

# **AFFIDAVIT OF SUPPORT**

## **Questions and Answers**

### **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.

#### 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

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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 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.

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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 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?

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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.

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. Where can I find the current poverty level?

The poverty level can be found at the following website:

<http://aspe.os.dhhs.gov/poverty/poverty.htm>.

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

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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.

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

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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.

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?

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

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.

## **PROCESS**

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

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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.

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?

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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 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

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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 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?

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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.

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.

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## **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 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.

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