

File: —

IMMIGRATION

Welfare/ Affidavit
of Support

AGS - 6/16

INS
State
HHS
SSA
Ag

2148 Wed. 1:30
Rayman

Background:

- Bill Griffith: at Public Charge b/cy.
- Followup on AOS briefs
- What's ^{INS+} State Dept. is doing to collect info
- What each agency is doing the effort.
- Explain ~~to~~ based on ~~into~~ benefit program.

Implementation

- INS
- INS is collecting the info + creating an electronic database - name, SSN, Address
 - Form for benefit granting agency - has been developed. No request there far.
 - AOS. interim up but up + running - want time to gain some ~~that~~ experience on working on the up.

State - State - ~~prob~~ problem getting the background info. Unless ~~they~~ they get

⊗ 50-80% reduction at some visa proposals.
up for 5-10 yr.

Alien ID - does not indicate sponsored immig - but has the date. Some gray areas. No one before 12/19/97

HHS - Andy Hyman / David Nielsen

State Medicaid Director Letter - on AOS. 6/10/98 letter

- ^{States} Obligation to go after sponsor + deeming.
- Not relevant now ~~it~~ be unlikely.
- Timing ~~asked in a yr or two~~ fairly soon.

SSA - Webb

~~Heads up to field office.~~

- Deeming ~~reg~~ procedure

- Reimbursement - have methodology of obtaining reimbursement.

- finalize shortly.

AG - Dan Willis

- ~~Fixed Steps~~ - state office

- 12/97. Q + A explaining the return sub.

+ AG will put on reg.

- What ~~fl~~ can states use to ~~enforce~~ enforce - grand treaty debt.

Exceptions to 5 year ban

- Veterans, family members - small # of cases

State Deeming their own program paid for from state

- no income

- Center for Budget

Both of us - when we are
understandably strategy.

some info - only give specific info -

(2:30pm)



from La Gar -

~~Dr. M. Patel, Minor~~

~~Mark K. 4-69H~~

~~Wendy Park~~

INS *Leobach*

INS ~~restudy~~
- Drill spider to Colgate
- Colgate to AG.

- Colgate to AG

John Thompson -

~~W. H. L. L. L. L.~~

Who are they mty w/.

Barbara

Lisa Kory - was well informed - 5

Not aggressive ~~met~~ meeting

Sequence of agreements was effective - SSA, USDA, etc.

Next
steps

copies of material

what did other know

Deering - less well informed

6-9 months - convene ~~again~~ again to get written report

- Ask INS for budget on request
- What are agencies doing to assist - what will we say - are we vulnerable?
- Where are we on learning & providing guidance § 421

- Reimbursement

- Do we know what states are doing? § 422

- What's the status of the bond provision - Regs?

- Old Q & A on states - (David)

- Get Reg - ~~Status of Reg?~~

• Should offer briefing to Rep. Schrock - Lee.

• State Medicaid Director Action.



NEWS RELEASE

Contact: Media Services
Office of Public Affairs
(202) 514-2648 Fax: (202) 514-1776

October 20, 1997

INS To Implement New Law Requiring Financial Liability for Immigrant Sponsors

New Affidavit of Support to Take Effect on December 19, 1997

WASHINGTON, D.C. — As mandated by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), the Immigration and Naturalization Service (INS) today released guidelines that, for the first time, require sponsors of certain immigrants to meet minimum income requirements and be financially responsible for the immigrants they sponsor.

The new Affidavit of Support provisions and form are published today in the Federal Register and become effective on December 19, 1997. The new Affidavit of Support form (Form I-864) requires the immigrant's petitioner to be the immigrant's sponsor and requires the sponsor to demonstrate an income level at or above 125 percent of the Federal poverty line. Beginning December 19, 1997, the new Affidavit of Support Form I-864 must be completed by U.S. citizens and lawful permanent residents who sponsor family members as immigrants to live in the United States.

"The new Affidavit of Support is a significant change to U.S. immigration law," said Paul Virtue, Acting Executive Associate Commissioner for Programs. "INS is working to ensure that the public is aware of the requirements and ramifications of these new provisions."

Beginning on December 19, 1997, applications for immigrant visas submitted at Department of State (DOS) consular posts abroad and adjustment of status applications filed with the INS in the United States must include the new legally-enforceable Affidavit of Support Form I-864 for:

- all immediate relative and family-sponsored immigrants, and for
- employment-based immigrants who are coming to work for relatives, or for companies where a relative owns 5 percent or more of the company.

In processing the new Affidavits of Support, DOS and INS will place the greatest weight on a sponsor's earnings from current employment.

Beginning December 19, 1997, agencies that provide means-tested public benefits to immigrants may enforce Affidavits of Support against their sponsors until the immigrants become U.S. citizens, can be credited with 40 quarters of work, leave the United States permanently, or die.

(more)

Most immigrants who are sponsored under the new Affidavit of Support will be barred from federal means-tested public benefit programs for 5 years. To date, federal agencies have announced the following four programs as means-tested public benefits: Food Stamps, Medicaid, Supplemental Security Income (SSI), and Temporary Assistance to Needy Families (TANF.) After the 5 years, immigrants will be able to apply for benefits. However, federal and state public benefit granting agencies will be able to count sponsor income as part of the immigrant's income in determining whether the immigrant is eligible to receive public benefits. This action is called "deeming." "Deeming" will make most immigrants sponsored under the new affidavit of support ineligible for means-tested public benefits.

Federal and state agencies that provide public means-tested benefits will be responsible for enforcing the Affidavits of Support. Upon request, INS will provide to these benefit providing agencies the names and addresses of sponsors. The benefit agencies, in turn, may take legal action against sponsors under the new Affidavit of Support provisions. If sponsors do not provide basic support to new immigrants, they may be sued by the sponsored immigrants and by the agencies for the amount of benefits provided to sponsored immigrants.

— INS —

NOTE: For additional information regarding the affidavit of support (including copies of the new Form I-864) and other INS issues, the public can visit INS' World Wide Web site at www.ins.usdoj.gov.

Talking Points (For Internal Use Only)

10/20/97

Affidavit of Support, Form I-864

- Beginning December 19, 1997, the new Affidavit of Support Form I-864 must be completed by U.S. citizens and lawful permanent residents who sponsor family members as immigrants to live in the United States. This new form is a legally enforceable contract that ensures that sponsors can be financially responsible for sponsored immigrants and, thereby, helps prevent immigrants from relying on public assistance.
- The new Affidavit of Support is required for all immediate relative and family-based immigrants, and for employment-based immigrants who are coming to work for a relative or for a company where the relative owns 5% or more of the company.
- While the form is completed and signed by the immigrants' sponsor — who must be the family member who files the visa petition for the immigrants — the form is submitted for processing by the prospective immigrants when they are interviewed by the Department of State (DOS) for an immigrant visa overseas, or when they apply with the Immigration and Naturalization Service (INS) for adjustment of status in the United States.
- In processing the new Affidavits of Support, DOS and INS will place the greatest weight on a sponsor's earnings from current employment. The sponsor must demonstrate the means to maintain an income at 125 percent of the Federal poverty level.
- Most immigrants who are sponsored under the new Affidavit of Support will be barred from Federal means-tested public benefit programs for 5 years. After the 5 years, public benefit granting agencies will be able to count sponsor income as part of the immigrant's income in determining whether the immigrant is eligible to receive public benefits. This action is called "deeming."
- The Affidavit of Support is enforceable against the sponsor until the immigrant becomes a U.S. citizen, can be credited with 40 quarters of work, leaves the U.S. permanently, or dies. If sponsors do not provide basic support to the immigrants they bring to the United States, they can be sued both by the means-tested benefit agencies for the amount of benefits provided to sponsored immigrants and by the sponsored immigrants themselves.
- INS will provide information to benefit providing agencies on the names and addresses of sponsors. These agencies — not INS — will be involved in the enforcement of Affidavits of Support.
- The sponsor must report every change of address to INS using Form I-865, Sponsor's Notice of Change of Address, within 30 days of moving. The INS will maintain this information in an automated database and provide it to benefit granting agencies upon request.

— INS —

FACT SHEET

10/20/97

Affidavit of Support

The new Affidavit of Support form and interim regulation were published in the Federal Register on October 20, 1997, as required by the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA). The new legally enforceable Affidavit of Support (Form I-864), as specified in Section 213A of the Immigration and Nationality Act, must be completed by U.S. citizens and legal permanent residents who sponsor family members as immigrants to live in the United States. The new Affidavit of Support form will be required for immigrant visa and adjustment of status applications filed on or after December 19, 1997, 60 days after publication. The published regulation also implements a 120-day public comment period.

To ensure that the immigrants are not likely to rely on public benefits, sponsors must demonstrate on the new form that they meet minimum income requirements and can be financially responsible for the sponsored immigrants. Sponsors must complete the new Affidavit of Support form for relatives who will file applications for immigrant visas or for adjustment of status on or after December 19, 1997.

The Affidavit of Support Filing Process

All immediate relative and family-based immigrants, including orphans, must have a sponsor. In addition, a sponsor is required for employment-based immigrants who are coming to work for a relative or for a company in which a relative owns 5 percent or more of the company. An Affidavit of Support is not required for an immigrant who is self-petitioning for immigration benefits because they are the battered spouse or child, or the widow/widower of a U.S. citizen or legal permanent resident. Also, the new Affidavit of Support is not required for any other group of immigrants or refugees.

The sponsor must be the family member who filed the visa petition for the immigrant, or the family member who owns 5 percent or more of the company that filed the petition for the immigrant. The sponsor must also be a U.S. citizen or lawful permanent resident, at least 18 years of age, and domiciled in the United States (including territories and possessions).

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The sponsor must complete and sign the Affidavit of Support and attach all required documentation, including copies of tax returns. The form and documentation are subject to verification by other appropriate government agencies.

After completing the Affidavit of Support, sponsors forward the Affidavit of Support form and related documentation to the prospective immigrants. To protect the privacy of financial records, sponsors may enclose the documents in sealed envelopes to be opened only by designated Government officials. Prospective immigrants submit the Affidavit of Support to Department of State (DOS) consular posts abroad when they are interviewed for their immigrant visa — or, if applying for adjustment of status in the United States, to the Immigration and Naturalization Service (INS) along with their application for adjustment of status. In both cases, the Affidavit of Support must be submitted to the government within 6 months of signature by the sponsor.

Affidavit of Support Income Requirements

The law requires a sponsor to demonstrate an income level at or above 125 percent of the Federal poverty line, as published annually by the Department of Health and Human Services. To establish income level, sponsors must provide proof of current employment and copies of their Federal income tax returns for the 3 most recent tax years. The income of certain other household members may be added in computing income level if they sign a contract, Form I-864A, agreeing to make their income and/or assets available for the support of the sponsored immigrants. For active duty military personnel, the income requirement is 100 percent of the poverty level, if they are sponsoring their spouse and/or child.

If the sponsor's household income does not meet the income requirements, evidence of assets, such as cash in savings accounts, stocks, bonds, or property, may be considered in determining the sponsor's ability to support the immigrant.

