



August 16, 2022

Cash Assistance Manual Transmittal Letter No. 184

TO: All Cash Assistance Manual Holders
FROM: Matt Damschroder, Director
SUBJECT: **Five Year Rule Review: Benefit Eligibility: Indefinite Detainees or Lifers and Sponsor-to-Alien Deeming Requirements: Ohio Works First.**

In accordance with section 106.03 of the Ohio Revised Code (ORC), each state agency is required to review each of its rules in the Ohio Administrative Code a minimum of once every five years. The intent of the review is to ensure that Administrative Code rules are clearly written and that program requirements are accurate, up-to-date, and clearly expressed. To the extent possible, unnecessary paperwork will be eliminated, local agencies will be given increased flexibility, and any adverse impact on businesses will be eliminated or reduced. As a result of the review, the agency may amend the rule; rescind the rule; or continue the rule without amendment.

The Office of Family Assistance (OFA) has completed a review of the following rules and the rules have been subject to a review by the Joint Committee on Agency Rule Review (JCARR). The rules will become effective on 09/01/2022.

Chapter 1000

5101:1-2-35 "Sponsor-to-Alien Deeming Requirements: Ohio Works First."

This rule describes the Sponsor-to-alien deeming requirements for the Ohio Works First program. OFA amended this rule. Changes to the rule include:

- All language made in reference to Disability Financial Assistance (DFA) was removed due to the repeal of the DFA program in accordance with section 812.40 of the Ohio Revised Code. Effective December 1, 2017, funding was no longer available for the DFA program;
- Minor language changes were made in paragraph (D)(2) for clarity and to remove any reference to DFA; and
- Paragraph (D)(4) was removed due to the referenced DFA eligibility.

5101:1-2-30.2 "Benefit Eligibility: Indefinite Detainees or Lifers."

This rule sets forth policy for determining benefit eligibility for indefinite detainees or lifers. OFA amended this rule. Changes to the rule include:

- All language made in reference to Disability Financial Assistance (DFA) was removed due to the repeal of the DFA program in accordance with section 812.40 of the Ohio Revised Code. Effective December 1, 2017, funding was no longer available for the DFA program;
- Some non-substantive changes to language were added in paragraphs (C)(1), (C)(2) and (C)(3) to align with federal regulations;
- Minor language changes were made in paragraphs (D)(2) and (D)(3) to align with other OWF rules for consistency; and
- Rule citation referenced in paragraph (D)(5) was updated in accordance with the Administrative Code.

5101:1-2-30.2

Benefit eligibility: indefinite detainees or lifers.

(A) Are indefinite detainees or lifers eligible for benefits?

Some indefinite detainees or lifers released from detention may have a status as refugees or may receive a status that makes them potentially eligible for refugee cash assistance (RCA), ~~disability financial assistance (DFA)~~ or Ohio works first (OWF).

(B) Who are indefinite detainees or lifers?

Indefinite detainees or lifers are non-citizens who, after having served time for a criminal conviction and are given a final order of removal by the department of homeland security (DHS) United States citizenship and immigration services (USCIS), remain indefinitely in the United States (U.S.) because their home country and no other country will accept them. An alien's detention is limited to a period reasonably necessary to bring about the alien's removal from the U.S. and does not permit indefinite detention.

(C) What shall an indefinite detainee or lifer provide when applying for benefits?

(1) An "Order of Supervision" (USCIS I-220B) in accordance with 8 C.F.R. 241.5 (8/2011). The order of ~~supervision~~ supervision should include the individual's alien registration number and notation concerning exclusion, deportation or removal. The order shall specify the conditions of supervision including but not limited to a requirement that the alien:

- (a) Report to a specified officer periodically and provide relevant information under oath as directed;
- (b) Continue efforts to obtain a travel document and assist in obtaining a travel document;
- (c) Report as directed for a mental or physical examination or examinations as directed;
- (d) Obtain advance approval of travel beyond previously specified times and distances; and
- (e) Provide DHS with a written notice of any change of address ~~within ten days of the change~~.

