

**DEPARTMENT OF HOMELAND SECURITY**

**8 CFR Part 213a**

[CIS No. 2655–20; DHS Docket No. USCIS–2019–0023]

RIN 1615–AC39

**Affidavit of Support on Behalf of Immigrants**

**AGENCY:** U.S. Citizenship and Immigration Services, Department of Homeland Security (DHS).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The U.S. Department of Homeland Security (DHS) proposes to amend its regulations governing the affidavit of support requirements under section 213A of the Immigration and Nationality Act (INA or the Act). Certain immigrants are required to submit an Affidavit of Support Under Section 213A of the INA (Affidavit) executed by a sponsor who agrees to provide financial support to the sponsored immigrant and accepts liability for reimbursing the costs of any means-tested public benefits a sponsored immigrant receives while the Affidavit is in effect pursuant to section 213A(a)(2) of the INA. DHS proposes to clarify how a sponsor demonstrates the means to maintain income as required under section 213A(f)(6) of the Act such as revising the documentation that sponsors and household members must submit to meet the requirements under section 213A(f) of the Act. DHS proposes to modify when an applicant is required to submit an Affidavit from a joint sponsor, who may be a household member for purposes of executing a Contract Between Sponsor and Household Member (Contract), and who is considered as part of a sponsor's household size. DHS also proposes to update reporting and information sharing requirements between authorized parties and USCIS.

**DATES:** Written comments must be submitted on this proposed rulemaking on or before November 2, 2020. Comments on the collection of information (see Paperwork Reduction Act section) must be received on or before December 1, 2020. Comments on both the proposed rulemaking and the collection of information received on or before November 2, 2020 will be considered by DHS and USCIS. Only comments on the collection of information received between November 2, 2020 and December 1, 2020 will be considered by DHS and USCIS. *Note:* Comments received after November 2, 2020 on the proposed

rulemaking rather than those specific to the collection of information will not be considered by DHS and USCIS.

**ADDRESSES:** You may submit comments on the entirety of this proposed rule package, identified by DHS Docket No. USCIS–2019–0023, through the *Federal eRulemaking Portal*: <http://www.regulations.gov>. Follow the website instructions for submitting comments.

Comments submitted in a manner other than the one listed above, including emails or letters sent to DHS or USCIS officials, will not be considered comments on the proposed rule and may not receive a response from DHS. Please note that DHS and USCIS cannot accept any comments that are hand delivered or couriered. In addition, USCIS cannot accept comments contained on any form of digital media storage devices, such as CDs/DVDs and USB drives. Due to COVID–19, USCIS is also not accepting mailed comments at this time. If you cannot submit your comment by using <http://www.regulations.gov>, please contact Samantha Deshommes, Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, by telephone at 202–272–8377 for alternate instructions.

**FOR FURTHER INFORMATION CONTACT:** Mark Phillips, Residence and Naturalization Chief, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, DHS, 20 Massachusetts NW, Washington, DC 20529–2140; telephone 202–272–8377.

**SUPPLEMENTARY INFORMATION:**

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**Table of Abbreviations**

- DHS—Department of Homeland Security
- DOJ—Department of Justice
- DOS—Department of State
- EOIR—Executive Office for Immigration Review
- FCRA—Fair Credit Reporting Act
- HHS—Department of Health and Human Services
- INA—Immigration and Nationality Act
- INS—Immigration and Naturalization Service
- USCIS—U.S. Citizenship and Immigration Services

**I. Public Participation**

DHS invites all interested parties to participate in this rulemaking process by submitting written data, views, comments, and arguments on all aspects of this proposed rule. DHS also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposed rule. Comments must be submitted in English, or an English translation must be provided. Comments that will provide the most assistance to USCIS in implementing these changes will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

*Instructions:* If you submit a comment, you must include the agency name (U.S. Citizenship and Immigration Services) and the DHS Docket No. USCIS–2019–0023 for this rulemaking. Regardless of the method used for submitting comments or materials, all submissions will be posted, without change, to the Federal eRulemaking Portal at <http://www.regulations.gov>, and will include any personal information you provide. Therefore, submitting this information makes it

public. You may wish to consider limiting the amount of personal information that you provide in any voluntary public comment submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy and Security Notice available at <http://www.regulations.gov>.

*Docket:* For access to the docket and to read background documents or comments received, go to <http://www.regulations.gov>, referencing DHS Docket No. USCIS-2019-0023. You may also sign up for email alerts on the online docket to be notified when comments are posted or a final rule is published.

## II. Executive Summary

### A. Purpose and Summary of the Regulatory Action

DHS is proposing to amend its regulations related to the Affidavit of Support Under Section 213A of the INA (Affidavit). The proposed rule changes certain requirements for the Affidavit and is intended to better ensure that all sponsors, as well as household members who execute a Contract Between Sponsor and Household Member (Contract), have the means to maintain income at the applicable income threshold and are capable of meeting their support obligations under section 213A of the INA, 8 U.S.C. 1183a, during the period in which the Affidavit or the Contract is enforceable. This proposed rule is also aimed at strengthening the enforcement mechanism for the Affidavit so that sponsors and household members who agree to use their income and assets to support the sponsored immigrant are held accountable if the sponsored immigrant ultimately receives means-tested public benefits during the period in which the Affidavit or the Contract is enforceable.

First, this proposed rule would update the evidentiary requirements for sponsors submitting an Affidavit, which will better enable immigration officers and immigration judges to determine whether the sponsor has the means to maintain an annual income at or above the applicable threshold, and whether the sponsor can, in fact, provide such support to the intending immigrant and meet all support obligations during the period the Affidavit is in effect. Specifically, this proposed rule would require sponsors and household members who execute an Affidavit or Contract to provide Federal income tax

returns for 3 years, credit reports, credit scores, and bank account information.

Second, this proposed rule would also amend the regulations to specify that a sponsor's prior receipt of any means-tested public benefits and a sponsor's failure to meet support obligations on another executed Affidavit, or household member obligations on a previously executed Contract, will impact the determination as to whether the sponsor has the means to maintain the required income threshold to support the immigrant. Receipt of means-tested public benefits by a sponsor may indicate that the sponsor does not have the financial means to maintain an annual income equal to at least 125 percent of the Federal poverty line,<sup>1</sup> or 100 percent of the Federal poverty line for an individual who is on active duty (other than active duty for training) in the Armed Forces of the United States and who is petitioning for his or her spouse or child,<sup>2</sup> and is relevant to determining whether the sponsor can, in fact, provide such support to the intending immigrant during the period of enforceability. Similarly, whether a sponsor has previously failed to fulfill his or her support obligations is relevant to determining whether the sponsor will meet future support obligations. Specifically, this proposed rule would require an applicant submitting an application for an immigrant visa or adjustment of status on or after the effective date of this rule to submit a Form I-864 executed by a joint sponsor if a petitioning sponsor or substitute sponsor received any means-tested public benefits on or after the effective date of this rule and within the 36-month period prior to executing the Affidavit, or if the petitioning sponsor or substitute sponsor had a judgment entered against him or her at any time for failing to meet any prior sponsorship or household member obligation. Furthermore, this proposed rule would only allow an individual to be a joint sponsor if he or she has neither received means-tested public benefits on or after the effective date of this rule and within the 36 month period prior to executing the Affidavit, nor had a judgment entered against him or her at any time for failing to meet a prior sponsorship or household member obligation.

Third, this proposed rule would revise the current regulatory requirements concerning who can qualify as a household member for purposes of submitting and executing a

Form I-864A. Currently, there is no limitation on the number of household members who may execute a Form I-864A. DHS intends to permit only a sponsor's spouse or an intending immigrant with the same principal residence (same principal residence upon immigrating, in the case of an intending immigrant consular processing) as the sponsor to execute Form I-864A, which will better ensure that the income a household member promises to make available to support the intending immigrant is actually available.

Fourth, this proposed rule would update and improve how means-tested public benefit-granting agencies obtain information from USCIS and how they can provide information to USCIS. The current regulations require a duly issued subpoena before USCIS can provide a certified copy of the Form I-864 or Form I-864EZ for use in any action to enforce the support obligation.<sup>3</sup> The proposed rule would eliminate the requirement of a duly issued subpoena before USCIS will provide a certified copy of Form I-864 or Form I-864EZ to a requesting party and instead allow requesting parties to submit a formal request for an Affidavit or a Contract to USCIS. A requestor will submit a formal request using a new form created by DHS, G-1563, Request for Certified Copy of Affidavit of Support Under Section 213A of the INA or Contract Between Sponsor and Household Member. DHS also proposes to revise the process for informing USCIS about judgments obtained against sponsors and indigency determinations to give USCIS flexibility to determine a more efficient mechanism for information reporting. The current regulations require that copies of judgments and indigency determinations must be mailed to a specific USCIS office in Washington, DC.<sup>4</sup> The proposed rule would remove the address specified in the regulation<sup>5</sup> and permit USCIS to provide a different mechanism for submitting copies of judgments and indigency determinations.

Fifth, DHS proposes to update the regulation to clarify which categories of aliens are exempt from the Affidavit requirement, and to add and revise definitions to provide greater clarity and to conform to statutory changes made since the current regulation was adopted in 2006.

Sixth, DHS proposes to update the regulation by clarifying that the notification of change of address

<sup>1</sup> See INA section 213A(f)(1)(E), 8 U.S.C. 1183a(f)(1)(E).

<sup>2</sup> See INA section 213A(f)(3), 8 U.S.C. 1183a(f)(3).

<sup>3</sup> See 8 CFR 213a.4(a)(3).

<sup>4</sup> See 8 CFR 213a.4(c).

<sup>5</sup> See 8 CFR 213a.4(c)(3).

requirement under section 213A(d) of the Act, 8 U.S.C. 1183a(d) also applies to household members who execute a Contract in addition to sponsors. This change allows DHS to provide current household member information to means-tested benefit granting agencies and appropriate entities in accordance with section 213A of the Act, 8 U.S.C. 1183a(a), and creates parity between the requirements of sponsors and household members.

Last, DHS proposes other minor revisions to the regulations to update definitions, eliminate form numbers, and revise outdated terminology. DHS proposes to replace the term “affidavit of support attachment” with “Contract Between Sponsor and Household Member”, which is the name of the relevant form (Form I-864A), throughout the regulation. DHS also proposes to clarify that, for purposes of an Affidavit and a Contract, assets used to meet the required threshold must be those that can be readily converted to cash.

DHS is also proposing corresponding changes to the Form I-864, Affidavit of Support Under Section 213A of the Act, Form I-864 EZ, Affidavit of Support Under Section 213A of the Act, and Form I-864A, Contract Between Sponsor and Household Member. Simultaneously, DHS is proposing to eliminate the use and consideration of the Request for Exemption for Intending Immigrant’s Affidavit of Support, Form I-864W, currently applicable to certain classes of aliens.

### B. Summary of Legal Authority

The Secretary of Homeland Security’s authority for the proposed regulatory amendments is found in section 213A of the Act, 8 U.S.C. 1183a, which governs Affidavits, and section 212(a)(4) of the Act, 8 U.S.C. 1182(a)(4), which governs public charge inadmissibility, including which aliens are required to execute an Affidavit. In addition, section 103(a)(3) of the Act, 8 U.S.C. 1103(a)(3), authorizes the Secretary to establish such regulations as he deems necessary for carrying out his authority under the INA.

### C. Costs and Benefits

The proposed rule would impose new net costs on the population of sponsors executing an Affidavit using Form I-864 or Form I-864EZ, as well as on the population of household members who execute a Contract using Form I-864A so that a sponsor can use the household member’s income and/or assets to demonstrate means to maintain income. Additionally, the proposed rule would impose new net costs on the population

executing Form I-864A as a household member who would now be required to submit Form I-865 to provide notice of a change of address after moving. Moreover, the proposed rule would produce some cost savings for immigrants applying for adjustment of status who would have needed to request an exemption from filing an Affidavit as DHS is proposing to eliminate Form I-864W for use when filing Form I-485. Instead, individuals would be required to provide the information previously requested on Form I-864W when filing Form I-485. DHS has determined that the information an applicant provides on Form I-485 would be sufficient for an adjudications officer to be able to verify whether an immigrant is statutorily required to file an Affidavit.

