



# INTRODUCTORY GUIDE TO THE AFFIDAVIT OF SUPPORT

By ILRC Attorneys

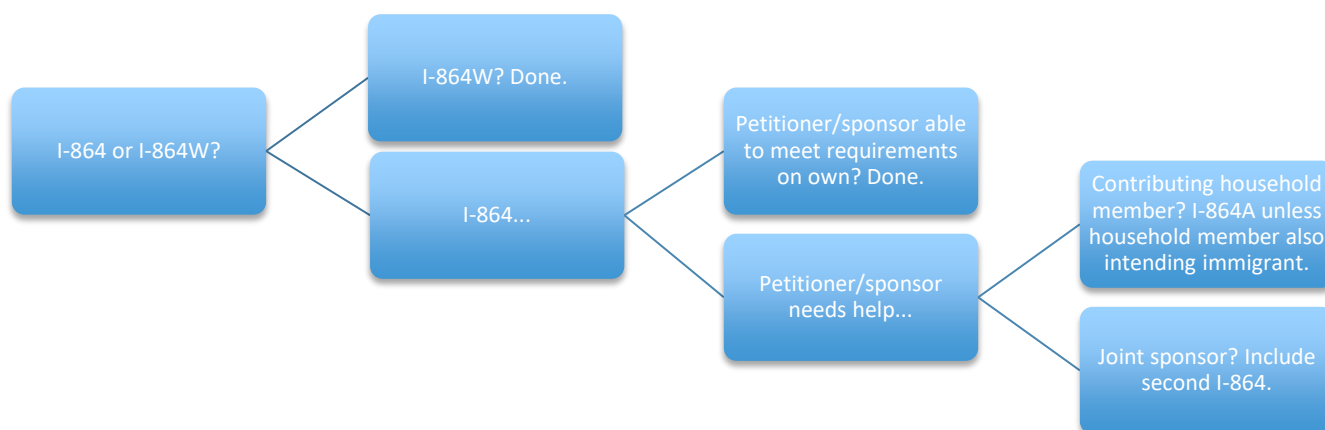
The Affidavit of Support is a legally binding contract between the petitioner/sponsor and the U.S. government, in both the context of adjustment of status and consular processing. Individuals immigrating through most family-based, and some employment-based,<sup>1</sup> visa petitions are required to submit an Affidavit of Support on Form I-864, unless they fall within an exemption. By filing the Form I-864, the sponsor is promising that they will (and providing proof that they can) financially support the individual who is immigrating to the United States. Essentially, the sponsor must prove that the immigrant relative who they are responsible for bringing to the United States will not have to resort to certain governmental financial assistance after arriving in the United States—in other words, that the immigrant will not end up being a “public charge” under the ground of inadmissibility at INA § 212(a)(4)(C).

Although the Affidavit of Support has long been the primary evidence in evaluating admissibility pursuant to the “public charge” ground, this area is presently evolving. The Trump Administration has proposed changing the rules that govern these decisions. Already, earlier this year the Foreign Affairs Manual (FAM), which guides adjudication of consular processing cases, was revised to change the “sufficiency,” or weight, of the Affidavit of Support.<sup>2</sup> Previously, a qualifying Affidavit of Support was generally considered sufficient to establish that the intending immigrant would not become a public charge. Now, it is simply one positive factor, to be considered as part of the “totality of the circumstances,” which include other factors such as a person’s age, work, health, etc.<sup>3</sup> This means that a qualifying Affidavit of Support, on its own, is no longer enough to refute possible public charge inadmissibility. Nonetheless, it is still a required and important part of immigrant visa applications.

Even though the weight accorded the Affidavit of Support has changed in the consular processing context, the requirements relating to completion and submission of the I-864 Affidavit of Support have not changed, at least for now.<sup>4</sup> This advisory focuses on various ways to meet the financial requirements, different types of sponsors who may submit Affidavits of Support, and who is considered a “household member” for purposes of the Affidavit of Support.<sup>5</sup> However, it is prudent to continue monitoring the public charge issue and to stay abreast of any other changes so that you can accurately advise your clients whether, even with a qualifying Affidavit of Support, they are still at risk of being found inadmissible under the public charge ground.

If an exemption to the Affidavit of Support requirement does not apply, and a visa petitioner cannot show that they will be able to support the intending immigrant above the required level (discussed further below), then the family member will not be able to immigrate through that petition.<sup>6</sup> A qualifying Affidavit of Support is a mandated requirement, although not the only evidence which may be required, in overcoming public charge inadmissibility.

This advisory is organized in terms of how a practitioner might approach an Affidavit of Support case:



## I. I-864 or I-864W? Determine Whether Your Client Is Required to File an Affidavit of Support

Every person immigrating through a family member must submit *either* a qualifying Form I-864 Affidavit of Support, *or* a Form I-864W Intending Immigrant’s Affidavit of Support Exemption if they are exempt from the Affidavit of Support requirement.<sup>7</sup> The I-864W is used to establish that the person is not required to file an I-864 Affidavit of Support. This means that if someone is exempt from the Affidavit of Support requirement, the Form I-864 is not simply omitted; rather, the Form I-864W is submitted in lieu of the I-864.

Exemptions to the Affidavit of Support requirement are based on the circumstances of the principal visa beneficiary. The following individuals can file Form I-864W because they are exempt from the Affidavit of Support requirement:

1. VAWA Self-Petitioners (battered spouse, child, or parent);
2. Self-petitioning widow(er)s of U.S. citizens;
3. Those individuals who have already earned or can be credited with 40 “qualifying quarters” of employment;
4. Children under age 18 who will automatically derive U.S. citizenship at the same time that they become permanent residents, because of a parent’s U.S. citizenship.