(2) Posting of bond. An officer authorized to issue an order of suspension may require the posting of a bond in an amount determined by the officer to be sufficient to ensure compliance with the conditions of the order, including surrender for removal.

(3) Employment authorization. An officer authorized to issue an order of supervision may, in his or her discretion, grant employment authorization to an alien released under an order of supervision if the officer finds that:- :

(a) The alien cannot be removed in a timely manner; or

(b) The removal of the alien is impracticable or contrary to public interest.

(D) What are the responsibilities of the county agency?

The county agency shall:

(1) Collect as much of the following information from the applicant as possible;

(a) Name;

(b) Alien registration number ("A number");

(c) Date of birth;

(d) Social security number;

(e) Home country;

(f) Number on the I-94 "Arrival-Departure Record";

(g) Parent's name;

(h) Driver's license number; and

(i) Copies of any immigration documents.

(2) Call the office of refugee resettlement (ORR) ~~at (202) 401-9246~~ to inform them about the need for an eligibility determination for an indefinite detainee.

(3) Send ~~a fax with~~ the collected information from the applicant and contact information for the eligibility determiner handling the case at the county agency to the ORR ~~at (202) 401-5487~~. The ORR will work with the USCIS to determine the applicant's original status, entry date and eligibility.

(4) After information has been received by the county agency, the ORR may contact the county agency for additional information. The ORR will notify the county agency of the applicant's status, entry date and eligibility.

- (5) Based upon the information received from ORR, the county agency shall determine eligibility of the indefinite detainee or lifer for RCA benefits in accordance with rule ~~5101:1-2-40~~ 5101:1-2-40.1 of the Administrative Code; ~~for DFA benefits in accordance with Chapter 5101:1-5 of the Administrative Code~~ or for OWF benefits in accordance with division 5101:1 of the Administrative Code.

Effective: 9/1/2022
Five Year Review (FYR) Dates: 6/8/2022 and 09/01/2027

CERTIFIED ELECTRONICALLY

Certification

08/15/2022

Date

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5101:1-2-35

Sponsor-to-alien deeming requirements: Ohio works first and disability financial assistance.

(A) What is the sponsor-to-alien deeming requirement?

In the determination of eligibility for cash assistance benefits, the county agency is required to deem a sponsor's income and resources to the alien. The United States citizenship and immigration services (USCIS) form I-864, "Affidavit of Support" has been developed for the determination of the sponsor-deeming directive and is available at <https://www.uscis.gov/i-864>.

(B) Who is considered a sponsor?

- (1) A sponsor is anyone who executes the I-864 "Affidavit of Support" on behalf of an alien as a condition of the alien's entry into the United States (U.S.).
- (2) Pursuant to section 213A of the Immigration and Nationality Act (INA) (1954), the I-864 is completed when the income and or resources of the sponsor and any other household member are used to qualify an alien for sponsorship.

(C) Who is not subject to the sponsor-to-alien deeming requirements?

An assistance group that consists of:

- (1) An alien who is a minor child when the sponsor of the alien or any spouse of the sponsor is a parent of the alien;
- (2) An alien admitted to the U.S. as a refugee;
- (3) An alien paroled into the U.S. for a period of at least one year;
- (4) An alien granted political asylum by the attorney general of the U.S.;
- (5) A lawful permanent resident who applied for an immigrant visa at a consular's office or adjustment of status to lawful permanent resident before December 19, 1997;
- (6) A qualified alien who is sponsored by an organization or who is not a lawful permanent resident and who is not required to have a sponsor;
- (7) A victim of a severe form of trafficking, as defined in rule 5101:1-2-30 of the Administrative Code;
- (8) Certain family members of a victim of a severe form of trafficking as described in rule 5101:1-2-30.3 of the Administrative Code;

