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# Temporary Assistance for Needy Families Program Instruction

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U.S. Department of Health and Human Services  
Administration for Children and Families  
Office of Family Assistance  
Washington, DC 20201

No. TANF-ACF-PI-2019-01

Date: September 13, 2019

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**TO:** State agencies administering the Temporary Assistance for Needy Families (TANF) program under title IV-A of the Social Security Act, and other interested parties.

**SUBJECT:** The reimbursement obligations of sponsors of noncitizens and procedures for recovering TANF funds.

**REFERENCES:** The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), as amended, Title IV, sections 403, 421, 422, 423, and 431 (8 USC 1613, 1631, 1632, 1183a and 1641, respectively); 8 CFR 213a - Affidavits of Support on Behalf of Immigrants; the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA); title IV-A, section 408(f)(1) of the Social Security Act (SSA) (42 USC 608(f))

**PURPOSE:** To provide clarification on the reimbursement obligations of sponsors and recovery of costs from sponsors.

## **BACKGROUND:**

On May 23, 2019, the White House released a Presidential Memorandum titled *Memorandum on Enforcing the Legal Responsibilities of Sponsors of Aliens* (referred to hereinafter as Presidential Memo). It directs certain agencies administering means-tested public benefit programs to update, as appropriate, specified procedures and guidance on sponsor reimbursement of means-tested public benefits, as well as the deeming of a sponsor's financial resources in determining both the sponsored immigrant's eligibility for, and the amount of, means-tested public benefits.

On April 17, 2003, we issued Program Instruction (PI) ACF-PI-2003-03 (Deeming of Sponsor's Income and Resources to a Non-Citizen), referred to hereinafter as the 2003 guidance, which summarized the deeming requirements of Title IV, section 421 of PRWORA, as amended by IIRIRA, and the implementing regulations at 8 CFR 213a.<sup>1</sup> Section 403(a) of PRWORA provides that most qualified aliens<sup>2</sup> are barred from receiving any federal means-tested public benefit for the first five years after entering the United States.<sup>3</sup> The Administration for Children and Families (ACF) issued the 2003 guidance in response to the expiration of the five-year bar for the first group of qualified aliens under PRWORA whose sponsors executed an Affidavit of Support under section

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<sup>1</sup> This regulation was originally promulgated by the Department of Justice (DOJ) but is now under the auspices of the Department of Homeland Security (DHS).

<sup>2</sup> 8 USC 1641(b).

<sup>3</sup> Please see Responses 6 and 7 in ACF PI-2003-03 for guidance on the types of TANF-funded expenditures that are considered federal means-tested public benefits.

213A of the Immigration and Nationality Act (INA or the Act) (Form I-864), referred to hereinafter as “Form I-864 Affidavit.”<sup>4</sup> The 2003 guidance largely focused on the deeming provision and its applicability to TANF programs. In accordance with the Presidential Memo, this PI recaps some of the 2003 guidance and provides guidance on the reimbursement obligations of sponsors and recovery of costs from sponsors.

### **Summary of Federal Law**

The sponsor deeming requirement in section 421 of PRWORA, codified in 8 USC 1631, is used in determining the eligibility for, and the amount of federal means-tested public benefits that a sponsored immigrant may receive.<sup>5</sup>

It generally applies only to Lawful Permanent Residents (LPRs) whose sponsors executed the Form I-864 Affidavit, which is required for certain LPRs who applied for an immigrant visa or for adjustment of status on or after December 19, 1997. If the LPR has a sponsor who executed the I-864 Affidavit that remains in force and the LPR applies for a federal means-tested public benefit, then the state, with noted exceptions listed in this PI, must consider, or “deem,” the income and resources of the sponsor to be available to the sponsored LPR when determining eligibility for, and the amount of, the benefit. Immigrants whose sponsors executed a Form I-864 Affidavit on or after December 19, 1997, and who apply for TANF benefits, are subject to deeming upon the expiration of the five-year bar (veterans, active duty members of the U.S. Armed Forces, or their families whose sponsors signed a Form I-864 Affidavit, and who became LPRs, are among the noncitizens who are excepted from the five-year bar on the receipt of a federal means-tested public benefit, but are not excepted from the deeming rules). The sponsor deeming provisions continue to apply until the sponsored immigrant becomes a naturalized U.S. citizen, has earned, or can be credited with, 40 qualifying quarters of coverage as defined in the SSA, ceases to hold the status of an alien lawfully admitted for permanent residence and departs the United States permanently, the sponsor or the sponsored immigrant dies, or if the alien obtains a new grant of adjustment of status as relief from removal in removal proceedings, with certain caveats.<sup>6</sup>

