

# Sponsored Immigrants & Benefits in California

## What is a sponsor?

A sponsor is a person who has helped an immigrant become a lawful permanent resident (a person with a “green card”) by signing an “affidavit of support.”

## What is an affidavit of support?

An affidavit of support is a contract signed by the sponsor to show that the immigrant applying for a green card is not likely to become a “public charge.” “Public charge” is a term that has been used for many years to describe persons who are primarily dependent on the government for income maintenance. During the Trump administration, the Departments of State and Homeland Security published regulations that changed the definition of “public charge” and the test used to determine whether a person is likely to become a public charge in the future. The Department of Homeland Security has withdrawn the Trump administration’s public charge rule and indicated that it will publish an Advance Notice of Proposed Rulemaking related to new public charge regulations. The State Department regulations and associated forms have been placed on hold by a court, and the agency has instructed its personnel to process applications subject to public charge under the rules in effect prior to 2017.

For updates, see [www.protectingimmigrantfamilies.org](http://www.protectingimmigrantfamilies.org).

## Are affidavits of support enforceable contracts?

It depends on which type of affidavit the sponsor signed. There are two major types of affidavits. The “**enforceable**” affidavit of support (USCIS Form I-864) went into use on December 19, 1997. It is a binding contract by the sponsor for support of the immigrant and for repayment of certain benefits received by the immigrant. The “**nonenforceable**” affidavit of support (USCIS Form I-134), which was the main form used before December 19, 1997, is still used by some immigrants and cannot be enforced.

## Which immigrants must use an *enforceable* affidavit of support?

- Most immigrants who apply for a green card through a family member after December 19, 1997
- Most immigrants who apply for a green card through an employer after December 19, 1997, if the employer is a relative or if a relative owns more than 5 percent of the business

### *Exceptions:*

- Persons with credit for 40 quarters of work history in the United States (including work performed by a spouse during marriage and parents while the immigrant was under 18 years old) and

- children who will automatically become U.S. citizens when they immigrate under the Child Citizenship Act

do not need to file an “enforceable” affidavit of support.

### **Which immigrants do not need to use an affidavit of support?**

Many [categories](#) of immigrants do not need to have sponsors, including:

- Refugees and asylees applying for a green card
- Persons applying for a green card through:
  - registry (residence in the U.S. since before January 1, 1972)
  - Nicaraguan Adjustment and Cuban American Relief Act
  - Haitian Refugee Immigration Fairness Act
  - Cuban Adjustment Act
  - certain Indochinese, Polish, and Hungarian parolees
  - self-petitioners under the Violence Against Women Act
  - survivors of trafficking and other serious crimes
  - people applying as special immigrant juveniles

### **Are there income requirements for sponsors who sign the enforceable affidavits of support?**

Yes. Sponsors who sign enforceable affidavits must show that they earn enough to support a household at 125 percent of the federal poverty level.<sup>1</sup> The household includes:

- the immigrant;
- family members joining the immigrant;
- the sponsor, sponsor’s spouse, and children under 21;
- dependents; and
- other immigrants sponsored under the I-864.

Sponsors who don’t earn enough money can show that their assets (such as a house, car, or bank account) are worth 5 times the difference between 125 percent of the federal poverty level and their income (or 3 times this difference, if a U.S. citizen is petitioning for their spouse or child).

Sponsors who can’t meet these requirements may find a joint sponsor or cosponsor, who also must sign an affidavit of support promising to support the immigrant.

### **Can immigrants whose sponsor signed an enforceable affidavit get benefits?**

Yes. In California, immigrants whose sponsors sign enforceable affidavits can get benefits. However, their sponsor’s income may be added to theirs (“deemed” as theirs) when they apply for certain benefits, such as CalWORKs, CAPI, CalFresh, or

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<sup>1</sup> See Form I-864P, 2021 HHS Poverty Guidelines for Affidavit of Support.

the California Food Assistance Program (CFAP). See “Major Benefits Programs Available to Immigrants in California,” [www.nilc.org/bens\\_table.html](http://www.nilc.org/bens_table.html).

