
SHO # 19-004

**Re: Sponsor Deeming and Repayment for
Certain Immigrants**

August 23, 2019

Dear State Health Official:

The purpose of this letter is to provide guidance, following issuance of the May 23, 2019 Presidential Memorandum, “Memorandum on Enforcing the Legal Responsibilities of Sponsors of Aliens,”¹ on requirements related to determining eligibility for certain sponsored immigrants who seek coverage under Medicaid and the Children’s Health Insurance Program (CHIP). The Presidential Memorandum directs the Secretary of Health and Human Services to take steps necessary to ensure compliance with requirements under the Immigration and Nationality Act (INA) and other applicable federal law, including that the income and resources of sponsors of certain immigrants must be deemed (i.e., counted) to the sponsored immigrants in determining eligibility for federal means-tested public benefits, including Medicaid and CHIP. Under the INA, sponsors of these immigrants also are responsible for reimbursing the state benefit-granting agency for the cost of most means-tested public benefits provided to the sponsored immigrant upon the state agency’s request for reimbursement.

The issues addressed in this letter include:

- Application of the sponsor deeming requirements;
- Methodologies for deeming a sponsor’s income and resources;
- Reimbursement obligations of, and recovery of costs from, a sponsor;
- Data collection and reporting on sponsor recovery; and
- Other operational considerations.

Generally, the sponsor deeming requirements and this guidance apply equally to Medicaid and CHIP. Where there are differences, those differences will be specified.

Background

Title 8 U.S.C. § 1182(a)(4)(C) and (D) require some immigrants who seek Lawful Permanent Resident (LPR) status to provide an Affidavit of Support Under Section 213A of the INA (Form I-864), referred to hereinafter as “Form I-864 Affidavit of Support,” executed by a qualified sponsor or sponsors. As discussed in detail below, section 213A of the INA, 8 U.S.C. §1183a, provides details on the applicability and enforcement of the Form I-864 Affidavit of Support. A sponsor must demonstrate that he or she can provide support to maintain the intending immigrant at an income of no less than 125 percent of the Federal Poverty Guidelines calculated based on the sponsor’s household size during the period in which the Form I-864 Affidavit of Support is enforceable.² Sponsors must sign the legally enforceable Form I-864 Affidavit of Support, under which the sponsor agrees to assume financial support for the sponsored immigrant as well as

liability for the cost of any means-tested public benefits provided to the sponsored immigrant. Sponsors can also include spouses or other eligible adult members of the household of the individual providing the Form I-864 Affidavit of Support, if they execute a Contract Between Sponsor and Household Member (Form I-864A) (“Form I-864A Contract”).³ In family-based cases, if the sponsor dies after approval of the immigrant petition, a substitute sponsor may sign a Form I-864 Affidavit of Support if the substitute sponsor meets all of the requirements that applied to the original sponsor.

In determining a sponsored immigrant’s eligibility for, and the amount of, any federal means-tested public benefits, the income and resources of the sponsor and the sponsor’s spouse (if the sponsor’s spouse also signed a Form I-864 Affidavit of Support or a Form I-864A Contract) must be counted “notwithstanding any other provision of law,” in accordance with 8 U.S.C. § 1631(a). Medicaid, other than services necessary to treat an emergency medical condition, and CHIP both are considered federal means-tested public benefit programs.^{4,5} We refer to the counting of a sponsor’s income and resources in determining an immigrant’s eligibility as “deeming” – i.e., a sponsor’s income and resources are said to be deemed to the sponsored immigrant.

Applicability of Sponsor Deeming Rules

Sponsor deeming requirements as set forth in 8 U.S.C. § 1631(a) apply only to LPRs who have a sponsor who has executed a Form I-864 Affidavit of Support.⁶ With the exceptions noted below, this generally includes LPRs who applied for LPR status on or after December 19, 1997, and are:

- Family-sponsored LPRs, including immediate relatives of U.S. citizens and other family-sponsored immigrants; or
- Employment-based LPRs, if a relative either (1) filed the employment-based immigrant petition, or (2) has an ownership interest of 5 percent or more in the petitioning entity.⁷

The sponsor deeming rules cease to apply to a sponsored immigrant if:

- The sponsored immigrant becomes a naturalized citizen;
- The sponsored immigrant achieves 40 qualifying work quarters, as defined by the Social Security Act (the Act); or
- The sponsor or the sponsored immigrant dies.⁸

The following immigrants, even if they have sponsors who signed a Form I-864 Affidavit of Support, are not subject to the sponsor deeming requirements described at 8 U.S.C. § 1631:

- Sponsored immigrants for whom the state is determining eligibility for Medicaid coverage of services necessary for treatment of an emergency medical condition, in accordance with section 1903(v)(3) of the Act.
- Children under 21 years of age or pregnant women (including women covered in the 60-day post-partum period) who are lawfully residing in the U.S. and covered by Medicaid and/or CHIP, if the state has elected the option in accordance with sections 1903(v)(4)(A) and 2107(e)(1)(N) of the Act (often referred to as the “CHIPRA 214 option,” after the section of the Children’s Health Insurance Program Reauthorization Act of 2009, which added this option to titles XIX and XXI of the Act).

