

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

### **A. INTRODUCTION - DEEMING INCOME**

Some legal alien's 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 alien's obtain lawful permanent resident status. As a result of this relationship, the federal government requires any sponsored alien's to include the sponsor's assets in any application for AFDC, SSI, and Food Stamp benefits for their first three years in the United States. The sponsor's income is therefore "deemed" available to the sponsored alien. However, the affidavit does not legally obligate sponsors to share their assets with the sponsored alien. Income of ineligible aliens is also deemed.

#### **1. Deeming Income Of Alien's Sponsor (WV WORKS)**

The income of the sponsor and the sponsor's spouse if living with the sponsor is deemed to a sponsored alien if all of the following conditions are met:

- The alien is not one of the following:
  - Admitted prior to April 1, 1980 under Section 203 (a) (7) of the Immigration and Nationality Act (INA); or
  - Admitted after March 31, 1980 under Section 207 (c) 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 501 (e) of the Refugee Assistance Act of 1980.
- The sponsor is an individual not an organization, institution or group.
- 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.
- The alien is not a dependent child of the sponsor or the sponsor's spouse.

- The alien did not receive AFDC or AFDC-related Medicaid prior to October 1, 1981.
- 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 is counted for the alien whether or not the income is actually made available. This income is 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 gives 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 available.

## 2. Responsibility For Obtaining Information Verification From The Sponsor

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

## 3. Determining The Amount To Be Deemed

The following steps is used to determine the amount to be deemed to the alien:

- Determine the gross monthly earnings of the sponsor.
- From the amount, subtract 20% of the gross monthly earnings or \$175, whichever is less.
- To this figure, add the sponsor's total monthly unearned income.
- Subtract the amount of the appropriate standard of need from 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 the AG.
- 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.

- Subtract any amounts actually paid by the sponsor for alimony or child support.
- 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:

- The income of the ineligible alien will be divided by the number of persons in the AG including the ineligible alien to determine the individual's prorated share. Any income excluded by Chapter 10 will not be counted.
- The remaining income after subtracting the prorated share will be considered as income to the remaining AG members.
- If the income is from earnings, the earned income percentage disregard will apply only to that portion which is attributed to the AG.
- That portion of the AG's shelter/utility and dependent care expense which is paid from the ineligible alien's income will be prorated.
- All but the ineligible alien's share is counted as an expense for the remaining AG 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 total \$250. Income for the AG is calculated as follows:

AG'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 x 4 (number in the AG) = \$400 AG's total prorata share of ineligible alien's income.

- The 20 percent earned income disregard is applied to the AG's prorata share  $400 \times 80 \text{ percent} = 320$ .
- $\$250$  (total expense) divided by 5 (number in household)  $\times 4$  (number in AG) =  $\$200$ .
- Countable income is determined as follows:
- Income ( $\$320$ ) minus standard deduction ( $\$112$ ) =  $\$208$ .
- 50 percent of net income is  $\$208 \times 50 \text{ percent} = \$104$ .
- $\$200$  (shelter/utility costs) -  $\$104$  (50 percent of net income) =  $\$96$  shelter/utility deductions.
- Countable income =  $\$208 - \$96 = \$112$ .

The ineligible alien will not be included in the AG 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 Food Stamp Program if the AG 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:

- The alien must be lawfully admitted for permanent residence in the United States.
- The sponsor is an individual not an organization, institution or group.
- 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.
- The affidavit or similar statement referred to above must have been signed by the sponsor on or after February 1, 1983.
- The alien and sponsor are not members of the same Food Stamp AG.

- The sponsor is not participating in the program separate and apart from the alien.
- 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 AG containing the alien whether or not the income is actually made available. This income will be deemed to the alien for a period of 3 years from the date established by INS as the date the alien was admitted for permanent residence and will continue for 3 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 other identifying factors of other aliens for whom the sponsor has signed an agreement of support. Until needed information is received and verified, the sponsored alien will be ineligible for Food Stamp benefits, but other members of the alien's AG may participate if otherwise eligible. When the sponsored alien is not included in the AG 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 and the alien can, therefore, be included in the AG, the addition to the AG 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 spouses 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.