This proposed rule also would impose new costs on those from a party or entity authorized to bring an action to enforce an Affidavit or Contract making a formal request using the proposed new Form G-1563, Request for Certified Copy of Affidavit of Support Under Section 213A of the INA or Contract Between Sponsor and Household Member, so that USCIS may provide a certified copy of the requested Affidavit or Contract that has been executed on behalf of a sponsored immigrant for use as evidence in any action of enforcement. DHS estimates the total cost for filing the proposed new Form G-1563 would be approximately \$779 annually.<sup>6</sup>

DHS estimates the total new quantified net costs imposed by the proposed rule would be \$240,314,623 annually for sponsors filing an Affidavit for an intending immigrant using Form I-864 and Form I-864EZ, for those executing a Contract using Form I-864A, and for those submitting a notice of a change of address after moving using Form I-865, for those filing Form G-1563 to make a formal request for a certified copy of and Affidavit or Contract, as well as accounting for the estimated cost savings for immigrants applying for adjustment of status who would have needed to request an exemption from filing an Affidavit as DHS is proposing to eliminate Form I-864W for use when filing Form I-485. The estimated new quantified net costs of the proposed rule would be based on an increased opportunity costs of time for completing Form I-864, Form I-

864A, and Form I-864EZ,<sup>7</sup> as well as new requirements for completing these forms, including:

- Obtaining credit reports and credit scores,
- obtaining Internal Revenue Service (IRS)-issued certified copies or transcripts of Federal income tax returns for the 3 most recent taxable years, and
- opportunity cost of time to file IRS Form 4506, Request for Copy of Tax Return, to obtain IRS-issued certified Federal income tax returns for completing Form I-864 and Form I-864EZ.

The estimated new quantified costs of the proposed rule also would be based on the proposed requirement that those who file Form I-864A use Form I-865 to provide notice of a change of address after moving.

Over the first 10 years of implementation, DHS estimates the total quantified new net costs of the proposed rule would be \$2,403,146,230 (undiscounted). DHS estimates that the 10-year discounted total net costs of this proposed rule would be about \$2,049,932,479 at a 3 percent discount rate and about \$1,687,869,350 at a 7 percent discount rate.

The primary benefit of the proposed rule would be to better ensure that the sponsored immigrant is financially supported as is required by law and that means-tested public benefit agencies can more efficiently seek reimbursement from sponsors and household members when a sponsored immigrant receives any means-tested public benefit.

DHS also anticipates the proposed rule to produce benefits by strengthening the enforcement mechanism for Affidavits and Contracts through elimination of the subpoena requirement in 8 CFR 213a.4 to make it easier for means-tested public benefits granting agencies to recover payment for any means-tested public benefits that an intending immigrant receives during the period in which an Affidavit or a Contract is enforceable. The proposed rule would update the evidentiary requirements for sponsors submitting an Affidavit and household members submitting Contracts, which would provide immigration officers and immigration judges more effective ways to determine whether individuals have the means to maintain an annual income at or above the outlined income threshold and provide financial support to the intending immigrant and meet all support obligations during the period an

<sup>6</sup> Calculation: \$31.17 (cost per filer to file Form G-1563) \* 25 (estimated annual population who would make a formal request using Form G-1563) = \$779.25 = \$779 (rounded) annual total cost to file Form G-1563.

<sup>7</sup> The quantified cost of the new requirement to provide bank account information for those individuals filing Forms I-864, I-864A and I-864EZ are accounted for in the increased time burden estimate for completing these forms.

Affidavit is in effect. Additionally, the proposed rule would update and improve how means-tested public benefit-granting agencies obtain immigration status information from

USCIS about individuals who are seeking means-tested public benefits and how means-tested public benefit-granting agencies provide information to USCIS.

Table 1 provides a more detailed summary of the proposed provisions and their impacts.

TABLE 1—SUMMARY OF MAJOR PROVISIONS AND ECONOMIC IMPACTS OF THE PROPOSED RULE

| Provisions                                                                                  | Proposed provision                                                                                                                                                                                                       | Estimated impact of proposed provision                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|---------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Amending 8 CFR 213a.1. Definitions.<br>Revising 8 CFR 213a.2. Use of Affidavit of Support.  | To add new and update existing definitions.<br>Outlines circumstances, requirements, and exemptions for executing an Affidavit of Support Under Section 213A of the INA.                                                 | Quantitative:<br><i>Costs:</i><br><ul style="list-style-type: none"> <li>• Total annual net costs of the proposed rule would be about \$240.3 million, including:</li> <li>• \$226.6 million to applicants who must file Form I-864;</li> <li>• \$10.63 million to those who must complete Form I-864A;</li> <li>• \$6.75 million to applicants who must file Form I-864EZ;</li> <li>• \$3.68 million cost savings to applicants from eliminating Form I-864W;</li> <li>• \$2,751 to those who must file Form I-865; and</li> <li>• \$779 to those who file the proposed new Form G-1563.</li> </ul> Total net costs over a 10-year period would range from:<br><ul style="list-style-type: none"> <li>• \$2.40 billion for undiscounted net costs;</li> <li>• \$2.05 billion at a 3 percent discount rate; and</li> <li>• \$1.69 billion at a 7 percent discount rate.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| Adding 8 CFR 213a.3 Change of Address.                                                      | Requires sponsors and household members to notify USCIS of any change of address within 30 days while the sponsor's and/or household member's support obligation is in effect.                                           | Qualitative:<br><i>Costs</i><br><ul style="list-style-type: none"> <li>• The proposed rule could result in some sponsors and joint sponsors who may intend to sponsor a family member in the future to forego enrollment or disenroll from a means-tested public benefits program to avoid triggering the proposed additional requirements.</li> <li>• The proposed rule may result in an increased number of individuals with support obligations who are held accountable for the reimbursement of the cost of means-tested public benefits. Further, sponsors or household members would incur the cost of reimbursing the means-tested public benefits-granting agency and would likely incur the costs of legal representation if means-tested public benefits granting agencies choose to pursue legal action to recover the means-tested public benefits a sponsored individual received.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Amending 8 CFR 213a.4. Actions for reimbursement, public notice, and congressional reports. | Outlines process by which USCIS provides a certified copy of Affidavit of Support Under Section 213A of the INA or Contract Between Sponsor and Household Member that has been executed to a party or authorized entity. | Qualitative:<br><i>Benefits</i><br><ul style="list-style-type: none"> <li>• Update evidentiary requirements to provide USCIS with more effective ways to determine whether the sponsor has the means to maintain an annual income at or above the outlined income threshold. These updated requirements would better enable USCIS to determine whether the sponsor is able to provide financial support to the intending immigrant and meet all support obligations during the period the Affidavit is in effect;</li> <li>• Update and improve how means-tested public benefit-granting agencies obtain immigration status information from USCIS about individuals who are seeking means-tested public benefits and how means-tested public benefit-granting agencies provide information to USCIS. This proposed provision would eliminate the requirement of obtaining a duly issued subpoena before USCIS is authorized to provide a certified copy of Form I-864 or Form I-864EZ to a requesting party for use in any action to enforce the support obligation and instead allow a requesting party to submit a formal request for an Affidavit or a Contract directly to USCIS. This will strengthen the enforcement mechanism for Affidavits and Contracts, which would allow means-tested public benefits-granting agencies to recover payment for any means-tested public benefits that a sponsored alien receives during the period in which an Affidavit or Contract is enforceable; and</li> <li>• Revise the process for informing USCIS about judgments obtained against sponsors (for failing to meet prior support obligations as a sponsor or household member) and indigency determinations to give USCIS flexibility to determine a more efficient mechanism for information reporting, whereby USCIS would be permitted to provide a different mechanism for submitting copies of judgments and indigency determinations to ensure accuracy and efficiency.</li> </ul> |

Source: USCIS analysis.

DHS does not have sufficient data to quantify the expected benefits of the proposed rule. However, the Administration has identified enforcement of sponsorship obligations as a priority and DHS has made a policy determination that the proposed changes in this rule will assist with better ensuring sponsors and household members who execute a Contract are capable of meeting their support obligations under section 213A of the

INA, 8 U.S.C. 1183a, and strengthening the enforcement mechanism for the Affidavit and Contract so that sponsors and household members are held accountable for those support obligations.

**III. Background & Purpose**

*A. Statutory Authority*

In 1996, Congress enacted the Illegal Immigration Reform and Immigrant

Responsibility Act (IIRIRA).<sup>8</sup> Section 531(a) of IIRIRA amended section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4), to require an executed Affidavit for certain aliens to avoid a finding of inadmissibility under this section; this includes most aliens seeking an immigrant visa, admission as an

<sup>8</sup> See Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Public Law 104-208, 110 Stat. 3009 (1996).

immigrant, or adjustment of status as: (a) An immediate relative, (b) a family-based preference immigrant, or (c) an employment-based preference immigrant, if a relative of the alien is the petitioning employer or has a significant ownership interest in the entity that is the petitioning employer.<sup>9</sup> This formalized Affidavit requirement that had been in common use at overseas consular offices since President Herbert Hoover directed widespread adoption in 1929.<sup>10</sup> Section 551 of IIRIRA added section 213A to the INA, 8 U.S.C. 1183a, and specified the requirements for a sponsor's Affidavit.<sup>11</sup> The new section 213A of the INA, 8 U.S.C. 1183a, also specified who is eligible to be a sponsor, which aliens require an Affidavit, the scope of a sponsor's obligations, and how an Affidavit may be enforced.<sup>12</sup> These provisions were intended to "encourage immigrants to be self-reliant in accordance with national immigration policy."<sup>13</sup>

Protecting American taxpayers by requiring sponsors to be responsible for repayment of means-tested public benefits received by sponsored immigrants was another purpose of the support obligation. For example, while considering enacting an Affidavit requirement and imposing obligations on a sponsor, the Senate Committee on the Judiciary stated "[i]t should be made clear to immigrants that the taxpayers of

this country expect them to be able to make it in this country on their own and with the help of their sponsors."<sup>14</sup> The same Senate Committee on the Judiciary further stated that "[i]t was only on the basis of the assurance of the immigrant and the sponsor that the immigrant would not *at any time* become a public charge that the immigrant was allowed in this country" (emphasis in original).<sup>15</sup>

Congress also enacted the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), which generally imposed new restrictions on an alien's eligibility for many Federal, state, and local benefits.<sup>16</sup> The law prohibits recent immigrants, with some exceptions, from receiving Federal means-tested public benefits such as Temporary Assistance for Needy Families (TANF), the Supplemental Nutrition Assistance Program (SNAP) (formerly known as Food Stamps), and the Children's Health Insurance Program (CHIP).<sup>17</sup> For purposes of determining eligibility for Federal means-tested public benefits programs, PRWORA also specified that the income and resources of an immigrant would generally be deemed to include the income and resources of any person who executed an Affidavit (and that person's spouse, if any).<sup>18</sup> The deeming requirements reflect Congress' determination that aliens "not depend on public resources to meet their needs, but rather rely on their own capabilities and the resources of their families, their sponsors, and private organizations".<sup>19</sup>

### B. Prior Rulemaking

In 1997, the former Immigration and Naturalization Service (INS or the Service)<sup>20</sup> published an interim rule implementing the affidavit of support requirement created by IIRIRA and PRWORA.<sup>21</sup> The interim rule promulgated 8 CFR part 213a, defining

the procedures for submitting Affidavits, defining a sponsor's ongoing obligations and specifying the procedures Federal, State, or local agencies, or private entities, must follow to seek reimbursement from the sponsor for provision of means-tested public benefits. In conjunction with the interim rule, the Service also created three new public use forms: Form I-864; Form I-864A; and Form I-865. The interim rule went into effect on December 19, 1997. The interim rule included Department of State consular officers within the meaning of "immigration officer" only for the purpose of 8 CFR part 213a. See 62 FR 54346, 54352 (Oct. 20, 1997).

In a joint rulemaking with the Department of Justice (DOJ) in 2006, DHS adopted the 1997 interim rule as a final rule clarifying who needed an Affidavit, how sponsors qualify, what information and documentation sponsors must present, and when the income of other people could be used to support an intending immigrant. The final rule also made changes that led to the development of Form I-864EZ, for use by a sponsor who relies only on his or her own employment to meet the income requirements under section 213A of the Act, 8 U.S.C. 1183a.<sup>22</sup>

On May 23, 2019, President Trump issued the Memorandum on Enforcing the Legal Responsibilities of Sponsors of Aliens (Presidential Memo).<sup>23</sup> The Presidential Memo states that a "key priority of [the] Administration is restoring the rule of law by ensuring that existing immigration laws are enforced."<sup>24</sup> The Presidential Memo also emphasized that sponsors who pledge to financially support sponsored aliens will be expected to fulfill their commitment under the law.<sup>25</sup> The Presidential Memo directed Federal agencies to undertake more effective oversight to ensure full compliance with Federal laws on income deeming and reimbursement.<sup>26</sup> Agencies have issued revised guidance on income deeming and reimbursement for Medicaid, CHIP, TANF, and SNAP subsequent to the Presidential Memo.<sup>27</sup>

<sup>22</sup> See *Affidavits of Support on Behalf of Immigrants*, 71 FR 35731 (June 21, 2006).