- Sponsored immigrants who have worked 40 qualifying quarters, as defined under title II of the Act, or can be credited with 40 qualifying quarters in accordance with 8 U.S.C. §§ 1631(b)(2) and 1645. Some immigrants may have already been credited with 40 qualifying quarters at the time they receive LPR status;⁹ others may accumulate 40 qualifying quarters after becoming an LPR.

Exemptions: The state agency has the responsibility to make determinations for two exemptions to the sponsor deeming requirements, in accordance with 8 U.S.C. §§ 1631(e) and 1631(f). The exemptions are for sponsored immigrants who are:

- Victims who have been battered or subjected to extreme cruelty. There are three categories of immigrants who can be covered under this exemption:
 - Immigrants who are victims of battery or extreme cruelty;
 - Immigrant parents of a battered child or a child who has been subject to extreme cruelty; or
 - Immigrant children of a battered parent or a parent who has been subject to extreme cruelty.

The detail on the standard to be used to determine if an individual meets this exemption is in Appendix A.

None of the sponsor's income or resources are counted in determining the sponsored immigrant's eligibility if this exemption applies; however, the sponsor may still be responsible for repayment for the cost of the benefits received by the sponsored immigrant in accordance with 8 U.S.C. § 1183a. Additional detail on repayment requirements of sponsors is provided below. The initial exemption is in effect for 12 months from the date the state makes the determination of abuse or cruelty. The exemption can be extended, with respect to deeming the batterer's income and resources only, if the battery or extreme cruelty is recognized by the Department of Justice, an Administrative Law Judge, or the U.S. Department of Homeland Security (DHS).

- Determined by the state to be “indigent.”

An indigent immigrant is defined as one who “would, in the absence of the assistance provided by the agency, be unable to obtain food and shelter, taking into account the alien's income, plus cash, food, housing, or other assistance provided by other individuals, including the sponsor.” *See* 8 U.S.C. § 1631(e).

Within these statutory parameters, states have discretion to adopt reasonable standards for making this determination. For example, some means-tested public benefit programs have established policies that a sponsored immigrant is considered “indigent” if the sum of the immigrant's own income and income provided by the sponsors and others to the immigrant's household is less than the program's standard. *See* Appendix B for examples of policies that the Centers for Medicare & Medicaid Services (CMS) believes are reasonable, including the indigence standards adopted by the Supplemental Nutrition Assistance Program (SNAP) and the Supplemental Security Income (SSI) programs.

If the state Medicaid agency determines that a sponsored immigrant is indigent, only the amount actually provided by the sponsor to the immigrant is counted for the 12-month period, beginning on the date the determination is made. States may extend this exemption for additional 12-month periods, but must make a new determination that the state's indigence standard is met for each such additional period.

If the agency makes a finding that the individual is indigent, the agency must provide written notice to DHS/U.S. Citizenship and Immigration Services (DHS/USCIS) of this determination, including the name of the sponsor and the sponsored immigrant. *See* 8 U.S.C. § 1631(e)(2); 8 CFR § 213a.4(c)(2). More detailed specifications about this notice (including where to send it) is provided at 8 CFR § 213a.4(c)(2) and (c)(3).

State agencies must notify the sponsored immigrant that a finding of indigence will be reported to DHS/USCIS so that sponsored applicants or beneficiaries can decide whether to request consideration for the indigence exemption or not. Although not required, states are also encouraged to have the sponsored immigrants acknowledge (either through a check box on a form or in some other way) that they understand a finding of indigence will result in the agency notifying DHS of the sponsored immigrant's name, sponsor's name, and finding of indigence.

Methodologies for Determining Sponsor Deeming

Section 8 U.S.C. § 1631 does not specify what methodology states should use in determining sponsors' income and resources for purposes of the sponsor deeming requirements, and states have flexibility to determine a reasonable methodology for doing so. Below we describe several approaches CMS believes are reasonable. States may choose from the methodologies described or present an alternative methodology for CMS approval. A number of the options described are not mutually exclusive, and states may elect to combine two or more options. Note that any reference in the discussion below to a sponsor's income or resources also includes the income or resources of any household member of the sponsor who signed a Form I-864A Contract.¹⁰

Additionally, resources are only relevant under this guidance where a sponsored immigrant's financial eligibility is subject to a resource test. CMS does not interpret the reference in 8 U.S.C. § 1631 to "resources" to impose a resource standard for sponsored immigrants whose Medicaid eligibility is not otherwise subject to a resource test.