- (9) A lawful permanent resident entering employment or other non-family categories, such as the diversity category (i.e., lottery immigrants) where a person did not have to sign the I-864 affidavit. Persons from countries with low rates of immigration are allowed into the U.S. through a lottery system;
- (10) An alien or alien's child who has been determined to be a victim of domestic violence or extreme cruelty is exempt for a period of twelve months:
- (a) A county agency may use any credible evidence of abuse that is available to make a determination. This would include, but is not limited to reports or affidavits from police, judges, other court officials, medical personnel, school officials, clergy, social workers, other social service agency personnel, protection orders, affidavits from family members or others who have a personal knowledge of the battery or extreme cruelty, photographs of injuries, and the applicant's own credible affidavit.
 - (b) The deeming exemption may not apply to the alien's benefits during any period that the individual responsible for such battery or cruelty resides in the same household or family eligible unit as the individual who was subjected to such battery or cruelty.
 - (c) The exemption can be extended beyond twelve months when the abuse or cruelty is recognized by a court order, an administrative law judge or the USCIS, and the victim does not live with the batterer. However, the county agency shall notify the Ohio department of job and family services, office of families and children, of each such determination so information may be forwarded to the USCIS. The name of the sponsor(s) and the sponsored lawful permanent resident(s) involved should be provided;
- (11) An alien child of a battered parent, as described in rule 5101:1-2-30 of the Administrative Code;
- (12) An indigent alien who has been determined by the county agency to be unable to obtain food and shelter taking into account the alien's own income plus any cash, food, housing, or other assistance provided by other individuals, including the sponsor. In this instance, only the amount of income and resources actually provided by the sponsor or sponsor's spouse should be considered. The exemption is granted for a twelve-month period beginning on the date the determination is made;
- (13) An alien whose sponsor signed an affidavit(s) of support other than the I-864 affidavit of support; and

(14) Cuban and Haitian entrants.

(D) How is the sponsor-to-alien deeming requirement applied?

- (1) The sponsor and sponsor's spouse do not have to reside in the household of the sponsored alien or any member of the alien's assistance group for the deeming provision to apply.
- (2) An alien whose sponsor signed an I-864 affidavit on or after December 12, 1997 and applies for Ohio works first (OWF) ~~or disability financial assistance (DFA) benefits~~, is subject to the deeming requirement upon the expiration of the five-year ban on receipt of OWF ~~or DFA~~ benefits as described in rule 5101:1-2-30 of the Administrative Code.
- (3) The income of the sponsor and the sponsor's spouse shall be deemed in accordance with the income allocation methodology as described in rule 5101:1-23-20 of the Administrative Code.
- ~~(4) For purposes of DFA eligibility, resources of the sponsor and the sponsor's spouse shall be deemed pursuant to rule 5101:1-5-30 of the Administrative Code.~~
- ~~(5)~~(4) Deemed income shall be considered unearned income, and unearned income and resources shall be equally divided and budgeted among the sponsored aliens. This deeming applies until the alien meets one of the requirements outlined in paragraph (C) of this rule.
- ~~(6)~~(5) When an alien has two sponsors, both of whom executed an I-864 and an I-864A, "Contract Between Sponsor and Household Member" affidavit, the income and resources of both the primary and joint sponsor(s), as well as their respective spouses shall be deemed to the sponsored lawful permanent resident.
- ~~(7)~~(6) An alien sponsored pursuant to an I-864 and an I-864A affidavit shall be required to provide such information and documentation with respect to the alien's sponsor as may be necessary in order to make a determination of eligibility required by this rule, and to obtain any cooperation from the sponsor necessary for any such determination. This includes such information and documentation that the alien or the alien's sponsor provided in support of the alien's immigration application.
- ~~(8)~~(7) When an accepted I-864 and an I-864A affidavit provides that an alien is not excludable as a public charge, the sponsor agrees to financially support the alien so that the alien will not become a public charge. Upon notification that a sponsored alien has received a benefit, the county agency shall request reimbursement by the sponsor for the alien's assistance. A public charge means

an alien who has become (for deportation purposes) or who is likely to become (for admission/adjustment purposes) primarily dependent on the government for subsistence.

(E) How long do the deeming requirements apply?

Deeming applies until the alien:

- (1) Becomes a U.S. citizen;
- (2) Has earned or can be credited with forty qualifying quarters of work as defined in rule 5101:1-2-30 of the Administrative Code; or
- (3) Departs the U.S. permanently or dies.

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