<sup>23</sup> See <https://www.whitehouse.gov/presidential-actions/memorandum-enforcing-legal-responsibilities-sponsors-aliens/> (last visited May 24, 2019).

<sup>24</sup> See Section 1 of the Presidential Memo.

<sup>25</sup> See Section 1 of the Presidential Memo.

<sup>26</sup> See Sections 1 and 2 of the Presidential Memo.

<sup>27</sup> See *Sponsoring Deeming and Repayment for Certain Immigrants*, available at <https://www.medicaid.gov/federal-policy-guidance/downloads/sho19004.pdf> (last visited June 2, 2020). See *Reimbursement obligations of sponsors of noncitizens and procedures for recovering TANF funds*, available at <https://www.acf.hhs.gov/ofa/>

<sup>9</sup> See INA section 212(a)(4)(C)-(D), 8 U.S.C. 1182(a)(4)(C)-(D). See INA section 213A, 8 U.S.C. 1183a.

<sup>10</sup> See INA section 213A, 8 U.S.C. 1183a. See Section 551 of IIRIRA, Public Law 104-208, 110 Stat. 3009 (1996). The Department of State had required low-income applicants to submit affidavits since the 1930s (a process that was formalized with Immigration and Naturalization Service (INS) Form I-134), but the courts had determined that the affidavits were legally unenforceable as an obligation to reimburse the government for public aid rendered. See *San Diego County v. Vilorio* (276 Cal. App. 2d 350, 80 Cal. Rptr. 869 (Cal. App. 1969)). The IIRIRA addressed this issue by requiring that an affidavit of support be legally enforceable. See Section 551 of IIRIRA, Pub. L. 104-208, 110 Stat. 3009 (1996). See Roger Daniels, *Guarding the Golden Door: American Immigration Policy and Immigrants since 1882*, at p. 61 (New York: Hill and Wang, 2004).

<sup>11</sup> See INA section 213A, 8 U.S.C. 1183a. See Section 551 of IIRIRA, Public Law 104-208, 110 Stat. 3009 (1996).

<sup>12</sup> See INA section 213A, 8 U.S.C. 1183a. See Section 551 of the IIRIRA, Public Law 104-208, 110 Stat. 3009 (1996).

<sup>13</sup> See H.R. Rep. 104-828, at 241 (Sept. 24, 1996) (Conf. Rep.). Section 551(d) of IIRIRA mentions the promulgation by the Attorney General [now Secretary of Homeland Security], in consultation with the heads of other appropriate agencies, of a standard form for an affidavit of support consistent with INA 213A. See 8 U.S.C. 1183a Note. Section 531(b) of IIRIRA also mentions the "standard form" for an Affidavit promulgated by the Attorney General [now Secretary of Homeland Security]. See 8 U.S.C. 1182 Note.

<sup>14</sup> See S. Report 104-249, at 7 (Apr. 10, 1996).

<sup>15</sup> See S. Report 104-249, at 6 (Apr. 10, 1996).

<sup>16</sup> See the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Public Law 104-193, 110 Stat. 2105 (1996).

<sup>17</sup> See 8 U.S.C. 1611 and 1613. See Sections 401 and 403 of PRWORA, Public Law 104-193, 110 Stat. 2105 (1996).

<sup>18</sup> See 8 U.S.C. 1631. See Section 421 of PRWORA, Public Law 104-193, 110 Stat. 2105 (1996).

<sup>19</sup> See 8 U.S.C. 1601(2)(A).

<sup>20</sup> On March 1, 2003, the Service ceased to exist, and its functions were transferred from the Department of Justice to the Department of Homeland Security. See *Homeland Security Act of 2002*, Public Law 107-296 (Nov. 25, 2002). DHS is the issuing authority for this proposed rule since the Homeland Security Act transferred immigration services functions to U.S. Citizenship and Immigration Services.

<sup>21</sup> See *Affidavits of Support on Behalf of Immigrants*, 62 FR 54346 (Oct. 20, 1997).

On August 14, 2019, DHS published a final rule, Inadmissibility on Public Charge Grounds.<sup>28</sup> The final rule explains how DHS will consider Affidavits in the totality of the circumstances when making public charge inadmissibility determinations.<sup>29</sup>

### C. Current Processing of an Affidavit of Support Under Section 213A of the INA

An Affidavit is required for most family-sponsored immigrants and some employment-based immigrants.<sup>30</sup> A petitioning sponsor must execute Form I-864 or Form I-864EZ at one of the following points in the immigration process depending on the type of immigration benefit the applicant is seeking: As part of the immigrant visa application with DOS; when the principal immigrant submits an application for adjustment of status to permanent resident status with USCIS; or when directed by an immigration judge in the United States.<sup>31</sup> As described further below, in certain

*resource/tanf-acf-pi-2019-01* (last visited June 2, 2020). See State Enforcement of Legal Responsibilities of Sponsors of Non-Citizens, available at <https://www.fns.usda.gov/snap/resource/state-enforcement-legal-responsibilities-sponsors-non-citizens> (last visited June 2, 2020).

<sup>28</sup> See *Inadmissibility on Public Charge Grounds*, 84 FR 41292 (Aug. 14, 2019). Due to delays resulting from ongoing litigation in the U.S. District Courts for the Southern District of New York, Northern District of California, Eastern District of Washington, Northern District of Illinois, and District of Maryland, DHS implemented the final rule nationwide on February 24, 2020. On July 29, 2020, the U.S. District Court for the Southern District of New York enjoined DHS nationwide from enforcing, applying, implementing, or treating as effective the final rule for any period during which there is a declared national health emergency in response to the COVID-19 outbreak. *New York v. DHS*, No. 19-777 (S.D.N.Y. July 29, 2020). On August 12, 2020, the U.S. Court of Appeals for the Second Circuit issued a partial administrative stay of the nationwide injunction limiting its scope to the Second Circuit, *i.e.*, New York, Connecticut, and Vermont. *New York v. DHS*, No. 20-2537 (2d Cir. Aug. 12, 2020).

<sup>29</sup> Under the final rule, “DHS will consider the likelihood that the sponsor would actually provide the statutorily-required amount of financial support to the alien, and any other related considerations.” See 8 CFR 212.22(b)(7).

<sup>30</sup> See INA section 212(a)(4)(C) and (D), 8 U.S.C. 1182(a)(4)(C) and (D).

<sup>31</sup> Three different agencies review an Affidavit for sufficiency, each in a different context. USCIS reviews an Affidavit and Contract while adjudicating certain applications for adjustment of status. DOS consular officers also review Affidavits and Contracts as part of the immigrant visa application process, and when an Affidavit is required, to assess potential ineligibility on public charge grounds. See 22 CFR 40.41. Immigration Courts, which are part of the U.S. Department of Justice (DOJ), Executive Office for Immigration Review (EOIR), may review Affidavits and Contracts in the context of an alien in removal proceedings who is seeking adjustment of status as a form of relief from removal.

circumstances, a joint sponsor or a substitute sponsor is permitted.<sup>32</sup>

By executing an Affidavit, a sponsor is creating a contract between the sponsor and the U.S. Government. The intending immigrant becoming a lawful permanent resident is the consideration for the contract.<sup>33</sup> Under the contract, the sponsor agrees that he or she will provide support to the sponsored immigrant at an annual income not less than 125 percent of the Federal poverty line<sup>34</sup> during the period the obligation is in effect, to be jointly and severally liable for any reimbursement obligation incurred as a result of the sponsored immigrant receiving means-tested public benefits during the period of enforcement,<sup>35</sup> and to submit to the jurisdiction of any Federal or State court for the purpose of enforcing the support obligation. The sponsor also agrees that the U.S. Government can consider the sponsor’s income and assets as available for the support of the sponsored immigrant when the immigrant applies for means-tested public benefits.<sup>36</sup>

#### a. Submitting an Affidavit

Sponsors submit either a Form I-864 or the shorter Form I-864EZ. Sponsors may use the Form I-864EZ if: The sponsor is the petitioner who filed the petition (Form I-130, Petition for an Alien Relative, Form I-129F, Petition for Alien Fiancé(e), or Form I-600, Petition to Classify Orphan as an Immediate Relative) for the relative being sponsored; the relative being sponsored is the only person, other than the petitioner, listed on the petition; and the income the sponsor is using to qualify for the Affidavit is based entirely on the sponsor’s salary or pension as shown on one or more Internal Revenue Service Form W-2. Applicants seeking adjustment of status before USCIS file Form I-864 or Form I-864EZ with Form I-485, Application to Register Permanent Residence or Adjust Status. USCIS does not currently charge a separate fee to file Form I-864 or Form I-864EZ. For most immigrant visa applications, Affidavits and Contracts are submitted to the Department of State

<sup>32</sup> See INA section 213A(f)(5), 8 U.S.C. 1183a(f)(5).

<sup>33</sup> See 8 CFR 213a.2(e)(1).

<sup>34</sup> A sponsor who is on active duty (other than active duty for training) in the Armed Forces of the United States, and is petitioning for the admission of the alien under INA section 204, 8 U.S.C. 1154, as the spouse or child of the sponsor only needs to demonstrate the means to maintain an annual income equal to at least 100 percent of the Federal poverty line. See INA section 213A(f)(3), 8 U.S.C. 1183a(f)(3).

<sup>35</sup> See 8 CFR 213a.2(c)(2)(i)(C)(2).

<sup>36</sup> See Sections 421–422 of PRWORA, Public Law 104–193, 110 Stat. 2105 (1996). See 8 U.S.C. 1631.

National Visa Center (NVC). The Department charges a fee to ensure that the Affidavit is properly completed before it is forwarded to a consular post for adjudication of an immigrant visa.<sup>37</sup> An applicant is charged only one fee in certain circumstances. For example, Affidavits from an individual concurrently sponsoring an immediate relative spouse and child would be the same in substance, and essentially duplicative and therefore only one fee is charged. When the Affidavit is submitted directly to a consular post overseas, no fee is charged.

The Form I-864 and Form I-864EZ are designed to determine whether the individual executing Form I-864 or Form I-864EZ meets the eligibility criteria for sponsorship.<sup>38</sup> In general, a sponsor is defined as an individual who executes a Form I-864 or Form I-864EZ with respect to a sponsored alien and who: Is a citizen or national of the United States or a lawful permanent resident; is at least 18 years of age; is domiciled in any of the several States of the United States, the District of Columbia, or any territory or possession of the United States; is petitioning for the admission of the alien under section 204 of the INA, 8 U.S.C. 1154; and demonstrates the means to maintain an annual income equal to at least 125 percent of the Federal poverty line.<sup>39</sup>

A petitioner who meets all the requirements of section 213A(f)(1) of the INA, 8 U.S.C. 1183a(f)(1), except for the requirement to demonstrate the means to maintain an annual income equal to at least 125 percent of the Federal poverty line sponsor may still be a sponsor.<sup>40</sup> The term sponsor also includes an individual who is on active duty (other than active duty for training) in the Armed Forces of the United States, is petitioning for his or her spouse or child, and demonstrates (as provided in section 213A(f)(6) of the Act, 8 U.S.C. 1183a(f)(6)) the means to maintain an annual income equal to at least 100 percent of the Federal poverty line.<sup>41</sup>

<sup>37</sup> The fee authority is contained in 8 U.S.C. 1183a Note, added by Public Law 106–113, Div. B, 1000(a)(7) [Div. A, Title II, sec. 232], Nov. 29, 1999, 113 Stat. 1536, 1501A–425, as amended Public Law 107–228, Div. A, Title II, sec. 211(b), Sept. 30, 2002, 116 Stat. 1365.

<sup>38</sup> See INA section 213A(f)(3), 8 U.S.C. 1183a(f)(3).

<sup>39</sup> See INA section 213A(f)(1), 8 U.S.C. 1183a(f)(1).

<sup>40</sup> See INA section 213A(f)(2) and (3), 8 U.S.C. 1183a(f)(2) and (3).

<sup>41</sup> See INA section 213A(f)(3), 8 U.S.C.

1183a(f)(3). See also 8 CFR 213a.2(c)(2)(iii)(C) and (D).