Approaches to sponsor deeming

- *Immigrants sponsored by a spouse or parent*
Many immigrants are sponsored by a parent or spouse such that the sponsor's income and/or resources would be counted in determining the sponsored immigrant's eligibility independent of the sponsor deeming provision. In such circumstances, we believe states may comply with the sponsor deeming requirements by determining eligibility for the sponsored immigrant by following the methodologies described in the Medicaid and CHIP statutes and regulations, and the applicable state plan.

For example, if John is a sponsored immigrant and lives with Jane, who is both his wife and sponsor, and John applies for Medicaid, the state Medicaid agency could determine John's eligibility in accordance with the applicable methodology described in 42 CFR §§ 435.601-603, including the Modified Adjusted Gross Income (MAGI)-based and supplemental security income (SSI)-based, depending on the eligibility group for which John's eligibility is being determined. If John's eligibility determination is a MAGI-based one, Jane would be included in John's household pursuant to 42 CFR § 435.603(f)(4), and her income (as defined under 42 CFR § 435.603(e)) would be included in John's household income. Assuming no other children or tax dependents, per section 1902(e)(14)(I) of the Act and 42 CFR § 435.603(d)(4), an amount equivalent to 5 percentage points of the federal poverty level for a family of two would be deducted from John's household income, and the remainder compared against the applicable income standard for a household of two.¹¹ Similarly, if John's eligibility is being determined using an SSI-based methodology, Jane's income and resources would be counted applying the applicable SSI methodology, and any spousal-related income or resource disregards approved under the state plan pursuant to section 1902(r)(2) of the Act, would be applied to her income and resources in the same manner as those methods would be applied for a spouse who is not a sponsor.

- *Deem all gross or countable income and resources*
“Income” and “resources” for purposes of the sponsor deeming statute could reasonably include all of a sponsor's gross income and/or resources, or all of a sponsor's income and resources that are otherwise countable under the financial eligibility methodologies applied to Medicaid or CHIP applicants and beneficiaries (countable income and resources). In the case of Medicaid, a state could choose the methodology most closely aligned with the financial eligibility methodology applicable to the sponsored immigrant's eligibility determination (i.e., MAGI or SSI-based methodologies), or apply either MAGI or SSI-based methodologies to all sponsored immigrants, regardless of which methodology is otherwise applied in determining a given sponsored immigrant's eligibility.
- *Account for needs of the sponsor and/or sponsor's dependents*
In determining the amount of a sponsor's income available for the sponsored immigrant, states may account for the sponsors' needs or the needs of sponsors' dependents. MAGI methodologies generally account for the needs of other family members by including them in the household size of the Medicaid applicant. Under SSI methodologies, a deduction (called an “allocation”) is made from the income of a spouse or parent of an SSI applicant for each of their dependents in determining how much of the spouse's or parent's income to deem available to the SSI applicant. States may adopt either the MAGI or SSI approach (i.e., a state could adopt the SSI approach even if determining the sponsored immigrant's eligibility using MAGI-based methodologies, or vice versa) or, subject to CMS approval, develop another reasonable approach (e.g., deduct from the sponsor's income a flat amount for the sponsor and each of the sponsor's dependents or a flat amount for the sponsor's household).

- *Apply income and/or resource disregards adopted under the state plan*
States may apply income and/or resource disregards approved under section 1902(r)(2) of the Act to the sponsor's income and/or resources to the extent that such disregards would be applied if the sponsor him or herself were applying for coverage. For example, if a state applies a disregard in determining eligibility for a particular non-MAGI group (e.g., disregards an amount of earned income or the value of a retirement account), a state could apply the same disregards to the sponsor's income and/or resources in determining the amount of sponsor income and/or resources to be deemed to the sponsored immigrant seeking coverage under that eligibility group.

Subject to CMS approval, states also may propose other disregards to be applied specifically to a sponsor's income and/or resources, where there is an identifiable and reasonable rationale to do so. However, it would not be reasonable to use this option to categorically exclude all of a sponsor's income and/or resources in determining the eligibility of the sponsored immigrant.

Repayment from Sponsors

Section 213A of the INA, 8 U.S.C § 1183a, authorizes states to recover the costs of means-tested public benefits, including Medicaid or CHIP, provided to sponsored immigrants from sponsors who have signed a Form I-864 Affidavit of Support, or a Form I-864A Contract in support of a Form I-864 Affidavit of Support, during the time period that the Form I-864 Affidavit of Support is in effect. Title 8 CFR § 213a.4(a)(1) provides that states have the discretion to seek the repayment from the sponsor.

