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 | ADMINISTRATIVE DIRECTIVE |
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TRANSMITTAL: 99 ADM-2

TO: Commissioners of
 Social Services

DIVISION: Temporary
 Assistance

DATE: February 4, 1999

SUBJECT: Alien Sponsorship - Deeming of Sponsor's Income and
 Resources

SUGGESTED

DISTRIBUTION: | Income Maintenance Directors
 | Food Stamp Directors
 | Medical Assistance Directors
 | CAP Coordinators
 | Employment Coordinators
 | Staff Development Coordinators

CONTACT

PERSON: | Region I (518) 473-0332; Region II (518) 474-9344;
 | Region III (518) 474-9307; Region IV (518) 474-
 | 9300; Region V (518) 473-1469; Region VI (212) 383-
 | 1658
 | Medicaid:(518)473-5501

ATTACHMENTS:

| A. Report of Sponsored Aliens Granted Assistance -
 | B. INS Form I-864 Affidavit of Support (Revised
 | 10/6/97) - not available on line

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
97 ADM-25		352.33	Welfare		
97 ADM-23			Reform		
93 ADM-13			Act of 1997		
98 INF-5					

I. PURPOSE

This directive advises social services districts (SSDs) of the provisions and requirements of the Welfare Reform Act of 1997 as they relate to alien sponsorship and deeming of a sponsor's income and resources when determining eligibility for public assistance. Additionally, it provides instructions for pursuing reimbursement from the sponsor of any means-tested public benefits granted to the sponsored immigrant(s) as required under the Federal sponsorship agreement.

II. BACKGROUND

The federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) mandates that the income and resources of the sponsor(s) of an immigrant must be deemed to the sponsored immigrant(s) when:

- a) the sponsored immigrant is applying for Federal means-tested public benefits; and,
- b) the sponsor has executed the new Immigration and Naturalization Services (INS) form I-864 Affidavit of Support on behalf of the immigrant.

Additionally, PRWORA requires that the sponsor reimburse any agency for federally funded means-tested benefits granted to immigrants covered by the new Affidavit of Support. This requirement also applies to any State programs which are determined by the State as means-tested public benefits. Additionally, under PRWORA such designated State programs may apply sponsor deeming to the eligibility determination. (Note: New York State Social Services law prohibits deeming in state/locally funded public assistance programs; see Section IV-A 2.)

The federal Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) amended section 213A of the Immigration and Nationality Act (INA) to establish a legally enforceable I-864, Affidavit of Support. In signing the new affidavit, the sponsor agrees to provide financial support to the sponsored alien and to reimburse any agency which provides means-tested public benefits to a sponsored alien. Interim federal regulations were published implementing the use of the revised, legally enforceable, I-864 Affidavit of Support effective as of December 19, 1997. The Federal, State and local governments can enforce these agreements in the same way that they enforce contracts.

The State Welfare Reform Act of 1997 (WRA) provides that the income and resources of a sponsor of an alien who has signed an affidavit of support pursuant to section 213A of the INA as amended shall be deemed

available to such alien for determining eligibility for family assistance, other public assistance funded under the Federal Temporary Assistance for Needy Families (TANF) block grant and Medicaid.

III. PROGRAM IMPLICATIONS

A. Definitions.

1. Sponsored Immigrant. Any alien who is seeking an immigrant visa or adjustment of status as:

- a) an immediate relative, including orphans and family-based immigrants; or,
- b) an employment based immigrant where a relative is the petitioning employer or has a significant ownership interest in the business that is filing the petition on behalf of the immigrant.

Immigrants in the above groups are those identified on LDSS-4579, ALIEN STATUS DESK GUIDE under "Qualified" Aliens. (These are Lawful Permanent Residents (LPR); Persons Paroled into the U.S.; and Conditional Entrants as described in 98 INF-5.) Generally, it is immigrants in these groups who will have a sponsorship agreement.

NOTE: Immigrants in these groups who entered the United States on or after August 22, 1996 are not eligible for federally funded public assistance benefits except Food Stamps for the first five years they are in the United States. Determination of eligibility for public assistance, if any, must be made under the non-federally funded Safety Net Assistance programs.