Certain relatives<sup>42</sup> of employment-based immigrants can also be a sponsor if the relative filed a petition for the sponsored alien as an employment-based immigrant under section 203(b) of the Act, 8 U.S.C. 1153(b), or if the relative has a significant ownership interest in the entity that filed such a petition.<sup>43</sup> The term sponsor includes this relative, if the relative also meets the requirements of section INA 213A(f)(1)(A), (B), (C), 8 U.S.C. 1183a(f)(1)(A), (B), and (C), as described above, and demonstrates (as provided in INA section 213A(f)(6), 8 U.S.C. 1183a(f)(6)) the means to maintain an annual income equal to at least 125 percent of the Federal poverty line.<sup>44</sup>

A petitioner who meets all the requirements of section 213A(f)(1) of the Act, 8 U.S.C. 1183a(f)(1), except for the requirement to demonstrate the means to maintain an annual income equal to at least 125 percent of the Federal poverty line, but accepts joint and several liability with a joint sponsor (as defined under section 213A(f)(5)(A) of the INA, 8 U.S.C. 1183a(f)(5)(A)), is also a sponsor.<sup>45</sup> Similarly, a relative of an employment-based immigrant that meets the requirements of section 213A(f)(1)(A), (B), (C), and (f)(4)(A), yet does not meet the requirement to demonstrate the means to maintain an annual income equal to at least 125 percent of the Federal poverty line, but accepts joint and several liability with a joint sponsor (as defined under section 213A(f)(5)(A) of the INA, 8 U.S.C. 1183a(f)(5)(A)), is also a sponsor.<sup>46</sup> Joint sponsors are discussed in greater detail in subsection 1 below.

#### b. Demonstration of Means To Maintain Income

Sponsors may demonstrate that they have the means to maintain an annual income equal to at least 125 percent of the Federal poverty line, or 100 percent as applicable,<sup>47</sup> through a combination of income and/or significant assets.<sup>48</sup> All sponsors must submit a copy of their Federal income tax return, including

supporting documents like schedules, for the most recent tax year, or provide evidence demonstrating why they were not required to file a Federal tax return for that year.<sup>49</sup> Sponsors may also submit additional evidence demonstrating their income, including letters evidencing their employment and income, paycheck stubs, and financial statements.<sup>50</sup>

Currently, the sponsor's household income for the year in which the intending immigrant filed the application for adjustment of status is given the most evidentiary weight.<sup>51</sup> If the sponsor's projected household income for the year in which the intending immigrant filed the application for adjustment of status meets the applicable income threshold, the immigration officer or immigration judge may determine the Affidavit is insufficient on the basis of household income only if, based on specific facts, it is reasonable to infer that the sponsor will not be able to maintain the household income at a level sufficient to meet the support obligations.<sup>52</sup> When reviewing an Affidavit for sufficiency, the immigration officer or immigration judge may consider facts such as a material change in a sponsor's employment or income history, the number of aliens included in other pending Affidavits executed by the sponsor, and other relevant facts.<sup>53</sup>

Sponsors may also demonstrate the means to maintain the applicable annual income through their significant assets or the significant assets of the intending immigrant.<sup>54</sup> Significant assets may include savings accounts, stocks, bonds, certificates of deposit, and real estate.<sup>55</sup> In order to qualify as significant assets, the total value of all the assets must equal at least five times the difference between sponsor's total household income and the current Federal poverty line for sponsor's household size (including all immigrants sponsored on any Affidavit in force or pending).<sup>56</sup> However, if the sponsor is a U.S. citizen and he or she is sponsoring a spouse or child (age 18 years of age or older), the total value of the assets must only be equal to at least three times the difference.<sup>57</sup> If the intending immigrant is an orphan or

Hague Convention adoptee who is considered to be coming to the United States for adoption, the total value of the assets only needs to equal the difference between the sponsor's household income and the current Federal poverty line for sponsor's household size (including all immigrants sponsored on any Affidavit in force or pending).<sup>58</sup> Sponsors relying on significant assets need to provide evidence establishing location, ownership, and value of each listed asset.<sup>59</sup>

An immigration officer or immigration judge may pursue verification of any information provided for the Affidavit if the sponsor and/or household member provides authorization. If the sponsor and/or household member fails to provide verification authorization, the Affidavit will be considered withdrawn.<sup>60</sup>

A sponsor may withdraw an Affidavit at any time until a decision is issued on the applicant's application for an immigrant visa or adjustment of status.<sup>61</sup> The withdrawal must be in writing, must include the sponsor's signature, and must be received before the final decision is issued. A withdrawal may not be retracted.

An Affidavit is considered sufficient if the immigration officer or immigration judge determines a sponsor has demonstrated he or she meets all the eligibility requirements in section 213A(f)(1) or (5) of the Act.<sup>62</sup> The support obligations agreed to when Form I-864, Form I-864EZ, and Form I-864A are executed generally commence when the intending immigrant is granted lawful permanent resident status.<sup>63</sup> The support obligations terminate by operation of law when: The sponsored immigrant becomes a U.S. citizen;<sup>64</sup> the sponsored immigrant has worked or can be credited with 40 qualifying quarters of work in the United States under title II of the Social Security Act<sup>65</sup> (provided that the sponsored immigrant is not credited

<sup>58</sup> See 8 CFR 213a.2(c)(2)(iii)(B)(2).

<sup>59</sup> See 8 CFR 213a.2(c)(2)(iii)(B).

<sup>60</sup> See 8 CFR 213a.2(c)(2)(v).

<sup>61</sup> See 8 CFR 213a.2(f).

<sup>62</sup> An immigrant can be determined to be inadmissible as a public charge under INA section 212(a)(4), 8 U.S.C. 1182(a)(4), even if the immigrant has a sufficient affidavit of support. See 8 CFR 213a.2(c)(2)(iv).

<sup>63</sup> See 8 CFR 213a.2(e)(1). In cases where it is determined that either a Form I-864 executed by a joint sponsor or a Form I-864A executed by a household member is not needed because the petitioning sponsor or substitute sponsor demonstrated the means to maintain income at the applicable threshold, the support obligation associated with such Form I-864 or Form I-864A would not commence.

<sup>64</sup> See 8 CFR 213a.2(e)(2)(i)(A).

<sup>65</sup> See 42 U.S.C. 401, *et seq.*

<sup>42</sup> See 8 CFR 213a.1 ("Relative means a husband, wife, father, mother, child, adult son, adult daughter, brother, or sister.").

<sup>43</sup> See INA section 213A(f)(4)(A), 8 U.S.C. 1183a(f)(4)(A). This relative would not meet (nor does he or she have to meet) the requirements of INA section 213A(f)(1)(D), 8 U.S.C. 1183a(f)(1)(D).

<sup>44</sup> See INA section 213A(f)(4)(A) and (B)(i), 8 U.S.C. 1183a(f)(4)(A) and (B)(i).

<sup>45</sup> See INA section 213A(f)(2), 8 U.S.C. 1183a(f)(2). See INA section 213A(f)(5)(A), 8 U.S.C. 1183a(f)(5)(A).

<sup>46</sup> See INA section 213A(f)(4)(A) and (B)(ii), 8 U.S.C. 1183a(f)(4)(A) and (B)(ii).

<sup>47</sup> See INA section 213A(f)(3), 8 U.S.C. 1183a(f)(3).

<sup>48</sup> See INA section 213A(f)(6)(A)(i)-(ii), 8 U.S.C. 1183a(f)(6)(A)(i)-(ii).

<sup>49</sup> See 8 CFR 213a.2(c)(2)(i)(A)-(B).

<sup>50</sup> See 8 CFR 213a.2(c)(2)(i)(A).

<sup>51</sup> See 8 CFR 213a.2(c)(2)(ii)(C).

<sup>52</sup> See 8 CFR 213a.2(c)(2)(ii)(C).

<sup>53</sup> See 8 CFR 213a.2(c)(2)(ii)(C).

<sup>54</sup> See INA section 213A(f)(6)(A)(ii), 8 U.S.C.

1183A(f)(6)(A)(ii). See also 8 CFR

213a.2(c)(2)(iii)(A)(1), 213a.2(c)(2)(iii)(B).

<sup>55</sup> See 8 CFR 213a.2(c)(2)(iii)(B).

<sup>56</sup> See 8 CFR 213a.2(c)(2)(iii)(B)(3).

<sup>57</sup> See 8 CFR 213a.2(c)(2)(iii)(B)(1).

with any quarter beginning after December 31, 1996, during which the sponsored immigrant receives or received any Federal means-tested public benefit);<sup>66</sup> the sponsored immigrant dies;<sup>67</sup> the sponsored immigrant abandons or loses lawful permanent resident status and departs the United States;<sup>68</sup> or, the sponsored immigrant obtains lawful permanent resident status on a new basis in removal proceedings based on a new Affidavit (if such an Affidavit is required).<sup>69</sup> The support obligation also terminates if the sponsor dies.<sup>70</sup> Divorce does not end the support obligation.<sup>71</sup>

If an Affidavit is deemed insufficient because the sponsor is determined to be unable to maintain household income at a level sufficient to meet the sponsor's support obligations, the intending immigrant will be inadmissible on the public charge ground under section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4).<sup>72</sup> The intending immigrant's application for adjustment of status or an immigrant visa will be denied.

## 1. Joint Sponsors and Substitute Sponsors

### a. Joint Sponsors

Section 213A(f)(1) of the INA, 8 U.S.C. 1183a(f)(1), defines a sponsor as an "individual who executes an affidavit of support with respect to the sponsored alien," and who, is a citizen or national of the United States or a lawful permanent resident;<sup>73</sup> is at least 18 years of age;<sup>74</sup> is domiciled in any of the several States of the United States, the District of Columbia, or any territory or possession of the United States;<sup>75</sup> is petitioning for the admission of the alien under section 204 of the Act, 8 U.S.C. 1154;<sup>76</sup> and demonstrates the means to maintain an annual

income equal to at least 125 percent of the Federal poverty line.<sup>77</sup>

As stated previously, a petitioner who meets all the requirements of section 213A(f)(1) of the INA, 8 U.S.C. 1183a(f)(1), except for the requirement to demonstrate the means to maintain an annual income equal to at least 125 percent of the Federal poverty line, but accepts joint and several liability with a joint sponsor (as defined under section 213A(f)(5)(A) of the INA, 8 U.S.C. 1183a(f)(5)(A)), is also a sponsor.<sup>78</sup>

A joint sponsor is an individual who is not the petitioning sponsor, but who accepts joint and several liability with the petitioning sponsor and who demonstrates the means to maintain an annual income equal to at least 125 percent of the Federal poverty line.<sup>79</sup>

If a petitioner is qualifying as a sponsor under section 213A(f)(2) of the Act, 8 U.S.C. 1183a(f)(2), by accepting joint and several liability with a joint sponsor, both the petitioner and the joint sponsor must execute Form I-864.<sup>80</sup> A joint sponsor is permitted where the petitioning sponsor cannot demonstrate the means to maintain an annual income equal to at least 125 percent of the Federal poverty line, or 100 percent as applicable.<sup>81</sup> A joint sponsor cannot serve as a replacement for the petitioning sponsor; both the petitioner and the joint sponsor must accept joint and several liability.<sup>82</sup> Therefore, the joint sponsor must file Form I-864 in addition to the petitioning sponsor, and only if the petitioning sponsor does not meet the requirement of demonstrating the means to maintain an annual income as stated in the statute and regulations.<sup>83</sup> The joint sponsor must provide evidence of income or assets that independently meets the income threshold to support the sponsored immigrant(s).<sup>84</sup> The joint sponsor cannot meet the income threshold by combining his or her income with the income of the

petitioning sponsor and/or the sponsored immigrant.<sup>85</sup>

An intending immigrant may not submit a Form I-864 executed by more than one joint sponsor.<sup>86</sup> However, if the joint sponsor's household income is insufficient to meet the income requirement with respect to the principal intending immigrant, plus any spouse and all the children who seek to accompany the principal intending immigrant,<sup>87</sup> the joint sponsor may specify on the Affidavit that it is submitted only on behalf of the principal intending immigrant and those accompanying family members specifically listed on the Affidavit.<sup>88</sup> Any remaining accompanying family members not included in the first joint sponsor's affidavit would be inadmissible under section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4), unless a second joint sponsor submits a Form I-864 on their behalf.<sup>89</sup> A family group consisting of the principal intending immigrant and the accompanying spouse and children may not have more than two joint sponsors.<sup>90</sup>

### b. Substitute Sponsors

A petitioning sponsor's death ends the sponsor's obligation to meet the terms of the Affidavit. However, a petitioning sponsor's death does not end the requirement to submit a sufficient Affidavit, if such requirement applies. An applicant cannot meet the Affidavit requirement by relying on a Form I-864 or Form I-864EZ signed by a deceased petitioning sponsor. A substitute sponsor may submit an Affidavit if USCIS determines for humanitarian reasons that revocation of the approval of the immigrant petition would be inappropriate, or if the petition is being adjudicated pursuant to section 204(l) of the Act, 8 U.S.C. 1154(l).<sup>91</sup> Except for the requirement of petitioning for the admission of the alien under section 204 of the Act, 8 U.S.C. 1154, a substitute sponsor must meet the same sponsorship requirements as the petitioning sponsor.<sup>92</sup> A substitute sponsor must be related to the intending immigrant applicant in one of the ways

<sup>66</sup> See 8 CFR 213a.2(e)(2)(i)(B).