### A. VAWA Self-Petitioners

A noncitizen who has been battered or abused by a U.S. citizen or permanent resident spouse, parent, or child can file a “self-petition” under the Violence Against Women Act (VAWA) provisions. Unlike other family immigrants, they are not subject to the public charge ground of inadmissibility at all.<sup>8</sup> Therefore, these self-petitioners do not need an I-864 Affidavit of Support, but do need to file an I-864W.

### B. Self-Petitioning Widow(er)s of U.S. Citizens

If the intending immigrant was married to (and not legally separated from) a U.S. citizen at the time of the U.S. citizen’s death, the widow(er) may file a petition on his or her own behalf,<sup>9</sup> but must do so within two years of the U.S. citizen spouse’s death. Self-petitioning widow(er)s of U.S. citizens file an I-864W instead of an I-864, indicating the applicable Affidavit of Support exemption.

### C. People With 40 Qualifying Quarters of Work

If the intending immigrant has earned (or can be credited with) 40 quarters pursuant to the Social Security Administration (SSA) rules, she is exempt from the requirement to file Form I-864, but must file Form I-864W.

An intending immigrant can acquire 40 qualifying quarters in the following ways:

1. Working in the United States for 40 quarters in which the intending immigrant received the minimum income established by the Social Security Administration;<sup>10</sup> or
2. By being credited with quarters worked by the person's spouse during the marriage or a parent during the time the person was under 18 years of age;<sup>11</sup> or
3. A combination of the above.

A “quarter of qualifying income” is three months of wages (a quarter of a year) at a certain level for which money has been paid into the Social Security system. Since 1978, qualifying quarters are calculated on an annual rather than quarterly basis, meaning the Social Security Administration looks at the total amount earned over the course of the year, not specifically for each quarter (this is reflected in Social Security Earnings Statements, from 1978 or later). Therefore, 40 quarters is usually 10 years. Under SSA regulations, some people are also able to claim quarters of work done by certain relatives as their own. A person under 18 can count all of her parent's qualifying quarters since the day she was born, and a spouse can count his spouse's quarters earned since the date of the marriage.

Whether a person has earned and/or been credited with 40 qualifying quarters of income is important at two different points in the immigration process. First, it determines whether an individual is required to file an Affidavit of Support. If a person has the 40 qualifying quarters at the time she applies for permanent residency, she does not need to file an I-864 and instead files an I-864W. Second, it marks the end of a sponsor's obligations under the Affidavit of Support (see **Section VI**, below, for more on sponsor obligations). A sponsor's obligations under the Affidavit of Support will end at the moment that the immigrant reaches 40 qualifying quarters.

**Example:** Diana is immigrating and must submit an Affidavit of Support. Her U.S. permanent resident father, Pietro, held a steady job earning above the SSA annual minimum when Diana was five years old up until she was 10, and then he was briefly unemployed before finding another job, again earning at least the SSA minimum, which he has held from the time Diana was 12 years old until the present. She is now 30 years old. Does Diana have 40 qualifying quarters through her father?

Yes. Diana is able to count her father's five years working when she was ages five to 10, and another six years when she was a teenager, from age 12 until she turned 18. In total, that is 44 qualifying quarters (four per year for a total of 11 years). She will need to be able to submit proof of this, such as his Social Security Earnings Statements for those years.

### D. Children Who Become U.S. Citizens at the Same Time They Become LPRs

Some noncitizen children automatically become U.S. citizens (“derive” U.S. citizenship) on the date that they become lawful permanent residents, through the citizenship of the parent.<sup>12</sup> Because these children will become citizens on the same date that they become permanent residents, and because U.S. citizenship also ends the obligations of any sponsor submitting an I-864 Affidavit of Support, the government does not require these children to submit an I-864 as an intending immigrant.<sup>13</sup> However, as with other intending immigrants who are exempt from the Affidavit of Support requirement, the I-864W is still required in place of an I-864.

A noncitizen orphan adopted by a U.S. citizen may also be exempt from the Affidavit of Support requirements depending upon factors such as whether the orphan is adopted abroad or in the United States and whether the U.S. citizen parent(s) saw the child before adoption.<sup>14</sup>

**Children Born after the Visa is Acquired.** There is no Affidavit of Support requirement for children who are born after their immigrant parent(s) have been interviewed by the U.S. consulate and received the immigrant visa, if the child will accompany the parent(s) to the United States. 8 CFR § 213a.2(a)(2)(ii)(D).

## II. Definition of Affidavit of Support “Sponsor”

If you determine that your client is not exempt from filing an Affidavit of Support, then the intending immigrant’s “sponsor” must submit Form I-864. This section briefly explains the definition of the Affidavit of Support sponsor: who is the “sponsor,” what is the “domicile” requirement, and when may a “substitute sponsor” be involved. Later sections will define “joint sponsor,” “household member,” and “contributing household member,” some of the other types of individuals who may be involved in the Affidavit of Support application process.

### A. Who Is the “Sponsor”

If the intending immigrant is required to submit an Affidavit of Support, the visa petitioner *must* submit an I-864 Affidavit of Support as a sponsor, even if they do not have sufficient financial resources to meet the requirements and must enlist the help of others. In family-based cases, the visa petitioner is the person who filed an I-130 visa petition on the immigrant’s behalf, so in this guide we refer to this individual as the “petitioner/sponsor,” to differentiate this individual from other sponsors.

Specifically, the Affidavit of Support sponsor is defined as someone who is a U.S. citizen, U.S. national, or U.S. permanent resident; at least 18 years old; domiciled in the United States (see next section on domicile requirement); is petitioning for the noncitizen to immigrate to the United States; is able to demonstrate that they have the means to meet the financial support requirements; and executes an Affidavit of Support form on the immigrant’s behalf.<sup>15</sup> The age and immigration status requirements are straightforward, while the financial requirements can be met in multiple ways, as we will discuss in the sections that follow.