In pursuing reimbursement of benefits from an immigrant's sponsor, states must follow the process set out by DHS regulations at 8 CFR § 213a.4. When requesting reimbursement from a sponsor,¹² the state agency must arrange for a written request for reimbursement to be provided to the sponsor through personal service.¹³ The request for reimbursement must contain specific information, including an itemized statement supporting the claim for reimbursement. If there is no response to the reimbursement request within 45 days of the date of service indicating a willingness to commence repayment, the state agency may file a lawsuit against the sponsor to enforce the sponsor's support obligation. More detail on the recovery procedures is available in DHS' regulations at 8 CFR § 213a.4.

The requirement to repay cost of Medicaid and CHIP benefits pertains only to a sponsor who has signed a Form I-864 Affidavit of Support or a Form I-864A Contract. The state agency may not seek repayment from the sponsored immigrant.¹⁴

The recovery of the cost of such benefits also may not be sought from sponsors in the following circumstances:

- The sponsored immigrant is a child or pregnant woman (including within the 60-day post-partum period) who is eligible for Medicaid or CHIP pursuant to the state's election to cover lawfully residing children and pregnant women in the U.S. in Medicaid and/or CHIP under the CHIPRA 214 option;¹⁵

- The Medicaid benefits provided to the sponsored immigrant were necessary for the treatment of an emergency medical condition,¹⁶ or
- The Form I-864 Affidavit of Support is no longer in effect, e.g., when the benefits are provided to a sponsored immigrant who has achieved 40 qualifying work quarters or has become a naturalized citizen.

Pursuant to 8 U.S.C. § 1183a, sponsors are liable for the cost of the Medicaid or CHIP benefits that a sponsored immigrant receives even if the state agency granted an exemption from the requirement to deem the sponsor's income and/or resources to the sponsored immigrant on the basis that the immigrant is indigent or a victim of battery or extreme cruelty. The state may seek repayment from the sponsor in these circumstances.

Data Collection and Reporting Related to Sponsor Liability

Section 5 of the Presidential Memorandum provides that the Departments of State, Homeland Security, Agriculture, Health and Human Services, and the Social Security Administration coordinate to establish and maintain records regarding each sponsor's reimbursement obligations and status, as appropriate and consistent with law. We are working with our federal partners to develop a coordinated process for states to share information relating to sponsor liability to the extent permitted under applicable laws, including the INA, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, and titles XIX and XXI of the Act. We will provide additional information and guidance on this process as soon as it is available.

Operational Considerations

We understand that some states already have implemented sponsor deeming and/or repayment processes. All states should review this guidance and ensure that their policies and procedures are consistent with all applicable requirements concerning sponsor deeming and/or repayment as soon as practicable for new applicants and current beneficiaries. However, we understand that states will need time to fully incorporate this guidance into their eligibility processes, including policy manuals, notices, verification processes, eligibility systems, and staff training. CMS believes it is reasonable for states to implement changes for current beneficiaries at their next scheduled renewal and/or as soon as practicable thereafter. With respect to repayment, CMS believes it is reasonable for states to apply the sponsor repayment provision to benefits provided to sponsored beneficiaries after the issuance of this guidance and notice to the affected beneficiaries has been provided.

Some households will include both individuals subject to sponsor deeming and repayment requirements and individuals who are not subject to such requirements. As states implement the requirements described in this letter, states must (1) ensure that any changes to their eligibility determination processes do not discriminate against other members of sponsored immigrants' families based on national origin, and (2) take appropriate steps to ensure that applicants, beneficiaries and the general public understand that the Medicaid and CHIP eligibility of other members of a sponsored immigrant's family are not impacted unless they themselves are sponsored by an individual who signed a Form I-864 Affidavit of Support or a Form I-864A Contract.

Collection and Verification of Information Necessary to Conduct Eligibility Determinations

- *Identification of Sponsored Immigrants/Verification through SAVE and SSA*
States administering federal means-tested public benefits can verify whether a sponsored immigrant is subject to the sponsor deeming and repayment provisions by using DHS's Systematic Alien Verification for Entitlements (SAVE) program, 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). 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 of Support and provide each sponsor's name, address, and Social Security Number.¹⁷ In order for the sponsor information to be provided by SAVE, the state must request the sponsor information. In addition, states using the Federal Data Services Hub must have their systems configured to accept the data elements returned from SAVE.

To verify that an individual should not be considered or is no longer a sponsored immigrant, DHS's SAVE program can verify citizenship for individuals who are naturalized U.S. citizens. The Social Security Administration (SSA) can verify whether individuals have earned or can be credited with 40 qualifying work quarters, information which can be sought through the Federal Data Services Hub or a direct connection with SSA.

Additional information on how to request information from SAVE is provided in Appendix C to this letter.

