

18.8 DEEMING INCOME AND ASSETS OF ALIEN'S SPONSOR (Before December 19, 1997)

A. Introduction - Deeming Income

Some legal immigrants come to the United States with the aid of citizens who serve as their "sponsors". A sponsor is someone who files an "affidavit of support" to help the sponsored immigrant obtain lawful permanent resident status. As a result of this relationship, the federal government requires any sponsored immigrant to include the sponsor's resources in any application for AFDC, SSI, and food stamps for the first three years in the United States. The sponsor's income is then "deemed" available to the sponsored immigrant. However, the affidavit does not legally obligate sponsors to share their resources with the sponsorees. Income of ineligible aliens is also deemed.

1. Deeming Income of Alien's Sponsor (TANF/WV WORKS)

The income of the sponsor (and the sponsor's spouse if living with the sponsor) will be deemed to a sponsored alien if ALL of the following conditions are met:

a. The alien must NOT be one of the following:

- (1) admitted prior to April 1, 1980 under Section 203 (a) of the Immigration and Nationality Act (INA), OR
- (2) admitted after March 31, 1980 under Section 207 (c) of INA, OR
- (3) paroled into the United States as a refugee under Section 212 (d) (5) of the INA, OR
- (4) granted political asylum by the Attorney General under Section 208 of the INA, OR
- (5) a Cuban or Haitian entrant as defined in Section 501 of the Refugee Assistance Act of 1980.

b. The sponsor is an individual NOT an organization, institution or group.

c. The sponsor must have executed an affidavit of support or similar agreement on behalf of the alien as a condition of alien's entry or admission into the United States as a permanent resident.

- d. The alien is not a dependent child of the sponsor or the sponsor's spouse.
- e. The alien did not receive AFDC/U or AFDC/U-related Medicaid prior to October 1, 1981.
- f. The amount actually paid to the alien by the sponsor and his spouse is less than the deemed amount.

When these conditions are met, income will be counted for the alien whether or not the income is actually made available. This income will be deemed to the alien for a period of THREE YEARS from the date established by INS as the date the alien was admitted for permanent residence and will continue for three years even if the sponsor fulfills up his sponsorship responsibilities.

Income of the sponsor is not deemed to members of the alien's family for whom he is not a sponsor except to the extent it is actually made available.

2. Responsibility for Obtaining Information Verification from the Sponsor

When information and/or verification is not provided, the sponsor, the alien and any other benefit group members sponsored by the same sponsor will be excluded from the benefit group. When the sponsor or the alien is not included in the benefit group, his income (excluding the amount deemed from the sponsor to the alien) will be deemed to the benefit group using appropriate policy.

3. Determining the Amount to be Deemed

The following steps will be used to determine the amount to be deemed to the alien.

- a. Determine the gross monthly earnings of the sponsor.
- b. From the amount, subtract 20% of the gross monthly earnings, or \$175, whichever is less.

- c. To this figure, add the sponsor's total monthly unearned income.
- d. Subtract the amount of the appropriate standard of need from the Standard of Need Chart for the number of individuals living with the sponsor who are claimed by the sponsor as dependents for federal personal income tax purposes but who are not included in an AFDC/U benefit group.
- e. Subtract any amounts actually paid by the sponsor to the individuals not living with him but who he claims as dependents for federal income tax purposes.
- f. Subtract any amounts actually paid by the sponsor for alimony or child support.
- g. The amount remaining is divided by the number of eligible aliens and the resulting figure is deemed to each eligible alien sponsored by the individual.

Income of the sponsor is not deemed to members of the alien's family for whom he is not a sponsor except to the extent it is actually available.

4. Deeming of Income - Food Stamp Program

Deeming of income for Food Stamp cases is possible only in the situations described below.

The income of the ineligible alien will be treated as follows:

- a. The income of the ineligible alien will be divided by the number of persons in the benefit group including the ineligible alien to determine the individual's prorated share. Any income excluded by Chapter 10 will not be counted.
- b. The remaining income after subtracting the prorated share will be considered as income to the remaining benefit group members.
- c. If the income is from earnings, the earned income percentage

disregard will apply only to that portion which is attributed to the benefit group.

- d. That portion of the benefit group's shelter/utility and dependent care expense which is paid from the ineligible alien's income will be prorated.
- e. All but the ineligible alien's share is counted as an expense for the remaining benefit group members.

EXAMPLE: Household consists of a father, mother and three children. The father has earnings of \$500 per month and is an ineligible alien. There is no other income in the household. Rent and utilities are \$250. Income for the benefit group will be calculated as follows:

Benefit group's prorata share of income is calculated as follows:

$\$500$ (father's income) divided by 5 (total number in the household) = $\$100$. (prorata share per person) $\$100 \times 4$ (number in the benefit group) = $\$400$ benefit group's total prorata share of ineligible alien's income.