According to 8 CFR 213a.2(d), the Form I-864 Affidavit “creates a contract between the sponsor and the U.S. Government for the benefit of the sponsored immigrant, and of any federal, state, or local governmental agency or private entity that administers any means-tested public benefits program.” In signing the Form I-864 Affidavit, the sponsor agrees to assume liability for the unreimbursed cost of a means-tested public benefit provided to the sponsored immigrant, and accepts the obligation to reimburse, upon request, appropriate government agencies and nongovernmental entities that provide federal or state means-tested public benefits to the sponsored LPR. There can be more than one sponsor who executed a Form I-864 Affidavit for an LPR (i.e., joint sponsors who accept joint and several liability with the sponsor). Spouses or other eligible adult members of the household of the individual providing the I-864 Affidavit, who execute a

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<sup>4</sup> Some sponsors are eligible to file Affidavit of Support Under Section 213A of the INA (Form I-864EZ), which also creates the legally enforceable obligation under INA 213A, 8 USC 1183a.

<sup>5</sup> Upon receipt of a sponsored immigrant’s benefit application, the agency may wish to provide written clarification to the sponsored immigrant reminding him or her that the sponsor’s income will be included in the eligibility determination.

<sup>6</sup> Pursuant to 8 CFR 213a.2(e)(2)(ii), the death of one person who had a support obligation under an I-864 Affidavit or an Affidavit of Support Attachment does not terminate the support obligation of any other sponsor, substitute sponsor, joint sponsor, or household member with respect to the same sponsored immigrant.

Contract Between Sponsor and Household Member (Form I-864A) (“Form I-864A Contract”), agree to be responsible along with the sponsor for the support of the sponsored immigrant.<sup>7</sup>

#### **GUIDANCE:**

#### **Procedures for Reimbursement of TANF Funds, and Procedures for Notification to the Sponsor of Amounts Owed, Payment Plans, Failure to Respond, Failure to Reimburse TANF Funds, and Appeal**

Section 213A of the INA, 8 USC 1183a, authorizes states to recover the costs of federal means-tested public benefits provided to sponsored immigrants from sponsors<sup>8</sup> who have signed a Form I-864 Affidavit during the time period that the Form I-864 Affidavit is in effect.

In pursuing reimbursement of benefits from a sponsor, states must follow the process set out in DHS regulations at 8 CFR 213a.2 (“use of affidavit of support”) and 8 CFR 213a.4 (“actions for reimbursement”). In cases where there is no response or no reimbursement from a sponsor, the TANF agency may enforce the sponsorship obligations by suing the sponsor to recover unreimbursed means-tested TANF benefits, thus enforcing the contract. Section 213A of the INA, 8 USC 1183a, also authorizes the use of collection agencies for purposes of collecting any amounts owed.

Specifically, 8 CFR 213a.4 lists the following procedural requirements for recovery of payments, also addressing notification to the sponsor of amounts owed in reimbursement and payment plans:

- (i) If an agency that provides a means-tested public benefit to a sponsored immigrant wants to seek reimbursement from a sponsor, household member, or joint sponsor, the program official must arrange for service of a written request for reimbursement upon the sponsor, household member, or joint sponsor, by personal service, as defined by 8 CFR 103.8(a)(2), except that the person making personal service need not be a Federal Government officer or employee.
- (ii) The request for reimbursement must specify the date the sponsor, household member, or joint sponsor’s support obligation commenced (this is the date the sponsored immigrant became a permanent resident), the sponsored immigrant’s name, alien registration number, address, and date of birth, as well as the types of means-tested public benefit(s) that the sponsored immigrant received, the dates the sponsored immigrant received the means-tested public benefit(s), and the total amount of the means-tested public benefit(s) received.
- (iii) It is not necessary to make a separate request for each type of means-tested public benefit, nor for each separate payment. The agency may instead aggregate in a single request all benefit payments the agency has made as of the date of the request. A state or local

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<sup>7</sup> The Form I-864A Contract is a document in which a household member agrees to support the immigrant, and to be jointly and severally liable for repayment of any sponsor obligations to any agency that provides means-tested public benefits. It is typically used when the income and resources of the individual executing the Form I-864 Affidavit alone are insufficient to meet affidavit of support requirements under section 213A of the INA, 8 USC 1183a. The resources of a spouse who has not executed an I-864 Affidavit or Form I-864A Contract should not be deemed and are not subject to a reimbursement obligation.

<sup>8</sup> Including household members who have executed a Form I-864A Contract.

government may make a single reimbursement request on behalf of all of the state or local government agencies that have provided means-tested public benefits.