If the sponsor cannot meet the required income level based on income and assets, another person may serve as a joint sponsor. The joint sponsor must meet all sponsorship requirements, other than being the petitioner, and be willing to assume legal liability for the sponsored immigrant(s) with the petitioning relative.

INS and DOS will not use a set formula to determine whether a person qualifies as a sponsor. The greatest weight will be placed on earnings from current employment. In most instances, sponsors will be found eligible if they are employed and demonstrate the ability, along with household members who sign a contract on Form I-864A, to earn income at or above 125 percent of the poverty line for the number of persons who will be supported.

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Enforcement of the New Affidavit of Support

Most immigrants who are sponsored under the new Affidavit of Support will be barred from federal means-tested public benefit programs for 5 years. To date, federal agencies have announced the following four programs as means-tested public benefits: Food Stamps, Medicaid, Supplemental Security Income (SSI), and Temporary Assistance to Needy Families (TANF.) After the 5 years, public benefit granting agencies will be able to count the income and resources of the sponsor, and the sponsor's spouse, as part of the immigrant's income in determining whether the immigrant is eligible to receive public benefits. This action is called "deeming." States may also choose to "deem" in determining eligibility for their own means-tested public benefit programs.

The Affidavit of Support is enforceable against the sponsor until the immigrant becomes a U.S. citizen, can be credited with 40 quarters of work, leaves the United States permanently, or dies. If sponsors do not provide basic support to the immigrants they bring to the United States, they may be sued by the sponsored immigrants and by federal or state benefit agencies for the amount of the means-tested public benefits provided to sponsored immigrants.

As required by law, the sponsor must report every change of address to INS using Form I-865, Sponsor's Notice of Change of Address, within 30 days of the change. The INS will maintain this information in an automated database and provide it to benefit granting agencies upon request.

- INS -

Questions & Answers

10/20/97

AFFIDAVIT OF SUPPORT, Form I-864 Under Section 213A of the Immigration and Nationality Act

WHO SPONSORS AND IS SPONSORED?

1. What are affidavits of support and sponsors?

Every immigrant admitted to the United States must demonstrate to a Consular or Immigration Officer that he or she is not inadmissible on public charge grounds. One way to help demonstrate that an immigrant is not inadmissible is to have a person in the United States, a sponsor, sign an affidavit of support promising to provide support and assistance to the immigrant if necessary. Immigrants who have someone sign an affidavit of support for them are called sponsored immigrants.

2. Which immigrants must have sponsors?

All family-based immigrants, including immediate relatives, family preference immigrants, and orphans, will be required to have new legally enforceable affidavits of support (Form I-864) if they file adjustment of status or immigrant visa applications on or after December 19, 1997. In addition, employment-based immigrants who are coming to work for relatives or for companies where relatives of the immigrant own 5 percent or more of the company must have sponsors.

3. How have immigrants' sponsors' responsibilities changed under the new law?

Affidavits of support (Form I-864) filed on or after December 19, 1997, are legally enforceable. Sponsors who fail to support the immigrants they sponsor can be sued by any Federal, State, or local agency or private entity that provides means-tested benefits, as well as by the immigrants they sponsored. Most sponsors must now demonstrate income of at least 125 percent of the Federal poverty level.

4. Who can be a sponsor?

The family member who filed the visa petition for the immigrant must be a sponsor. In certain circumstances, additional persons can accept joint legal responsibility with the petitioner as joint sponsors. Sponsors must also be U.S. citizens, nationals, or lawful permanent residents; age 18 or over; and live in one of the 50 States, Washington, DC, or a US territory or possession.

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5. What is a joint sponsor?

A joint sponsor is a person who is not the petitioner for the sponsored immigrant but who meets the citizenship, residence, and age requirements *and* who meets the 125 percent minimum income requirement for his or her household size. Joint sponsors are permitted when the petitioner cannot meet the income requirements or has died before all family members have immigrated. Joint sponsors must accept joint legal responsibility for supporting sponsored immigrant(s) and reimbursing the cost of any means-tested public benefit used until the sponsored immigrants naturalize, can be credited with 40 qualifying quarters of work, depart the United States permanently, or die.

6. Is there a limit on the number of joint sponsors?

There is no limit on the number of joint sponsors; however, *each* joint sponsor must meet the 125 percent of the poverty line income requirement for their household size. Joint sponsors are not permitted if the petitioner meets the income requirements unless an Immigration or Consular Officer requests one.

7. What is the definition of "relative" for employment based sponsors?

Relative includes the spouse, adult son or daughter, child, parent, or sibling of the person filing the I-140 (employment) petition or who has a relative with 5 percent or more ownership interest in the petitioning company.

8. Can a sponsored immigrant sponsor other immigrants?

Immigrants who are currently the beneficiaries of sponsorship obligations may be sponsors. They must meet the income requirements on their own or obtain a joint sponsor in the same manner that other petitioner-sponsors qualify. This situation would most likely occur when permanent residents petition for their spouses or unmarried sons and daughters under the second preference, since most other petitioners would be U.S. citizens.

9. Are citizens adopting immigrant children required to file affidavits of support?

Yes. All persons who immigrate as immediate relatives, including all orphans, must have affidavits of support unless they are self-petitioning beneficiaries of approved Forms I-360.

10. Is there a battered-spouse/child exception to the affidavit of support requirement?

Yes. Prospective immigrants who have the status of battered spouses or children of U.S. citizens or lawful permanent residents may immigrate without affidavits of

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support. To qualify for this status, aliens must be the beneficiaries of approved I-360 applications classifying them under this "self-petitioning" category.

11. Is an affidavit of support required for diversity immigrants (visa lottery applicants) or any other groups of immigrants?

The new affidavit of support (Form I-864) may only be used for family-based and certain employment based immigrants. For other types of immigrants, such as diversity immigrants or lawful permanent residents returning after long absences from the United States where there are concerns about inadmissibility on public charge grounds, the earlier affidavit of support, Form I-134, may be used.

12. Are affidavits of support required for persons other than immigrants?

Currently, some aliens entering the United States temporarily, particularly students and parolees, may be required to have affidavits of support filed on their behalf. These situations are not affected by the new legally enforceable affidavit of support requirements. Sponsors of aliens who do not fall within the definition of Section 213A will continue to use the I-134 affidavit of support. Refugees are not subject to the new affidavit of support requirement.

13. When does a sponsor's obligation to support sponsored aliens end?

The sponsorship obligation continues until the sponsored alien naturalizes, has worked or can be credited with 40 quarters of work, leaves the United States permanently, or dies. However, a sponsor or the sponsor's estate remains liable for any support or requests for repayment of benefits that arose before the support obligation ended.

14. Does divorce nullify the sponsorship agreement?

No, divorce does not nullify the sponsorship agreement.

15. Can a religious group, non-governmental organization, venture capitalist, or bail bondsman sponsor an immigrant as a joint sponsor?

No, only a natural person can be a sponsor. Religious and other groups usually sponsor refugees who are not required to have affidavits of support.

16. What if a petitioner dies before all family members immigrate?

If the petitioner of a preference immigrant dies after the principal sponsored family member has immigrated but before a family member qualifying to "follow to join" the principal immigrant has immigrated, another sponsor, acting and qualifying as a "joint sponsor," may file an affidavit of support on behalf of that immigrant. Take the

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example of a parent who petitions for her married daughter and her family to immigrate. The daughter and children immigrate immediately, but the husband chooses to wait for another year. A new affidavit of support signed by the petitioner would be required for the husband at the time he immigrates, but this would not be possible if the petitioning parent had died. In this instance, a joint sponsor would be permitted. In the case of an immediate relative, since each immediate relative family member is the beneficiary of a separate visa petition, a new petition and affidavit of support would be required.

INCOME REQUIREMENTS

1. What does the requirement that the sponsor demonstrate the ability to maintain an income at 125 percent of the poverty level mean?

Sponsors will be judged on their ability to support the immigrants they are sponsoring at 125 percent of the poverty level for their household size based on the information they provide in the affidavit of support and accompanying documentation. This information must demonstrate that the sponsor and his or her household can reasonably be expected to maintain an income at or above the level required to provide for themselves and all immigrants they have sponsored or are sponsoring.

2. Are sponsors required to have incomes above a certain level?

Sponsors must have household incomes equal to at least 125 percent of the poverty level for their current household size, including themselves their families and dependents, any immigrants previously sponsored on the new affidavit of support, and the immigrants currently being sponsored. Petitioners who are on active duty in the U.S. Armed Forces, other than active duty for training, only need to demonstrate income at 100 percent of the poverty level *if they are sponsoring their spouse or children.*

3. Does the petitioner have to file an affidavit of support if he or she cannot meet the income requirements and there is a joint sponsor?

Yes. The law requires that the petitioner must be a sponsor and file an affidavit of support, even if he or she cannot meet the income requirements. The petitioner remains fully liable, along with the joint sponsor, for any benefits the sponsored immigrant(s) may use. The joint sponsor must file a separate affidavit of support.

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4. Who determines the poverty level?

The poverty level is recalculated and published annually for the Office of Management and Budget by the Department of Health and Human Services (HHS.) The poverty level is increased by a set dollar amount based on the number of persons in the household. The poverty level guidelines are the same for the continental 48 States; separate levels are established for Hawaii and Alaska.

5. What is the current poverty level?

The poverty level announced in the March 10, 1997, Federal Register for the contiguous United States is \$7,890 for a family unit of one person, with \$2,720 added for each additional person. At the 125 percent level, these amounts are \$9,862 and \$3,400 respectively. Under the new income requirements, a sponsor would need to have an annual income of \$20,062 to support four persons. In 1996, the poverty level for Alaska is \$9,870 for one person with an increment of \$3,400 for each additional person; the figures for Hawaii are \$9,070 and \$3,130. Sponsors living in these States would need to have incomes at least 125 percent of these levels.

6. How is household size determined?

Household size for purposes of the affidavit of support includes the sponsor and anyone related to the sponsor by birth, marriage, or adoption living in the sponsor's residence for at least 6 months, dependents listed on the sponsor's Federal income tax return for the most recent tax year, immigrants previously sponsored on the new affidavit of support if the support obligation has not terminated, and the persons sponsored in the current affidavit of support (the principal immigrant and any accompanying spouse and/or children.)

7. Does a sponsor need to show proof of current employment?

A sponsor is not required to be employed, so long as the sponsor's income from sources other than employment, or the income of other qualifying persons in the household and/or assets are sufficient to reach or exceed the poverty line for the sponsor's household size. However, it is anticipated that in most cases the sponsor will need to be employed and show proof of employment to meet the income requirements.

8. What types of evidence can be used to show current employment?

A recent pay stub for the most recent pay period or a letter from an employer including beginning date of employment, type of work performed, and wages or salary paid provide the best evidence of current employment.

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9. What types of evidence can be used to show self-employment?

Self-employed persons can show evidence such as the self-employment schedules they filed with their income tax returns or financial records such as bank statements for their business accounts as proof of self-employment.