The 20 percent earned income disregard is applied to the benefit group's prorata share 400×80 percent = 320.

$\$250$ (total expense) divided by 5 (number in household) $\times 4$ (number in benefit group) = $\$200$.

Countable income is determined as follows:

Income ($\$320$) minus standard deduction ($\$112$) = $\$208$.

50 percent of net income is $\$208 \times 50$ percent = $\$104$.

$\$200$ (shelter/utility costs) - $\$104$ (50 percent of net income) = shelter/utility deductions.

Countable income = $\$208 - \$96 = \$112$.

The ineligible alien will not be included in the benefit group for purposes of determining coupon allotment or household size as it relates to monthly allowable income standards.

5. Deeming Income of Alien's Sponsor(s)

NOTE: Sponsored alien information is presumed to be met for the Stamp Program if the benefit group is categorically eligible.

The income of the sponsor (and the sponsor's spouse if living with the sponsor) will be deemed to a sponsored alien if ALL of the following conditions are met.

- a. The alien must be lawfully admitted for permanent residence in the United States.
- b. The sponsor is an individual NOT an organization, institution, or group.
- c. The sponsor must have executed an affidavit of support or similar agreement on behalf of the alien as a condition of the alien's entry or admission into the United States as a permanent resident.
- d. The affidavit or similar statement referred to above must have been signed by the sponsor on or after February 1, 1983.
- e. The alien and sponsor are not members of the same Food Stamp benefit group.
- f. The sponsor is not participating in the program separately apart from the alien.
- g. The amount actually paid to the alien by the sponsor and his spouse is less than the deemed amount.

When these conditions are met, income will be counted for the benefit group containing the alien whether or not the income was actually made available. This income will be deemed to the alien for a period of three years from the date established by INS as the date the alien was admitted for permanent residence and will continue for three years even if the sponsor claims to have given up his sponsorship responsibilities. In the event of the death of the sponsor, income will no longer be deemed to the alien either from the

sponsor's estate or from the sponsor's surviving spouse. Should the alien change sponsors, the amount of income deemed must be recalculated to reflect the circumstances of the new sponsor and the income of the former sponsor will no longer be counted.

6. Responsibility for Obtaining Information/Verification from the Sponsor

The alien is responsible for the cooperation of the sponsor in providing information and verification necessary to determine the alien's eligibility and benefit level including the names (or identifying factors) of other aliens for whom the sponsor has an agreement of support. Until needed information is received and verified, the sponsored alien will be ineligible for Food Stamp benefits and other members of the alien's benefit group may participate if they are otherwise eligible. When the sponsored alien is not included in the benefit group due to the lack of information/verification about the sponsor's circumstances, income will be treated in the same way as the income of an ineligible alien.

If the needed information or verification is later made available, the alien can, therefore, be included in the benefit group, the alien's addition to the benefit group will be treated as a reported change.

7. Determining the Amount to be Deemed

The following steps will determine the amount to be deemed to the alien:

NOTE: The sponsor's spouse's income will be counted when the spouse lives with the sponsor even if the sponsor and spouse were married after the sponsor signed the agreement.

- (1) Determine the total monthly earned income of the sponsor and his spouse (if the spouse is living with the sponsor). This includes gross income (not gross profit) from self-employment. Multiply the total monthly earned by .80 to provide the 20% earned income deduction.

- (2) Add the result of step 1 to all gross unearned income of the sponsor and his spouse (if the spouse is living with the sponsor). Income exclusions normally applicable to the Food Stamp Program are to be applied to this income. See Chapter 10.
- (3) Determine the total number of persons claimed by the sponsor and the sponsor's spouse (if the spouse lives with the sponsor) as dependents for federal income tax purposes. Include in the count the sponsor, the sponsor's spouse and any other persons who could be claimed by the sponsor or the sponsor's spouse as a dependent for federal income tax purposes.
- (4) Consult Basic Needs Chart and determine the gross allowable income for a benefit group of the same size as the group in Step 3.
- (5) Subtract the result of Step 4 from the result of Step 2.
- (6) Compare the result of Step 5 to the amount actually paid to the alien by the sponsor. The higher of the two amounts is to be counted as unearned income to the alien. If the alien and spouse are not in the benefit group due to failure to provide information or verification of the sponsor's circumstances, the deemed amount of income (the result of Step 5) is not to be counted as income to the alien to be prorated. However, the amount actually contributed by the sponsor or spouse of the sponsor would be counted as the alien's income in this situation.
- (7) If the sponsor verifies that he has signed an affidavit of support or similar agreement for more than one alien, the amount in Step 5 will be divided by the number of aliens for whom he signed agreements of support and who have applied for or receive Food Stamps. The resulting amount will be compared to the amount he actually contributes to each of his sponsored aliens. When the deemed amount (Step 5 divided by the number of sponsored aliens applying for or receiving Food Stamps) exceeds the amount actually

contributed to a particular alien, the deemed amount will be used as unearned income. When the contributed amount exceeds the deemed amount, the actual contribution will be used as unearned income.