### **Does the sponsor’s income count when the immigrant applies for public benefits?**

Sometimes. Under “immigrant sponsor deeming,” the income and resources of the immigrant’s sponsor are considered, or “deemed,” to be available to the sponsored immigrant when the immigrant applies for certain public benefits. Deeming rules usually make the immigrant ineligible for benefits because adding the sponsor’s income and resources renders the immigrant “over-income.” There are exceptions to the deeming rules — for example, for domestic violence survivors or immigrants who would go hungry or homeless without assistance.<sup>2</sup>

### **Will the sponsor need to repay benefits used by the sponsored immigrants?**

It depends. Sponsors who sign the *enforceable* affidavit of support (Form I-864) may be required to repay the government for “means-tested” benefits that were used by the immigrant after the individual became a lawful permanent resident. Sponsors who signed the nonenforceable affidavits (Form I-134) are *not* required to repay benefits used by the immigrant.

### **Which public benefits will a sponsor need to repay?**

The only federal benefits a sponsor may be liable to repay are:

- Supplemental Security Income (SSI),
- CalFresh,
- CalWORKs, and
- Medi-Cal (nonemergency).

Many immigrants whose sponsors signed enforceable affidavits of support are not eligible for these federally funded programs, because there is a five-year (or longer) waiting period for these services. California provides benefits to some of these immigrants using state funds. But California has not decided which state-funded benefits a sponsor may need to repay and cannot ask sponsors to repay benefits used before it makes and announces this decision. States are not required to pursue sponsors, and, *to our knowledge, California agencies have not sought reimbursement from sponsors.*

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<sup>2</sup> In 2019, the Centers for Medicaid and Medicare Services issued guidance to states indicating that they were required to deem sponsors’ income in Medicaid (Medi-Cal). This guidance was posted pursuant to President Trump’s Memorandum on “Enforcing the Responsibilities of Sponsors.” President Biden rescinded the Trump memorandum through an executive order (EO) issued on February 2, 2021. That EO directed federal agencies to review all agency actions issued under the Trump memorandum.

**Do sponsors who sign enforceable affidavits need to repay every benefit?**

No. Sponsors will *not* need to repay the cost of emergency Medi-Cal or other emergency medical care, immunizations, or testing and treatment for communicable disease symptoms (outside of Medi-Cal), short-term noncash emergency aid, school breakfast or school lunch, Head Start, Student Financial Aid, job-training programs, certain noncash services that are available regardless of income, or many other programs that have not been named as “means-tested” benefits. In addition, *sponsors who are receiving CalFresh do not need to repay the cost of CalFresh received by the sponsored immigrant.*

**Are sponsors responsible for benefits used by the immigrant’s U.S. citizen children?**

No. Sponsors are not responsible for benefits used by the sponsored immigrant’s U.S. citizen children or by any other “nonsponsored” family members.

**When does the sponsor’s responsibility begin?**

When the immigrant becomes a lawful permanent resident (a person with a “green card”).

**When does the sponsor’s responsibility end?**

Sponsors who signed “enforceable” affidavits are not responsible for benefits used after the immigrant:

- becomes a U.S. citizen; or
- earns credit for 40 quarters (about 10 years) of work history in the U.S., according to the Social Security Administration, either through their own work or the work of a spouse or parent;
- leaves the U.S. permanently; or
- dies.

**Where can I find more information on affidavits of support, deeming, and public charge?**

- “I-864 Affidavit of Support Under Section 213A of the INA” (U.S. Citizenship and Immigration Services webpage), <https://www.uscis.gov/i-864>.
- “I-864 Affidavit of Support (FAQs)” (U.S. Department of State webpage), <https://travel.state.gov/content/travel/en/us-visas/immigrate/the-immigrant-visa-process/step-1-submit-a-petition/i-864-affidavit-faqs.html>.
- *Supplemental Nutrition Assistance Program: Guidance on Non-Citizen Eligibility* (USDA, June 2011), <https://www.fns.usda.gov/snap/eligibility/non-citizen-eligibility>; [https://www.nilc.org/wp-content/uploads/2019/05/Non-Citizen\\_Guidance\\_063011.pdf](https://www.nilc.org/wp-content/uploads/2019/05/Non-Citizen_Guidance_063011.pdf).
- “TANF-ACF-PI-2003-03 (Deeming of Sponsor’s Income and Resources to a Non-Citizen)” (publication date: April 17, 2003) (Office of Family Assistance webpage), <https://www.acf.hhs.gov/ofa/policy-guidance/tanf-acf-pi-2003-03-deeming-sponsors-income-and-resources-non-citizen>.