### B. Domicile Requirement

The sponsor for Affidavit of Support purposes must be “domiciled” in the United States.<sup>16</sup> Domicile is defined in the regulations as “the place where [the sponsor] has his or her principal residence, as defined in § 101(a)(33) of the Act, with the intention to maintain that residence for the foreseeable future.”<sup>17</sup> It must be the “principal, actual dwelling place in fact, without regard to intent.”<sup>18</sup> What this means is that sponsors cannot sign affidavits of support if they themselves do not live in the United States—for example, if a U.S. citizen is living abroad, she cannot immigrate her foreign national mother unless she provides proof that she intends to resume residing in the United States on or before the date her mother will immigrate.

**PRACTICE TIP: When the Petitioner/Sponsor is Temporarily Abroad.** A petitioner/sponsor who lives in the United States but is temporarily traveling abroad for a lengthy period, such as a recent college graduate, may still qualify to submit the I-864 without having to immediately return to the United States. Helpful documentation to submit could include the sponsor’s own sworn declaration stating that the United States is her principal residence, she plans to reside in the United States for the foreseeable future, and explaining the purpose of her time abroad. Other documents could include a recently filed U.S. tax return, copies of temporary visas, U.S. lease agreement that includes petitioner/sponsor, and letter from temporary employer

abroad stating that sponsor is visiting the country temporarily and was hired on a temporary basis such as to teach English, provide some other service, etc.

### C. Substitute Sponsor

A “substitute sponsor” may take the place of a deceased petitioner/sponsor in certain limited circumstances. Specifically, if the original petitioner/sponsor dies, and the immigrant visa application is allowed to go forward,<sup>19</sup> then a substitute sponsor may take the place of the original sponsor.<sup>20</sup> A substitute sponsor *must be related to the intending immigrant* in one of the following ways: spouse; parent; mother- or father-in-law; sibling; child if at least 18 years old; son or daughter; son- or daughter-in-law; brother- or sister-in-law; grandparent; grandchild; or legal guardian.<sup>21</sup> This is unlike a joint sponsor (see **Section IV.B.**), who does not have to have any family relationship with the beneficiary.

The substitute sponsor must also be at least 18 years old; a U.S. citizen, U.S. national, or permanent resident; be domiciled in the United States; and meet all the other requirements under INA § 213A.

## III. Determine Whether the Sponsor Meets the Financial Requirements

The sponsor must prove that he or she has the means to maintain an annual income equal to at least 125% of the federal poverty guidelines for his or her own household, plus the intending immigrant and any family members immigrating with the intending immigrant. Sponsors who are active in the U.S. Armed Forces need only demonstrate they meet 100% of the federal poverty guidelines, rather than 125%.

A sponsor can show that they meet the financial requirements based on their personal financial resources, using a combination of income and assets. If the petitioner/sponsor is unable to show that they meet the financial requirements on their own, they may also use the income and/or assets of others. **Section A**, below, explains how to meet the financial requirements based on income; **Section B** covers use of “significant assets.” These sections apply to all sponsors. **Sections A and B of Part IV** address how to enlist the help of others, through a “contributing household member” and/or “joint sponsor,” respectively.

The most common (and straightforward) way that a sponsor can prove they meet the financial requirements is based on their income.

### A. Meeting the Financial Requirements Based on Income

Each year the federal government decides the amount of income that brings families to the official poverty level, and publishes this as the poverty income guidelines. The federal government updates the guidelines each year, usually in March.<sup>22</sup> To view the most current version of the Poverty Income Guidelines, go to [www.uscis.gov/i-864p](http://www.uscis.gov/i-864p). It is also important to keep in mind that the DHS and the Department of State consider the poverty income guidelines in effect *at the time the I-864 Affidavit of Support was filed*, and not at the time of adjudication of the adjustment of status or immigrant visa application. For this reason, when filing the I-864 Affidavit of Support package, the poverty income guidelines (I-864P) should be included if it will likely be a determining factor relating to sufficiency of the Affidavit of Support.

**Example:** Remy has a family of three (herself and two children) and wants to immigrate her husband. With him, she will have a household of four. She lives in Illinois. Using the 2018 I-864P, you should see that a family of four must earn \$31,375 to meet 125% of the poverty guidelines. Therefore, Remy will have to show annual income of \$31,375 in order to be able to sponsor her husband by herself. (If Remy was on active duty in the U.S. Armed Forces, she would only have to show an annual income of \$25,100.)

## 1. Determining Household Size

The amount of income required according to the poverty income guidelines varies based on household size—the larger the household, the higher the amount required to show 100% or 125% of the federal poverty level. In Remy’s case, it was easy to calculate that she had a household of four with her two children and her husband. Other cases may be more complex, however. The regulations provide that the following persons, in addition to the sponsor herself, must be counted as part of the household regardless of where they reside:

- The sponsor’s spouse;
- The sponsor’s children under the “age of majority,” excluding stepchildren not living with the sponsor and not listed as dependents for tax purposes;<sup>23</sup>
- The intending immigrant;
- All derivatives of the intending immigrant who are obtaining lawful permanent resident status at the same time or within six months;
- All dependents claimed on the sponsor’s most recent tax return, including children who have reached the age of majority and would not otherwise be counted; and
- All noncitizens previously included in an I-864 Affidavit of Support (for immigration on or after December 19, 1997), unless the obligation has ended.<sup>24</sup> Note that noncitizens previously included in an I-134, the Affidavit of Support form used for all immigrants pre-December 1997, do *not* need to be included as part of the household.