10. What if a sponsor is receiving welfare benefits?

Current use of welfare benefits by a sponsor or one of the sponsor's family members or dependents will be considered as a factor in making a determination of eligibility for sponsoring immigrants. However, receipt of certain non-cash types of benefits will not disqualify a sponsor.

11. Is only the sponsor's income included in the determination of whether he or she has sufficient income to be a sponsor?

Income of anyone related to the sponsor by birth, marriage, or adoption who has lived in the sponsor's household for at least 6 months or who is listed on the sponsor's income tax return for the most recent tax year as a dependent can include their income on the affidavit of support if they complete and sign a Form I-864A, Contract Between Sponsor and Household Member. This could include the sponsored immigrant's income.

12. What is the Contract Between Sponsor and Household Member, Form I-864A?

The Contract Between Sponsor and Household Member, Form I-864A, is a contract between the sponsor and anyone qualifying as a household member or dependent of the sponsor who agrees to make his or her income and/or assets available for the support of the immigrants being sponsored in the affidavit of support. By signing this form, household members agree to be jointly responsible with the sponsor to reimburse the costs of any means-tested public benefits used by the sponsored immigrants.

13. If the sponsored immigrant qualifies as a household member or dependent, do they need to sign the I-864A?

A sponsored immigrant household member only needs to submit an I-864A if his or her income will be used to support his or her accompanying spouse and/or children. If there are no accompanying family members, the sponsored immigrant does not complete the I-864A. The sponsored immigrant does *not* need to complete an I-864A for his or her assets to be included on the affidavit of support.

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14. What portion(s) of Federal income tax returns should be submitted with the affidavit of support?

The legal definition of a tax return includes the tax return as well as all supporting supplements, schedules, attachments, or lists which were filed with the return. Sponsors are required to submit all of these materials as they were submitted to IRS for themselves and any other persons whose income is used to qualify.

15. Will the Government verify the accuracy of information?

The State Department and INS may verify the accuracy of information provided on, or in support of, the affidavit of support with employers and financial or other institutions, as necessary. This may include the Internal Revenue Service and the Social Security Administration.

16. What if income tax returns have not been filed for each of the most recent 3 tax years?

A sponsor must include as many of the income tax returns for the most recent 3 tax years with the affidavit of support as he or she was required by law to file. If the sponsor filed fewer tax returns than were required, he or she should contact the Internal Revenue Service to determine how to file retroactively. If fewer than three returns were required for reasons such as less than 3 years' residency in the United States or lack of sufficient income, the sponsor should explain the reasons on the affidavit of support.

17. How is eligibility of a person to sponsor immigrants determined?

There is no set formula for determining whether a person qualifies as a sponsor. The greatest weight will be placed on earnings from current employment and the total unadjusted income shown on the most recent three tax returns. In most instances a sponsor who is employed and demonstrates ability of household members to earn income at or above 125 percent of the poverty line for the number of persons who will be supported will be found eligible.

18. Which income line from the federal tax return is used for income determination?

The line for gross (total) income on IRS Forms 1040 (line 22 in 1996) and 1040A (line 14 in 1996) is used to determine income. The line for adjusted gross income is used for persons filing IRS Form 1040 EZ (line 4 in 1996).

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19. What other evidence of income will be accepted if U.S. Federal income tax returns were not required?

Copies of foreign income tax returns or other evidence of income from foreign employment can be accepted as evidence of income in certain circumstances.

20. How are assets used to demonstrate ability to sponsor an immigrant?

If a sponsor does not have sufficient income to meet the income requirement for the number of persons supported, he or she may list assets which are readily convertible to cash within one year for support of the sponsored immigrant(s). To qualify, the net worth of these assets needs to be five times the difference between the sponsor's income and the poverty line for the sponsor's household size.

21. What assets can be used?

Any type of asset can be used if it is readily convertible to cash within a year. Liquid assets, such as savings deposits, stocks, bonds, and certificates of deposit will be viewed most favorably because they would be most accessible for the support of sponsored immigrants. Other assets, such as property, may also be acceptable if they can be sold within a year.

22. What evidence of assets is required?

Evidence establishing ownership and the value and location of assets is needed. Additionally, information on any liens and liabilities relating to these assets must be provided. For bank accounts, bank statements for the most recent 12 months, or a letter from the bank stating the date the account was opened, a history of deposits and withdrawals for the past year, and the current balance are needed.

23. Does a sponsor need to submit a new affidavit of support if new poverty guidelines are issued before the case is decided?

Immigrant officers will begin to use new poverty guidelines at the start of the second month after HHS publishes them in the Federal Register. As long as the affidavit of support demonstrates sufficient income to meet the 125 percent income requirement for the sponsor's household size under the new poverty guidelines, a new affidavit of support will not normally be required.

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PROCESS

1. When will the new affidavit of support (I-864) be put into use?

The new affidavit of support will be required for immigrant visa applications filed with U.S. Department of State Consulates abroad and adjustment of status applications filed with the Immigration and Naturalization Service as of December 19, 1997.

2. If a person is issued an immigrant visa before the effective date for the new affidavit of support but does not immigrate until later, do they need to get a new affidavit of support (I-864)?

No. Implementing regulations designate Consular Officers interviewing immigrants during the transition period as Immigration Officers. These immigrants will have had their immigrant visa interviews before the new affidavit of support requirements become effective and will not need affidavits of support that meet the new requirements.

3. When are affidavits of support filed?

For Consular processing overseas, applicants for immigrant visas file affidavits of support with Consular Officers on the date they are interviewed for their immigrant visas. For adjustment of status cases filed with INS, affidavits of support are filed on the date the adjustment of status (Form I-485) is filed with the Service, which will be at least several weeks before the interview is held. The affidavit of support may not be filed with the immigrant visa petition (Forms I-130 or I-140) unless the petition is filed concurrently with the adjustment of status application (Form I-485). The affidavit of support must have been completed and signed within 6 months of its filing with the Consular Service or INS.

4. When does the new affidavit of support go into effect for immigrants adjusting status in the United States?

The new affidavit of support will be required for adjustment of status cases that are *filed* with INS beginning on December 19, 1997. Cases that are *filed* with INS before December 19, 1997, will not be subject to the new requirement even though the interview will be after December 19. Applicants who file before December 19 will continue to demonstrate that they are not inadmissible under the public charge grounds through other means, including the current affidavit of support, Form I-134, proof of a job offer in the United States, or demonstration of sufficient income or assets.

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5. Who submits the affidavit of support to a Consular or INS officer?

The sponsor gives the completed affidavit of support and all supporting documentation, including any Forms I-864A completed by household members, to the prospective immigrant to give the Consular or Immigration Service at the time he or she applies for immigrant status. Sponsors may submit affidavits of support and supporting documentation in sealed envelopes to protect their personal information.

6. Are *original* affidavits of support required for each family member?

Photocopies of the original affidavit of support may be used for each accompanying family member as long as each copy has an original signature and is signed before a Consular or Immigration Officer or a notary public. Photocopies are only valid for 6 months from the date of the signature on the *original* affidavit of support.

7. Does the affidavit of support need to be witnessed or notarized?

The sponsor must sign the original and each photocopied affidavit of support before a notary public or an Immigration or Consular Officer. Household members submitting Form I-864A must also sign this contract before a notary public or an Immigration or Consular Officer.

8. Are "following to join" relatives included in the affidavit of support?

Family members who will not immigrate within the 6-month validity period of the affidavit of support should not be listed on it. Petitioners must submit new affidavits of support for "following to join" immigrants at the time they immigrate if it is later than 6 months after they signed the original affidavit of support.

9. Will Consular and Immigration Officers interview sponsors?

Sponsors will not routinely be interviewed. An officer may request that the intending immigrant provide additional information from his or her sponsor at any time during the adjudication of the case. An immigration officer may request that a sponsor appear for an interview if he or she believes that an interview is necessary to make a decision in the case; on rare occasions, a Consular officer could request an interview if the sponsor is overseas.

10. What are the penalties for sponsors who make false statements on the affidavit of support?

The criminal penalty for false statements (18 USC 1001) or perjury (18 USC 1621) is a term of imprisonment for up to 5 years, a fine, or both. The criminal penalty for visa

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and other document fraud (18 USC 1546) is a term of imprisonment for up to 10 years, a fine, or both. All of these offenses have a 5-year statute of limitation. Additionally, if fraud is discovered on an affidavit of support, the intending immigrant's immigrant visa or adjustment of status application will be denied.

11. What are the change of address responsibilities that a sponsor has and what is the penalty for not complying?

During the period in which the affidavit of support is in force, sponsors are required to report all changes in their addresses to the Immigration and Naturalization Service on Form I-865, Sponsor's Change of Address, within 30 days of the change. If a sponsor fails to comply with this provision, he or she is subject to a penalty ranging from \$250 to \$2,000, unless the sponsor knew that the sponsored immigrant had received means-tested public benefits. In this instance the fine will range from \$2,000 to \$5,000. The law requires that sponsors also report their changes in address to the States in which the sponsored immigrants reside. INS will not assess penalties if sponsors have reported their address changes to INS.

12. Can Form I-134 continue to be submitted by immigrants?

No. Beginning December 19, 1997, the old Affidavit of Support, Form I-134, can no longer be filed with applications for immigrant visas or adjustment of status by family or employment-based immigrants. The form will continue to be used for certain other groups of aliens such as parolees and nonimmigrants.

13. What is the pilot bond program?

The new immigration law requires that INS establish a pilot program in five INS district offices under which new immigrants would be required to post bonds in addition to the affidavits of support filed by the petitioners/sponsors. The bonds are to be in an amount sufficient to cover the cost of certain benefits and would be in force until immigrants depart, naturalize, or die. Regulations to implement this pilot bond program are currently being prepared.

DEEMING AND ENFORCEMENT OF THE AFFIDAVIT OF SUPPORT

1. How will the affidavit of support be enforced?

Agencies that provide means-tested public benefits to sponsored immigrants will be able to request reimbursement from sponsors for the amount of benefits that they provide and sue them if they do not repay. INS will provide information to benefit providing agencies on the names and addresses of sponsors; these agencies, not INS, will be involved in the enforcement of affidavits of support. If sponsors do not

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provide basic support to the immigrants they bring to the United States, the sponsored immigrants may sue their sponsors.

2. Can INS verify sponsorship information for benefit agencies?

Yes, INS currently provides certain benefit agencies with information that sponsors provided on the original affidavit of support. INS will have automated information on the name and address of sponsors and will make this information available to benefit agencies.

3. What is deeming?

If a sponsored immigrant applies for a means-tested public benefit, that agency will consider or "deem" the sponsor's income and resources as well as the income and resources of the sponsor's current spouse to be available to the sponsored immigrant in determining the eligibility of that sponsored immigrant for benefits. Deeming of the sponsor's income usually will make the sponsored immigrant ineligible for means-tested public benefits.

4. How does the legislation change deeming requirements?

Under previous law, deeming of sponsor's income applied only to AFDC, food stamps, and SSI. This process applied for 3 years for AFDC and food stamps and for 5 years for SSI. The new law applies deeming requirements to most Federal means-tested programs until citizenship or until the sponsored immigrant has worked or can be credited with 40 qualifying quarters of work. Once the new affidavit of support is in use, States may also choose to apply deeming requirements to their State means-tested public benefit programs.