<sup>67</sup> See 8 CFR 213a.2(e)(2)(i)(E).

<sup>68</sup> See 8 CFR 213a.2(e)(2)(i)(C) (if the sponsored immigrant has not abandoned permanent resident status, executing the form designated by USCIS for recording such action, this provision will apply only if the sponsored immigrant is found in a removal proceeding to have abandoned that status while abroad).

<sup>69</sup> See 8 CFR 213a.2(e)(2)(i)(D).

<sup>70</sup> See 8 CFR 213a.2(e)(2)(ii).

<sup>71</sup> See *Affidavits of Support on Behalf of Immigrants*, 71 FR 35731, 35740 (June 21, 2006).

<sup>72</sup> See INA section 213A(a)(1), 8 U.S.C. 1183a(a)(1).

<sup>73</sup> See INA section 213A(f)(1)(A), 8 U.S.C. 1183a(f)(1)(A).

<sup>74</sup> See INA section 213A(f)(1)(B), 8 U.S.C. 1183a(f)(1)(B).

<sup>75</sup> See INA section 213A(f)(1)(C), 8 U.S.C. 1183a(f)(1)(C).

<sup>76</sup> See INA section 213A(f)(1)(D), 8 U.S.C. 1183a(f)(1)(D).

<sup>77</sup> See INA section 213A(f)(1)(E), 8 U.S.C. 1183a(f)(1)(E).

<sup>78</sup> See INA section 213A(f)(2), 8 U.S.C.

1183a(f)(2). See INA section 213A(f)(5)(A), 8 U.S.C. 1183a(f)(5)(A).

<sup>79</sup> See 8 CFR 213a.1.

<sup>80</sup> See INA section 213A(f)(2), 8 U.S.C.

1183a(f)(2). See INA section 213A(f)(5)(A), 8 U.S.C. 1183a(f)(5)(A).

<sup>81</sup> See INA section 213A(f)(3), 8 U.S.C.

1183a(f)(3).

<sup>82</sup> See INA section 213A(f)(2), 8 U.S.C.

1183a(f)(2). See INA section 213A(f)(5)(A), 8 U.S.C. 1183a(f)(5)(A).

<sup>83</sup> See INA section 213A(f)(2), (3), (5)(A), and (6), 8 U.S.C. 1183a(f)(2), (3), (5)(A), and (6). See also 8 CFR 213a.2(b)(1).

<sup>84</sup> See INA section 213A(f)(5)(A), 8 U.S.C.

1183a(f)(5)(A). See also 8 CFR 213a.2(c)(2)(iii)(C).

<sup>85</sup> See 8 CFR 213a.1.

<sup>86</sup> See 8 CFR 213.2(c)(2)(iii)(C).

<sup>87</sup> See INA section 203(d), 8 U.S.C. 1153(d).

<sup>88</sup> See 8 CFR 213a.2(c)(2)(iii)(C).

<sup>89</sup> See 8 CFR 213a.2(c)(2)(iii)(C).

<sup>90</sup> See 8 CFR 213a.2(c)(2)(iii)(C).

<sup>91</sup> See INA section 213A(f)(5)(B), 8 U.S.C. 1183a(f)(5)(B). See INA section 204(l), 8 U.S.C. 1154(l). See also 8 CFR 205.1(a)(3)(i)(C)(2).

<sup>92</sup> See INA section 213A(f)(1) and (5)(B), 8 U.S.C. 1183a(f)(1) and (5)(B). See also 8 CFR 213a.2(c)(2)(iii)(D).



specified in section 213A(f)(5)(B) of the INA, 8 U.S.C. 1183a(f)(5)(B).<sup>93</sup>

A Form I-864 signed by an eligible substitute sponsor is an acceptable replacement of the deceased petitioning sponsor's Form I-864 if submitted and received before the adjudication of the adjustment application. If the applicant does not have a substitute sponsor file a sufficient Form I-864 on his or her behalf, then the applicant is inadmissible under section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4).<sup>94</sup>

## 2. Household Members

In certain circumstances, a sponsor's household members may agree to use their income to financially support an intending immigrant.<sup>95</sup> Although not required by section 213A of the Act, 8 U.S.C. 1183a, in order to meet the income threshold, a sponsor may rely on the income of individuals included in the sponsor's household size (as determined for purposes of section 213A of the Act, 8 U.S.C. 1183a).<sup>96</sup> The individual must be at least 18 years old and the individual must execute Form I-864A.<sup>97</sup> Currently, the following individuals may be household members for purposes of executing Form I-864A:<sup>98</sup>

- The sponsor's spouse, parent, child, sibling, or adult child who has the same principal residence as the sponsor;
- Any person who the sponsor lawfully claims as a dependent on the sponsor's most recent Federal tax return;
- An intending immigrant who has the same principal residence as the sponsor if there is a spouse or child immigrating with the intending immigrant, and the intending immigrant can establish his or her income comes from authorized employment in the United States<sup>99</sup> and is the result of employment in a lawful enterprise or some other lawful source, and that

employment from a lawful source will continue even after acquiring lawful permanent resident (LPR) status; or

- An intending immigrant who is the sponsor's spouse and can show his or her income comes from authorized employment in the United States<sup>100</sup> and is the result of employment in a lawful enterprise or some other lawful source, and that employment will continue from a lawful source, even after acquiring LPR status if a spouse or child is immigrating with the intending immigrant.

A household member submits Form I-864A with evidence of his or her income and/or assets.<sup>101</sup> In signing Form I-864A, the household member agrees to provide the petitioning "sponsor as much financial assistance as may be necessary for the petitioning sponsor to maintain the intending immigrant at the annual income level required by section 213A(a)(1)(A) of the Act."<sup>102</sup> Household members are jointly and severally liable for any reimbursement obligation the sponsor may incur.<sup>103</sup>

As stated previously, the household member's support obligations terminate by operation of law when: The sponsored immigrant becomes a U.S. citizen;<sup>104</sup> the sponsored immigrant has worked or can be credited with 40 qualifying quarters of work in the United States under title II of the Social Security Act<sup>105</sup> (provided that the sponsored immigrant is not credited with any quarter beginning after December 31, 1996, during which the sponsored immigrant receives or received any Federal means-tested public benefit);<sup>106</sup> the sponsored immigrant dies;<sup>107</sup> the sponsored immigrant abandons or loses lawful permanent resident status and departs the United States;<sup>108</sup> or, the sponsored immigrant obtains lawful permanent resident status on a new basis in removal proceedings based on a new

Affidavit (if such an Affidavit is required).<sup>109</sup>

A household member's obligation created by executing a Form I-864A also terminates when the household member dies.<sup>110</sup> The death of one person who had a support obligation under an Affidavit or a 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.<sup>111</sup> Divorce does not end the support obligation.<sup>112</sup>

## D. Reimbursement Process

Sponsors are responsible for reimbursing the cost of means-tested public benefits received by sponsored aliens. The Act states "[u]pon notification that a sponsored alien has received any means-tested public benefit, the appropriate nongovernmental entity which provided such benefit or the appropriate entity of the Federal Government, a State, or any political subdivision of a State shall request reimbursement by the sponsor in an amount which is equal to the unreimbursed costs of such benefits."<sup>113</sup> Agencies can sue sponsors pursuant to the executed Affidavit.<sup>114</sup>

If an agency requests reimbursement from a sponsor, the agency must arrange for personal service of a written request for reimbursement upon the sponsor (and any household member who executed Form I-864A).<sup>115</sup> The request for reimbursement must specify the date the support obligation commenced, the sponsored immigrant's name, alien registration number, address, and date of birth, as well as the types of means-tested public benefit(s) that the sponsored immigrant received, the dates the sponsored immigrant received the benefits, and the total amount of the benefits received.<sup>116</sup> Agencies do not need to make a separate request for each type of benefit or for each separate payment; agencies may aggregate in a single request all benefit payments made as of the date of the request.<sup>117</sup> The reimbursement request must include an itemized statement supporting the claim for

<sup>93</sup> A substitute sponsor can be the spouse, parent, mother-in-law, father-in-law, sibling, child (if at least 18 years of age), son, daughter, son-in-law, daughter-in-law, sister-in-law, brother-in-law, grandparent, or grandchild of a sponsored alien or a legal guardian of a sponsored alien.

<sup>94</sup> See INA section 212(a)(4), 8 U.S.C. 1182(a)(4); see INA section 213A(a)(1), 8 U.S.C. 1183a(a)(1). See also 8 CFR 213a.2(c)(2)(iii)(D).

<sup>95</sup> See 8 CFR 213a.2(c)(2)(i)(C)(1).

<sup>96</sup> See 8 CFR 213a.2(c)(2)(i)(C)(1). See *Affidavit of Support on Behalf of Immigrants*, 62 FR 54346, 54348 (Oct. 20, 1997). See *Affidavit of Support on Behalf of Immigrants*, 71 FR 35732, 35736 (June 21, 2006).

<sup>97</sup> See 8 CFR 213a.2(c)(2)(i)(C)(1). See *Affidavit of Support on Behalf of Immigrants*, 62 FR 54346, 54348 (Oct. 20, 1997). See *Affidavit of Support on Behalf of Immigrants*, 71 FR 35732, 35736 (June 21, 2006).

<sup>98</sup> See 8 CFR 213a.1 and 213a.2(c)(2)(i)(C)(1).

<sup>99</sup> See 8 CFR 274a.12.

<sup>100</sup> See 8 CFR 274a.12.

<sup>101</sup> See 8 CFR 213a.2(c)(2)(i)(C)(4). The regulation provides that a household member must sign an "affidavit of support attachment". Form I-864A is the form USCIS designated for the affidavit of support attachment.

<sup>102</sup> See 8 CFR 213a.2(c)(2)(i)(C)(2).

<sup>103</sup> See 8 CFR 213a.2(c)(2)(i)(C)(2).

<sup>104</sup> See 8 CFR 213a.2(e)(2)(i)(A).

<sup>105</sup> See 42 U.S.C. 401, *et seq.*

<sup>106</sup> See 8 CFR 213a.2(e)(2)(i)(B).

<sup>107</sup> See 8 CFR 213a.2(e)(2)(i)(E).

<sup>108</sup> See 8 CFR 213a.2(e)(2)(i)(C) (if the sponsored immigrant has not abandoned permanent resident status, executing the form designated by USCIS for recording such action this provision will apply only if the sponsored immigrant is found in a removal proceeding to have abandoned that status while abroad).

<sup>109</sup> See 8 CFR 213a.2(e)(2)(i)(D).

<sup>110</sup> See 8 CFR 213a.2(e)(2)(ii).

<sup>111</sup> See 8 CFR 213a.2(e)(2)(ii).

<sup>112</sup> See *Affidavits of Support on Behalf of Immigrants*, 71 FR 35731, 35740 (June 21, 2006).

<sup>113</sup> See INA section 213A(b)(1), 8 U.S.C. 1183a(b)(1).

<sup>114</sup> See INA section 213A(b)(2), 8 U.S.C. 1183a(b)(2).

<sup>115</sup> See 8 CFR 213a.4(a)(1)(i).

<sup>116</sup> See 8 CFR 213a.4(a)(1)(ii).