Extended family members such as parents, siblings, aunts and uncles, cousins, and even adult children who reside with the sponsor should only be included if they are dependents of the sponsor (usually, this means they are listed as dependents on the sponsor’s tax returns, instead of separately filing their own tax returns). Another, optional reason to include extended family members is if they qualify as a “relative” and wish to be included to contribute their income and assets to the meet the required income level (see **Section IV.A.** below). “Relative” is defined as a sponsor’s spouse, child, adult son or daughter, parent, or sibling. 8 CFR § 213a.1.

**Example:** Amy lives in Florida, and she wants to immigrate her husband Michel and his daughter Nicolette. Amy has two sons from a previous marriage. One 17-year-old son lives at home with her, while the other is a college student listed as a dependent on her most recent income tax return. She filed an old form I-134 Affidavit of Support for her father who immigrated in 1991 and an I-864 Affidavit of Support for her sister who immigrated in May 2012. How many people are in Amy’s household, for purposes of calculating how many she must be able to support at 125% of the poverty income guidelines? How much money must she earn to meet the requirement?

Amy must count herself, Michel, and Michel’s daughter (listed on the current Affidavit of Support), and Amy’s two sons (one lives with her and is under the age of majority for the state where they live, and the other is a dependent on her tax return). She must count her sister, because she submitted an I-864 Affidavit of Support for her. She does not have to count the 1991 I-134 Affidavit of Support she filed for her father, because that was not an I-864 affidavit. Thus, in order to immigrate her husband and his daughter, Amy must meet 125% of the guidelines for a household of six. According to the 2018 I-864P, 125% of the poverty guidelines for a family of six is \$42,175. Therefore, Amy will have to show an income of at least \$42,175 before she can immigrate her husband Michel and his daughter Nicolette.

**PRACTICE TIP:** Don’t Count the Same Person Twice! Individuals counted on the Form I-864 under “Household Size” should only be counted once. For example, if the intending immigrant is also the sponsor’s spouse,

write “1” in the “persons you are sponsoring” box but leave the “spouse” box blank. Similarly, if you have a child as your tax dependent and have also filed an I-864 for that child in the past, only add that child to the “dependent children” box, not also to the “sponsored any other persons” box.

## 2. Proving Income

The Affidavit of Support regulations place significant emphasis on the sponsor’s current income in proving that they meet the financial requirements. The “greatest evidentiary weight” will be given to the sponsor’s “reasonably expected household income” in the year the application is filed (what they are currently earning and will be reporting in their next tax return) instead of the income reported on the most recent tax return (what they earned in the last tax year).<sup>25</sup>

Tax returns merely serve as evidence that the sponsor will likely maintain his or her income in the future. The sponsor is only required to submit their most recent federal income tax return. However, the I-864 asks for information from a sponsor’s last three tax returns. If the sponsor was exempt from filing a tax return for one of those years, she must provide a written explanation proving by a preponderance of the evidence that she was entitled to the exemption, for instance because she did not earn enough to be required to file a tax return for that year because she was a college student or unemployed or disabled.

A sponsor does not have to be employed and can use income from other sources besides employment such as a pension, retirement benefits, interest income, dividends, unemployment or worker’s compensation, alimony, or child support to meet the income requirement. However, while receipt of cash public benefits to maintain income does not disqualify a person from being a sponsor, the sponsor cannot count any of these benefits towards income. Some examples of cash public benefits include Supplementary Security Income (SSI) and Medicaid.<sup>26</sup>

**PRACTICE TIP: When the Sponsor Is Self-Employed.** If the sponsor is self-employed, it can be much more difficult to prove income, apart from tax returns, unless the sponsor has received IRS 1099 forms as an independent contractor, which cover most of the sponsor’s income. For most self-employed persons, then, it is necessary to be creative. In addition to the federal 1040 tax return, Schedule C for self-employment and Schedule A for itemized deductions should be included if the sponsor submitted these forms with her taxes. Copies of major invoices sent to clients and cancelled checks for large amounts, combined with a company profit and loss statement, should also be submitted if possible. If a profit and loss statement is generated by the company accountant, on official letterhead, it is more likely to be deemed credible and sufficient. It is likely a wise strategy to add proof of assets to an I-864 for a sponsor who is self-employed, particularly if the return does not reflect significant income or if the income for the two prior years was insufficient.

### B. Meeting the Financial Requirements Based on Assets

If the sponsor cannot meet the Affidavit of Support requirements based on income, the sponsor may also utilize assets to prove the financial means to support the immigrant.<sup>27</sup>

**PRACTICE TIP: Utilizing Income Rather than Assets.** It is generally easier to prove that a sponsor meets the Affidavit of Support financial requirements based on income, rather than assets. Therefore, you may want to screen for income first. If the sponsor’s income is not enough to meet the requirements, they can consider using their assets but they may also want to consider other options. See **Section IV**, for a discussion of options when the petitioner/sponsor alone cannot meet the financial requirements.

To meet the Affidavit of Support requirements using assets, there are two general requirements: (1) the assets must be convertible to cash within one year, and (2) the net worth of the assets must be five times the difference between the sponsor's actual income and the income the sponsor is required to have according to the Poverty Guidelines for their household size. However, the required value of assets is less if the intending immigrant is the spouse or child (who is at least 18 years old) of a U.S. citizen. For these sponsors, they must only show a value of the assets *three* times the difference between the sponsor's income and the required amount.<sup>28</sup> In addition, if the intending immigrant is an orphan to be formally adopted in the United States, the value of the assets only must equal the shortfall between the sponsor's income and the required amount.<sup>29</sup> Savings accounts, stocks and bonds, certificates of deposit, life insurance policies, real estate, and personal property are examples of significant assets.<sup>30</sup> If real estate is utilized as a "significant asset," the appropriate starting value is the appraised value (or estimated appraised value) less the amount of the mortgage still outstanding, or the "equity" the sponsor has in the real estate property.