- *Obtaining and Verifying Sponsor's Income and Resource Information*
States will need to be able to collect information about sponsor income and resources, as appropriate, in order to make accurate Medicaid and CHIP determinations. Immigrants subject to the sponsor deeming requirements are responsible for obtaining the cooperation of the sponsor in providing information needed about the sponsor's income and resources, as well as any needed documentation. States will use their current verification policy and procedures, including obtaining verification from electronic sources whenever possible, to verify sponsor income and resources. If either the sponsored immigrant or the sponsor fails to cooperate in providing information or documentation necessary to determine eligibility, the sponsored immigrant's eligibility must be denied or terminated.

The reasonable opportunity period (ROP) described in section 1137(d) of the Act and 42 CFR § 435.956(b) of the regulations, during which otherwise-eligible immigrants can receive benefits pending verification of their immigration status, does not apply in the case of sponsored immigrants pending verification of sponsor income and/or resources. The requirement to furnish benefits during an ROP only applies to non-citizens who otherwise meet the eligibility criteria for coverage under the state plan, including income and resource requirements, as applicable, pending verification of immigration status. If verification of sponsor income or resources is pending, the state will be unable to

determine whether the individual meets the income/and or resources criteria for Medicaid or CHIP.

- *Application, Notices, and Related Changes*

Collecting the information necessary to determine eligibility may involve changes to applications and other forms, including the addition of new instructions or help text. Any changes to the application should be directed only to those individuals for whom the information is necessary to make an eligibility determination in accordance with 42 CFR § 435.907(e) and 42 CFR § 457.330. CMS is working on additional guidance regarding changes to the single streamlined application and we are available to provide technical assistance to states on identifying and implementing the necessary changes.

States will need to revise current notices or develop new notices in accordance with 42 CFR § 435.917 and 42 CFR § 457.340, to reflect the impact of the sponsor deeming requirements on sponsored immigrants and their sponsors. Notices to the sponsored immigrant should include the following:

- 1) Clear information about the income and/or resource verification process, including what information and documentation regarding the sponsor's income and/or resources (and the sponsor's spouse's income and resources, if the spouse signed a Form I-864 Affidavit of Support or a Form I-864A Contract) is necessary to determine the sponsored immigrant's eligibility.
- 2) Clear information on when the sponsor deeming requirements apply, when the deeming requirements cease to apply, the availability of the exemptions for victims of battery or extreme cruelty and for indigent immigrants, and how to request an exemption.
- 3) A clear explanation that the state will notify USCIS if the sponsored immigrant is approved for an indigence exemption. States are also encouraged to have the sponsored immigrant acknowledge they are aware that this notification will take place.
- 4) Clear information on the potential liability of the sponsor if the sponsored immigrant is determined eligible for Medicaid or CHIP and enrolls in a managed care plan or receives covered services, and explanation that the sponsor is responsible for paying back the cost of the benefits received, even if the state has granted an exemption from the sponsor deeming requirements because the sponsored immigrant is indigent or is a victim of battery or extreme cruelty.

Federally Facilitated Exchange

The sponsor deeming requirements described in this letter have operational implications for the eligibility determination, verification, and account transfer (AT) processes of the Federally-Facilitated Exchange (FFE). CMS is evaluating potential changes to the FFE processes and AT payload. Additional information on these operational issues will be released separately.

Eligibility Systems Upgrade Funding

Enhanced Federal Financial Participation (FFP) is available at a 90 percent federal matching rate for the design and development of improvements to Medicaid eligibility determination systems, including changes related to determinations of eligibility to implement the sponsor deeming provisions, in accordance with applicable federal requirements.¹⁸ Seventy-five percent enhanced federal funding is also available for on-going maintenance and operations of such systems, in accordance with applicable federal requirements. Receipt of these enhanced funds is conditioned on states meeting a series of standards and conditions to ensure investments are efficient and effective. Other activities, such as sponsor deeming policy development and outreach, may be claimed under Medicaid at 50 percent administrative match, in accordance with regular eligibility and enrollment claiming policies for such administrative activities. For states jointly administering Medicaid and a separate CHIP, cost-allocation methodologies set forth in 45 CFR part 75 apply. For the CHIP portion of the cost, states can claim the state's enhanced CHIP match available under title XXI of the Act. CHIP administrative funding is limited to 10 percent of the state's CHIP allotment.

Closing

CMS will soon release Medicaid and CHIP State Plan Amendment pages that will be required by states to document their sponsor deeming policies and procedures. Additionally, CMS staff is available to provide technical assistance regarding the sponsor deeming and repayment provisions discussed in this letter. Questions regarding the policies discussed in this letter may be directed to Stephanie Kaminsky, Director, Division of Medicaid Eligibility Policy, at (410) 786-4653 or Stephanie.Kaminsky@cms.hhs.gov.