NOTE: If information about other aliens for whom the sponsor is responsible is not provided by the alien (See Section C above), the deemed income is to be deemed to the applicant alien in its entirety until the information is provided.

B. INTRODUCTION - DEEMING ASSETS OF ALIEN'S SPONSOR

Assets will be deemed to sponsored aliens only for the Food Stamp and TANF/WORKS Programs. Exception: Income from an alien sponsor is prohibited under Medicaid regulations.

1. SPECIAL VERIFICATION PROCEDURES - FOREIGN REAL PROPERTY OF PHILIPPINE ALIENS (SSI-RELATED MEDICAID)

When an alien of the Philippines makes application for SSI-Related Medicaid, it will be necessary to verify whether he owns any property in that country and/or the United States.

If either the alien or the alien's spouse was born in the Philippines, has resided in the United States for less than five years, and appears to be otherwise eligible, the following special verification procedures must be followed:

- a. Contact the Veterans' Administration Regional Office in Manila requesting a check of property records to determine whether the applicant or his spouse own any real property and an estimate of the current market value of any property that is discovered.

The address is: VARO, 1131 Roxas Boulevard (Manila), APO San Francisco, California 96528. Please indicate AIR MAIL or registered envelope.

The Worker must provide the Veteran's Administration the following names including maiden name of the applicant and/or his spouse and the address of their last residence in the Philippines.

- b. If the applicant has not indicated that he owned any real property in the Philippines and is otherwise eligible, app the application. The Worker must, however, request verification through the Veteran's Administration as per instructions in number 1 above.
 - c. Make a appropriate recording to indicate the VA was contac
 - d. If the response from the VA reveals that the client owned property for which he did not report, and if the current n value of the property exceeds the asset maximum, appropria correspondence should be sent to him advising him that his is being closed.
2. CONDITIONS REQUIRING DEEMING: FOOD STAMP PROGRAM
- a. The assets of the sponsor (and the sponsor's spouse if liv with the sponsor) will be deemed to the sponsored alien wh ALL of the following conditions are met:
 - 1. The alien must be lawfully admitted for permanent residence in the United States.
 - 2. The sponsor is an individual NOT an organization, institution or group.
 - 3. The sponsor must have executed an affidavit of suppor similar agreement on behalf of the alien as a conditi the alien's entry or admission into the United States permanent resident.
 - 4. The affidavit or similar statement referred to above have been signed by the sponsor on or after February 1983 and before December 19, 1997.
 - 5. The alien and sponsor are not members of the same Foo Stamp benefit group.

6. The sponsor is not participating in the program separately and apart from the alien.
7. The amount actually paid to the alien by the sponsor or his spouse is less than the deemed amount.

When these conditions are met, income will be counted to the benefit group containing the alien whether or not the income is actually made available. This income will be deemed to the alien for a period of three years from the date established by INS as the date the alien was admitted for permanent residence and will continue for three years even if the sponsor claims to have given up his sponsorship responsibilities. In the event of the death of the sponsor, income will no longer be deemed to the alien either from the sponsor's estate or from the sponsor's surviving spouse. Should the alien change sponsors, the amount of income deemed must be recalculated to reflect the circumstances of the new sponsor and the income of the former sponsor will no longer be counted.

The responsibilities for obtaining information from the sponsor are the same for the deeming of assets as for the deeming of income.

b. Determining Amount to be Deemed

The following steps are to be used to determine the amount of the sponsor's assets and the assets of the sponsor's spouse (living with the sponsor) which will be deemed to the alien.

1. Determine the total countable value of the assets of the sponsor and the sponsor's spouse as if they were applicants for the Food Stamp Program. Count only assets not excluded by this Chapter and determine the value of the non-excluded assets as would be done for any Food Stamp client.
2. Subtract \$1,500 from the amount arrived at in Step 1.
3. The remainder of the value of the assets is to be deemed to the benefit group containing the alien and added to other assets the benefit group has to

determine eligibility. If the alien is not in the benefit group due to failure to provide information or verification of the sponsor's circumstances, the deemed amount of the sponsor's assets will not be counted as the alien's asset to be deemed to the benefit group.

4. If the sponsor verifies that he has signed an affidavit of support or similar agreement for more than one alien, the amount in Step 3 will be divided by the number of aliens for whom he signed agreements of support and who have applied for or receive Food Stamps. The resulting amount will be deemed to each of the aliens who are Food Stamp clients.