A sponsor may use significant assets to meet, or help meet, the 125% amount. In addition, the *intending immigrant's* assets can be counted—even if the immigrant is in another country.

**Example:** Caro, a U.S. citizen, has four people in her household (including herself) and wants to sponsor her husband. Caro makes \$20,000 in annual income. To meet 125% of the poverty guidelines for a household of five, she needs \$36,775 in income. Caro owns her house, which has a cash value (subtracting her mortgage from the appraised value) of \$60,000. Can she use ownership of this asset to make up the remaining \$16,775 income that she needs?

Yes. The difference between 125% of the poverty line (\$36,775) and Caro's income (\$20,000) is \$16,775. Her \$60,000 worth of assets is more than three times the amount she needs to reach 125% (\$50,325), so she will qualify.

**Example:** What if Caro's house was only worth \$20,000, but her husband had stocks and bonds in his home country that could be sold for a net gain of \$40,000?

Caro could combine proof of her \$20,000 in real property plus proof of her husband's ownership of the stocks to show a total of \$60,000 in significant assets. That is more than three times the shortfall between her income and the \$36,775 required by the poverty guidelines.

**Example:** What if Caro later wishes to sponsor her mother after sponsoring her husband. For a household of six, she will need \$42,175 in income and/or assets. Additionally, her assets will need to be more than five times the amount needed after her income is considered. Does she have enough income and assets if her income is still \$20,000 and her assets are valued at \$60,000?

No. The difference between Caro's annual income (\$20,000) and the amount she needs to show according to the poverty guidelines (\$42,175) is \$22,175. Because Caro must show assets that are worth five times the shortfall, rather than three times, her assets must be worth \$110,875. Her \$60,000 in assets will not satisfy this requirement.

#### IV. If Necessary, Consider Including a Household Member or Joint Sponsor

If the petitioner/sponsor is not able to meet the I-864 requirements based on their own financial resources, consider including a contributing household member or joint sponsor. There are also two main ways that the petitioner/sponsor can meet the financial requirements for the Affidavit of Support with the assistance of others: (1) by getting the help of a household member, or (2) with the help of a joint sponsor. Just as the



petitioner/sponsor may prove they meet the financial requirements using income or assets (or a combination), so may the contributing household member or joint sponsor.

Remember that the petitioner *must* submit an I-864, even if she cannot meet the financial requirements on her own (and may have no income at all). This means that even if another person's financial resources are the sole basis for the Affidavit of Support, the petitioner must still submit an I-864 and at least provide their last tax return or a declaration that no such return was required by the IRS.

### A. Including a Household Member's Income

The income of any sponsor's household members may be added to the sponsor's income in order to reach 125% of the poverty income guidelines.<sup>31</sup> The following people may be contributing household members:

- The sponsor's spouse if residing with the sponsor (note: if the spouse is the intending immigrant he or she need not reside with the sponsor);
- The sponsor's children if residing with the sponsor;
- Any other relative designated by the regulations<sup>32</sup> who is residing in the household, is not a dependent, and is at least 18 years old;
- Any dependents listed on the sponsor's tax return for the most recent tax year; and
- The intending immigrant, subject to limitations (see below).

If the intending immigrant has employment authorization (and also qualifies as a household member because they are residing with the sponsor, or are the sponsor's spouse or claimed dependent), the petitioner/sponsor can also include the intending immigrant's income.

**Example:** George has DACA, and is currently employed. His wife, Ruby, is petitioning for him. She is a full-time student. The couple can include George's income to show that they meet the Affidavit of Support requirements because he has employment authorization through DACA.

To include a household member's income, the household member and sponsor must together complete and sign the Form I-864A Contract Between Sponsor and Household Member. As the name suggests, this is a contract between the contributing household member and the sponsor. In that contract, the household member agrees to be *jointly and severally liable* for all of the sponsor's obligations under the Affidavit of Support. In other words, the household member would be just as responsible as the sponsor would be if the sponsor were sued and had to pay out money (see **Section VI** for more on sponsor obligations and liability). Unlike other household members, the intending immigrant does not have to sign an I-864A, as long as she is immigrating by herself (i.e., she is not immigrating with a spouse or child).

### B. Adding a Joint Sponsor

If the petitioner/sponsor does not make enough money to meet the requirements of the Affidavit of Support, then another person can also file an Affidavit of Support and become a joint sponsor. The general rule is that there can be only one joint sponsor. But, in cases where multiple individuals are immigrating on a single family petition, there can be up to two joint sponsors.<sup>33</sup> See example below for how to split up a family of four immigrants between two joint sponsors so that each joint sponsor need only be responsible for one or two immigrant family members, instead of all four.

The joint sponsor must meet the same requirements as the original sponsor, the petitioner. The joint sponsor must be a U.S. permanent resident or U.S. citizen of at least 18 years of age who lives in the United States or a U.S. territory or possession. The joint sponsor does not have to be related in any way to the

intending immigrant (e.g., she could be a third cousin, great aunt, or close friend).<sup>34</sup> The joint sponsor must sign a separate Affidavit of Support, Form I-864. By signing the affidavit, the joint sponsor agrees to accept joint and several liability for the Affidavit of Support. This means that the joint sponsor will have exactly as much responsibility as the original sponsor under the Affidavit of Support.

