

**18.6 DEEMING-THE NEW AFFIDAVIT OF SUPPORT FILED ON OR AFTER
December 19, 1997.**

A. INTRODUCTION

Deeming for current aliens applies to sponsored alien residents who were in the United States prior to the New Affidavit of Support (December 19, 1997).

Deeming for future immigrants begins with the new legally enforceable Affidavit of Support for sponsorship affidavits filed on or after December 19, 1997. All federal means-tested programs must count the income and resources of an alien's sponsor and that of the sponsor's spouse in determining the alien's eligibility for TANF/WV WORKS, Food Stamps, and Medicaid. The sponsor's/sponsor spouses income and resources are considered to be available to the sponsored alien in determining the sponsored alien's eligibility for these benefits.

NOTE: The sponsor is an individual not an organization, institution, or group.

When a sponsor is participating in the Food Stamp Program, the sponsor is exempt from receiving a bill from the Department for the value of the Food Stamp benefits provided to the alien for whom he has signed an Affidavit of Support.

B. Deeming Sponsors Income and Assets

The sponsor and the sponsor's spouse's income and assets are counted in their entirety and are considered to be available to the sponsored alien in determining the sponsored alien's eligibility for benefits. (See item C,3. for countable resource and income requirements of an ineligible sponsored alien) No allowances are made for the needs of the sponsor, his spouse, or the sponsor's family, or other alien families sponsored. The sponsor's income and assets are counted in their entirety for all aliens sponsored by the specific sponsor. Deeming applies to all non citizens sponsored by individuals.

Most aliens who are sponsored by the new affidavit of Support will be barred from Food Stamps, Medicaid, and TANF/WV WORKS.

1. Deeming ends when an alien has forty quarters of work (See Section 18.5).

- a. Therefor deeming will apply for Food Stamp purposes only to those who qualify under the military service provision.
 - b. Medicaid and WV WORKS has no forty qualifying quarters requirement therefore, deeming will apply. these programs unless there is documentation showing the alien has forty quarters of work.
2. After the 5 year bar the income and resources of the sponsor as well as the income and resources of the current spouse (who is living with the sponsor) will be deemed as part of the alien's income in determining the aliens eligibility for benefits.
 - a. Deeming of the sponsor's income will usual make the sponsc alien ineligible for means-tested public benefits.
 - b. The alien is ineligible until all information needed to determine the income and resources of the sponsor and the sponsor's spouse has been provided.
 - c. All other benefit eligibility requirements must be met.

C. EXCEPTIONS TO DEEMING

1. Battered Aliens/Aliens Subjected to Extreme Cruelty.

The phrase "battered or subjected to extreme cruelty" includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence; acts or threatened acts that, in and of themselves, may not initially appear violent may be part of an overall pattern of violence.

- a. If the battered alien lives in the same household as the battered there is no exemption.
 - b. If the battered alien is not living in the same household there could be an exemption.

- (1) Battered aliens and aliens whose child or parent has been battered may be exempt from the deeming provision.
 - (2) The exemption is for a 12 month period provided that there is a substantial connection between the need for benefits and the battery.
- c. The sponsored alien must provide documented proof that battery or extreme cruelty in the United States exists. Documented proof can include the following;
- (1) An applicant may submit his or her own affidavit, under penalty of perjury (it does not have to be notarized), describing the circumstances of the abuse.
 - (2) A petition filed with INS on behalf of the battered alien.
 - (3) A protection order issued against the abuser.
 - (4) A record of criminal conviction of the abuser with whom the applicant was living for committing an act of violence against the applicant, or his or her child or family member with whom they were living.
 - (5) Reports or affidavits from police, judges, and other court officials, medical personnel, school officials, clergy, social workers, counseling or mental health personnel, and other social service personnel.
 - (6) Sworn affidavits from third parties who have personal knowledge of the battery or cruelty.
- d. The sponsored alien must provide documented proof of non-residency with the batterer. Relevant credible evidence supporting the claim of non-residency can include, but is limited to, the following:
- (1) A civil protection order requiring the batterer to stay away from the applicant or the applicant's children or parent, or evicting the batterer from the applicant's residence;

- (2) Employment records; utility receipts school records, hospital or medical records; rental records or records from a building or property manager;
 - (3) An affidavit from a staff member at a shelter for battered women or homeless persons, family members, friends or other third parties with personal knowledge, or from the battered applicant himself or herself;
 - (4) Or any other records establishing that the applicant or his or her child or parent no longer resides with the abusive spouse, parent, or family member.
- e. The applicant must meet the requirements for qualified alien status by appropriate immigration documentation for which they are applying and all other eligibility requirements for the specific benefits should be determined.
 - f. The worker must provide the SAVE Coordinator, Special Projects Unit, with the documented proof from the alien that battery or extreme cruelty exists regarding the abuse of the alien, the alien's child, or the alien child's parent. If further action is needed the SAVE Coordinator will notify the worker.

2. Indigent Aliens

- a. After taking into account the alien's own income plus any cash, food, housing or other assistance provided by other individuals (including the sponsor), if the worker determines that a sponsored alien would, in the absence of the assistance provided by the agency, be unable to obtain food and shelter the amount of income and resources of the sponsor or the sponsor's spouse that shall be attributed to the sponsored alien shall not exceed the amount actually provided for a period of one year after the date such determination is made.

NOTE: The Indigent Alien must meet all other eligibility program requirements for the specific benefits (Medicaid and/or WV WORKS), not have forty qualifying quarters of work, and meet the requirement for qualified alien status.

- b. In this instance, the worker must provide the SAVE Coordinator Special Projects Unit with the name of the sponsor and sponsored alien(s) receiving benefits and

the type of benefits received. If further action is needed the SAVE Coordinator will notify the worker.

3. Ineligible Sponsored Alien

The resources and income of the sponsor and the sponsor's spouse must not be included in determining the resources and income of an ineligible sponsored alien.