5. Do agencies have to implement deeming right away?

The new deeming requirements apply only to immigrants whose sponsors sign new affidavits of support (Form I-864). Therefore, no new deeming will occur until December 19, 1997. However, since most immigrants who enter the United States after August 22, 1996, are barred from receiving Federal means-tested public benefits for their first 5 years in the United States, there will be no new deeming for Federal means-tested public benefits for approximately 5 years, with one exception. Deeming for Federal means-tested programs may take place sooner for aliens who are veterans, active duty servicemen, or their families since they are not barred from receiving these benefits. States may choose to deem sponsor income and resources in determining eligibility for their programs for immigrants sponsored under the new affidavit of support. Deeming could begin to occur very soon in those States which do not bar access of immigrants to their means-tested public benefits.

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6. Are there exceptions to deeming all of the sponsor's income?

Yes. If an agency determines that a sponsored alien would be unable to obtain food and shelter (taking into account the alien's income plus any cash, food, housing, or other assistance supplied by the sponsor or another individual) only the income and resources that the sponsor and his or her spouse actually provide to the immigrant will be attributed to the immigrant. The agency must provide INS with the name of sponsor and sponsored immigrants receiving benefits under this provision. An agency's decision to grant benefits under this exception does not relieve the sponsor of the obligation to reimburse the agency for any means-tested public benefits used.

If sponsored immigrants demonstrate that they or their children have been battered or subjected to extreme cruelty by certain persons in the same household, and the battery has substantial connection to the need for the public benefits, deeming may be waived if a judge, an administrative law judge, or INS recognize the battery or cruelty.

7. Do the new deeming requirements affect immigrants who are already here?

No. The new deeming requirements apply only to immigrants whose sponsors sign new legally enforceable affidavits of support (Form I-864) and who apply for immigrant visas or adjustment of status on or after December 19, 1997.

8. Do the sponsorship and deeming requirements affect refugees and asylees?

No. Refugees and asylees are not subject to the public charge and deeming provisions.

MEANS-TESTED PUBLIC BENEFITS

1. What programs are Federal means-tested public benefits?

Federal means-tested public benefits include public benefits funded in whole or in part by the Federal government *and* that the Federal agency administering these funds has determined to be a means-tested public benefits. To date, Federal agencies have announced the following four programs as means-tested public benefits: Food Stamps, Medicaid, Supplemental Security Income (SSI), and Temporary Assistance to Needy Families (TANF.)

2. What programs are State means-tested public benefits?

State means-tested benefits are any public benefit for which no federal funds are provided that a State, State agency, or political subdivision of a State has determined are State means-tested public benefits. Each State must determine which, if any, of its

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public benefits are means-tested. We encourage States to publicly announce which programs they determine are means-tested benefits.

3. How does a potential sponsor find out if a particular program is a Federal or State means-tested public benefit?

We encourage Federal and State agencies to publicly announce which, if any, of their programs are means-tested public benefits. If a person is uncertain about a particular benefit, they should check with the benefit-granting agency to determine if the granting agency considers it to be a means-tested public benefit.

4. What programs does the law exempt from the definition of means-tested public benefit?

The following programs are *not* included as means-tested public benefits: emergency Medicaid; short-term, non-cash emergency relief; services provided under the National School Lunch and Child Nutrition Acts; immunizations and testing and treatment for communicable diseases; student assistance under the Higher Education Act and the Public Health Service Act; certain forms of foster care or adoption assistance under the Social Security Act; Head Start programs under the Elementary and Secondary Education Act; and Job Training Partnership Act programs.

— INS —

(A) is lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act; and

(B)(i) has worked 40 qualifying quarters of coverage as defined under title II of the Social Security Act or can be credited with such qualifying quarters as provided under section 435, and (ii) in the case of any such qualifying quarter creditable for any period beginning after December 31, 1996, did not receive any Federal means-tested public benefit (as provided under section 403) during any such period.

(3) **VETERAN AND ACTIVE DUTY EXCEPTION.**—An alien who is lawfully residing in any State and is—

(A) a veteran (as defined in section 101 of title 38, United States Code) with a discharge characterized as an honorable discharge and not on account of alienage,

(B) on active duty (other than active duty for training) in the Armed Forces of the United States, or

(C) the spouse or unmarried dependent child of an individual described in subparagraph (A) or (B).

(4) **TRANSITION FOR THOSE CURRENTLY RECEIVING BENEFITS.**—An alien who on the date of the enactment of this Act is lawfully residing in any State and is receiving benefits on the date of the enactment of this Act shall continue to be eligible to receive such benefits until January 1, 1997.

Subtitle C—Attribution of Income and Affidavits of Support

SEC. 421. FEDERAL ATTRIBUTION OF SPONSOR'S INCOME AND RESOURCES TO ALIEN.

(a) **IN GENERAL.**—Notwithstanding any other provision of law, in determining the eligibility and the amount of benefits of an alien for any Federal means-tested public benefits program (as provided under section 403), the income and resources of the alien shall be deemed to include the following:

(1) The income and resources of any person who executed an affidavit of support pursuant to section 213A of the Immigration and Nationality Act (as added by section 423) on behalf of such alien.

(2) The income and resources of the spouse (if any) of the person.

(b) **DURATION OF ATTRIBUTION PERIOD.**—Subsection (a) shall apply with respect to an alien until such time as the alien—

(1) achieves United States citizenship through naturalization pursuant to chapter 2 of title III of the Immigration and Nationality Act; or

(2)(A) has worked 40 qualifying quarters of coverage as defined under title II of the Social Security Act or can be credited with such qualifying quarters as provided under section 435, and (B) in the case of any such qualifying quarter creditable for any period beginning after December 31, 1996, did not receive

any Federal means-tested public benefit (as provided under section 403) during any such period.

(c) **REVIEW OF INCOME AND RESOURCES OF ALIEN UPON REAPPLICATION.**—Whenever an alien is required to reapply for benefits under any Federal means-tested public benefits program, the applicable agency shall review the income and resources attributed to the alien under subsection (a).

(d) **APPLICATION.**—

(1) If on the date of the enactment of this Act, a Federal means-tested public benefits program attributes a sponsor's income and resources to an alien in determining the alien's eligibility and the amount of benefits for an alien, this section shall apply to any such determination beginning on the day after the date of the enactment of this Act.

(2) If on the date of the enactment of this Act, a Federal means-tested public benefits program does not attribute a sponsor's income and resources to an alien in determining the alien's eligibility and the amount of benefits for an alien, this section shall apply to any such determination beginning 180 days after the date of the enactment of this Act.

SEC. 422. AUTHORITY FOR STATES TO PROVIDE FOR ATTRIBUTION OF SPONSORS INCOME AND RESOURCES TO THE ALIEN WITH RESPECT TO STATE PROGRAMS.

(a) **OPTIONAL APPLICATION TO STATE PROGRAMS.**—Except as provided in subsection (b), in determining the eligibility and the amount of benefits of an alien for any State public benefits (as defined in section 412(c)), the State or political subdivision that offers the benefits is authorized to provide that the income and resources of the alien shall be deemed to include—

(1) the income and resources of any individual who executed an affidavit of support pursuant to section 213A of the Immigration and Nationality Act (as added by section 423) on behalf of such alien, and

(2) the income and resources of the spouse (if any) of the individual.

(b) **EXCEPTIONS.**—Subsection (a) shall not apply with respect to the following State public benefits:

(1) Assistance described in section 411(b)(1).

(2) Short-term, non-cash, in-kind emergency disaster relief.

(3) Programs comparable to assistance or benefits under the National School Lunch Act.

(4) Programs comparable to assistance or benefits under the Child Nutrition Act of 1966.

(5) Public health assistance for immunizations with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases whether or not such symptoms are caused by a communicable disease.

(6) Payments for foster care and adoption assistance.

(7) Programs, services, or assistance (such as soup kitchens, crisis counseling and intervention, and short-term shelter) specified by the Attorney General of a State, after consultation with appropriate agencies and departments, which (A) deliver in-kind services at the community level, including through public or private nonprofit agencies; (B) do not condition the provision

of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient's income or resources; and (C) are necessary for the protection of life or safety.

SEC. 423. REQUIREMENTS FOR SPONSOR'S AFFIDAVIT OF SUPPORT.

(a) **IN GENERAL.**—Title II of the Immigration and Nationality Act is amended by inserting after section 213 the following new section:

"REQUIREMENTS FOR SPONSOR'S AFFIDAVIT OF SUPPORT

"SEC. 213A. (a) ENFORCEABILITY.—(1) No affidavit of support may be accepted by the Attorney General or by any consular officer to establish that an alien is not excludable as a public charge under section 212(a)(4) unless such affidavit is executed as a contract—

"(A) which is legally enforceable against the sponsor by the sponsored alien, the Federal Government, and by any State (or any political subdivision of such State) which provides any means-tested public benefits program, but not later than 10 years after the alien last receives any such benefit;

"(B) in which the sponsor agrees to financially support the alien, so that the alien will not become a public charge; and

"(C) in which the sponsor agrees to submit to the jurisdiction of any Federal or State court for the purpose of actions brought under subsection (e)(2).

"(2) A contract under paragraph (1) shall be enforceable with respect to benefits provided to the alien until such time as the alien achieves United States citizenship through naturalization pursuant to chapter 2 of title III.

"(b) **FORMS.**—Not later than 90 days after the date of enactment of this section, the Attorney General, in consultation with the Secretary of State and the Secretary of Health and Human Services, shall formulate an affidavit of support consistent with the provisions of this section.

"(c) **REMEDIES.**—Remedies available to enforce an affidavit of support under this section include any or all of the remedies described in section 3201, 3203, 3204, or 3205 of title 28, United States Code, as well as an order for specific performance and payment of legal fees and other costs of collection, and include corresponding remedies available under State law. A Federal agency may seek to collect amounts owed under this section in accordance with the provisions of subchapter II of chapter 37 of title 31, United States Code.

"(d) **NOTIFICATION OF CHANGE OF ADDRESS.**—

"(1) **IN GENERAL.**—The sponsor shall notify the Attorney General and the State in which the sponsored alien is currently resident within 30 days of any change of address of the sponsor during the period specified in subsection (a)(2).

"(2) **PENALTY.**—Any person subject to the requirement of paragraph (1) who fails to satisfy such requirement shall be subject to a civil penalty of—

"(A) not less than \$250 or more than \$2,000, or

"(B) if such failure occurs with knowledge that the alien has received any means-tested public benefit, not less than \$2,000 or more than \$5,000.

"(e) **REIMBURSEMENT OF GOVERNMENT EXPENSES.**—(1)(A) Upon notification that a sponsored alien has received any benefit under any means-tested public benefits program, the appropriate Federal, State, or local official shall request reimbursement by the sponsor in the amount of such assistance.

"(B) The Attorney General, in consultation with the Secretary of Health and Human Services, shall prescribe such regulations as may be necessary to carry out subparagraph (A).