- 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.
- 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.
- 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 this count the sponsor, the sponsor's spouse and any other person who could be claimed by the sponsor or the sponsor's spouse as a dependent for federal income tax purposes.
- Consult Basic Needs Chart and determine the gross allowable income for an AG of the same size as the group in Step 3.
- Subtract the result of Step 4 from the result of Step 2.
- Compare the result of Step 5 to the amount actually paid to the alien by the sponsor. The higher of the 2 amounts is to be counted as unearned income to the alien. If the alien and his spouse are not in the AG 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.
- 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, 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 WV 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 5 years, and appears to be otherwise eligible, the following special verification procedures must be followed:

- 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 on the envelope.

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

- If the applicant has not indicated that he owned any real property in the Philippines and is otherwise eligible, approve the application. The Worker must, however, request verification through the Veteran's Administration as per instructions in number 1 above.
- Make an appropriate recording to indicate the VA was contacted.

- If the response from the VA reveals that the client owned real property for which he did not report, and if the current market value of the property exceeds the asset maximum, appropriate correspondence should be sent to him advising him that his case is being closed.

2. Conditions Requiring Deeming: Food Stamp Program

a. Sponsor Assets Deeming

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

- The alien must be lawfully admitted for permanent residence in the United States.
- The sponsor is an individual NOT an organization, institution or group.
- 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.
- The affidavit or similar statement referred to above must have been signed by the sponsor on or after February 1, 1983 and before December 19, 1997.
- The alien and sponsor are not members of the same Food Stamp AG.
- The sponsor is not participating in the program separate and apart from the alien.
- 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 AG containing the alien whether or not the income is actually made available. This income will be deemed to the alien for a period of 3 years from the date established by INS as the date the alien was admitted for permanent residence and will continue for 3 years even if the sponsor claims to have given up his sponsorship responsibilities. In the event of the death of the sponsor,



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Aliens, Refugees and Citizenship

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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 if living with the sponsor which will be deemed to the alien:

- 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 Section 18.8 and determine the value of the non-excluded assets as would be done for any Food Stamp client.
- Subtract \$1,500 from the amount arrived at in Step 1.
- The remainder of the value of the assets is to be deemed to the AG containing the alien and added to any other assets the AG has to determine eligibility. If the alien is not in the AG 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 AG.
- 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 (WV WORKS)

#### a. WV WORKS Deems Assets

The assets 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:

- The alien must not be one of the following:
  - Admitted prior to April 1, 1980 under Section 203 (a) (7) of the Immigration and Nationality Act (INA), OR
  - Admitted after March 31, 1980 under Section 207 (c) 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 501 (e) of the Refugee Assistance Act of 1980.
- The sponsor is an individual not an organization, institution or group.
- 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.
- The alien is not a dependent child of the sponsor or the sponsor's spouse.
- The alien did not receive AFDC or AFDC-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 to the alien for a period of 3 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 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 in assets to be deemed:

- Determine the value of the sponsor's total non-excluded assets following the instructions in Section 18.8 for WV WORKS.
- Subtract \$1,500 from the result of Step 1.
- 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 severely liable 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 AG 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 Worker and Coordinator.

When it is determined that the sponsor did not have good cause, the Supervisor in conjunction with the Worker will decide which of the following is the appropriate action:

- Establish a claim against the sponsor when the primary responsibility for the error rests with the sponsor.
- Establish a claim against the alien's AG when the primary responsibility for the error rests with the alien.
- Establish a claim against the sponsor and the alien's AG at the same time when there is shared responsibility for the error.

- Establish a claim against the party most likely to repay first.

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 AG.

#### 5. Collecting Claims Against Sponsors

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

- The amount owed;
- The reason for the claim;
- How the sponsor may repay the claim, lump sum payment, or regular installments. The standard repayment agreement, ES-FS-8, is to be used as the repayment agreement;
- That the sponsor will not be held responsible for repayment of the claim if he can demonstrate that he had good cause or was without fault for the incorrect information.

The collection action against a sponsor may be terminated by the 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 meets the criteria for a referral to **Investigations and** Fraud Management (IFM), the referral is 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 AG

Before initiating collection against the alien's AG, 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 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.