"Specially" Qualified Aliens as described on the Desk Guide are exempt from having a sponsor. (These are Refugees; Cuban/Haitian Entrants; Amerasians; Asylees; immigrants with Deportation Withheld; LPRs with 40 qualifying quarters of work with Social Security coverage as described in 98 INF-5.)

2. Sponsor. The sponsor must be:

- a) a citizen or national of the United States or an alien Lawfully Admitted to the United States for Permanent Residence;
- b) at least 18 years of age; and,
- c) domiciled in the United States or its possessions.

The sponsor must demonstrate to INS the means to maintain an income of at least 125% of the Federal poverty guidelines based on a household size including family members residing with the sponsor plus all sponsored immigrants. The

sponsor, by signing the I-864 Affidavit of Support agrees to reimburse any agency which provides means-tested public benefits to the sponsored alien(s).

3. INS Form I-864 Affidavit of Support (under Section 213A of the Act). This revised form (dated 10/6/97) is mandated by federal law for use by a petitioning relative when submitting an affidavit on their relative's behalf on or after December 19, 1997. The executed form creates a legally enforceable contract between the sponsor and any Federal, state or local governmental agency, or by any other entity that provides means-tested public benefits to the sponsored immigrant.

NOTE: The 213A affidavit is different from the old 213 affidavit which is not enforceable except in the Food Stamp program. Section 213 affidavits, which includes all I-864 Affidavit of Support issued prior to December 19, 1997, may not be used for PA deeming. (NOTE: See section. IV B.1 for required FS deeming actions under the "old" 213 affidavit of support.)

4. Means-tested public benefits. The federal Department of Health and Human Services has designated Temporary Assistance to Needy Families (TANF) and Medicaid as Federal means-tested programs. The United States Department of Agriculture has designated the Food Stamp Program as a Federal means-tested program. The Social Security Program has designated Supplemental Security Income (SSI) as their only means-tested program.

In addition, each state must determine which state and/or local programs are considered means-tested public benefits. New York State has designated non-TANF funded Safety Net Assistance (SNA) as a means-tested public benefit program.

B. Termination of INS I-864 Affidavit of Support.

The I-864 remains valid until the sponsored immigrant(s) achieve naturalization or until the sponsored immigrant has worked or can be credited with 40 qualifying quarters of work as defined by Title II of the Social Security Act.

C. Federal Alien Sponsorship Requirements.

INS requires that a sponsor (including any joint sponsor), when executing an Affidavit of Support, must demonstrate the means to maintain an annual income equal to at least 125% of the Federal poverty level. (It is reduced to 100% of the Federal poverty level for sponsors who are on active duty in the U.S. Armed Forces who are filing on behalf of their spouse or child).

In determining whether they meet the 125% test, the sponsor's household size is considered to include the sponsor, all related persons residing with the sponsor, plus all aliens included in the

current Affidavit of Support and any immigrants previously sponsored by the sponsor.

The sponsor is required to submit Federal income tax returns for each of the three most recent tax years. For purposes of demonstrating means to maintain income, the total income before deductions for the most recent tax year will generally be matched against the Federal poverty level for the household as described above to determine if it is greater than 125%. The law does allow INS to use other sources, such as a W-2 wage report, when necessary to verify most recent income.

The law also allows an assets test to be considered in addition to or in lieu of the income test in situations where significant assets exist. Under this test, the assets of the sponsor and/or the sponsored immigrant(s), if such assets are available for support of the sponsored immigrant, are evaluated. INS has determined that the assets must be sufficient to support the immigrant(s) for at least five years, if necessary, as sufficient for demonstrating the ability to support the sponsored alien. They consider the assets to be sufficient if they are at least five times the difference between the sponsor's income and 125% of the Federal poverty level for the sponsor's household size.

D. Federal Alien Sponsorship Deeming Requirements.

PRWORA mandates that all of the income and resources of the sponsor(s) must be deemed to be available to the sponsored immigrant when determining eligibility for Federal means-tested public benefits. In most cases this would make the sponsored immigrant ineligible for the federally funded benefit sought.