- (iv) So that the sponsor, household member, or joint sponsor may verify the accuracy of the request, the request for reimbursement must include an itemized statement supporting the claim for reimbursement. The request for reimbursement must also include a notification to the sponsor, household member, or joint sponsor that the sponsor, household member, or joint sponsor must, within 45 days of the date of service, respond to the request for reimbursement either by paying the reimbursement or by arranging to commence payments pursuant to a payment schedule that is agreeable to the program official.
- (v) Prior to filing a lawsuit against a sponsor, household member, or joint sponsor to enforce the sponsor, household member, or joint sponsor's support obligation under section 213A(b)(2) of the Act, a Federal, state, or local governmental agency or a private entity must wait 45 days from the date it serves a written request for reimbursement in accordance with this section.

Courts with jurisdiction<sup>9</sup> handle agency lawsuits seeking reimbursement from a sponsor as well as any appeals that a sponsor makes.

#### **Procedures for Notifying the Secretary of Homeland Security of Sponsor's Nonpayment**

To notify U.S. Citizenship and Immigration Services (USCIS) of a sponsor's nonpayment, states should follow the instructions under 8 CFR 213a.4(c), which specify that:

- (1) For purposes of section 213A(i)(3) of the Act, USCIS will consider a sponsor or joint sponsor to be in compliance with the financial obligations of section 213A of the Act unless a party that has obtained a final judgment enforcing the sponsor or joint sponsor's obligations under section 213A(a)(1)(A) or 213A(b) of the Act has provided a copy of the final judgment to the USCIS by mailing a certified copy to the address listed in 8 CFR 213a.4 (c)(3). The copy should be accompanied by a cover letter that includes the reference "Civil Judgments for Congressional Reports under section 213A(i)(3) of the Act." Failure to file a certified copy of the final civil judgment in accordance with this section has no effect on the plaintiff's ability to collect on the judgment pursuant to law.
- (2) If a federal, state, or local agency or private entity that administers any means-tested public benefit makes a determination under section 421(e) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 in the case of any sponsored immigrant, the program official shall send written notice of the determination, including the name of the sponsored immigrant and of the sponsor, to the address listed in 8 CFR 213a.4 (c)(3). The written notice should include the reference "Determinations under 421(e) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996."

Please mail certified copies as referenced in section (1) to: Office of Policy and Strategy, USCIS, 20 Massachusetts Avenue, NW, Washington, DC, 20529.

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<sup>9</sup> Pursuant to section 213A(a)(1)(C) of the INA, 8 USC 1183a(a)(1)(C), a sponsor agrees to submit to the jurisdiction of any federal or state court for the purpose of an action for reimbursement.

## **Procedures for Using the Systematic Alien Verification for Entitlements Program (SAVE)**

States administering TANF programs verify immigration status of noncitizens applying for benefits through SAVE. We encourage state TANF staff to familiarize themselves with all of SAVE's applicable functions and capabilities. For example, in addition to being able to verify basic non-citizen information for an applicant, such as the individual's name and admission code (which a non-citizen receives from DHS upon entry, and which may be updated according to the changing status of the individual), staff can also obtain information in SAVE as to whether or not an LPR has a sponsor, joint sponsor, and/or substitute sponsor, as well as the sponsor's name, address, and Social Security number (SSN). For informational materials related to SAVE, please consult any internal resources that your agency has and visit <https://www.uscis.gov/save>. If your agency uses the SAVE web browser access method, you may also have access to guides and other items posted in the resources page in the SAVE system. If you need information beyond what these avenues provide, please contact SAVE at [SAVE.help@uscis.dhs.gov](mailto:SAVE.help@uscis.dhs.gov) or (877) 469-2563 from 7:00 am to 5:00 pm Central Time, Monday through Friday.

## **Procedures for How the Income and Resources of the Sponsor and the Sponsor's Spouse will be Deemed Attributable to the Alien in Determining Eligibility for the Means-Tested Public Benefit and the Amount of Benefits that May be Awarded**

For a detailed explanation of how the income and resources of the sponsor and the sponsor's spouse can be deemed attributable to the non-citizen in determining eligibility for TANF and the amount of benefits that may be awarded, please refer to the 2003 guidance.

A state should use its own methods and procedures to verify the income and resources of any sponsor that must be deemed to the sponsored LPR. For example, in implementing the deeming requirement under section 421 of PRWORA, a state could opt to use the income and resource disregards enumerated in section 408(f)(1) of the SSA.