"(2) If within 45 days after requesting reimbursement, the appropriate Federal, State, or local agency has not received a response from the sponsor indicating a willingness to commence payments, an action may be brought against the sponsor pursuant to the affidavit of support.

"(3) If the sponsor fails to abide by the repayment terms established by such agency, the agency may, within 60 days of such failure, bring an action against the sponsor pursuant to the affidavit of support.

"(4) No cause of action may be brought under this subsection later than 10 years after the alien last received any benefit under any means-tested public benefits program.

"(5) If, pursuant to the terms of this subsection, a Federal, State, or local agency requests reimbursement from the sponsor in the amount of assistance provided, or brings an action against the sponsor pursuant to the affidavit of support, the appropriate agency may appoint or hire an individual or other person to act on behalf of such agency acting under the authority of law for purposes of collecting any moneys owed. Nothing in this subsection shall preclude any appropriate Federal, State, or local agency from directly requesting reimbursement from a sponsor for the amount of assistance provided, or from bringing an action against a sponsor pursuant to an affidavit of support.

"(f) **DEFINITIONS.**—For the purposes of this section—

"(1) **SPONSOR.**—The term 'sponsor' means an individual who—

"(A) is a citizen or national of the United States or an alien who is lawfully admitted to the United States for permanent residence;

"(B) is 18 years of age or over;

"(C) is domiciled in any of the 50 States or the District of Columbia; and

"(D) is the person petitioning for the admission of the alien under section 204."

(b) **CLERICAL AMENDMENT.**—The table of contents of such Act is amended by inserting after the item relating to section 213 the following:

"Sec. 213A. Requirements for sponsor's affidavit of support."

(c) **EFFECTIVE DATE.**—Subsection (a) of section 213A of the Immigration and Nationality Act, as inserted by subsection (a) of this section, shall apply to affidavits of support executed on or after a date specified by the Attorney General, which date shall be not earlier than 60 days (and not later than 90 days) after the date the Attorney General formulates the form for such affidavits under subsection (b) of such section.

(d) **BENEFITS NOT SUBJECT TO REIMBURSEMENT.**—Requirements for reimbursement by a sponsor for benefits provided to a sponsored alien pursuant to an affidavit of support under section 213A of the Immigration and Nationality Act shall not apply with respect to the following:

(1) Medical assistance described in section 401(b)(1)(A) or assistance described in section 411(b)(1).

(2) Short-term, non-cash, in-kind emergency disaster relief.

(3) Assistance or benefits under the National School Lunch Act.

(4) Assistance or benefits under the Child Nutrition Act of 1966.

(5) Public health assistance for immunizations (not including any assistance under title XIX of the Social Security Act) with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases whether or not such symptoms are caused by a communicable disease.

(6) Payments for foster care and adoption assistance under parts B and E of title IV of the Social Security Act for a parent or a child, but only if the foster or adoptive parent (or parents) of such child is a qualified alien (as defined in section 431).

(7) Programs, services, or assistance (such as soup kitchens, crisis counseling and intervention, and short-term shelter) specified by the Attorney General, in the Attorney General's sole and unreviewable discretion after consultation with appropriate Federal agencies and departments, which (A) deliver in-kind services at the community level, including through public or private nonprofit agencies; (B) do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient's income or resources; and (C) are necessary for the protection of life or safety.

(8) Programs of student assistance under titles IV, V, IX, and X of the Higher Education Act of 1965, and titles III, VII, and VIII of the Public Health Service Act.

(9) Benefits under the Head Start Act.

(10) Means-tested programs under the Elementary and Secondary Education Act of 1965.

(11) Benefits under the Job Training Partnership Act.

Subtitle D—General Provisions

SEC. 431. DEFINITIONS.

(a) **IN GENERAL.**—Except as otherwise provided in this title, the terms used in this title have the same meaning given such terms in section 101(a) of the Immigration and Nationality Act.

(b) **QUALIFIED ALIEN.**—For purposes of this title, the term "qualified alien" means an alien who, at the time the alien applies for, receives, or attempts to receive a Federal public benefit, is—

(1) an alien who is lawfully admitted for permanent residence under the Immigration and Nationality Act,

(2) an alien who is granted asylum under section 208 of such Act,

(3) a refugee who is admitted to the United States under section 207 of such Act,

(4) an alien who is paroled into the United States under section 212(d)(5) of such Act for a period of at least 1 year,

(5) an alien whose deportation is being withheld under section 243(h) of such Act, or

(6) an alien who is granted conditional entry pursuant to section 203(a)(7) of such Act as in effect prior to April 1, 1980.

SEC. 432. VERIFICATION OF ELIGIBILITY FOR FEDERAL PUBLIC BENEFITS.

(a) **IN GENERAL.**—Not later than 18 months after the date of the enactment of this Act, the Attorney General of the United States, after consultation with the Secretary of Health and Human Services, shall promulgate regulations requiring verification that a person applying for a Federal public benefit (as defined in section 401(c)), to which the limitation under section 401 applies, is a qualified alien and is eligible to receive such benefit. Such regulations shall, to the extent feasible, require that information requested and exchanged be similar in form and manner to information requested and exchanged under section 1137 of the Social Security Act.

(b) **STATE COMPLIANCE.**—Not later than 24 months after the date the regulations described in subsection (a) are adopted, a State that administers a program that provides a Federal public benefit shall have in effect a verification system that complies with the regulations.

(c) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated such sums as may be necessary to carry out the purpose of this section.

SEC. 433. STATUTORY CONSTRUCTION.

(a) **LIMITATION.**—

(1) Nothing in this title may be construed as an entitlement or a determination of an individual's eligibility or fulfillment of the requisite requirements for any Federal, State, or local governmental program, assistance, or benefits. For purposes of this title, eligibility relates only to the general issue of eligibility or ineligibility on the basis of alienage.

(2) Nothing in this title may be construed as addressing alien eligibility for a basic public education as determined by the Supreme Court of the United States under *Plyler v. Doe* (457 U.S. 202) (1982).

(b) **NOT APPLICABLE TO FOREIGN ASSISTANCE.**—This title does not apply to any Federal, State, or local governmental program, assistance, or benefits provided to an alien under any program of foreign assistance as determined by the Secretary of State in consultation with the Attorney General.

(c) **SEVERABILITY.**—If any provision of this title or the application of such provision to any person or circumstance is held to be unconstitutional, the remainder of this title and the application of the provisions of such to any person or circumstance shall not be affected thereby.

Barbara 8/11

- HIV guidance

- Medicaid / CHIP

- HIV Regent - Lisa Roney - AOS implementation

• interview call

• INS - collect info

• Efforts to implement AOS

Lamar Smith likes AOS but not implement

- Spotted issues

- Enthusiasm about implement

Meeting - 6/16 -

- Out FR + MON

First time enforceable 12/2002

Dave

- only Veterans but ~~not~~ exempted from deans but
not AOS

- State & Local means tested - many are getting it & could
seek reimbursement. Want to be silent. There not dead yet

Irene Bueno


 06/11/99 12:00:15 PM

Record Type: Record

To: Cynthia A. Rice/OPD/EOP
cc: J. Eric Gould/OPD/EOP
Subject: Summary - Mtg on AOS Enf with DOS, HHS, SSA, and USDA

I learned yesterday that INS was called by Rep. Lamar Smith's immigration staff to request a briefing on the status of the Affidavit of Support (AOS) provisions of the welfare reform. Meeting is tentatively scheduled for Wed. Yesterday, INS coordinated a conference call with SSA, HHS, and USDA to discuss preparations for the briefing.

I called Barbara Strack and she left a message to apologize for not calling to inform us of this request. She basically explained that Smith is very supportive of AOS and wants to make that it is being implemented by the agencies. In list of possible hearing I received earlier this year, Smith indicates his interest in holding a hearing on this issue. Since agencies are at different point in the implementation process - they will not have much to say except that to say that they working on working on implementation procedures. Below are some notes from the conference call.

I think we should have a conference call with these agencies prior to the briefing to understand where they are in the process and what they plan to say during the briefing.

Also, I think that INS should offer the same briefing to Rep. Jackson-Lee's staff (ranking member on the House Judiciary Subcommittee on Immigration).

Let me know what you think. Thanks.

----- Forwarded by Irene Bueno/OPD/EOP on 06/11/99 12:00 PM -----



Barbara.L.Strack@usdoj.gov
06/10/99 05:45:00 PM

Record Type: Record

To: Irene Bueno/OPD/EOP
cc:
Subject: Summary - Mtg on AOS Enf with DOS, HHS, SSA, and USDA

Notes on AOS meeting.

Forward Header

Subject: Summary - Mtg on AOS Enf with DOS, HHS, SSA, and USDA
Author: Lisa S Roney at HQ-MGM-002
Date: 6/10/99 5:16 PM

Barbara,

Below is a summary of the meeting. It lasted another 15 minutes after you left. We are looking at a meeting on Wednesday which seemed to be the most acceptable day. USDA is supposed to call me tomorrow to confirm Art Foley's availability. Danielle suggested that each agency come to the briefing with a one-page handout, but most rejected the idea; Judy Chessar was vocally opposed because not all agencies had much to say yet, and handouts would only point this out.

Suggested approach to meeting with Bill Griffith:

- . Data collection on and entry of sponsor information from affidavit of support
- . Delivery of information from affidavits of support to agencies (SAVE)
- . Benefit agency plans for enforcing affidavit of support

Issues discussed:

- . What is plan and timetable for electronic transfer of sponsor information to agencies?
- . What is the timeframe for States to request reimbursement from sponsors? (It's up to each agency to determine.)
- . Is it premature to issue guidelines to States at this time since deeming and requests for reimbursement are still a couple of years in the future and States are busy with Y2K and enrollment issues? (I.e., they don't need it yet and will have forgotten it when they do need it.)
- . How can Federal agencies most effectively work with States - and in some cases, counties and localities - to provide good guidance relating to enforcement while accommodating the inherent complexities and providing for flexibility yet not dictating to them? What about coordination with prosecutors and cost/benefit concerns?
- . To what extent can agencies base guidance on past experience (deeming) or other programs such as recovery of overpayments (enforcement)?

Status of agency plans:

- . HHS - HCFA sent a letter to States in June 1998 about AOS; veterans were listed as the only potential group to whom the new deeming and enforcement provisions might apply.
- . SSA - Working on deeming guidelines. Basing enforcement on overpayment collection.
- . USDA - Drafting currently but dealing with issue of how to deal with States collecting Federal money and Treasury offsets.

Immigration Law's Fine Print Emerges, Setting Off a Debate About Welfare Provisions

By CELIA W. DUGGER

On Dec. 19, the Government will begin enforcing a new law that will make it more difficult for poor and working-class immigrants living legally in the United States to have members of their families immigrate to join them.

The law will require an income test for the half a million legal immigrants and citizens who annually seek to bring relatives to the United States. Research sponsored by the Government found that 30 percent of the sponsors of immigrants would not have passed the new income test.

Under the new law, the sponsoring relatives will generally be required to prove that they earn 125 percent of the poverty level, or \$20,062 this year for a family of four.