<sup>117</sup> See 8 CFR 213a.4(a)(1)(iii).

reimbursement.<sup>118</sup> The reimbursement request must also include a notification to the sponsor (and any household members) that, within 45 days of the date of service, the sponsor (and any household members) must respond to the request for reimbursement either by paying the reimbursement or by arranging to begin payments pursuant to a schedule that is agreeable to the program official.<sup>119</sup>

A Federal, state, or local government entity or a private entity must wait 45 days from the date it serves the written request for reimbursement before filing a lawsuit against the sponsor or household member.<sup>120</sup> An entity may also bring an action against a sponsor for failure to abide by repayment terms.<sup>121</sup> No cause of action may be brought later than 10 years after the date on which the sponsored alien last received any means-tested public benefit to which an Affidavit applied.<sup>122</sup>

#### E. Information Sharing

USCIS considers a sponsor or household member to be in compliance with the support obligations of section 213A(i)(3) of the Act, 8 U.S.C. 1183a(i)(3), unless a party that has obtained a final judgment enforcing the obligations under sections 213A(a)(1)(A) or 213A(b) of the Act, 8 U.S.C. 1183a(a)(1)(A) or 1183a(b), has provided a copy of the final judgment to USCIS.<sup>123</sup>

PRWORA also requires certain information sharing between benefit granting agencies and DHS. For sponsored immigrants, section 421(e)(2) of PRWORA, 8 U.S.C. 1631(e)(2), requires agencies to notify DHS when an agency has made an indigency determination, and the notification must include the names of the sponsor and the sponsored immigrant involved.<sup>124</sup> This statutory requirement was implemented at 8 CFR 213a.4(c)(2), providing a mechanism for reporting this information to USCIS.

#### F. Problems Arising From Current Processes

##### 1. Insufficient Information About Sponsors' and Household Members' Financial Ability To Maintain Income of At Least the Applicable Threshold or Meet Support Obligations

Although immigration officers and immigration judges make public charge inadmissibility determinations based, in part, on information contained in the Affidavit and supporting documents,<sup>125</sup> currently very little financial information is required from sponsors to make such determinations. Similarly, very little financial information is currently required from household members who submit a Contract. This provides limited insight into the sponsors' and household members' actual ability to maintain income at the income threshold or meet their support obligations. Situations such as variable income, a current or past receipt of means-tested public benefits, or the lack of a U.S. bank account, may indicate a sponsor or household member cannot maintain income of at least the statutory income threshold and/or will not be able to fulfill his or her support obligation to the intending immigrant. The Administration has identified enforcement of sponsorship obligations as a priority and DHS believes a more complete picture of the sponsor's and household member's financial situation would help immigration officers and immigration judges determine whether the sponsor can meet the requirements of section 213A of the Act, 8 U.S.C. 1183a, particularly whether the sponsor has demonstrated the means to maintain income as required by section 213A(f)(6), 8 U.S.C. 1183a(f)(6), and whether the sponsor and household member will actually fulfill his or her support obligation to the intending immigrant. USCIS believes that this will strengthen the integrity of the immigration process.

##### 2. Too Many Household Members Contributing Income to the Sponsor's Household Income

Current DHS regulations do not limit how many household members can agree to make their income available to the sponsor for the purposes of the sponsor meeting the income threshold by executing Form I-864A. Even though such household members agree to provide the sponsor with enough support to maintain the sponsored

immigrant and to be jointly and severally liable for any reimbursement obligation the sponsor incurs, household members may not have sufficient resources to individually fulfill a judgment related to the support obligation. Furthermore, despite the language on the Contract, it is not clear that the income of these additional household members is actually available to the sponsor for the support of the intending immigrant. Limiting household members will better ensure that any income listed on Form I-864A is actually available to the sponsor for the support of the intending immigrant.

##### 3. Barriers to Repayment Actions and Reporting Problems

USCIS receives limited information from benefit-granting agencies or other parties enforcing the Affidavit or Contract, despite the information sharing provisions in the statute and regulations. Current DHS regulations for obtaining copies of Affidavits are burdensome and inefficient because they require a subpoena. Laws governing subpoenas vary by jurisdiction, but subpoenas often need to be issued by a court clerk or by a licensed attorney,<sup>126</sup> which requires additional time and resources. The requirements in the current regulations may have contributed to unintended difficulties for benefit-granting agencies and sponsored immigrants seeking to hold sponsors legally responsible for their obligations based on Affidavits. Similarly, current regulations for reporting judgments against sponsors and indigency determination information to USCIS are confusing as there are multiple addresses to send notifications to, some of which are no longer current.<sup>127</sup> The existing regulation will also soon be incorrect as the mailing address in the regulation will no longer be used for USCIS.<sup>128</sup>

<sup>126</sup> For example, the Federal Rules of Civil Procedure permit court clerks or attorneys (authorized to practice in the issuing court) to issue subpoenas. See Fed. R. Civ. P. Rule 45(a)(3).

<sup>127</sup> 8 CFR 213a.4(a)(3) indicates that upon the receipt of a duly issued subpoena, USCIS may provide a certified copy of an Affidavit that has been filed on behalf of a specific alien for use as evidence in any action to enforce an Affidavit, and may also disclose the last known address and Social Security number of the sponsor, substitute sponsor, or joint sponsor, but that regulation currently does not provide an address or office to which the subpoena should be sent. 8 CFR 213a.4(c)(3) requires information to be sent to the Office of Program and Regulation Development, which no longer exists.

<sup>128</sup> See 8 CFR 213a.4(c)(3). USCIS expects to relocate its headquarters from 20 Massachusetts Ave. NW, Washington, DC 20529, which is the mailing address currently listed in the regulation for reporting purposes.

<sup>118</sup> See 8 CFR 213a.4(a)(1)(iv).

<sup>119</sup> See 8 CFR 213a.4(a)(1)(iv).

<sup>120</sup> See INA section 213A(b)(2)(A), 8 U.S.C. 1183a(b)(2)(A). See also 8 CFR 213a.4(a)(1)(v).

<sup>121</sup> See INA section 213A(b)(2)(B), 8 U.S.C. 1183a(b)(2)(B).

<sup>122</sup> See INA section 213A(b)(2)(C), 8 U.S.C. 1183a(b)(2)(C).

<sup>123</sup> See 8 CFR 213a.4(c)(1).

<sup>124</sup> See 8 U.S.C. 1631(e).

<sup>125</sup> See INA section 212(a)(4)(B)(ii), (C), (D), 8 U.S.C. 1182(a)(4)(B)(ii), (C), (D); INA section 213A(a)(1), 8 U.S.C. 1183a(a)(1). See also 22 CFR 40.41.

#### IV. Discussion of Proposed Rule

##### A. Requiring Joint Sponsors in Certain Circumstances

DHS is proposing revisions to 8 CFR 213a.2(c) to account for additional evidence relevant to determining whether the sponsor can demonstrate the means to maintain income at the income threshold and whether a sponsor can actually meet his or her support obligations.

##### 1. Joint Sponsor Required When Petitioning or Substitute Sponsor Received Means-Tested Public Benefits

DHS proposes revising 8 CFR 213a.2(c)(2)(ii)(C) to require an applicant filing an application on or after the effective date of this rule to submit a Form I-864 executed by a joint sponsor when the petitioning sponsor or substitute sponsor has received one or more means-tested public benefits<sup>129</sup> on or after the effective date of this rule and within the 36 month period before the Form I-864 is filed. *See* proposed 8 CFR 213a.2(c)(2)(ii)(C)(4)(i). The 36-month period aligns with DHS' proposed revision to require 3 years of tax returns from sponsors and household members. *See* section D.2 below.

Under the current regulation, a sponsor's receipt of means-tested public benefits is excluded from the calculation of the sponsor's income.<sup>130</sup>

A petitioning sponsor's or substitute sponsor's receipt of means-tested public benefits within 36 months of filing Form I-864 indicates that the petitioning sponsor or substitute sponsor may be unable to maintain income equal to at least 125 percent of the Federal poverty line,<sup>131</sup> or 100 percent, as applicable,<sup>132</sup> during the period the Affidavit is in effect and indicates that he or she may not have the ability to meet the support obligations while the Affidavit is in effect.<sup>133</sup>

If the petitioning sponsor or substitute sponsor has received means-tested public benefits on or after the effective date of this rule and within the 36 month period prior to executing the Affidavit he or she would still be required to execute the Affidavit,<sup>134</sup> but

<sup>129</sup> The term "means-tested public benefits" is used as currently defined in 8 CFR 213a.1 throughout this proposed rule. The proposed rule does not substantively amend the definition of what constitutes a means-tested public benefit.

<sup>130</sup> *See Affidavits of Support on Behalf of Immigrants*, 71 FR 35731, 35738 (June 21, 2006).

<sup>131</sup> *See* INA section 213A(f)(1)(E), 8 U.S.C. 1183a(f)(1)(E).

<sup>132</sup> *See* INA section 213A(f)(3), 8 U.S.C. 1183a(f)(3).

<sup>133</sup> *See* INA section 213A(a)(1)(A), 8 U.S.C. 1183a(a)(1)(A).

<sup>134</sup> *See* INA section 213A(f)(1)(D), 8 U.S.C. 1183a(f)(1)(D).

would not meet the definition of a sponsor under section 213A(f)(1), (f)(3), or (f)(5)(B) of the Act, 8 U.S.C. 1183a(f)(1), (f)(3), or (f)(5)(B), and therefore, would be unable to meet the income requirements under section 213A of the Act, 8 U.S.C. 1183a. *See also* proposed 8 CFR 213a.2(c)(2)(ii)(C)(4)(i). Accordingly, the intending immigrant would be found to be inadmissible under section 212(a)(4) of the Act, 8 U.S.C. 1182(a)(4),<sup>135</sup> unless a joint sponsor executes a separate Affidavit.<sup>136</sup> Joint sponsors who have received a means-tested public benefit on or after the effective date of this rule and within 36 months of submitting the Affidavit would likewise be considered unable to meet the income requirement under section 213A(f)(1)(E) of the Act, 8 U.S.C. 1183a(f)(1)(E).<sup>137</sup>

DHS recognizes that an individual's financial circumstances can vary over time and the receipt of a means-tested public benefit in the past may be less indicative of a current inability to demonstrate the means to maintain income at the applicable threshold for an Affidavit. However, DHS believes that looking at the 36-month period before executing Form I-864 will provide a more complete picture of the petitioning sponsor's or substitute sponsor's ability to maintain income and carry out his or her support obligations. Accordingly, DHS proposes to require a joint sponsor when the petitioning sponsor or substitute sponsor has received a means-tested public benefit within 36 months of executing Form I-864 if the means-tested public benefit was received on or after the effective date of the rule. The proposed lookback period also aligns with DHS' policy determination to require 3 years of Federal income tax returns.

Any receipt of a means-tested public benefit received before the effective date of the final rule would be considered only to the extent that it is excluded from the calculation of the sponsor's income, which is USCIS' current practice.<sup>138</sup>

This proposed rule provides advance notice to aliens and public benefit granting agencies that DHS is considering changing how receipt of means-tested public benefits would impact the determination of whether an

Affidavit is sufficient. DHS notes that the proposed exclusion of receipt of means-tested public benefits received before the effective date may provide an opportunity for public benefit granting agencies to communicate the potential consequences of receiving means-tested public benefits to the extent such agencies deem appropriate before publication of a final rule. DHS also recognizes that as a result of a future final rule, some benefit-granting agencies may decide to modify enrollment processes and program documentation for designated benefits programs. For instance, agencies may choose to advise potential beneficiaries of the potential immigration consequences of receiving certain public benefits. DHS requests public comments regarding such potential modifications, including information regarding how long it would take to make such modifications, and the resources required to make such modifications. DHS may use this information to determine the appropriate effective date for a final rule, among other purposes.

As an alternative, DHS considered permanently barring an individual who had ever received means-tested public benefits from becoming a sponsor. However, DHS concluded such a policy would unreasonably restrict an individual from petitioning for eligible family members as is permitted by section 204 of the Act, 8 U.S.C. 1154.

DHS specifically requests public comments on the proposed requirement for a joint sponsor when the petitioning sponsor or substitute sponsor has received any means-tested public benefits on or after the effective date of this rule and within 36 months of filing Form I-864, including the 36-month lookback period. DHS is particularly interested in views and data that would inform whether, and to what extent, DHS should consider receipt of means-tested public benefits by petitioning sponsors and substitute sponsors or if there are other potential alternatives that would better ensure that sponsors can demonstrate the means to maintain income at the applicable level and are able to carry out their support obligations during the period of enforceability.

##### a. Exception for Petitioning Sponsors on Active Duty

DHS proposes not to apply the joint sponsor requirement when the petitioning sponsor has received means-tested public benefits within 36 months of filing the Form I-864 if the petitioning sponsor is on active duty (other than active duty for training) in the Armed Forces of the United States,

<sup>135</sup> *See* INA section 213A(a)(1), 8 U.S.C. 1183a(a)(1).

<sup>136</sup> *See* INA section 213A(f)(2), 8 U.S.C. 1183a(f)(2). *See* INA section 213A(5)(A), 8 U.S.C. 1183a(5)(A).