The sponsor's income and resources can be deemed only to immigrants he or she sponsors; however, the state defines which individuals comprise the TANF family/assistance unit. When the sponsored immigrant(s) is a member of the TANF family unit, the state should use the sponsor's deemed income and resources in accordance with the state's policy for determining the family's eligibility for, and payment amount of, the federally-funded TANF means-tested public benefit.

States can verify whether a sponsored immigrant is subject to the sponsor deeming and repayment provisions in section 421 by using SAVE, either through the Federal Data Services Hub Verify Lawful Presence v37 service or through a direct connection with the web-based Graphic User Interface (GUI).<sup>10</sup> At all three steps of the SAVE program, SAVE can verify that an individual is an LPR who has a sponsor, joint sponsor, and/or substitute sponsor who signed the Form I-864 Affidavit and provide each sponsor's name, address, and SSN. States using the Federal Data Services Hub must have their systems configured to accept the data elements returned from SAVE.

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<sup>10</sup> For additional detail on what sponsor information is available through SAVE, see *Verify Lawful Presence (VLP) v37 Business Services Definition (BSD)*, Table 34, Hub to Requestor—Sponsorship Data Array Data Elements (03/19), and DHS's *Interface Control Agreement Between VIS Agency Web Service Method and Agencies, Version 37 (Exhibits 30 and 72) (03/19)*. Requesting agencies that need either document should contact SAVE at (877) 469-2563 from 7:00 am to 5:00 pm Central Time, Monday through Friday or at [SAVE.help@uscis.dhs.gov](mailto:SAVE.help@uscis.dhs.gov) – please include the name of your agency.

States may provide a federal means-tested TANF benefit to an otherwise eligible sponsored immigrant pending verification of his or her sponsorship.

**Procedures for Determining Whether any Exceptions to the Deeming or Reimbursement Requirements Apply to the Alien**

By law, sponsor deeming does not apply to the following individuals:

- a. LPRs who applied for an immigrant visa at a consular office or adjustment of status to LPR before December 19, 1997;
- b. LPRs who adjusted their status to LPR from refugee or asylee status;
- c. Qualified aliens who are not LPRs (e.g., refugees, asylees, parolees, and Cuban and Haitian entrants);
- d. Victims of severe forms of trafficking who are not required to have a sponsor and are required to be treated like refugees for purposes of eligibility for federally-funded or federally-administered public benefit programs;
- e. LPRs entering in most employment or other nonfamily classifications, such as the diversity classification, where a sponsor did not have to sign an I-864 Affidavit;
- f. LPRs who are exempt from the deeming requirement because they are victims of battery or extreme cruelty as well as certain family members, and indigent immigrants;
- g. Noncitizens who earned, or can be credited with, 40 qualifying quarters of coverage as defined under title II of the SSA;
- h. Noncitizens, including U.S. nationals, who do not have sponsors; and,
- i. Noncitizens whose sponsors signed an Affidavit of Support other than the I-864 Affidavit.

Exceptions pertaining to immigrants or certain family members who are victims of battery or extreme cruelty and indigent immigrants are codified at 8 USC 1631(e) and (f). In both situations, the agency would not apply the deeming requirement for a 12-month period beginning on the date the determination of battery/cruelty or indigence is made. (The exemptions can be extended beyond 12 months. For battery or extreme cruelty, an additional 12-month exemption requires a court order or recognition by an Administrative Law Judge, or a prior determination of DHS or DOJ, and that the victim does not live with the batterer). It is up to the state agency to make the determination of which LPRs are exempt from the deeming requirement when they fall under these two categories.

*Victims of Battery Violence or Extreme Cruelty:*

An immigrant who is a victim of battery or extreme cruelty must demonstrate that he or she has been battered or subject to extreme cruelty in the United States by a spouse or a parent, or by a member of the spouse or parent's family residing in the same household as the alien and the spouse or parent consented or acquiesced to such cruelty, and that the immigrant did not actively participate in the battery or cruelty. The exemption also applies to certain immigrant parents of a battered child or a child who has been subject to extreme cruelty, and to certain immigrant children of a battered parent or a parent who has been subject to extreme cruelty. More information about this exception and how to apply for it is available in [Interim Guidance on Verification of Citizenship, Qualified Alien Status, and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996](#), 62 Federal Register 61344 (November 17, 1997). Part II of Exhibit B to Attachment 5 of the Interim Guidance discusses the exemptions from sponsor deeming for victims of battery or extreme cruelty.