Forty pages of rules spelling out how the law will be applied and when it takes effect will be published today in The Federal Register.

The new law also requires the sponsoring families to sign contracts to support the newcomers and to reimburse the Government if their relatives receive welfare benefits.

But the new rules limit the definition of such public aid to the major anti-poverty programs — food stamps, Medicaid and income supports for low-income families and for poor people who are elderly or disabled.

The new reimbursement requirement will have little impact for at least a few years because the welfare law adopted last year made most legal immigrants who enter the country after August 1996 ineligible for the major Federal anti-poverty programs for at least five years.

The rules exempt the sponsoring families from reimbursing the Government if their relatives use a range of smaller programs, including school lunches, Head Start, foster care, student loans and emergency medical care.

Before the new law was passed, there was no income requirement for families sponsoring their relatives, nor had the courts found sponsors' general promises to support relatives to be legally enforceable.

Typically, able-bodied immigrants who showed proof that they had a job waiting for them in the United States were not required to have sponsors who promised to support them indefinitely.

The new rules drew sharp criticism on Friday from an author of the law, Representative Lamar Smith, Republican of Texas and chairman of the House immigration subcommittee, who said the Clinton Administration had defined the liability of sponsoring families too narrowly and should have defined welfare benefits more broadly.

"The effect of the Administration's groundless interpretation will be to relieve immigrants' sponsors of all responsibility to repay the taxpayers for a vast set of welfare benefits," Mr. Smith said.

But Federal officials said their interpretation of which welfare benefits were covered was consistent with both the law and Congressional intent. They included programs in which benefits are based on recipients' incomes and spending is mandated by Congress. Programs like Head Start, whose financing is discretionary, were not included.

The Clinton Administration opposed the new income test for sponsors, but it supported the require-

ment that sponsors sign contracts to support their relatives.

Despite their disagreement over the definition of welfare benefits, both the Congressional authors of the provision and Clinton Administration officials say the law, part of the immigration bill adopted in September 1996, sends an important signal to immigrants that their sponsoring families are responsible for supporting them.

Under the guidelines, sponsors will have to commit to supporting immigrant relatives until the new arrivals have become citizens, worked for 10 years in this country, left the United States permanently or died. If the immigrants receive welfare benefits, state and local government agencies will be able to sue their sponsors for reimbursement.

Advocates for immigrants and some scholars say the income test will have unnecessarily harsh consequences and is likely to backfire. It will prevent many poor and working-class immigrants and citizens who do not meet the new test from legally bringing in relatives even though those relatives would be unlikely to wind up on welfare under the new welfare law, they said. And it will encourage wives, children and others who want to be reunited with their families in this country to come illegally, the critics of the income test say.

"It's another example of the law of unintended consequences," said Thomas Espenshade, a sociology professor at Princeton University. "It's particularly perverse because Congress has long set as its objective to preserve legal immigration and reduce the number of immigrants coming illegally."

The new income test will make it extremely difficult for immigrants who work in the underground economy and do not pay taxes to bring in relatives, even if the relative has a job offer here.

For example, some farm workers, day laborers and sweatshop workers may have trouble qualifying as sponsors. The new guidelines state that sponsors must provide income tax returns for the past three years to establish their income.

The new law is also likely to hit Mexicans and Salvadorans hard because their incomes are generally lower than those of other groups, according to research sponsored by the Immigration and Naturalization Service that has not yet been released. The analysis of a random survey of 2,160 statements signed by sponsors of family immigrants in 1994 found that roughly half of Mexicans and Salvadorans would not have met the new requirement.

A third of Dominicans and Koreans, a fourth of Chinese and Jamaicans and a fifth of Filipinos, Indians and Vietnamese would not have met the requirement, say several people familiar with the survey, including

both critics and supporters of the new law. Over all, the survey found that 3 immigrants in 10 had incomes below the new standard.

Similarly, a study of 1993 Census Bureau data by the Urban Institute, a nonprofit research group in Washington, found that 40 percent of immigrant families and a quarter of Americans born in the United States would not make enough to sponsor an immigrant.

But it is impossible to predict how many prospective immigrants will be excluded because the guidelines provide two ways that poor families can bring in their relatives, even if the head of household alone does not earn enough to qualify.

Family members who have lived in the sponsoring household for at least six months can pool their earnings to reach the income standard, though each person must then sign a contract promising to help support the newcomer.

The family is also allowed to find an employer, friend or relative who is not part of the household to co-sponsor the immigrant. Again, the co-sponsor has to sign a contract to support the immigrant in hard times.

Advocates for immigrants say that families who are considering sponsoring relatives fear that the new rules can spell financial ruin in extreme circumstances and play havoc with relations within families.

What if a relative develops a catastrophically expensive illness after arriving? What if a husband brings in his wife, and she leaves him for another man? Under the guidelines, divorce does not release a sponsor from the responsibility to support a former spouse. In fact, immigrants can sue their sponsors for financial support under the new rules.

The immigration service says it will keep computer records on the estimated 565,000 immigrants who will be sponsored annually by family members and will make this information available to state and Federal agencies that provide welfare benefits.

Sponsoring relatives will be required to notify the immigration service if they move. Sponsors who fail to send in a change of address form can be fined \$250 to \$2,000, or up to \$5,000 if they know that a relative they sponsored has received welfare benefits.

The New York Times

MONDAY, OCTOBER 20, 1997

**New Requirements on Immigrant Sponsors
Questions and Answers
October 20, 1997**

Q. What action is INS taking today that will effect individuals that sponsor legal immigrants into this country?

A. Today, the Immigration and Naturalization Service (INS) released guidelines implementing a provision of the 1996 Immigration Law that requires sponsors of certain immigrants to meet minimum income requirements and financial responsibility for the immigrants they bring to live in the United States. The new requirements will take effect on December 19, 1997.

The new requirements will mean that agencies that provide means-tested public benefits to immigrants may seek reimbursement from ~~against~~ their sponsors. This provision will have only limited immediate effect because under the terms of the welfare and immigration laws, most new immigrants cannot receive means-tested public benefits for 5 years.

In addition, the statute and implementing guidelines require the immigrant's sponsor to show an income of at least 125% of the federal poverty level. Sponsors must show proof of current employment and copies of their last 3 federal income tax returns.

Q. Why did the INS define "public means-tested benefits" so narrowly-- thereby limiting the number of welfare programs for which a sponsor will have to reimburse the government?

A. Federal agencies have defined this term and in the manner most consistent with the language and legislative history of the welfare law. The agencies have determined that Federal means-tested public benefits include Food Stamps, Medicaid, SSI, and Temporary Assistance to Needy Families. State means-tested benefits for which a state may seek reimbursement, are any public benefit for which no federal funds are provided that a state has determined are means-tested public benefits. We are encouraging Federal and state agencies alike to make public which of their programs are, and which are not, means-tested public benefits.

Q. Do the new requirements undermine the Nation's commitment to reuniting families?

A. We believe that the new legally enforceable obligation on U.S. residents to take financial responsibility for the immigrant they sponsor is consistent with our tradition of family reunification. Family members should be held responsible for providing basic support for the individuals they bring into this country as immigrants-- and should be held liable if the immigrants they support use means-tested benefits. We do think, however, that the new income

requirement for sponsors will make it more difficult for some families to reunite, and we raised concerns to this effect when Congress considered the provision in the immigration law last year.

Q. How many immigrants will be affected by the new requirements?

A. INS estimates that each year approximately 565,000 U.S. residents will submit affidavits of support taking financial responsibility for family members whom they sponsored for immigration.

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limited immediate effect because
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New Requirements on Immigrant Sponsors

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Q. What action is INS taking today that will effect individuals that sponsor legal immigrants into this country?

A. Today, the Immigration and Naturalization Service (INS) released guidelines ^{to take} ^{for} ^{the} ^{first} ^{time} ^{that} ^{will} require sponsors of certain immigrants to meet minimum income requirements and be financially responsible for the immigrants they bring to live in the United States. The new requirements were mandated under the 1996 Immigration Law and will take effect on December 19, 1997.

The new requirements will mean that agencies that provide means-tested public benefits to immigrants may ^{seek reimbursement from} ~~enforce the legally binding affidavit of support against~~ their sponsors. ~~It should be noted that most immigrants who are sponsored under the new affidavits are barred under the immigration and welfare laws from federal means-tested public benefits for 5 years.~~ ^{cannot receive}

^{statute and implementing guidelines} In addition, the ^{new} ~~new~~ affidavit requires the immigrant's sponsor to show an income of at least 125% of the federal poverty level. Sponsors must show proof of current employment and copies of their last 3 federal income tax returns.

Q. Why did the INS define "public means-tested benefits" ^{for which} ~~for the affidavit~~ so narrowly - thereby limiting the number of welfare programs a sponsor will have to reimburse the government ^{for} ~~for~~?

A. Federal agencies have ^{been charged with} ~~been charged with~~ defining this term and many others in a manner most ^{that is} ~~that is~~ consistent with the welfare law. They have determined that Federal means-tested public benefits include Food Stamps, Medicaid, SSI, and Temporary Assistance to Needy Families. State means-tested benefits are any public benefit for which no federal funds are provided that a state has determined are means-tested public benefits. We are encouraging Federal and state agencies to ^{publicly announce} ~~publicly announce~~ which of their programs are means-tested public benefits.

Q. Doesn't the new affidavit of support ^{undermine} ~~undermine~~ the Nation's commitment to reuniting families? Is it a backdoor attempt to cut family reunification?

A. We believe that the new legally enforceable affidavit of support ^{is} ~~is~~ consistent with our tradition of family reunification. ^{It is our position that} ~~It is our position that~~ family members should be held responsible for providing basic support for the family they bring into this country as immigrants - and to be held liable if the immigrants they support use means-tested benefits. The new affidavit provides sponsors with reasonable opportunity to qualify as sponsors, or find another person to become a joint sponsor. We expect the new income requirement for sponsors to make it

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Today's guidelines

more difficult for some families to reunite, and we raised concerns to this effect when the Congress considered the provision ~~was being considered~~ in the immigration legislation last year.

Q. How many immigrants will be affected by the new affidavit of support? ~~for new requirements?~~

A. INS estimates that approximately 565,000 family immigrants will submit affidavits of support. INS does not have an estimate on the number of employment based immigrants that will be affected, but it is expected to be small.

each year

U.S. residents

~~individuals~~ ^{annually} will submit affidavits of support taking financial responsibility for ~~bringing~~ family members whom they ~~have~~ sponsored for immigration.



NEWS RELEASE

Contact: Media Services
Office of Public Affairs
(202) 514-2648 Fax: (202) 514-1776

October 20, 1997

INS To Implement New Law Requiring Financial Liability for Immigrant Sponsors

New Affidavit of Support to Take Effect on December 19, 1997

WASHINGTON, D.C. — As mandated by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), the Immigration and Naturalization Service (INS) today released guidelines that, for the first time, require sponsors of certain immigrants to meet minimum income requirements and be financially responsible for the immigrants they sponsor.

