

FREQUENTLY ASKED QUESTIONS

Understanding the President's Memorandum on Enforcing the Responsibilities of Sponsors

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On May 23, 2019, President Trump issued a memorandum regarding the legal obligations of people who act as sponsors for their immigrant family members. This FAQ provides information about current sponsor liability policy before offering analysis of the White House memo.¹

Current Policies on Sponsor Liability

What is sponsor liability?

Under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), people who sponsor their family members to immigrate to the United States are required to execute an **I-864, Affidavit of Support Under Section 213A of the INA**,² to show that the sponsored immigrant will not become a **public charge**.³ The affidavit of support is a legally enforceable commitment by the sponsor to provide financial support, if needed, to maintain the sponsored immigrant at an income of at least 125 percent of the federal poverty level. Employers who sponsor immigrants are also required to assume sponsor liability and execute the I-864 form if they own at least a five percent stake in the business that will employ the immigrant and are a member of the immigrant's family.

The affidavit of support also requires sponsors to agree to reimburse the government for the cost of certain "federal means-tested public benefits" used by the sponsored immigrant while the affidavit of support is in effect, with certain exceptions. This obligation is generally referred to as *sponsor liability*. In practice, benefits-granting agencies have not prioritized the enforcement of sponsor liability. Their reasons include that enforcing liability is an administrative burden and that only a small percentage of their caseloads are affected.

Which means-tested public benefits may give rise to sponsor liability?

Eligibility for many public benefits is based, in part, on a person's or household's income. These benefits are generally referred to as being "means-tested." The term "federal means-

¹ The first edition of this FAQ was published on May 31, 2019. An update based on guidance issued, respectively, by the Centers for Medicare and Medicaid Services and the U.S. Department of Agriculture's Food and Nutrition Service was added at the end of the FAQ on August 29, 2019.

² <https://www.uscis.gov/i-864>.

³ See www.nilc.org/pubcharge/ for more information about public charge. A "public charge" is a person who is dependent on the government for subsistence. A person deemed likely to become a public charge can be denied both permission to come to the U.S. and permanent resident status.

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tested public benefit” is defined very specifically in the context of sponsorship. Under agency guidance issued after the 1996 immigration law (IIRIRA) and currently in effect, the benefits that are potentially subject to sponsor liability are nonemergency Medicaid and the Children’s Health Insurance Program (CHIP), the Supplemental Nutrition Assistance Program (SNAP, or “food stamps”), and Supplemental Security Income (SSI) and Temporary Assistance for Needy Families (TANF) (SSI and TANF comprise “cash assistance”). States may also designate state-funded means-tested public benefits that could give rise to sponsor liability.

What is “sponsor deeming”?

Under “immigrant sponsor deeming,” the income and resources of immigrants’ sponsors are considered, or “deemed,” to be available to sponsored immigrants when they apply for SNAP, TANF, or SSI. Some states also deem sponsors’ income when immigrants apply for federal Medicaid or CHIP and certain state-funded benefit programs. Deeming rules usually make the immigrant ineligible for benefits because adding the sponsor’s income and resources renders the immigrant “over-income” for the program. Exceptions to the deeming rules are discussed below.

Sponsor deeming is carried out by agency personnel administering public benefits applications (such as employees of a state department of social services). These eligibility workers need to obtain information about a sponsor’s income from the sponsored immigrant. Many immigrants who would be eligible for essential services are reluctant to request financial information from family sponsors or are deterred from completing their applications when they learn that their sponsor is implicated.

When do the sponsor’s obligations under the affidavit of support begin and end?

The affidavit of support goes into effect when the sponsored immigrant becomes a lawful permanent resident (LPR, or someone who has a “green card”) and remains in effect until the sponsored immigrant becomes a U.S. citizen, obtains credit for 40 quarters of work in the U.S., dies, or leaves the U.S. permanently. A sponsor’s divorce from the sponsored immigrant does not terminate the affidavit of support.

Qualifying quarters of work are credited to individuals based on their earnings. In securing credit for quarters of work history, immigrants can add their own work to that performed by a spouse during the marriage, or work performed by a parent while an individual was under 18 (or not yet born). However, any quarters in which the worker received a federal means-tested benefit cannot be counted.

Are sponsored immigrants eligible for benefits?