Sincerely,

Calder Lynch
Acting Deputy Administrator and Director

Appendix A

Exemption for Immigrants who are Victims of Battery or Extreme Cruelty under 8 U.S.C. § 1631(f)

For an individual to be eligible for this exemption, the state must determine (1) that battery or extreme cruelty has occurred in the United States; (2) that the battery or cruelty was committed by the battered immigrant's spouse, parent or a member of the spouse or parent's family residing in the same household as the immigrant, and the spouse or parent consented to or acquiesced to such battery or cruelty; (3) that the battery or cruelty is substantially connected to the need for the benefits applied for; and (4) that the battered immigrant does not currently live with the batterer. If these conditions are met, the exemption is available to the battered immigrant, the battered immigrant's parent and/or the battered immigrant's child.

Additionally, battered immigrants and the parents or children of battered immigrants may be considered qualified aliens under 8 U.S.C. § 1641(c). These non-citizens, who can file a petition under the INA, and often are referred to as Violence Against Women Act (VAWA) self-petitioners, based on the statute which created this pathway to legal status for such immigrants. While the exemption for victims of battery or extreme cruelty from sponsor deeming requirements is distinct from the qualification of VAWA self-petitioners for qualified alien status, Interim Guidance issued by the Department of Justice on determining qualified alien status of VAWA self-petitioners will be useful to states in determining whether the exemption from sponsor deeming requirements under 8 U.S.C. § 1631(f) applies. The Interim Guidance, *Interim Guidance on Verification of US Citizenship, Qualified Alien Status, and Eligibility Under Title IV of the Personal Responsibility Work and Opportunity Reconciliation Act*, 62 Fed. Reg. 61344 (Nov. 17, 1997) is available at <https://www.govinfo.gov/content/pkg/FR-1997-11-17/pdf/97-29851.pdf>.

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. For determining whether the exemption applies, states are referred back to the discussion of certain requirements which must be satisfied by VAWA self-petitioners, which is found in Part I of Attachment 5 of the Interim Guidance. In particular, states are directed to the discussions of:

- Requirement 2 (relating to the definition of battered and extreme cruelty) at 62 Fed. Reg. at 61369-70;
- Requirement 3 (relating to whether a substantial connection between the battery and the need for benefits) at 62 Fed. Reg. at 61370; and
- Requirement 4 (relating to whether the battered immigrant lives in the same household with batterer) at 62 Fed. Reg. at 61370.

The initial exemption is in effect for 12 months from the date the state makes the determination of abuse or cruelty. The exemption can be extended if the abuse or cruelty is recognized by the Department of Justice, an Administrative Law Judge, or DHS.

Note that most VAWA self-petitioners determined by DHS to be considered a qualified alien under 8 U.S.C. § 1641(c) have not adjusted to LPR status; thus the sponsor deeming

requirements would not be applicable. Some VAWA self-petitioners do adjust to LPR status, but typically do not have a sponsor who has signed a Form I-864 Affidavit of Support; for these immigrants also, the sponsor deeming requirements would not be applicable. Occasionally, a VAWA self-petitioner may adjust to LPR status with a sponsor who signed a Form I-864 Affidavit of Support. Since these individuals will have been previously adjudicated by DHS as being a victim of battery or extreme cruelty, states can rely on their former VAWA status for purposes of the sponsor deeming exemption. SAVE provides Class of Admission response codes which can verify that an immigrant who is a LPR, was also a VAWA self-petitioner.

Appendix B

Examples of Indigent Exemption Policies

Both the Supplemental Nutrition Assistance Program (SNAP) and the Supplemental Security Income program (SSI) have published guidance on the indigence exemption from sponsor deeming provided under 8 U.S.C. § 1631(f). CMS believes both the SNAP and SSI policies represent reasonable approaches which state Medicaid and CHIP agencies may adopt.

- **SNAP**: States consider a sponsored immigrant to be indigent when a sponsored immigrant’s own household income, plus any cash and the value of any in-kind contribution actually provided by the sponsor and others, does not exceed 130 percent of the federal poverty level of the household size.¹⁹
- **SSI**: SSI treats sponsors who live in the home with the sponsored immigrant differently than sponsors who do not live with the sponsored immigrant. The SSI program will not grant an indigent exemption if a sponsored immigrant is living with the sponsor, as it assumes the sponsor is providing food and shelter. However, if the sponsored immigrant is not living with the sponsor and the total income (including all types of income, from all sources) the sponsored immigrant receives is less than the SSI federal benefit rate and resources available are under the applicable resource limit, the individual may be found to be indigent.²⁰

States may also adopt an alternative reasonable policy, subject to CMS approval:

- **Different Income Threshold**: States could employ a different income threshold to define “indigent” that is closely related to the Medicaid or CHIP program. For example, the state could determine that an individual is indigent if income deemed from the sponsor and the immigrant’s own income combined is under 133 percent federal poverty level or other income standard used for Medicaid or CHIP eligibility determinations.
- **Different Income Methodologies**: States could employ a different reasonable income or resource methodology. For example, a state could combine the sponsor and sponsored immigrant’s gross incomes, count their taxable income under MAGI methodologies, or exclude certain types or amounts of income, such as not counting the value of any in-kind contributions from a sponsor, in making an indigence determination.