The new Affidavit of Support provisions and form are published today in the Federal Register and become effective on December 19, 1997. The new Affidavit of Support form (Form I-864) requires the immigrant's petitioner to be the immigrant's sponsor and requires the sponsor to demonstrate an income level at or above 125 percent of the Federal poverty line. Beginning December 19, 1997, the new Affidavit of Support Form I-864 must be completed by U.S. citizens and lawful permanent residents who sponsor family members as immigrants to live in the United States.

"The new Affidavit of Support is a significant change to U.S. immigration law," said Paul Virtue, Acting Executive Associate Commissioner for Programs. "INS is working to ensure that the public is aware of the requirements and ramifications of these new provisions."

Beginning on December 19, 1997, applications for immigrant visas submitted at Department of State (DOS) consular posts abroad and adjustment of status applications filed with the INS in the United States must include the new legally-enforceable Affidavit of Support Form I-864 for:

- all immediate relative and family-sponsored immigrants, and for
- employment-based immigrants who are coming to work for relatives, or for companies where a relative owns 5 percent or more of the company.

In processing the new Affidavits of Support, DOS and INS will place the greatest weight on a sponsor's earnings from current employment.

Beginning December 19, 1997, agencies that provide means-tested public benefits to immigrants may enforce Affidavits of Support against their sponsors until the immigrants become U.S. citizens, can be credited with 40 quarters of work, leave the United States permanently, or die.

(more)

Most immigrants who are sponsored under the new Affidavit of Support will be barred from federal means-tested public benefit programs for 5 years. To date, federal agencies have announced the following four programs as means-tested public benefits: Food Stamps, Medicaid, Supplemental Security Income (SSI), and Temporary Assistance to Needy Families (TANF.) After the 5 years, immigrants will be able to apply for benefits. However, federal and state public benefit granting agencies will be able to count sponsor income as part of the immigrant's income in determining whether the immigrant is eligible to receive public benefits. This action is called "deeming." "Deeming" will make most immigrants sponsored under the new affidavit of support ineligible for means-tested public benefits.

Federal and state agencies that provide public means-tested benefits will be responsible for enforcing the Affidavits of Support. Upon request, INS will provide to these benefit providing agencies the names and addresses of sponsors. The benefit agencies, in turn, may take legal action against sponsors under the new Affidavit of Support provisions. If sponsors do not provide basic support to new immigrants, they may be sued by the sponsored immigrants and by the agencies for the amount of benefits provided to sponsored immigrants.

— INS —

NOTE: For additional information regarding the affidavit of support (including copies of the new Form I-864) and other INS issues, the public can visit INS' World Wide Web site at **www.ins.usdoj.gov**.

FACT SHEET

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Affidavit of Support

The new Affidavit of Support form and interim regulation were published in the Federal Register on October 20, 1997, as required by the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA). The new legally enforceable Affidavit of Support (Form I-864), as specified in Section 213A of the Immigration and Nationality Act, must be completed by U.S. citizens and legal permanent residents who sponsor family members as immigrants to live in the United States. The new Affidavit of Support form will be required for immigrant visa and adjustment of status applications filed on or after December 19, 1997, 60 days after publication. The published regulation also implements a 120-day public comment period.

To ensure that the immigrants are not likely to rely on public benefits, sponsors must demonstrate on the new form that they meet minimum income requirements and can be financially responsible for the sponsored immigrants. Sponsors must complete the new Affidavit of Support form for relatives who will file applications for immigrant visas or for adjustment of status on or after December 19, 1997.

The Affidavit of Support Filing Process

All immediate relative and family-based immigrants, including orphans, must have a sponsor. In addition, a sponsor is required for employment-based immigrants who are coming to work for a relative or for a company in which a relative owns 5 percent or more of the company. An Affidavit of Support is not required for an immigrant who is self-petitioning for immigration benefits because they are the battered spouse or child, or the widow/widower of a U.S. citizen or legal permanent resident. Also, the new Affidavit of Support is not required for any other group of immigrants or refugees.

The sponsor must be the family member who filed the visa petition for the immigrant, or the family member who owns 5 percent or more of the company that filed the petition for the immigrant. The sponsor must also be a U.S. citizen or lawful permanent resident, at least 18 years of age, and domiciled in the United States (including territories and possessions).

(more)

The sponsor must complete and sign the Affidavit of Support and attach all required documentation, including copies of tax returns. The form and documentation are subject to verification by other appropriate government agencies.

After completing the Affidavit of Support, sponsors forward the Affidavit of Support form and related documentation to the prospective immigrants. To protect the privacy of financial records, sponsors may enclose the documents in sealed envelopes to be opened only by designated Government officials. Prospective immigrants submit the Affidavit of Support to Department of State (DOS) consular posts abroad when they are interviewed for their immigrant visa — or, if applying for adjustment of status in the United States, to the Immigration and Naturalization Service (INS) along with their application for adjustment of status. In both cases, the Affidavit of Support must be submitted to the government within 6 months of signature by the sponsor.

Affidavit of Support Income Requirements

The law requires a sponsor to demonstrate an income level at or above 125 percent of the Federal poverty line, as published annually by the Department of Health and Human Services. To establish income level, sponsors must provide proof of current employment and copies of their Federal income tax returns for the 3 most recent tax years. The income of certain other household members may be added in computing income level if they sign a contract, Form I-864A, agreeing to make their income and/or assets available for the support of the sponsored immigrants. For active duty military personnel, the income requirement is 100 percent of the poverty level, if they are sponsoring their spouse and/or child.

If the sponsor's household income does not meet the income requirements, evidence of assets, such as cash in savings accounts, stocks, bonds, or property, may be considered in determining the sponsor's ability to support the immigrant.

If the sponsor cannot meet the required income level based on income and assets, another person may serve as a joint sponsor. The joint sponsor must meet all sponsorship requirements, other than being the petitioner, and be willing to assume legal liability for the sponsored immigrant(s) with the petitioning relative.

INS and DOS will not use a set formula to determine whether a person qualifies as a sponsor. The greatest weight will be placed on earnings from current employment. In most instances, sponsors will be found eligible if they are employed and demonstrate the ability, along with household members who sign a contract on Form I-864A, to earn income at or above 125 percent of the poverty line for the number of persons who will be supported.

(more)

Enforcement of the New Affidavit of Support

Most immigrants who are sponsored under the new Affidavit of Support will be barred from federal means-tested public benefit programs for 5 years. To date, federal agencies have announced the following four programs as means-tested public benefits: Food Stamps, Medicaid, Supplemental Security Income (SSI), and Temporary Assistance to Needy Families (TANF.) After the 5 years, public benefit granting agencies will be able to count the income and resources of the sponsor, and the sponsor's spouse, as part of the immigrant's income in determining whether the immigrant is eligible to receive public benefits. This action is called "deeming." States may also choose to "deem" in determining eligibility for their own means-tested public benefit programs.

The Affidavit of Support is enforceable against the sponsor until the immigrant becomes a U.S. citizen, can be credited with 40 quarters of work, leaves the United States permanently, or dies. If sponsors do not provide basic support to the immigrants they bring to the United States, they may be sued by the sponsored immigrants and by federal or state benefit agencies for the amount of the means-tested public benefits provided to sponsored immigrants.

As required by law, the sponsor must report every change of address to INS using Form I-865, Sponsor's Notice of Change of Address, within 30 days of the change. The INS will maintain this information in an automated database and provide it to benefit granting agencies upon request.

- INS-

Affidavit of Support
Media Questions & Answers
(For Internal Use Only)

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1. What caused the long delay in getting the affidavit of support published?

The affidavit of support requirements included in the new section 213A of the Immigration and Nationality Act are quite complex and far-reaching. A sponsor's legal responsibility for supporting the immigrants he or she brings to the United States is one of the most important new requirements included in immigration reform. As such, we have taken great care to develop a new affidavit of support that fairly reflects all requirements of the law and ensures that sponsors will meet their obligations while continuing, where possible, this country's long tradition of allowing its residents to be reunified with their close family members.

Many government agencies have been involved in developing the affidavit of support regulations and related regulations defining Federal means-tested public benefits. Certain events beyond our control obliged us to delay publication of the affidavit of support pending further review and required modifications. For instance, the June 27 Supreme Court decision in Printz v. United States, concerning the Brady Act, required that we reconsider how we request States to determine and provide notice on their means-tested public benefits and seek reimbursement from sponsors for benefits used by the immigrants they sponsored under the new legally enforceable affidavit of support. As a part of our consideration of these issues, our deliberations also included extensive discussions with Congressional staff.

2. Doesn't the affidavit of support requirement betray the Nation's historical commitment to reuniting families?

The Administration did not support specific income requirements for sponsors when this legislation was being considered. However, we believe that the new legally enforceable affidavit of support is consistent with our tradition of family reunification.

We believe that U.S.-based family members should be held responsible for providing basic support for the family members they bring to this country as immigrants and to be held legally liable if the immigrants they support use means-tested public benefits. The new affidavit of support provides sponsors with every reasonable opportunity to qualify as sponsors or to find another person, who does not need to be a family member, to be a joint sponsor. We expect that the income requirement for sponsors will make it more difficult for some families to reunite.

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**Affidavit of Support
Media Questions & Answers
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3. Isn't this just a back-door effort to cut family reunification?

The regulation and form that we are publishing provide every reasonable opportunity to allow sponsors to qualify under the new provisions while ensuring that they have the financial means to support the immigrants they are bringing in addition to any persons they are already supporting. We expect that the income requirement for sponsors will make it more difficult for some families to reunite.

4. Isn't this just an effort to ensure that new immigrants are wealthier and better educated, and to cut off immigration from countries that send poorer, less-educated migrants?

Most sponsors under the new provisions will be the relatives petitioning for their close family members. By giving these persons every reasonable opportunity to qualify as sponsors or to obtain one or more joint sponsors to enable the prospective immigrant to qualify, we hope that there will be little change in immigration patterns. There may be some impact on immigration from countries that send a larger number of poorer, less-well-educated immigrants, though.

5. Does the Administration support the 125 percent of the poverty line income requirement for sponsors?

The Administration did not support specific income requirements for sponsors when this legislation was being considered.

6. When will you release the results of your study of the potential impact of the Affidavit of Support? What has taken so long to publish the results that were presented in off-the-record briefings last January?

In early December, INS will release information from INS' sponsorship study as a baseline for monitoring the sponsorship process under the new form and regulations. Also prior to December 19, INS will present its plans for monitoring the new sponsorship process. INS believes that release of the results on the 1994 cohort of sponsors is most appropriate and useful in the context of monitoring changes in immigrant sponsorship under the new affidavit of support.

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7. How do you ensure uniform implementation across INS and DOS?

The affidavit of support requirements are, for the first time, embodied in statute and regulation which will guide implementation by both agencies. Additionally, INS and the Department of State have worked together closely on developing the affidavit of support form and regulation and have a common understanding of the principles behind this new requirement. We are also exchanging field guidance and training materials.