The Federal law does allow for exception to deeming in hardship situations. The exception applies only if the social services district makes a determination of indigence. Indigence is defined as existing when the unavailability of the sponsor's income results in the sponsored immigrant being unable to obtain food and shelter without public assistance. In determining whether the alien and his/her family are indigent, only the amount of income and support actually received from the sponsor(s) is budgeted when determining eligibility for Federal means-tested public benefits. Such local district's determinations of indigence are valid for no longer than 12 months.

In signing the I-864 Affidavit of Support, the sponsor attests in Part 7:

"I agree to provide the sponsored immigrant(s) whatever support is necessary to maintain the sponsored immigrant(s) at an income that is at least 125% of the Federal poverty guidelines"; and,

"This contract is designed to protect the United States Government and State and local government agencies or private entities that provide means-tested public benefits, from

having to pay benefits to or on behalf of the sponsored immigrant(s), for as long as I am obligated to support under this affidavit of support. I understand that the sponsored immigrants, or any Federal, State, local, or private entity that pays means-tested benefits to or on behalf of the sponsored immigrant(s), are entitled to sue me if I fail to meet my obligations under this affidavit of support, as defined by section 213A and INS regulations."

In signing the I-864 Affidavit of Support, the sponsor also authorizes INS, as a matter of routine use, to disclose I-864 information to Federal, State, and local agencies or private entities providing means-tested benefits for use in civil action against the sponsor for breach of contract.

Note: INS anticipates little impact due to deeming of income and resources until after the fifth anniversary (December 19, 2002) of implementation of the new (section 213A) I-864 Affidavit of Support. They anticipate very few new immigrants subject to sponsorship would be exempt from the five year bar on receipt of federally supported means-tested benefits and that only a small fraction of that group will be applying for federal benefits. Accordingly, there should be few applications processed for federally means-tested benefits and/or any federally funded benefits granted until after 12/19/02.

IV. REQUIRED ACTION

A. Public Assistance

1. Family Assistance, CAP and All Public Assistance Programs Funded Under the Temporary Assistance to Needy Families (TANF) Block Grant.

When an alien who is required to have a sponsor applies for public assistance, the local district must establish whether the affidavit of support was established on or after December 19, 1997 using the new I-864 form. If so, under PRWORA, the sponsor's income and resources must be deemed available to the alien(s) for the purpose of determining eligibility for Family Assistance, CAP, and TANF funded Safety Net Assistance.

NOTE: Most aliens subject to having an Affidavit of Support will be Qualified Aliens who are NOT ELIGIBLE for Federally funded benefits for the first five years they are in the United States.

- a. Verification of Affidavit of Support. When an alien applying for Public Assistance is potentially eligible for Federally funded benefits (i.e., has been in the country for five years or has an INS status which entitles them to federally funded benefits), the local district must ask the immigrant to provide the agency with a copy of the

Affidavit of Support. If the client does not have a copy or cannot otherwise adequately identify the sponsor and his/her ability to support the applicant, information about the sponsor will have to be obtained from INS. This is done by submitting INS form G-845 Documentation Verification Request to your regional INS office.

The standard report from INS will indicate only if an I-864 exists. However, when submitting the G-845 form you can request and are entitled to receive a copy of the I-864 Affidavit of Support if one is on file. Having a copy of the I-864 should provide you with all the information used by INS in establishing the sponsor's ability to support the sponsored immigrant, as well as the current address of the sponsor. It is recommended that you always request a copy of the INS I-864 when submitting the G-845.

- b. Availability of Sponsor's Income and Resources. In accordance with Federal requirements, the sponsor is considered able to support the sponsored immigrant(s) at 125% of the Federal poverty level. Under the State's poverty level test for public assistance, gross earned and unearned income usually cannot exceed the poverty level. As the sponsor's income necessary to support the sponsored immigrant(s) must be considered as an available resource and is greater than the poverty level, the sponsored immigrant(s) must be determined ineligible to receive Federally funded public assistance. The SSD must advise the applicant to request the necessary support from the sponsor.
- c. Determination of Indigence. When the sponsored immigrant reports that the sponsor is not providing and will not provide adequate support, the SSD must determine if without public assistance the immigrant would be unable to obtain food and shelter. In such event, the SSD must take into account only the amount of income actually received from the sponsor; any food, housing or assistance provided by the sponsor or other individuals; and the income and resources of the applicant and other members of the filing unit when determining eligibility for federally funded means-tested assistance. When the agency makes a determination that the sponsored immigrant would, in the absence of assistance provided by the agency, be unable to obtain food and shelter, the application must be considered under the indigence exception. When processing indigence situation cases for federally funded means-tested public assistance, the agency must:

- include the amount of income the sponsor(s) actually contribute to the alien; and,

- each time a new determination of indigence is established notify the Office of Temporary and Disability Assistance of such determination including the names and other known information about the sponsor and the sponsored alien using the Report on Sponsored Aliens Granted Assistance (Attachment A). This form should be copied locally and sent monthly to:

Office of Temporary and Disability Assistance
Division of Temporary Assistance - Team II
40 North Pearl Street
Albany, NY 12243

The information the district provides to the Office of Temporary and Disability Assistance will be sent to the Federal government as required by the Illegal Immigration Reform and Immigrant Responsibility Act.

NOTE: A Determination of Indigence under Federal regulations is considered to last only 12 months. A new Determination of Indigence may be made after 12 months if the agency determines that the sponsor still is not providing adequate support.

- d. Battered Aliens. The SSD may not apply alien deeming for a 12 month period with respect to battered aliens and their children as described in Section 421 (b)(1)(A) of PRWORA and if need for assistance continues may not thereafter apply such alien deeming, if:

- the alien demonstrates that the battery or cruelty has been recognized by a court order or order of an Administrative Law Judge of INS;
- the battery or cruelty bears substantial connection to the need for benefits; and,
- the person responsible for such battery or cruelty does not reside in the same household as the individual who was subject to the battery or cruelty.

2. State/locally funded Safety Net Assistance.

Under State law alien sponsor deeming provisions cannot be applied to applicants or recipients of state/locally funded cash assistance programs. Thus, the income and resources of the sponsor cannot be deemed as available to an applicant for or recipient of non-TANF funded Safety Net Assistance.

- a. Budgeting of Sponsor's Income and Resources. For non-federally funded SNA, the SSD must consider and pursue sponsor's support and income as an available resource for the A/R. However, eligibility for SNA must be determined

and benefits granted based on the income and resources of the sponsored immigrant, which must include any income and support actually received from the sponsor.

- b. Sponsor's Reimbursement for Safety Net Assistance Granted. The SSD must seek reimbursement from the sponsor for any assistance granted subsequent to the date the new (section 213A) I-864 Affidavit Support was signed. Additionally, the SSD must include this case on the next monthly Report on Sponsored Aliens Granted Assistance.(Attachment A).

NOTE: Under the State Welfare Reform Act of 1997(WRA) aliens Lawfully Admitted for Permanent Residence(LPR) who enter the U.S. on or after August 22, 1996 and who have resided in the U.S. for at least five years in LPR status are eligible to receive Family Assistance if they meet financial and other program requirements. Additionally, the WRA states any person who resides in a family eligible for TANF funded benefits is NOT eligible for Safety Net Assistance except under limited specified conditions. Qualified Aliens, including LPRs who have a sponsorship agreement, who have resided in the United States for five or more years and have a child in the household would most likely not be included under any of the specified exceptions. Hence, the determination of eligibility shall be processed as a request for TANF funded benefits, including the deeming of the sponsor(s) income and resources.

3. Seeking Reimbursement From the Sponsor.

The SSD must seek reimbursement from the sponsor for any means-tested public benefits provided subsequent to December 19, 1997 to a sponsored immigrant who was sponsored under the new I-864 Affidavit of Support. This applies to federally and non-federally funded means-tested public benefits. Section 213(A) of the INA specifies the following procedures be followed.

- a. Request for reimbursement. The request for reimbursement must be served by personal service. It shall specify the:
- date of the I-864 Affidavit of Support;
 - sponsored immigrant's name, alien registration number, address and date of birth;
 - type(s) of means-tested public benefits;
 - dates the sponsored immigrant received the benefits; and,
 - total amount of benefits received.