<sup>137</sup> *See* INA section 213A(f)(5)(A), 8 U.S.C. 1183a(f)(5)(A). *See also* proposed 8 CFR 213a.2(c)(2)(ii)(C)(3)(ii).

<sup>138</sup> *See Affidavits of Support on Behalf of Immigrants*, 71 FR 35731, 35738 (June 21, 2006).

is petitioning for his or her spouse or child under section 204 of the Act, 8 U.S.C. 1154, and the petitioning sponsor received the means-tested public benefits while on active duty. *See* proposed 8 CFR 213a.2(c)(2)(ii)(C)(5). The United States Government is profoundly grateful for the unparalleled sacrifices of the members of our armed services and their families. Certain members of the military may earn relatively low salaries, particularly if they are early in their careers, that are supplemented by certain allowances and tax advantages.<sup>139</sup> The Act already imposes a different income threshold on petitioning sponsors who are on active duty (other than active duty for training) in the Armed Forces of the United States and who are petitioning for their spouse or child under section 204 of the Act, 8 U.S.C. 1134, who must demonstrate the means to maintain an income equal to at least 100 percent of the Federal poverty line,<sup>140</sup> rather than the 125 percent of the Federal poverty line threshold applicable to all other petitioning sponsors.<sup>141</sup> This exception to the joint sponsor requirement is consistent with Congress' intent to impose different requirements on certain military service-members and their families, as well as DHS' policy of supporting our military personnel.

DHS considered not excepting eligible military service-members from the proposed requirement for a joint sponsor if the petitioning sponsor has received means-tested public benefits within 36 months of filing an Affidavit. However, since certain service-members already have a different income threshold requirement, and recognizing the invaluable contributions of service-members and their families, DHS proposes excepting eligible service-members from this proposed requirement.

<sup>139</sup> *See, e.g.*, 37 U.S.C. 201–212, 401–439 (Basic Pay and Allowances Other than Travel and Transportation Allowances, respectively); Lawrence Kapp, Cong. Research Serv., *Defense Primer: Regular Military Compensation* tbl.1 (Dec. 26, 2019), available at <https://fas.org/sgp/crs/natsec/IF10532.pdf> (reporting average regular military compensation of \$41,177 at the E–1 level in 2019, comprised of \$20,171 in average annual basic pay, plus allowances and tax advantage) (last visited June 2, 2020). *See* Lawrence Kapp et al., Cong. Research Serv., RL33446, *Military Pay: Key Questions and Answers* 6–9 (2019), available at <https://fas.org/sgp/crs/natsec/RL33446.pdf> (describing types of military compensation and Federal tax advantages) (last visited June 2, 2020).

<sup>140</sup> *See* INA section 213a(f)(3), 8 U.S.C. 1183a(f)(3).

<sup>141</sup> *See* INA section 213a(f)(1)(E), 8 U.S.C. 1183a(f)(1)(E).

## 2. Joint Sponsor Required When Petitioning Sponsor or Substitute Sponsor Defaulted on Support Obligation

DHS proposes revising 8 CFR 213a.2(c)(2)(ii)(C) to require the applicant to submit a Form I–864 executed by a joint sponsor when the petitioning sponsor or substitute sponsor has previously defaulted on a support obligation, as shown by a court judgment requiring the petitioning sponsor or substitute sponsor to repay a means-tested public benefit received by a sponsored immigrant. *See* proposed 8 CFR 213a.2(c)(2)(ii)(C)(4)(i). A petitioning sponsor's or substitute sponsor's default on a support obligation is indicative of the petitioning sponsor's or substitute sponsor's inability to demonstrate he or she has the means to maintain an annual income equal to at least 125 percent of the Federal poverty line,<sup>142</sup> or 100 percent as applicable;<sup>143</sup> it is also indicative of the inability to provide support to maintain the intending immigrant at the income threshold during the period the obligation is in effect.<sup>144</sup> In addition, if a petitioning sponsor or substitute sponsor has failed to meet his or her support obligations for a different alien under a prior Affidavit (as a sponsor) or Contract (as a household member), this can indicate that he or she may be unable to reimburse an agency for means-tested public benefits on additional Affidavits.

If the petitioning sponsor or substitute sponsor has failed to fulfill his or her obligation for a different alien on an Affidavit (as a sponsor) or Contract (as a household member) and is subject to a judgment for repayment, this may negatively impact the petitioning sponsor's or substitute sponsor's income because the judgment is similar to a debt that he or she must repay. There may be some instances when a petitioning sponsor's or substitute sponsor's income is obligated toward paying a judgment, and those petitioning sponsors or substitute sponsors may have less income available to support an intending immigrant. A petitioning sponsor's or substitute sponsor's failure to meet the obligation of an Affidavit or Contract is essentially breaching a contract with the Federal Government. As evidenced by the provisions in section 213a of the Act, 8 U.S.C. 1183a, providing for

<sup>142</sup> *See* INA section 213a(f)(1)(E), 8 U.S.C. 1183a(f)(1)(E).

<sup>143</sup> *See* INA section 213a(f)(3), 8 U.S.C. 1183a(f)(3).

<sup>144</sup> *See* INA section 213a(a)(1)(A), 8 U.S.C. 1183a(a)(1)(A).

reimbursement and multiple remedies, including liens on real property and garnishment,<sup>145</sup> Congress intended for sponsors to satisfy these obligations and be held accountable when they failed to do so.

If the petitioning sponsor or substitute sponsor defaulted on a support obligation, he or she would still be required to execute an Affidavit but would be considered unable to meet the income requirements under section 213A of the Act, 8 U.S.C. 1183a; in particular, the petitioner would not be able to demonstrate the means to maintain income as required by section 213A(f)(6) of the Act, 8 U.S.C. 1183a(f)(6), regardless of whether the individual has since complied with the support obligation (for example, repaid what was owed), and regardless of the individual's current income.

Therefore, the intending immigrant would be found to be inadmissible under section 212(a)(4) of the Act, 8 U.S.C. 1182(a)(4), unless a joint sponsor executed a separate Affidavit.<sup>146</sup> Joint sponsors who have previously defaulted on a support obligation would likewise be considered unable to meet the income requirement under section 213A(f)(1)(E) of the Act, 8 U.S.C. 1183a(f)(1)(E).<sup>147</sup>

DHS considered the alternative of permanently barring an individual who had previously defaulted on a support obligation from becoming a sponsor. However, because section 213A(f)(1)(D) of the Act, 8 U.S.C. 1183a(f)(1)(D), requires that the petitioner for family-based immigrants be a sponsor, DHS concluded that such a policy would unreasonably restrict an individual from petitioning for eligible family members as permitted by section 204 of the Act, 8 U.S.C. 1154. Instead, DHS proposes requiring a joint sponsor execute a Form I–864 in this circumstance.

DHS specifically requests public comments on the proposed requirement for a joint sponsor if the petitioning sponsor or substitute sponsor has previously defaulted on any support obligation. DHS is particularly interested in views and data that would inform whether, and to what extent, DHS should consider previous defaults on support obligations by a petitioning sponsor or substitute sponsor or if there are other potential alternatives that would better ensure sponsors can demonstrate the means to maintain

<sup>145</sup> *See* INA section 213a(b)–(c), 8 U.S.C. 1183a(b)–(c).

<sup>146</sup> *See* INA section 213a(f)(2), 8 U.S.C. 1183a(f)(2). *See* INA section 213a(5)(A), 8 U.S.C. 1183a(5)(A).

<sup>147</sup> *See* INA section 213a(f)(5)(A), 8 U.S.C. 1183a(f)(5)(A).

income at the applicable level and are able to carry out their support obligations during the period of enforceability.

*B. Changes to “Household Income” Definition*

DHS proposes revising 8 CFR 213a.1 to change the definition of “household income” to limit household income to the income of the sponsor, the sponsor’s spouse (if he or she executes a Contract), and, in specific circumstances, the intending immigrant. See proposed 8 CFR 213a.1(f). Currently, any household member who meets the criteria set forth in the current household income definition may execute a Contract. Under the proposed definition, household income would only include all income of the sponsor and the sponsor’s spouse (if the sponsor’s spouse executes a Form I-864A) obtained from employment in a lawful enterprise or some other lawful source. See proposed 8 CFR 213a.1(f). Under the proposed rule, household income will not include any income derived from unlawful enterprises, such as proceeds from illegal gambling or drug sales, or from means-tested public benefits. See proposed 8 CFR 213a.1(f). Like the current definition of household income, under the proposed rule, household income can include the income of the intending immigrant if the intending immigrant is either the sponsor’s spouse or has the same principal residence as the sponsor, and the preponderance of the evidence shows that the intending immigrant’s income is derived from employment in a lawful enterprise or some other lawful source, and such employment is authorized<sup>148</sup> and will continue to be available to the intending immigrant after they acquire lawful permanent resident status.<sup>149</sup>

By limiting whose income may be considered available to the sponsor, DHS believes it will reduce the possibility of counting income of household members who may not be able to, on their own, meet the support obligations. The Contract allows a sponsor to include the income of a household member as part of the sponsor’s income in cases where the sponsor cannot meet it by himself or herself. While the household member agrees to be jointly and severally liable with the sponsor to support the sponsored immigrant(s), the household member does not need to demonstrate that he or she can maintain income at the applicable income threshold. Moreover, even where a household

member has enough income and/or assets to help meet the income threshold, the household member’s income and assets may actually be unavailable to support the sponsored immigrant because the household member has other financial obligations.

DHS believes that limiting household income to the income of the sponsor, the sponsor’s spouse, and, in certain circumstances, the intending immigrant, more accurately reflects income that will be available to the sponsor to support the intending immigrant under the support obligation.

DHS believes there is a greater likelihood that the income of the sponsor’s spouse (compared to other household members) would actually be available to the sponsor to support the intending immigrant because spouses often share financial resources with each other. DHS further believes that there is a greater likelihood that the income of an intending immigrant would actually be available to the sponsor if the intending immigrant is accompanied by his or her spouse or children because the intending immigrant has a vested interest in his or her own family’s success and wellbeing in the United States. Therefore, DHS concluded that limiting the household members who could execute a Contract to the sponsor’s spouse and the intending immigrant if accompanied by the intending immigrant’s spouse and children would better ensure that the income the sponsor is relying on is actually available to support the intending immigrant.

DHS considered eliminating the Contract entirely, and considering only the sponsor’s income for the purposes of the Affidavit. This would prevent any individual who is unable to meet the applicable income threshold based solely on his or her own income and assets from executing an Affidavit without a joint sponsor also executing an Affidavit in which the joint sponsor agrees to be jointly and severally liable for the sponsored immigrant. This alternative is consistent with section 213A(f)(6)(A)(ii) of the Act, 8 U.S.C. 1183a(f)(6)(A)(ii), which references only the income of intending immigrants and sponsors. Additionally, it is consistent with one of the aims of this rule—better ensuring that sponsors can meet their support obligations, insofar as the household member is not required to demonstrate the means to maintain income at the applicable income threshold on his or her own or that the income is actually available to the sponsor to use to support the intending immigrants. In cases in which the household member does not have

income of at least the income threshold, it is possible that neither the sponsor nor the household members can alone meet the support obligations, even though both have agreed to be jointly and severally liable for the support obligation. However, DHS did not want to preclude the immigration of an intending immigrant’s minor children because the petitioning sponsor could not use the income of the intending immigrant parent. Furthermore, DHS recognizes that dual income households are a common and accepted way for households to meet their needs, DHS decided to continue to take this fact into account. DHS specifically requests public comments on the proposed changes to the household income definition, including the proposed limitation on who may execute a Contract. DHS is particularly interested in views and data that would inform how DHS should define household income, or if there are other potential alternatives that would help ensure that household income is actually available to the sponsor to support the intending immigrant.

*C. Changes to “Household Size”*

DHS proposes revising 8 CFR 213a.1 to change the definition of household size to also include, for purposes of counting household size: any aliens for whom the sponsor executed a Contract Between Sponsor and Household Member for whom the support obligation has not terminated (including any aliens for whom the sponsor has executed a Contract that has not yet become effective in accordance with 8 CFR 213a.2(e)(1), unless that Contract has been timely withdrawn or the adjustment of status application or immigrant visa application associated with that Contract has been denied and any appeal exhausted or waived); and any aliens the sponsor has sponsored under any other Affidavit for whom the sponsor’s support obligation has not terminated (including any aliens for whom the sponsor has executed an Affidavit that has not yet become effective in accordance with 8 CFR 213a.2(e)(1), unless the sponsor has either timely withdrawn the Affidavit of Support or the adjustment of status application or immigrant visa application associated with that Affidavit has been denied and any appeal exhausted or waived). See proposed 8 CFR 213a.1(g). The sponsor has already agreed to support these individuals when those Affidavits or Contracts go into effect and these support obligations are relevant to the sponsor’s ability to demonstrate means to maintain income to support the

<sup>148</sup> See 8 CFR 274a.12.