Unlike with a contributing household member, in which the household member's income is added to the sponsor's income, the joint sponsor's income *cannot* be added to the sponsor's income to meet 125% of the poverty income guidelines; in other words, the joint sponsor's finances must meet the requirements on their own, essentially taking the place of the sponsor. Therefore, the joint sponsor must be able to demonstrate income sufficient to meet 125% of the poverty guidelines to support both her own household, plus the intending immigrant. However, in a single family petition involving multiple immigrating family members and up to two joint sponsors, each joint sponsor need only include the person he or she is sponsoring as part of the household size (in addition to other members of the sponsor's actual household), rather than everyone on the family petition.

**Example:** Kimora, the sponsor, resides in California and wants to immigrate her husband and four children from Japan. She already has one child in the United States. To meet 125% of the poverty guidelines for a family of seven, she needs to make \$47,575. She does not earn enough to meet this amount. She has two friends, Miko and Sayako, who are willing to be joint sponsors, but when they calculate their own household size and add Kimora's husband and four kids, neither one of them earns enough to meet 125% of the poverty guidelines. However, Kimora's joint sponsors could divide among themselves the individuals in the family petition to reduce their household size and meet the required income level. Miko could be the joint sponsor for Kimora's husband and two of their children. She would then only have to show that she makes enough to support her own household plus three others. Then, Sayako could be a joint sponsor for Kimora's two other children and would only have to show that she makes enough to support her own household plus two other people.

**PRACTICE TIP: Mix and Match to Get to 125%.** The easiest way to meet the Affidavit of Support requirement is simply to rely on income from the sponsor and joint sponsor(s), and to attach the most recent year's tax return plus recent pay stubs.

However, you can also get creative and combine household income, joint sponsors, and significant assets to reach the 125% mark. However, keep in mind this will likely require more extensive paperwork to demonstrate the value of the assets and other sources of income. A joint sponsor can include income from members of his or her household, just like the main sponsor. Significant assets belonging to a sponsor, joint sponsor, household member, or the intending immigrant can be counted. For example, if Ellen agrees to be a joint sponsor, she may use her own contributing household member's income to reach 125%. Both she and the contributing household member can use significant assets to help reach the amount.

## V. Practical Considerations: Which Forms and Supporting Documents

### A. Supporting Documentation to Include with Form I-864

In a standard case, using income alone to meet the financial requirements, you should include along with the I-864 form the following:

- Proof of the sponsor's U.S. immigration status (a copy of their U.S. permanent resident card, U.S. naturalization certificate, U.S. birth certificate, or U.S. passport);
- A copy of the sponsor's most recent federal income tax return (IRS form 1040) and associated Schedules; and

- Three to five of the sponsor's last pay stubs (e.g. if submitting the Affidavit of Support in mid-April and the individual is paid twice per month, at a minimum include the two pay stubs covering March and the one they have for the first two weeks of April, a total of three pay stubs).

An employer letter verifying the sponsor's monthly or annual income, or their hourly rate of pay and the hours of work per week, may also be helpful in some cases. A recent pay stub should be brought to the interview, and if taxes have been filed by the sponsor and/or joint sponsor since the Affidavit of Support was filed, copies of those should be brought to the interview as well.

## B. Form I-864EZ

Instead of Form I-864, some individuals may be able to file the Form I-864EZ. A sponsor/petitioner may file the I-864EZ if they are the petitioner/sponsor who filed an I-130 visa petition on behalf of the immigrant, no one else is immigrating along with the intending immigrant/beneficiary, and they are able to prove they meet the financial requirements based solely on their salary or pension, as evidence by their W-2s. The benefit of using the I-864EZ in place of the I-864 is that the I-864EZ is shorter and easier to fill out.

**PRACTICE TIP: Check the Form I-864/I-864W/I-864EZ Edition Dates.** USCIS revised forms I-864, I-864A, and I-864EZ as well as the corresponding form instructions on March 1, 2018. It is always important to check for the latest version of the form on the USCIS form website (for the I-864, [www.uscis.gov/i-864](http://www.uscis.gov/i-864)) to make sure you are using the most updated version of the form, and to read updated form instructions, rather than just look at the form itself. Beginning May 16, 2018, USCIS will not accept older versions of these forms.

## VI. Understanding Sponsor Responsibilities and Obligations under the Affidavit of Support

### A. Sponsor Legal Obligations Under the Affidavit of Support

If the intending immigrant is required to submit an I-864 Affidavit of Support, the visa petitioner is always required to sign and complete an I-864 for their family member as a sponsor, and is the one bound by this contract, not the visa petition beneficiary/intending immigrant. Further, the petitioner/sponsor is required to submit an I-864 even if she does not make enough money or otherwise have enough financial resources to meet the requirements to show ability to support the beneficiary/intending immigrant (as explained in previous sections, this is where a joint sponsor may come in). This means that the sponsor must complete and submit an I-864, even if in reality another person such as a joint sponsor actually has the resources to financially support the intending immigrant.

**Example:** Alejandro works in the fields to support himself and his mother, who does not work because she has a disability. His mother is petitioning for him. She must submit an Affidavit of Support, even though she will have no income except for social security benefits, and even though *he* supports *her*.

The Affidavit of Support will be legally enforceable against the sponsor, as well as any joint sponsor or contributing household member.<sup>35</sup> The commitment under this "contract" persists until the person who immigrates becomes a U.S. citizen, dies, or can be credited with 40 quarters of work in the United States.<sup>36</sup> In addition, the sponsor's obligations end under the Affidavit of Support if the sponsored immigrant ceases to be a lawful permanent resident and leaves the United States, or the sponsored immigrant obtains a new grant of adjustment of status in removal proceedings as relief from removal.<sup>37</sup> The sponsor's (and any joint sponsor's) obligations under the Affidavit of Support do not begin until the intending immigrant obtains

lawful permanent resident status. This means that a sponsor may withdraw the Affidavit of Support at any time before the intending immigrant is granted permanent residence.

