrant rules do not apply to:

1. An immigrant who is part of the sponsor's FSP household,
2. Qualified immigrant children under 18 years of age,
3. An immigrant who is sponsored by an organization or group as opposed to an individual,

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### **121.2 Deeming of a Sponsor's Income and Resources for Immigrants Admitted under the Affidavit of Support (continued)**

4. An immigrant who is not required to have a sponsor, such as a refugee, a parolee, an asylee, an Iraqi or Afghan Special Immigrant, or a Cuban or Haitian entrant,
5. An indigent immigrant.
  - (a) The indigence exception is for immigrants who are abandoned by their sponsor or when the sponsor's contribution is so inadequate that the immigrant is unable to obtain 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 non-citizen'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.
  - (c) "Is unable to obtain food and shelter" means that the total amount of the eligible sponsored immigrant's household's own income, and the cash contributions and value of in-kind assistance provided by the sponsor and others does not exceed the gross income test for the household's size.
  - (d) When the local department determines that an immigrant is indigent, the name of the sponsored indigent immigrant and the sponsor's name must be forwarded to :

Executive Office for Immigration Review  
US Department of Justice  
950 Pennsylvania Avenue, NW  
Washington DC 20530-0001
  - (e) If the immigrant does not want BCIS contacted regarding their indigent status or their sponsor, the immigrant may choose to be removed from the FSP household or to withdraw the application.
  - (f) The case manager must advise the immigrant that receiving FSP does not affect their immigration status.
6. A battered immigrant spouse, parent of a battered child or child of a battered immigrant.
  - (a) An exception from sponsor deeming for certain battered spouses and children is allowed for a one-year period.

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- (b) This exception is for immigrant 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.
- (e) The battered spouse exception may extend beyond the initial one-year period, if the BCIS, 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.

**D. 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.

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## **121.2 Deeming of a Sponsor's Income and Resources for Immigrants Admitted under the Affidavit of Support (continued)**

**Reminder: Do not include the resources and income of the sponsor in determining the resources and income of an ineligible sponsored immigrant.**

## **121.3 Steps for Determining Eligibility**

Step 1: When sponsored legal permanent residents apply for FSP benefits, if they do not meet one of the exceptions to deeming, determine eligibility for 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 the household will 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 for FSP benefits.

## **121.4 Eligible Sponsored Immigrant's Responsibilities**

- A. The eligible sponsored immigrant is responsible for:
1. Obtaining the cooperation of the sponsor and for providing the agency with any information or documentation necessary to calculate deemed income and resources.
  2. Reporting the required information if the sponsor changes during the certification period.
  3. Reporting a change in income if the sponsor changes or loses employment or dies.
- B. The local department shall obtain from the sponsored immigrant the following information:

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#### **121.4 Eligible Sponsored Immigrant's Responsibilities (continued)**

1. The income and resources of the sponsor and the sponsor's spouse at the time of the immigrant's application for FSP.
2. The number of other immigrants for whom the sponsor has signed an affidavit of support 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 Bureau of Citizenship and Immigration Services (BCIS).
5. The immigrant's date of birth, place of birth and alien registration number.
6. The name, address and phone number of the immigrant's sponsor.

#### **121.5 Awaiting Verification**

- A. If the information listed in 121.4.B.1-6 is not received or verified on a timely basis, the sponsored immigrants are ineligible until all necessary facts are obtained.
- B. Determine the eligibility of any remaining household members.
- C. Consider as available a prorated portion of the income and all the resources of the ineligible immigrant (excluding the deemed income and resources of the immigrant's sponsor) in determining the eligibility and benefit level of the remaining household members.
- D. If the information or verification is subsequently received, act on the information as a reported change in household membership.

#### **121.6 Overissuances Due to Incorrect Sponsor Information**

- A. Effective June 1, 2001, any recipient claim arising from overissuances to a household that includes a sponsored immigrant is the sole responsibility of that household.
- B. Claims established prior to June 1, 2001 under the old policy are still valid.  
Under the prior policy:

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### **121.6 Overissuances Due to Incorrect Sponsor Information (continued)**

1. The sponsored immigrant and any sponsor are both jointly and separately liable for repayment of any overissuance of FSP benefits 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 the overissuance. The local department may choose to establish claims against both parties at the same time or to establish a claim against the party most likely to repay first.
2. 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 of receipt.
3. 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.
4. When collecting claims against the household of a sponsored immigrant 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.
5. 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.
6. When a sponsor does not respond to demand letters, the local department may use other collection methods to obtain payments or claims.
7. 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.
8. Collection of claims from sponsors shall be in accordance with procedures specified in section 490, Claims against Households.