NOTE: If information about other aliens for whom the sponsor is responsible is not provided by the alien, the deemed assets are to be deemed to the applicant alien in its entirety until the information is provided.

3. CONDITIONS REQUIRING DEEMING: TANF/WV WORKS

- a. The assets of the sponsor (and the sponsor's spouse if living with the sponsor) will be deemed to a sponsored alien if all the following conditions are met:

1. The alien must not be one of the following:
 - admitted prior to April 1, 1980 under Section 207 (7) of the Immigration and Nationality Act (INA)
 - admitted after March 31, 1980 under Section 207 of the INA, OR
 - paroled into the United States as a refugee under Section 212 (d) (5) of the INA, OR
 - granted political asylum by the Attorney General under Section 208 of the INA, OR
 - a Cuban or Haitian entrant as defined in Section 101 (e) of the Refugee Assistance Act of 1980.

2. The sponsor is an individual NOT an organization, institution or group.
3. The sponsor must have executed an affidavit of support similar agreement on behalf of the alien as a condition of the alien's entry or admission into the United States as a permanent resident.
4. The alien is not a dependent child of the sponsor or sponsor's spouse.
5. The alien did not receive AFDC/U or AFDC/U-Related Medicaid prior to October 1, 1981.

When these conditions are met, assets will be counted for the alien whether or not the asset is actually available for sale or use by the alien. The asset will be deemed available to the alien for a period of three years from the date established by INS as the date the alien was admitted to permanent residence and will continue for three years if the person gives up his sponsorship responsibilities.

The responsibilities for obtaining information and/or verification from the sponsor are the same for the deeming of assets as for the deeming of income.

b. Determining Amount to Be Deemed

The following steps will be used to determine the amount of assets to be deemed:

1. Determine the value of the sponsor's total non-excluded assets following the instructions in this Chapter for TANF/WV WORKS.
2. Subtract \$1,500 from the result of Step 1.
3. The remaining amount will be divided by the number of eligible aliens sponsored and the resulting figure will be deemed as an asset to each of the sponsored aliens. Assets of the sponsor are not deemed to members of the alien's family for whom he is not a sponsor except to the extent they are actually made available.

4. CLAIMS INVOLVING INCORRECT INFORMATION ABOUT ALIEN'S SPONSOR

The sponsor of an alien and the alien are jointly and severally for repayment of any overissuance as a result of incorrect information provided by the sponsor. However, if the sponsor had good cause or was without fault in not supplying the correct information, the alien's benefit group will be solely liable for repayment. Good cause is established when the sponsor provided information he believed to be correct at the time it was provided. The determination of good cause will be made jointly by the Work and Coordinator.

When it is determined that the sponsor did not have good cause, Economic Service Coordinator will decide which of the following is the appropriate action:

- a. Establish a claim against the sponsor when the primary responsibility for the error rests with the sponsor.
- b. Establish a claim against the alien's benefit group when the primary responsibility for the error rests with the alien.
- c. Establish a claim against the sponsor and the alien's benefit group at the same time when there is shared responsibility for the error.
- d. Establish a claim against the party most likely to repay for

However, if a claim is established against the sponsor first and the sponsor fails to respond to the repayment letter within 30 days of receipt, a claim must then be established against the alien's benefit group.

5. COLLECTING CLAIMS AGAINST SPONSORS

Collection action will be initiated against the alien's sponsor with a demand letter from the Economic Service Supervisor. The letter must specify:

- a. the amount owed;

- b. the reason for the claim;
- c. how the sponsor may repay the claim (lump sum payment or regular installments). The standard repayment agreement (FS-8) is to be used as the repayment agreement;
- d. that the sponsor will not be held responsible for repayment of the claim if he can demonstrate that he had good cause or without fault for the incorrect information.

The collection action against a sponsor may be terminated by the Economic Service Supervisor any time it can be documented that the sponsor cannot be located or when the cost of pursuing the collection is likely to exceed the amount that can be recovered.

If good cause does not exist, the sponsor does not respond to the repayment letter or responds but indicated he will not repay and does not meet the criteria for a referral to Internal Fraud Management, the referral is to be made.

NOTE: Sponsors are entitled to the same rights to a Fair Hearing as any other person when a claim is established.

6. COLLECTING CLAIMS AGAINST THE ALIEN'S BENEFIT GROUP

Before initiating collection against the alien's benefit group, it must be determined whether an Intentional Program Violation or Unintentional Program Violation claim is appropriate. This determination must be made on the basis of whether or not the alien (not the sponsor) intentionally misrepresented the sponsor's situation. Once this determination is made, collection of the overissuance will proceed as for any other case in which a similar determination has been made.