8. How will you train your staff to process the affidavit of support?

INS is developing field guidance on processing the new affidavit of support as well as detailed training manuals. We have already trained experts in each INS Region and Service Center and have plans to train every INS Immigration Information Officer, Immigration Examiner, and Immigration Inspector on the new affidavit of support. Training should be complete before the effective date for the new affidavit of support. We have also given advance training to our Immigration Information Officers who will initially be the group to disseminate information on the new requirements. Training on the new affidavit of support will be incorporated into our regular officer training curricula.

9. How will you inform state and local agencies about this provision?

As well as addressing issues affecting state and local agencies in the implementing regulation, we are holding briefings for national organizations representing state and local governments that will assist in explaining the new requirements. As necessary, we will hold additional meetings with state and local agencies at the local level and prepare specialized briefing materials.

10. What are the penalties for sponsors who make false statements on the affidavit of support?

The criminal penalty for false statements (18 USC 1001) or perjury (18 USC 1621) is a term of imprisonment for up to 5 years, a fine, or both. The criminal penalty for visa and other document fraud (18 USC 1546) is a term of imprisonment for up to 10 years, a fine, or both. All of these offenses have a 5-year statute of

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limitation. Additionally, if fraud is discovered on an affidavit of support, the intending immigrant's immigrant visa or adjustment of status application will be denied.

11. What is the difference between the new affidavit of support (I-864) and the earlier version (I-134) that is still valid in certain instances?

The new I-864, unlike the I-134, is based on a statutory requirement for a legally enforceable affidavit of support. It is mandatory for all family-based immigrants and must be filed by the petitioners for those new immigrants who must meet specific income criteria to qualify. The new form also requires substantially more information and documentation than the I-134. Any Federal agency administering means-tested public benefits can sue a sponsor for reimbursement of any benefits paid to a sponsored immigrant. State agencies can also sue for reimbursement for those programs they determine to be State means-tested public benefits.

12. How many immigrants will be affected by the new affidavit of support?

Based on an annual average flow of immigrants, we anticipate that approximately 565,000 family immigrants will submit affidavits of support to Consular or Immigration Officers each year. We have no estimates on how many employment-based immigrants will be affected by the new requirements, but the number is believed to be small. This number may increase in the next few years as immigrants legalized under the Immigration Reform and Control Act of 1986 (IRCA) naturalize and petition for immediate relatives.

13. Why isn't the new affidavit of support used for other groups of immigrants as well as immigrants and parolees if it is a more legally enforceable document?

The law passed by Congress precludes the use of the new affidavit of support for noncitizens other than family-based immigrants and two specific groups of employment-based immigrants. These groups make up the vast majority of noncitizens for whom affidavits of support are used.

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Talking Points (For Internal Use Only)

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Affidavit of Support, Form I-864

- Beginning December 19, 1997, the new Affidavit of Support Form I-864 must be completed by U.S. citizens and lawful permanent residents who sponsor family members as immigrants to live in the United States. This new form is a legally enforceable contract that ensures that sponsors can be financially responsible for sponsored immigrants and, thereby, helps prevent immigrants from relying on public assistance.
- The new Affidavit of Support is required for all immediate relative and family-based immigrants, and for employment-based immigrants who are coming to work for a relative or for a company where the relative owns 5% or more of the company.
- While the form is completed and signed by the immigrants' sponsor — who must be the family member who files the visa petition for the immigrants — the form is submitted for processing by the prospective immigrants when they are interviewed by the Department of State (DOS) for an immigrant visa overseas, or when they apply with the Immigration and Naturalization Service (INS) for adjustment of status in the United States.
- In processing the new Affidavits of Support, DOS and INS will place the greatest weight on a sponsor's earnings from current employment. The sponsor must demonstrate the means to maintain an income at 125 percent of the Federal poverty level.
- Most immigrants who are sponsored under the new Affidavit of Support will be barred from Federal means-tested public benefit programs for 5 years. After the 5 years, public benefit granting agencies will be able to count sponsor income as part of the immigrant's income in determining whether the immigrant is eligible to receive public benefits. This action is called "deeming."
- The Affidavit of Support is enforceable against the sponsor until the immigrant becomes a U.S. citizen, can be credited with 40 quarters of work, leaves the U.S. permanently, or dies. If sponsors do not provide basic support to the immigrants they bring to the United States, they can be sued both by the means-tested benefit agencies for the amount of benefits provided to sponsored immigrants and by the sponsored immigrants themselves.
- INS will provide information to benefit providing agencies on the names and addresses of sponsors. These agencies — not INS — will be involved in the enforcement of Affidavits of Support.
- The sponsor must report every change of address to INS using Form I-865, Sponsor's Notice of Change of Address, within 30 days of moving. The INS will maintain this information in an automated database and provide it to benefit granting agencies upon request.

— INS —

**Affidavit of Support
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14. Why does the law indicate that veterans and active members of the armed forces need only demonstrate an income of 100% of the poverty line yet they must agree to maintain the sponsored immigrant at a level of at least 125% of the poverty line?

This appears to be an inconsistency in the law, but we must implement the law as written. The law clearly states that all sponsors must agree to provide support to sponsored immigrants at a level of at least 125% of the poverty level.

15. Given that most immigrants are barred from receiving means-tested benefits for 5 years or longer in some cases, what purpose does the affidavit of support really serve?

Because of the 5-year ban, most sponsored immigrants will be unable to receive means-tested public benefits for their first 5 years in the United States. The affidavit of support may help prevent the limited number of sponsored immigrants subject to the exceptions to the 5-year ban --such as veterans and persons on active duty in the military or immigrants who can be credited with 40 quarters of work-- from using means-tested public benefits.

The impact will be greater after five years when sponsored immigrants are no longer barred from some means-tested public benefits. At that time, the affidavit of support will trigger the deeming provisions of the new welfare laws, allowing federal agencies to attribute the sponsor's income to the sponsored immigrant when determining eligibility for benefits. There may be some savings to states to the extent they choose to deem sponsor income and resources in determining eligibility for their means-tested public benefits. In addition, the affidavit of support creates a legal obligation for the sponsor to support the sponsored immigrant, regardless of whether or not the sponsored immigrant is eligible for public benefits.

16. What programs are Federal means-tested public benefits?

Federal means-tested public benefits include public benefits funded in whole or in part by the Federal government and that the Federal agency administering these funds has determined to be means-tested public benefits. To date, Federal agencies have announced the following programs as means-tested public benefits: Food Stamps, Medicaid, Supplemental Security Income (SSI), and Temporary Assistance to Needy Families (TANF.)

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17. What programs are State means-tested public benefits?

State means-tested benefits are any public benefit for which no federal funds are provided that a State, State agency, or political subdivision of a State has determined are State means-tested public benefits. Each State must determine which, if any, of its public benefits are means-tested. We encourage States to publicly announce which programs they determine are means-tested benefits.

18. How does a potential sponsor find out if a particular program is a Federal or State means-tested public benefit?

We encourage Federal and State agencies to publicly announce which, if any, of their programs are means-tested public benefits. If a person is uncertain about a particular benefit, they should check with the benefit-granting agency to determine if it is a means-tested public benefit.

19. Do you anticipate a rush of applications for permanent residence before the December 16 date when the new affidavit of support must be used?

Applicants for immigrant visas are scheduled several weeks in advance for visa interview appointments based on date of receipt and visa availability. Therefore, there is little chance for most new applicants to still apply and be interviewed before the deadline. Applicants for adjustment of status under the preference categories may only apply when a visa number is available, which results in a fairly constant flow of applicants. Immediate relative applicants who are exempt from this restriction, however, can apply for adjustment of status at any time.

20. How does an applicant for adjustment of status know if he or she should submit a new I-864 affidavit of support if the application is being submitted by mail just before the December 16 deadline?

Any adjustment of status cases for immigrant categories requiring the new affidavit of support which are received by INS on or after December 19, 1997, must include the new affidavit of support. This includes mail-in applications as well as any that are delivered in person. If the new affidavit of support is not included, INS will request that it be submitted, and the case cannot be processed until the affidavit of support and accompanying documentation are received.

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Affidavit of Support
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21. Why are the new affidavit of support regulation and form so complicated?

The new affidavit of support follows the provisions of the law that include many requirements for sponsorship and many ways that sponsors can demonstrate that they can meet the income requirement for their household size. The form is designed to allow potential sponsors to provide as little or as much information as is necessary to qualify. This saves time for both the sponsor and the reviewing government officer.

We have received public comment on earlier versions of the form and made many of the suggested changes. There is a 120-day comment period on the regulation, which includes 60 days when the new form will be in use. We will consider any recommendations for simplifying the process that will provide sponsors with all the opportunities to qualify that are provided in the law.

22. Why is the list of means-tested public benefits so narrowly defined?

The federal agencies providing public benefits, and not INS, are responsible for determining which programs are defined as means-tested public benefits. INS is merely using the definition that those agencies have developed in implementing welfare reform legislation.

23. In light of the fact that several courts held that the old affidavit of support was not legally enforceable, do you think that the new contract on form I-864A is enforceable?

Although it will ultimately be up to the courts to decide if the new contract is legally enforceable, our attorneys have concluded that it is. It is a contract between two private individuals with government agencies as third-party beneficiaries. It should be enforceable to the same extent as any similar contract between private parties with a third party beneficiary.

24. Why have you created a requirement that household members sign a contract in order for their income to be considered in determining a sponsor's household income?

The purpose of creating the new legally enforceable affidavit of support was to ensure that the sponsor would have enough income to support the sponsored
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immigrant and to create a legal obligation to use that income for this purpose. The contract is designed to ensure that all income used to meet the income requirements under the law will be available to support the sponsored immigrant and that the household members will be legally obligated to provide support.

25. Why do you permit sponsor's to include the income of household members when determining whether or not they can maintain an income of 125% of the poverty line?

By law, whether or not a sponsor meets the poverty line income requirements must be calculated based on his or her household size. As a general rule, Federal agencies use the income of all household members to determine if a household has an income that meets or exceeds the Federal poverty line. We believe it would be unfair to judge a sponsor's income based on his or her ability to support household members without including the household members' income when determining if a sponsor meets the Federal poverty line guidelines.

26. Why don't you permit the sponsor to include the income of sponsored immigrants not living in the sponsor's residence when calculating household income?

As a general rule Federal benefit agencies calculate household income based on the number of persons living in a particular residence. Benefit granting agencies generally base their determinations of eligibility on household income. We have tried to be as consistent as possible with the practice of the benefit agencies in defining household income.

27. When using the income of household members in order to reach the 125% of the poverty line, will you be counting the income of illegal aliens?

We are not instructing our field officers to verify employment authorization of household members. However, we believe that given the requirements for use of household income, that is, of submitting the three most recent Federal tax returns, proof of employment, and a properly executed Form I-864A, Contract Between Sponsor and Household Member, few illegal aliens will be using their income to assist sponsors in establishing the income requirement.

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28. Why doesn't the regulation say the sponsor is liable for means-tested public benefits used by the sponsored immigrant *only* up to 125% of the poverty line?

The regulation does not say this because the statute indicates that the sponsor is in fact liable for total reimbursement of government expenses for any means-tested public benefits in an amount which is equal to the unreimbursed costs of such benefits.

— INS —



HERE'S AN INTERESTING FAX...

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