Appendix C

Verifications through SAVE -- Sponsor and Naturalized Citizenship Information

To obtain sponsor information from SAVE, the state agency (requesting agency) must indicate that it is requesting sponsor information for an immigrant.

For requesting agencies that utilize the Federal Data Services Hub to verify immigration status through SAVE, the state agency selects “Y” (true) in the “RequestSponsorDataIndicator” field on the outbound file. This indicates that the state agency is requesting a return of sponsor data.

States using SAVE request sponsor information based on a document type associated with verification of lawful permanent resident status. Sponsor information can be requested with the following document types: Form I-327 (Reentry Permit), Form I-551 (Permanent Resident Card), the Machine Readable Immigrant Visa (with Temporary I-551 Language), the Temporary I-551 Stamp (on passport or I-94), and “other” by sending an A-Number or I-94 number.²¹

If a household member has signed a Form I-864A Contract, the information may also be available through SAVE.

The state agency’s system will need to be configured to receive this information on the inbound file. If sponsorship information is available, the “SponsorDataArrayDataElement” field will indicate “Y” (true). Up to 11 data elements will be returned regarding the sponsor: the first, middle and last name of the sponsor, Social Security Number, address and country code and country name (if an international address). Please refer to Table 34, Hub to Requestor— Sponsorship Data Array Data Elements, in the *Verify Lawful Presence (VLP) v37 Business Services Definition (BSD)* and DHS’s *Interface Control Agreement Between VIS Agency Web Service Method and Agencies, Version 37*. Requesting agencies that need a copy of the VLP v37 BSD Requesting agencies that need a copy of the DHS Interface Control Agreement Version 37 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 – Please include the name of your agency.

To obtain verification of U.S. citizenship for naturalized citizens, the state agency (requesting agency) provides specified information to SAVE, including the Naturalization Certificate number, Certificate of Citizenship number and/or the individual’s A-Number, depending on the document the individual is using to verify citizenship.²² State agencies may verify an individual’s naturalized citizenship through the Federal Data Services Hub or a direct connection with SAVE using DHS’s GUI web-based service.

¹ <https://www.whitehouse.gov/presidential-actions/memorandum-enforcing-legal-responsibilities-sponsors-aliens/>.

² See 8 U.S.C. § 1183a(a)(1)(A). If the petitioning sponsor is on active duty in the U.S. Armed Forces (other than for training) and is petitioning for his or her spouse and/or minor child (under age 21), the petitioning sponsor must demonstrate he or she can maintain income at only 100 percent of the poverty level for the household size.

³ 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 of Support alone are insufficient to meet affidavit of support requirements under Section 213A of the INA.

⁴ HHS Federal Register Notice, “Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA); Interpretation of ‘Federal Means-Tested Public Benefit,’” 62 FR 45256 (issued Aug 26, 1997) (designating Medicaid as a federal means-tested public benefit); State Health Official Letter (issued Jan 14, 1998) (designating CHIP as a federal means-tested public benefit), available at <https://www.medicaid.gov/Federal-Policy-Guidance/downloads/sho011498.pdf>.

⁵ Medical assistance to treat an emergency medical condition described at section 1903(v)(3) of the Act is not considered a means-tested public benefit subject to sponsor deeming or repayment requirements. See Presidential Memorandum, Section 7 Definitions (c) (defining “means-tested public benefit” has the meaning set forth in 8 CFR § 213a.1); 8 CFR § 213a.1 (defining “means-tested public benefit,” specifically that a benefit described in section 401(b) of Public Law 104-193 is not considered a means-tested public benefit); 8 U.S.C. § 1611(b)(1)(A).

⁶ Some sponsored immigrants may have a joint sponsor who also has executed a Form I-864 Affidavit of Support and accepted joint and several liability to satisfy the requirements of section 213A of the INA. See 8 CFR § 213a.1. Joint sponsors also may have household members who have executed a Form I-864A Contract in support of a Form I-864 Affidavit of Support provided by the joint sponsor. The sponsor deeming requirements apply to an immigrant with joint sponsors and any of their household members executing a Form I-864A Contract, and the repayment obligations apply to both joint sponsors and any of their household members who signed a Form I-864A Contract. The sponsor deeming rules do not apply to LPRs for whom the Form I-864 Affidavit of Support was not filed, including those whose sponsor signed a different affidavit such as Affidavit of Support (Form I-134) or Affidavit of Financial Support and Intent to Petition for Legal Custody for Public Law 97-359 Amerasian (Form I-361); those whose status was adjusted to LPR from refugee or asylee status under 8 U.S.C. § 1159; or those who were admitted as LPRs, applied for an immigrant visa, or applied for adjustment of status before December 19, 1997 (i.e. before the date the Form I-864 Affidavit of Support came into effect).