The SSD may aggregate all benefits granted as of the date of the request into a single request.

The request for reimbursement shall also notify the sponsor that the sponsor must, within 45 days of the date of service of the request, respond to the request for reimbursement either by paying the reimbursement or by arranging to commence payments pursuant to a payment schedule that is agreeable to the SSD.

Personal service under the Immigration and Nationality Act includes:

- Delivery of a copy personally;
- Delivery of a copy at a person's dwelling by leaving it with some person of suitable age and discretion;
- Delivery of a copy at the office of an attorney or other person, including a corporation, by leaving it with a person in charge;
- Mailing a copy by certified or registered mail, return receipt requested to a person at his/her last known address.

b. Failure to respond. If the sponsor fails to respond to a formal request for reimbursement issued by the SSD within 45 days by indicating a willingness to commence payment, the SSD may sue the sponsor in State or Federal court.

Remedies available to enforce the I-864 Affidavit of Support include all the remedies described in sections 3201, 3202, 3204, 3205 of Title 28 of the United States Code, as well as an order for specific performance and payment of legal fees and other costs of collection. Corresponding remedies are also available under State law. However, no action shall be brought more than ten years after assistance is last given.

4. Claiming

Whatever repayments are received from a sponsor should be reported as refunds on the claim forms in which the original expenditures were reported for reimbursement.

B. FOOD STAMP IMPLICATIONS

As noted above, INS began using a new Affidavit of Support on December 19, 1997. This new Affidavit of Support is legally binding, that is, enforceable in state or federal court. The food stamp alien deeming process will vary depending on whether the alien's sponsor signed the old or new Affidavit of Support.

Aliens whose sponsor signed the older Affidavit of Support (the one that is not legally binding) must have their sponsor's income deemed according to the rules found in section XII-D of the Food Stamp Source Book (FSSB).

Aliens whose sponsor signed the new legally binding Affidavit of Support must use the new rules established by PRWORA to determine whether deeming applies and how to deem the sponsor's income.

1. Deeming Rules for Non-binding Affidavits of Support

Section XII-D of the Food Stamp Source Book provides districts with instructions regarding the deeming of income of a sponsor to an alien under the "old" I-864.

Specifically, this section of the FSSB outlines the provisions that apply to sponsored aliens whose entry into the US was conditioned on their sponsors signing an Affidavit of Support. These provisions provide that a portion of the sponsor's gross income (and the income of the sponsor's living-with spouse) be deemed to the alien as unearned income for the 3 years following admission into the US as a permanent resident.

This section of the FSSB includes instructions on the process for determining the amount of income to be deemed, the responsibilities of the sponsor and the alien, verification guidelines, and how to deal with overissuances due to incorrect sponsor information.

This section specifies that these deeming provisions do not apply to:

- a. An Alien participating in the food stamp program as a member of his/her sponsor's household;
- b. An alien sponsored by a group;
- c. Aliens not required to have sponsors such as refugees, parolees, asylees, and Cuban/Haitian entrants;
- d. Aliens whose sponsor is participating in a FS household which does not include the alien;
- e. Vietnam Immigrants covered by the Foreign Operations Act of 1989 and admitted under Section 207 of the INA.

2. PRWORA Deeming Rules

PRWORA deeming does not apply to refugees, asylees, persons whose deportation has been withheld, or aliens sponsored by groups. For permanent residents (aliens with a "green card"), deeming ends when that person is nationalized or can be credited with 40 qualifying quarters of work. In addition, aliens who are granted "qualified" alien status by INS due to being battered are exempt from deeming for a 12 month period. As a result, in the food stamp program, PRWORA alien deeming only applies to a small number of aliens. These are:

- Aliens qualifying for FS under the provision which applies to persons in the military, veterans, or their family. (See section IV. E. of 97 ADM-25, pp12-14, for information on this provision.)

For those aliens subject to PRWORA deeming, the procedures for FS are similar to those noted above for alien deeming for PA purposes. All the income and resources of the sponsor and live-with spouse must be counted as available to the alien applicant. Usually, this will render the alien ineligible for FS based on excess income and/or resources.