Significantly, the commitment does not end if a petitioner and beneficiary later divorce, even if a premarital agreement or divorce agreement attempts to eliminate this responsibility.<sup>38</sup> The sponsor's obligation also does not end if the sponsor and immigrant become estranged and the sponsor loses track of the immigrant's whereabouts, or for other personal reasons. It does end if the sponsor dies, but the sponsor's estate may have to pay obligations that arose before the sponsor died.<sup>39</sup>

**Example:** Marco immigrated his brother Luca. They have a falling out and your client, Luca, tells you that his brother is refusing to honor the Affidavit of Support because he is mad at Luca. Notwithstanding the brothers' current disagreement and any protestations Marco may make to the contrary, Marco is still obligated under the I-864 he submitted on behalf of Luca, until Luca becomes a U.S. citizen or has 40 quarters (or passes away).

**Example:** Marie immigrated her husband Robert, with Marie's mother filing an I-864 Affidavit of Support as a joint sponsor. Five years later, Robert began drinking heavily and divorced Marie. Three years after that he was in an automobile accident and became unable to work. Marie and her mother will remain responsible for Robert under the affidavits of support, and may be forced to repay Medicaid for his medical expenses if the government insists they do so. Robert might even be able to sue to force them to support him at 125% of the poverty guidelines. Their obligation will not end until Robert becomes a U.S. citizen, or works 40 qualifying quarters, or loses lawful permanent resident status and leaves the United States, or dies.

Even after the sponsor's obligation ends, the sponsor is still liable for debts that arose before the support obligation ended. For example, if Robert in the above example ends the obligation by becoming a U.S. citizen, Marie and her mother might still be held liable for his Medicaid expenses from before he became a U.S. citizen, when the affidavit was in effect (as long as the government sues them within ten years of when he received the benefits).

Due to the serious, lasting consequences of signing an Affidavit of Support, it is important that the beneficiary and all sponsors fully understand their obligations under the Affidavit of Support.

**Government Suit to Recover Cost of Means-Tested Benefits.** Any federal, state, or local government can sue the sponsor to recover the cost of federal or state "means-tested public benefits" that were received by the immigrant during the period of enforcement of the Affidavit of Support. In fact, USCIS may disclose a sponsor's social security number and the sponsor's last known address to a benefits granting agency to help it obtain a reimbursement from the sponsor. Federal means-tested public benefits have been defined to include only Medicaid, the Children's Health Insurance Program (CHIP), Temporary Assistance for Needy Families (TANF), and SSI.<sup>40</sup> Advocates should keep abreast of which state or local benefits will be designated as being recoverable under the Affidavit of Support. In practice, there have been few government actions to obtain reimbursements for these benefits.<sup>41</sup> Note that government agencies cannot sue to collect reimbursement for benefits that the immigrant received more than ten years earlier.<sup>42</sup>

**The sponsored immigrant can sue the sponsor** to be supported at a level equal to 125% of the federal poverty guidelines, if the immigrant's income falls below that mark.<sup>43</sup> There have been a few cases brought against sponsors by the sponsored persons and all have been former spouses. Most notably, a federal district court in Indiana upheld a sponsored immigrant's right to recover from her sponsor ex-husband and awarded \$19,000 in damages, plaintiff's attorneys' fees, and held that the sponsor had a continuing obligation to support the immigrant at the 125% guideline level until the contract terminated.<sup>44</sup> Sponsors

who file affidavits of support for their spouses should be aware that they can be held liable to support their spouses even after divorce and even apart from state family laws relating to spousal support or alimony.

**PRACTICE TIP: Who Is Your Client?** A legal representative might represent the sponsor/petitioner in the I-130 petition, as well as the applicant for permanent residence (the beneficiary). If representing more than one party, as their legal representative it is important that you make sure to explain the potential conflicts that may arise. Have both parties sign a conflict waiver as part of your legal contract with them, stating that you explained the possibility of conflict and what will happen should a conflict arise.

Any joint sponsors should thoroughly read and review the I-864 that they are signing and obtain independent legal advice regarding their obligations and responsibilities.

## B. Sponsors Must Notify the Government if They Change Their Address

If a sponsor moves, he or she must notify both the USCIS and the state in which the sponsored immigrant resides within 30 days. The sponsor does this by filing Form I-865, Sponsor's Change of Address. If the sponsor fails to do this, he or she can be fined from \$250 to \$2,000, or up to \$5,000 if he or she knows the immigrant has collected benefits.<sup>45</sup>

## End Notes

<sup>1</sup> Employment-based immigrants only need to file an Affidavit of Support if the U.S. citizen, LPR, or U.S. national filed the visa petition on their behalf, or has a five percent or more ownership interest in the entity that filed the petition.

<sup>2</sup> See 9 FAM 302.8-2(B)(2), updated Jan. 3, 2018.

<sup>3</sup> *Id.*

<sup>4</sup> At the time of writing this advisory, further proposed changes were recently leaked that may change the affidavit of support forms and process as well. See <http://apps.washingtonpost.com/g/documents/world/read-the-trump-administrations-draft-proposal-penalizing-immigrants-who-accept-almost-any-public-benefit/2841/>. Check back at [www.ilrc.org](http://www.ilrc.org) for more materials on this developing issue.

<sup>5</sup> For questions about this advisory, please contact [abrown@ilrc.org](mailto:abrown@ilrc.org).

<sup>6</sup> However, they may be able to immigrate through a different visa petition, with a different petitioner/sponsor who is able to meet the financial requirements.