Under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), more widely known as “welfare reform,” most sponsored immigrants are ineligible for means-tested federal benefits during their first five years as LPRs, with the result that many sponsored immigrants are ineligible for benefits. Sponsor deeming also limits eligibility.

What are the exceptions to sponsor liability and deeming?

Sponsor deeming does not apply to:

- immigrant survivors of domestic violence or “extreme cruelty” or
- immigrants who would go homeless or hungry without benefits

In SNAP:

- deeming does not apply to children
- deeming does not apply to members of the sponsor’s household
- there is no sponsor liability if the sponsor is receiving SNAP

In states that have exercised the option to provide Medicaid and CHIP to lawfully residing children and pregnant women without a five-year waiting period, sponsors are not liable for the cost of health services received by people in these categories.

More information about the current policy is available at www.nilc.org/affidavits/.

President Trump’s Memo of May 23 about Enforcing Sponsors’ Responsibilities

What did the May 23 memo change?

To date, nothing has changed because of the May 23 memo. The memo directs several federal agencies to take certain actions within time periods ranging from 30 to 180 days. In the meantime, the rules for sponsors remain the same.

Do the required agency actions change the federal means-tested public benefits that may give rise to sponsor liability?

It’s possible. The five benefits classified as federal means-tested public benefits (nonemergency Medicaid and CHIP, SNAP, SSI, and TANF) under current policy are administered by the U.S. Department of Health and Human Services (HHS), the U.S. Department of Agriculture (USDA), and the Social Security Administration (SSA). The memo directs the secretaries of Treasury, Commerce, Labor, Housing and Urban Development, Transportation, and Education, as well as the secretaries of USDA and HHS, to submit a report that includes:

- a review of their agency’s guidance and regulations governing the issuance of federal public benefits to noncitizens;
- the steps they have taken to comply with the provisions of PRWORA that restrict benefits eligibility for certain immigrants;
- their opinion about whether the federal public benefits they administer are means-tested public benefits subject to sponsor deeming and liability and *whether any additional federal public benefits they administer should be regarded as means-tested public benefits*; and
- their review of any additional regulations or guidance that should be updated to align with applicable statutes.

The agencies are directed to submit their reports within 30 days and to coordinate with the U.S. Department of Homeland Security where appropriate.

Do the required agency actions change the enforcement of sponsor deeming and liability?

Changing the enforcement of sponsor deeming and liability seems to be the memo's primary intent. The memo directs the secretaries of USDA and HHS to take all appropriate steps to enforce the law related to sponsor liability. Specifically, it directs them, within 90 days, to establish or update their procedures and guidance on sponsor liability. It also directs the agencies to provide those procedures and guidance to all entities involved in the enforcement of sponsor liability, including federal and state agencies responsible for benefits administration.

The memo specifies that the guidance should include procedures for:

- recovering reimbursement of means-tested benefits from sponsors;
- notifying sponsors of amounts owed in reimbursement and any procedures related to appeal, payment plans, nonresponse, and nonreimbursement;
- notifying the U.S. attorney general and secretary of Homeland Security of a sponsor's nonpayment and procedures for requesting that the attorney general bring a civil action against the sponsor;
- deeming the income and resources of the sponsor and the sponsor's spouse to a sponsored immigrant in determining eligibility for means-tested public benefits; and
- determining whether any exceptions to the deeming or reimbursement requirements apply.

The memo directs HHS and USDA to submit a report within 180 days, detailing:

- all actions taken to establish or update the procedures and guidance;
- the methods used to track deeming and reimbursement actions and the results; and
- all actions taken to share information with other federal agencies pursuant to the memo.

When would federal agencies be required to communicate revised enforcement procedures to immigrants and their sponsors?

By the end of the current fiscal year (September 30, 2019), the Departments of HHS, Agriculture, and Homeland Security are required to communicate the enforcement procedures to current sponsors, people who may seek to become sponsors, people who may seek sponsors, and others who may be liable for the repayment of public benefits.

Do the required agency actions change how information about sponsors and sponsored immigrants is collected and shared?

The memo includes a vague statement that the procedures and guidance should include "procedures for data sharing with Federal agencies, as appropriate and consistent with law." It also requires the SSA commissioner and the secretaries of USDA and HHS to coordinate with the secretaries of State and Homeland Security to implement procedures for keeping

and managing records. These include procedures for sharing records regarding sponsors' reimbursement obligations and reimbursement status with the secretaries of State and Homeland Security. The purpose of this information-sharing is stated as "the administration and enforcement of all applicable immigration laws and regulations, as appropriate and consistent with applicable law."