If the alien can demonstrate that:

- the sponsor is not in fact providing the level of support called for in the Affidavit of Support; and,
- the local district determines that without food stamp benefits, the alien would be unable to obtain food and shelter,

then the amount of income deemed from the sponsor shall be the actual amount received by the alien.

In determining whether the alien would be unable to obtain food and shelter without food stamp benefits, the district must take into account the alien's own income plus any cash, food or other assistance provided by other individuals (including the sponsor) for the period beginning on the date of this determination and ending 12 months later. This process is comparable to the "Determination of Indigence" described in section IV.A.1(c) of this ADM.

If a sponsor who signed the new legally binding Affidavit of Support fails to provide the promised support to the alien, and this failure results in the alien's need for food stamp benefits, the local district must pursue reimbursement from the sponsor.

We are awaiting guidance from USDA as to how reimbursement for FS should be pursued. In the meantime, districts should use the procedures noted above in section IV.A.3 of this ADM to pursue reimbursement.

3. MEDICAL ASSISTANCE IMPLICATIONS

The provisions of PRWORA prohibit the deeming of sponsors' income and resources to alien A/Rs eligible for Medicaid coverage for the treatment of emergency medical conditions only. In addition, pregnant women are not required to document citizenship or alien status, and as such, are not subject to the deeming requirements.

Additional implications of the sponsor deeming requirements on the Medicaid program are under review and will be forthcoming from the Department of Health.

D. NOTICE REQUIREMENTS

The reason language below must be used when an applicant or recipient is affected by this provision. Districts that produce PA closing and denial notices through CNS must use manual notices with the paragraphs below until a new reason code specific to deeming of sponsor's income and resources for TANF funded assistance is issued.

Social services districts that use manual notices must use the appropriate State mandated (or approved local equivalent) notice:

DSS-4013: "Action Taken on Your Application; Public Assistance, Food Stamps, Medical Assistance and Services";

DSS-4014: "Action Taken on Your Recertification: PA, FS, MA Coverage and Services";

DSS-4015: "Notice of Intent to Change Benefits: PA, FS, MA Coverage and Services" (Timely and Adequate).

When a full explanation of the action will not fit on the notice, an attachment will be needed. Include enough information on the notice to identify the reason for the action and refer the client to the attachment for a full explanation. When an attachment is needed, the Regulatory citation must appear on the notice.

Excess Resources - Deemed Income and Resources of Alien Sponsor.

Your (Date) request for public assistance is NOT APPROVED.

This is because there is a limit on the amount of income and resources a public assistance case can have. Under conditions of the Federal Immigration and Naturalization Services form I-864, Affidavit of Support signed on or after December 18, 1997, the sponsor's income and resources must be counted as an available resource to you.

But this is not always so. Lawful permanent residents not affected by the deeming requirement are those who:

1. Become United States citizens;
2. Have worked 40 qualifying quarters of coverage as defined by Title II of the Social Security Act, or can be credited with such qualifying quarters; or,
3. Have been determined as being indigent solely as a result of your sponsor not providing enough income or resources for you to provide food and shelter for you and your family.

You entered the United States as a lawful permanent resident and your income and resources, including those of the sponsor that must be counted against the public assistance allowance for 12 months from the effective date of this notice are over the limit. We believe you are affected by the deeming requirements.

This decision is based on Department Regulation 352.33.

V. SYSTEMS IMPLICATIONS

Immigrants subject to having a sponsor under the revised, legally enforceable I-864, Affidavit of Support are "Qualified" Aliens LPRs who entered the United States as of, or subsequent to December 19, 1997. Under PRWORA, such LPRs are not eligible for TANF funded benefits for their first five years in the U.S. A new denial code based solely on the "Availability of Sponsor's Income and Resources" (IV A-2) will be developed prior to the earliest potential I-864 denial (TANF funded benefits granted subsequent to December 19, 2002).

VI. EFFECTIVE DATE

The eligibility provisions of this directive are effective immediately. The requirement to seek reimbursement from a sponsor apply to any assistance granted subsequent to the date of the signed new I-864 Affidavit of Support, but in no event can apply to assistance provided prior to December 19, 1997.

Patricia A. Stevens
Deputy Commissioner
Division of Temporary Assistance