⁷ For the definition of relative, see 8 CFR § 213a.1. See also 8 CFR § 213a.2(a)(2)(i)(C) for applicability of INA Section 213A requirements for employment-based immigrants.

⁸ Per 8 CFR § 213a.2(e)(2)(E)(ii), the death of one person who had a support obligation under a Form I-864 Affidavit of Support or Form I-864A Contract does not terminate the support obligation of any other sponsor, substitute sponsor, joint sponsor, or household member with respect to the same sponsored immigrant.

⁹ Note, though, that since DHS regulations at 8 CFR § 213a.2(a)(2)(ii)(C) exempt intending immigrants who have accrued 40 quarters from having to provide an affidavit of support in the first place, it would be rare for an LPR to both have a Form I-864 Affidavit of Support pertain to the LPR and to have accrued 40 quarters before becoming an LPR.

¹⁰ If the sponsor’s spouse signed either a Form I-864 Affidavit of Support or a Form I-864A Contract, the spouse’s income should be included. Deeming does not apply under 8 U.S.C. § 1631(a)(2) to any spouse who did not sign either of these forms, as relevant spousal responsibility for deeming and reimbursement is covered by treating such spouses directly as sponsors under section 1631(a)(1) based upon executing either a Form I-864 Affidavit of Support or the Form I-864A Contract.

¹¹ Although less common, states could also apply standard MAGI-based methodologies if the sponsor is not a spouse or parent of the sponsored immigrant, but is a different member of the sponsored immigrant’s MAGI-based household--for example, an 18-year old sibling who signed an I-864A Contract to support a younger sibling sponsored by their mother, with whom both are living, and the 18-year old sibling is required to file a federal income tax return such that his income is counted in determining the younger child’s income under the MAGI-based methodologies.

¹² The DHS regulations refer to requests for reimbursement made to “a sponsor, household member, or joint sponsor.” 8 CFR § 213a.4(a)(1)(i). The sponsor or joint sponsor is an individual who has executed a Form I-864 Affidavit of Support; the household member is a sponsor who has executed a Form I-864A Contract.

¹³ Personal service is defined in 8 CFR § 103.8(a)(2).

¹⁴ See also State Medicaid Director letter, issued June 10, 1998, available at <https://www.medicaid.gov/Federal-Policy-Guidance/downloads/smd061098.pdf>.¹⁵ Sections 1903(v)(4)(B) and 2107(e)(1)(N) of the Act.

¹⁶ See 8 U.S.C. § 1183a(b)(1)(A) (describing repayment from a sponsor only when a sponsored non-citizen has received federal “means-tested public benefits;” 8 CFR § 213a.1 (specifying that means-tested public benefit does not include a benefit described at section 401(b) of PRWORA, codified at 8 U.S.C. § 1611(b)).

¹⁷ For additional detail on sponsor information 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); DHS’s *Interface Control Agreement Between VIS Agency Web Service Method and Agencies, Version 37 (Exhibits 30 and 72) (03/19)*. See above for SAVE contact information to obtain these documents.

¹⁸ 42 CFR part 433, 80 FR 75817-75843 (Dec 4, 2015); *Medicaid and CHIP FAQs: Enhanced Funding for Medicaid Eligibility Systems*, April and August 2013, available at <https://www.medicaid.gov/State-Resource-Center/FAQ-Medicaid-and-CHIP-Affordable-Care-Act-Implementation/Downloads/FAQs-by-Topic-75-25-Eligibility-Systems.pdf>.

¹⁹ See 7 CFR §273.4(c)(3)(iv) and *Supplemental Nutrition Assistance Program Guidance on Non-Citizen Eligibility*, available at https://fns-prod.azureedge.net/sites/default/files/snap/Non-Citizen_Guidance_063011.pdf.

²⁰ SSA’s Program Operations Manual System (POMS), SI 00502.200 Sponsor-to-Alien Deeming; SI 00502.280 Indigence Exemption to Sponsor Deeming.

²¹ See Sponsorship Data column in Table 42 Document Types for types of documents that can be requested to obtain sponsorship data in the *Verify Lawful Presence (VLP) v37 Business Services Definition (BSD)* and in Exhibit 78 DHS Document Types in the *Interface Control Agreement (ICA) Between VIS Agency Web Services Access Method and Agencies, Version 37*. See above for SAVE contact information to obtain these documents.

²² See *id.*, for specified information required to be submitted to SAVE to verify citizenship through a Naturalization Certificate or Certificate of Citizenship.