Each of these actions is required within 180 days.

Does the memo include any new consequences for sponsors?

The memo also attempts to create new consequences for sponsors who fail, or are unable, to reimburse the government for means-tested benefits used by their sponsored immigrants.

Within 180 days, the Departments of State and Homeland Security are directed to issue guidance on whether sponsors who fail or are unable to reimburse the government for benefits used by their sponsored immigrants should be eligible to continue to serve as a sponsor or to sponsor additional family members.

The memo further directs the secretaries of Agriculture and HHS and the commissioner of Social Security to coordinate with the secretary of the Treasury to establish information-sharing procedures with the Treasury Offset Program, which collects nontax federal debts through withholding of federal payments that include tax refunds and benefits payments. This directive suggests an intent to use the program to collect benefit repayments.

How widespread will the effect of the memo be?

In practice, the five-year bar to federal benefits eligibility for most immigrants combined with sponsored immigrants' reluctance to participate in benefit programs mean that few sponsored immigrants participate in benefit programs. However, like many of the Trump administration's anti-immigrant actions, the practical effect of the memo will be much broader: deterring eligible immigrants from seeking essential services and deterring individuals from sponsoring their family members.

How can I learn about this issue as it unfolds?

Additional resources will be posted on NILC's website, www.nilc.org, and distributed through our email lists. You can subscribe to our email list by submitting your email address on the sign-up form that appears on each page of www.nilc.org.

UPDATE (AUG. 2019): New Guidance from CMS and FNS

Centers for Medicare and Medicaid Services (CMS)

On August 23, 2019, the Centers for Medicare and Medicaid Services released [guidance to state health officials](#) describing the requirements for states to deem sponsors' income as available to sponsored immigrants in determining their eligibility for Medicaid and CHIP.⁴ The guidance presents various approaches that states can use in implementing sponsor deeming. It also discusses processes for collecting repayment of the cost of Medicaid and CHIP from immigrants' sponsors (sponsor liability), while noting that states have discretion to decide whether to seek such repayment.

⁴ <https://www.medicare.gov/federal-policy-guidance/downloads/sho19004.pdf>.

Although this is the first CMS guidance addressing the subject, several states already implement sponsor deeming in their Medicaid programs. A [2009 Government Accountability Office \(GAO\) report](#) found that 30 states deemed sponsors' income in Medicaid.⁵ For various reasons, states generally have chosen not to pursue sponsors for repayment of benefits.

The CMS guidance details the exceptions to sponsor deeming and liability, as well as the notices states are required to provide. It emphasizes that there is no sponsor deeming or sponsor liability for emergency services or for services used by children or pregnant women — in states that elect the option to cover these groups without a waiting period. The guidance makes clear that states are not required to impose deeming on a sponsor whose income is already counted as a member of the immigrant's household and that the eligibility of other members of a sponsor's family is not affected unless they themselves are sponsored. The guidance explains that various methodologies may be used to calculate the amount of sponsors' income subject to deeming, and that states have discretion to adopt reasonable standards for determining whether a person should be exempt from sponsor deeming because they would be unable to obtain food and shelter without the agency's assistance.

CMS acknowledges that states will need time to fully incorporate the guidance into their eligibility processes. This flexibility presents an opportunity for advocates to work with their states in developing and implementing methodologies that will have the least adverse impact on immigrants' access to essential medical services.

Food and Nutrition Service (FNS)

Also on Aug. 23, the U.S. Department of Agriculture's Food and Nutrition Service (FNS) [issued guidance](#) encouraging, but not requiring, state agencies to seek reimbursement from sponsors for Supplemental Nutrition Assistance Program (SNAP, or "food stamps") benefits used by sponsored immigrants.⁶ Since guidance detailing the sponsor deeming rules and procedures in the SNAP program already had been issued, the new guidance should not change existing policy or practice.

⁵ <https://www.gao.gov/products/GAO-09-375>.

⁶ <https://www.fns.usda.gov/snap/resource/state-enforcement-legal-responsibilities-sponsors-non-citizens>.