Sometimes victims of battery or extreme cruelty may not be able to provide information on their sponsors without endangering themselves or their children. For example, the sponsor may also be the abuser. Therefore, the TANF agency may accept any credible evidence of abuse that is proffered by the applicant. This includes, but is not limited to, 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 agency personnel, protection orders, evidence that the applicant sought help from a battered women's shelter, photographs of injuries, affidavits from family members or others who have personal knowledge of the battery or extreme cruelty, and the applicant's own credible affidavit.

NOTE: This exemption for LPRs who have sponsors and have been subjected to battery or extreme cruelty should not be confused with the provision at 8 USC 1641(c), which states that certain battered aliens are qualified aliens. Pursuant to 8 USC 1641(b)(1), LPRs are qualified aliens regardless of whether or not they are also qualified aliens under section 1641(c). Determining that an applicant is a qualified alien does not in itself exempt the applicant's sponsor from deeming, if the applicant is an LPR. However, LPRs who have been determined to be covered by section 1641(c) would not be subject to deeming because either: (1) as VAWA self-petitioners, they were not subject to an affidavit of support requirement in the first place; or (2) if they did have sponsors, they are covered by the section 1631(f) exception to deeming. If the TANF agency has already determined that an applicant meets the criteria under 8 USC 1641(c), then he or she may be excluded from the deeming requirements in section 421 for an initial 12-month period without further inquiry<sup>11</sup>. Conversely, though, an alien in some cases could be eligible for the battery or extreme cruelty exception to deeming without having previously been determined to be a qualified alien under section 1641(c).<sup>12</sup>

### *Indigent Immigrants:*

An indigent immigrant is an LPR whose sponsor executed an I-864 Affidavit, but the sponsored immigrant "would, in the absence of the assistance provided by the agency, be unable to obtain food and shelter, taking into account the alien's own income plus any cash, food, housing, or other assistance provided by other individuals, including the sponsor." If such a determination is made, then for a 12-month period beginning on the date of the determination, only the income and resources that the sponsor and his or her spouse (if applicable) actually provide, if any, to the immigrant should be attributed to the sponsored immigrant.

States use their own standards and methods in determining whether the sponsored alien is indigent. For example, states may want to consider the approach taken by Supplemental Nutrition Assistance Program (SNAP) regulations at 7 CFR 273.4(c)(3)(iv), which define the phrase "is unable to obtain food and shelter" to mean that the immigrant's household income, plus any cash or in-kind assistance actually provided by the sponsor and others, does not exceed 130 percent of the federal poverty level for the size of the immigrant's household. Subsection (iv) also states that, "each indigence determination is renewable for additional 12-month periods." The TANF agency may elect to adopt part or all of the policy used by the SNAP program or establish its own policy for

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<sup>11</sup> After 12 months, the battered alien exception to deeming excludes only the income and resources of the batterer, if the batterer is a sponsor, pursuant to 8 USC 1631(f)(1)(B). Other sponsors should be deemed.

<sup>12</sup> For example, a first-time application by an LPR with an I-864 Affidavit sponsor, who was subjected to the qualifying battery or extreme cruelty after obtaining LPR status.

determining whether the sponsored alien, in the absence of the assistance provided by the agency, would be “unable to obtain food and shelter.”

If the TANF agency determines that the sponsored LPR is indigent, then only the amount actually provided, if any, by the sponsor to the LPR should be considered for the 12-month period beginning on the date such determination is made. Further, if a state TANF agency chooses to renew its determination for additional 12-month periods, we would consider that such policy represents a reasonable interpretation of section 421(e) of PRWORA, as amended. In accordance with section 421(e)(2) of PRWORA and 8 CFR 213a.4(c)(2)-(3), the agency must notify USCIS of each such determination, and provide the names of the sponsor and the sponsored LPR(s) involved. This report is sent to the Office of Policy and Strategy, USCIS, 20 Massachusetts Avenue, NW, Washington, DC 20529.

#### **INQUIRIES:**

Please direct inquiries to USCIS ([public.engagement@uscis.dhs.gov](mailto:public.engagement@uscis.dhs.gov) or the USCIS contact center at (800) 375-5283), or the TANF Program Manager in your region.

#### **RESOURCES:**

*ACF-PI-2003-03 (Deeming of Sponsor’s Income and Resources to a Non-Citizen)*, April 2003, available at: <https://www.acf.hhs.gov/ofa/resource/policy/pi-ofa/2003/pi2003-2htm-0>.

<https://www.uscis.gov/save>

SAVE contact information: [SAVE.help@uscis.dhs.gov](mailto:SAVE.help@uscis.dhs.gov) or (877) 469-2563 from 7:00 am to 5:00 pm Central Time, Monday through Friday.

/s/

Clarence H. Carter  
Director  
Office of Family Assistance