<sup>7</sup> A small class of people, those who filed an application for adjustment of status and/or received a visa from a consular officer before December 19, 1997, do not have to file either the I-864 or the I-864W.

<sup>8</sup> See INA § 212(a)(4)(C)(i)(III) and (E)(i).

<sup>9</sup> Using Form I-360, the intending immigrant essentially stands in the shoes of the deceased U.S. citizen spouse, who if still alive would have been able to submit an I-130 on their behalf (so the immigrant “self-petitions” on that same basis).

<sup>10</sup> Go to [www.ssa.gov](http://www.ssa.gov) for more information. The chart for earnings required per year for one quarter is available at: [www.ssa.gov/oact/cola/QC.html#qcseries](http://www.ssa.gov/oact/cola/QC.html#qcseries). For 2018, the minimum income in order to receive one quarter of Social Security earnings credit is \$1,320, so four quarters would require \$5,280 earnings over the course of the year.

<sup>11</sup> INA § 213A(a)(3)(B). Note that beginning December 31, 1996, quarters during which a parent or spouse received means-tested benefits cannot be counted towards the 40 quarters.

<sup>12</sup> This is subject to the requirement that the child must be in the legal and physical custody of the U.S. citizen parent in order to acquire U.S. citizenship. See the ILRC's *Naturalization and U.S. Citizenship: The Essential Legal Guide* for more information on derivation of citizenship.

<sup>13</sup> 8 CFR § 213a.2(a)(2)(ii)(E).

<sup>14</sup> The laws on this can be complicated. For a summary, see “Final Rule Regarding Affidavits of Support Issued by USCIS and EOIR,” 83 *Interpreter Releases* 1296 (July 3, 2006).

<sup>15</sup> INA § 213A(f)(1).

<sup>16</sup> INA § 213A(f)(1)(C).

<sup>17</sup> 8 CFR § 213a.1.

<sup>18</sup> INA § 101(a)(33).

<sup>19</sup> See INA § 204(l).

<sup>20</sup> 8 CFR § 213a.1.

<sup>21</sup> *Id.*

<sup>22</sup> The annual update of the poverty income guidelines for Affidavit of Support purposes does not go into effect until the first day of the second month after the date of publication in the Federal Register by the Department of Health and Human Services (HHS).

<sup>23</sup> 8 CFR § 213a.1(1). In many states the age of majority is 18, but make sure to check the relevant state laws for your case.

<sup>24</sup> 8 CFR § 213a.1.

<sup>25</sup> 8 CFR § 213a.2(c)(2)(ii)(C).

<sup>26</sup> For a non-exhaustive list of cash benefits for public charge inadmissibility, see

[www.uscis.gov/ilink/docView/FR/HTML/FR/0-0-0-1/0-0-0-54070/0-0-0-56200/0-0-0-56785/0-0-0-56933.html](http://www.uscis.gov/ilink/docView/FR/HTML/FR/0-0-0-1/0-0-0-54070/0-0-0-56200/0-0-0-56785/0-0-0-56933.html).

<sup>27</sup> INA § 213A(f)(6)(A)(ii).

<sup>28</sup> See 8 CFR § 213a.2(c)(2)(iii)(B)(1).

<sup>29</sup> See 8 CFR § 213a.2(c)(2)(iii)(B)(2). Note also that some children of U.S. citizens, including those qualifying as “adopted children” under the INA, are exempt from the Affidavit of Support requirement if they would become U.S. citizens by operation of law immediately upon acquiring permanent resident status. See Section II.

<sup>30</sup> See 8 CFR § 213a.2(c)(1)(iii)(B) and INA § 213A(f)(6)(A)(ii).

<sup>31</sup> See 8 CFR § 213a.2(c)(2)(i)(C)(1).

<sup>32</sup> “Relative” is defined only to include the sponsor’s spouse, child, adult son/daughter, parent, or sibling. 8 CFR § 213a.1(2).

<sup>33</sup> 8 CFR § 213a.2(c)(2)(iii)(C).

<sup>34</sup> See INA § 213A(f).

<sup>35</sup> See INA §§ 213A(a)(1)(B) & (b). The Form I-134 Affidavit of Support, which was used for all immigrants before December 1997 and now may be used for non-family immigrants, as well as for K visa fiancé(e)s, is *not* legally enforceable against the sponsor.

<sup>36</sup> INA § 213A(a)(3).

<sup>37</sup> *Id.* Note if the sponsored immigrant requires an Affidavit of Support for the new adjustment application, only the sponsors who file new Affidavits of Support in conjunction with the new adjustment will be obligated.

<sup>38</sup> See, e.g., *Erler v. Erler*, 824 F.3d 1173, 1177 (9th Cir. 2016) (“ . . . neither a divorce judgment nor a premarital agreement may terminate an obligation of support [under the Affidavit of Support].”); *Liu v. Mund*, 686 F.3d 418, 419-20 (7th Cir. 2012) (“[t]he right of support conferred by federal law exists apart from whatever rights [a sponsored immigrant] might or might not have under [state] divorce law.”).

<sup>39</sup> See 8 CFR § 213a.2(e)(2)(ii).

<sup>40</sup> However, as noted in the introduction to this advisory, these definitions may change.

<sup>41</sup> See, e.g., *Moody v. Sorokina*, 40 A.D.3d 14 (N.Y. App. Div. 2007).

<sup>42</sup> INA § 213A(b)(2)(C).

<sup>43</sup> See INA § 213A(a)(1)(B), (e)(1).

<sup>44</sup> See *Stump v. Stump*, 2005 WL 2757329 (N.D. Ind. 2005).

<sup>45</sup> INA § 213A(d)(2).