<sup>149</sup> See 8 CFR 213a.1.

intending immigrant listed on any other Affidavit, as well as the ability to meet his or her support obligations once the Affidavit goes into effect.

With respect to sponsored immigrants and household members who are counted as part of the household size, current regulations require only the inclusion of aliens whom the sponsor has sponsored under any Affidavit, and for whom the sponsor's support obligation has not been terminated, as well as the number of aliens to be sponsored under the current Affidavit.<sup>150</sup> However, a sponsor that previously agreed to make his or her income or assets available to support intending immigrants through a Contract will undertake a support obligation when that Contract goes into effect, which impacts the sponsor's ability to demonstrate that he or she meets the requirements of section 213A of the Act, 8 U.S.C. 1183a, and has the means to maintain income to support any other intending immigrants.

If the sponsor has executed other Affidavits and Contracts for aliens that have not yet gone into effect, the sponsor has demonstrated the intent to support these sponsored immigrants. However, this proposed change excludes from the household size individuals named on previously executed Affidavits and Contracts where the support obligation will never take effect because the Affidavit or Contract was timely withdrawn or the adjustment of status application or immigrant visa application associated with that Affidavit or Contract has been denied and any appeal exhausted or waived. This proposed change also reflects the reality of variable processing times and the fact that there may be a considerable lag between when an immigration officer or immigration judge reviews a sponsor's earlier-executed Affidavit or Contract and when an immigration officer or immigration judge reviews a later-submitted Affidavit from the same sponsor.

The sponsor's household size should reflect all support obligations the sponsor has agreed to undertake as either a sponsor or as a household member, which will ensure that the immigration officer or immigration judge can assess whether the sponsor meets the requirements set forth in section 213A of the Act, 8 U.S.C. 1183a, and that the sponsor has demonstrated the ability to meet his or her support obligations.

DHS considered keeping the existing household size definition. However, DHS concluded that including the

number of individuals sponsored in pending Affidavits or Contracts as part of a sponsor's household size will reduce the instances of sponsors undertaking support obligations that they cannot, or do not intend to, fulfill. DHS believes the proposed change to the household size definition will help ensure sponsors have the means to maintain income at the applicable income threshold and can meet their support obligations. This proposed change will also preserve DHS' limited resources and protect the integrity of the immigration system by reducing insufficient Affidavit filings.

#### *D. Revised Evidentiary Requirements*

DHS is proposing revisions to 8 CFR 213a.2(c) to require additional documentary evidence that sponsors need to provide with their Affidavit to demonstrate that they have the means to maintain income at the applicable income threshold. Household members who execute a Contract will also be subject to the proposed additional evidentiary requirements.

##### 1. Requiring Credit Reports and Credit Scores

DHS is proposing amending 8 CFR 213a.2(c)(2)(ii)(C) to allow immigration officers and immigration judges to take a sponsor's credit report and credit score into account when determining whether a sponsor has the means to maintain an annual income at or above the threshold, and whether the sponsor can, in fact, meet his or her support obligations. *See* proposed 8 CFR 213a.2(c)(2)(ii)(C). Credit reports contain information about an individual's bill payment history, loans, current debt, and other financial information such as the number and type of accounts with overdue payments, collection actions, outstanding debt, and the age of the accounts in the United States.<sup>151</sup> Credit reports may also provide information about an individual's work and places of residence, lawsuits, arrests, and bankruptcies in the United States.<sup>152</sup> Credit scores rate an individual's credit worthiness and credit risk at a point in time, and credit scores are based on an individual's financial history.<sup>153</sup> Credit reports and credit scores are frequently used by lenders, employers, insurers,

and other entities when assessing individuals' financial circumstances.<sup>154</sup> For example, lenders use credit reports and scores to determine the likelihood that a prospective borrower will repay a loan.<sup>155</sup>

While the sponsor's credit score or report would not determine, by itself, whether he or she has demonstrated the means to maintain income of at least 125 percent of the Federal poverty line (or 100 percent as applicable),<sup>156</sup> or the means to carry out the support obligations, a poor credit score (below 580)<sup>157</sup> or negative information on the credit report such as a high amount of outstanding debt, late payments, delinquent accounts, collections actions, and bankruptcy may indicate that a sponsor does not have the means to maintain income to support the intending immigrant or that the sponsor will not be able to carry out the support obligations.

On the other hand, a fair or higher credit score (580 or above) or positive credit history may indicate that a sponsor has the means to maintain income to support the intending immigrant and that the sponsor will be able to carry out the support obligation.

For the same reasons set forth above, DHS also proposes to consider the credit report and score of a household member executing Form I-864A.

DHS considered not requesting credit reports and credit scores from sponsors and household members executing Form I-864A. However, DHS determined that the financial status information provided by credit reports and credit scores would assist USCIS in determining if a sponsor or a household member who executes Form I-864A actually has the means to maintain the required income level and whether the sponsor or household member can meet his or her support obligations.

<sup>154</sup> *See USA.gov*, Credit Reports and Scores, available at <https://www.usa.gov/credit-reports> (last visited June 2, 2020). *See* Cheryl R. Cooper et al., Congressional Research Services, R44125, *Consumer Credit Reporting, Credit Bureaus, Credit Scoring, and Related Policy Issues*, p. 1 (2020), available at <https://fas.org/sgp/crs/misc/R44125.pdf> (last visited June 2, 2020).

<sup>155</sup> *See* Cheryl R. Cooper et al., Congressional Research Services, R44125, *Consumer Credit Reporting, Credit Bureaus, Credit Scoring, and Related Policy Issues*, p. 1 (2020), available at <https://fas.org/sgp/crs/misc/R44125.pdf> (last visited June 2, 2020).

<sup>156</sup> *See* INA section 213A(f)(3), 8 U.S.C. 1183a(f)(3).

<sup>157</sup> *See* Experian, What is a Good Credit Score, available at <https://www.experian.com/blogs/ask-experian/credit-education/score-basics/what-is-a-good-credit-score/> (last visited June 2, 2020).

<sup>150</sup> *See* 8 CFR 213a.1.

<sup>151</sup> *See USA.gov*, Credit Reports and Scores, available at <https://www.usa.gov/credit-reports> (last visited June 2, 2020). *See also* Fed. Trade Comm'n., *Consumer Information: Credit Scores* (Sept. 2013), available at <https://www.consumer.ftc.gov/articles/0152-credit-scores> (last visited June 2, 2020).

<sup>152</sup> *See USA.gov*, Credit Reports and Scores, available at <https://www.usa.gov/credit-reports> (last visited June 2, 2020).

<sup>153</sup> *See USA.gov*, Credit Reports and Scores, available at <https://www.usa.gov/credit-reports> (last visited June 2, 2020).

## 2. Federal Income Tax Returns for 3 Years

Consistent with DHS' authority in section 213A(f)(6)(A)(i) of the Act, 8 U.S.C. 1183a(f)(6)(A)(i), DHS is proposing to amend 8 CFR 213a.2(c)(2)(i)(A) to require sponsors and household members who execute Form I-864A to provide Internal Revenue Service-issued certified copies or Internal Revenue Service-issued transcripts<sup>158</sup> of their Federal income tax returns for the 3 most recent taxable years. See proposed 8 CFR 213a.2(c)(2)(i)(A). The statute permits DHS to require tax returns for the 3 most recent taxable years<sup>159</sup> but the existing regulation only requires sponsors to submit tax returns for the most recent taxable year.<sup>160</sup> The 1997 interim final rule implementing section 213A of the Act, 8 U.S.C. 1183a, required sponsors to provide copies of the 3 most recent tax years with an Affidavit.<sup>161</sup> However, in the 2006 final rule, DHS chose to require sponsors to only submit tax returns for the most recent tax year, as permitted by section 213A(f)(6)(B) of the Act, 8 U.S.C. 1183a(f)(6)(B).<sup>162</sup> The 2006 final rule also allowed sponsors to submit tax returns for the 3 most recent tax years, if they believe the additional tax returns may help to establish their ability to maintain the required household income.<sup>163</sup> The alternative of requiring only the tax return from the most recent tax year demonstrates a sponsor's income for that year, and does not allow immigration officers or immigration judges to review a sponsor's ability to maintain that income. Therefore, requiring only the tax return from the most recent tax year is not adequately representative of a sponsor's ability to support the sponsored immigrant throughout the obligation period. The provision in section 213A(f)(6)(B) of the Act, 8 U.S.C. 1183a(f)(6)(B), that permits DHS to limit the evidence that is submitted to

<sup>158</sup> A tax transcript summarizes return information and they are available for the most current tax year after the IRS processes the return. Taxpayers can also get them for the past 3 years. See *How to Get Tax Transcripts and Copies of Tax Returns from the IRS*, available at <https://www.irs.gov/newsroom/how-to-get-tax-transcripts-and-copies-of-tax-returns-from-the-irs> (last visited June 2, 2020).

<sup>159</sup> See INA section 213A(f)(6)(a)(i), 8 U.S.C. 1183a(f)(6)(A)(i).

<sup>160</sup> See INA section 213A(f)(6)(B), 8 U.S.C. 1183a(f)(6)(B). See also 8 CFR 213a.2(c)(2)(i)(A).

<sup>161</sup> See *Affidavit of Support on Behalf of Immigrants*, 62 FR 54346, 54354 (Oct. 20, 1997).

<sup>162</sup> See *Affidavits of Support on Behalf of Immigrants*, 71 FR 35731 (June 21, 2006).

<sup>163</sup> See INA section 213A(f)(6)(B), 8 U.S.C. 1183a(f)(6)(B). See also 8 CFR 213a.2(c)(2)(i)(A). See *Affidavits of Support on Behalf of Immigrants*, 71 FR 35731 (June 21, 2006).

demonstrate the means to maintain income to only the most recent tax year is discretionary, and therefore need not be applied to sponsors.

By reviewing 3 years of tax returns for all sponsors, as well as household members executing a Contract, immigration officers and immigration judges will have a more complete picture of a sponsor's financial circumstances in order to determine if a sponsor or household member who executed Form I-864A has demonstrated the means to maintain income at the income threshold for the sponsor's household size and whether the sponsor or household member who executed Form I-864A has demonstrated that he or she will actually be able to fulfill his or her support obligation to the intending immigrant. For purposes of demonstrating the means to maintain income, the total income, before deductions in the sponsor's tax return for the most recent taxable year, will continue to be generally determinative<sup>164</sup> of whether a sponsor's income is sufficient to maintain the sponsored immigrant at the income threshold for the sponsor's household size. As evidenced by the Act, Congress concluded that reviewing 3 years of tax returns was an important factor in demonstrating a sponsor's ability to maintain the required income.<sup>165</sup>

Also consistent with the Act, DHS proposes clarifying that the tax returns must be certified copies issued by the Internal Revenue Service (IRS).<sup>166</sup> Individuals may request certified copies from the IRS for the current tax year and the prior six years. DHS proposes conforming edits to the regulation to be consistent with these revisions. See proposed 8 CFR 213a.2(c)(2)(i)(B), 8 CFR 213a.2(c)(2)(i)(C)(4), and 8 CFR 213a.2(c)(2)(i)(D).

DHS considered keeping the existing requirement for only 1 year of tax returns. However, DHS concluded requiring 3 years of tax returns, instead of a single year, has significant value in determining sponsor eligibility. By reviewing 3 years of tax returns, immigration officers and immigration judges will be able to identify patterns in the yearly income of sponsors, and thereby better establish not only whether the sponsor's income reached the required threshold in the year the Affidavit was filed, but also the

<sup>164</sup> See INA section 213A(f)(6)(B), 8 U.S.C. 1183a(f)(6)(B).

<sup>165</sup> See INA section 213A(f)(6)(A)(i), 8 U.S.C. 1183a(f)(6)(A)(i).

<sup>166</sup> See INA section 213A(f)(6)(A)(i), 8 U.S.C. 1183a(f)(6)(A)(i).

sponsor's ability to maintain the required income threshold over time.

## E. Bank Account Information

DHS proposes to amend 8 CFR 213a.2(c)(2)(v) to add the collection of the sponsor's bank account information, such as type of account (e.g. checking, saving), bank account numbers and routing numbers. See proposed 8 CFR 213a.2(c)(2)(v). DHS also proposes to add the collection of bank account information for a household member who executes Form I-864A.

## F. Address Change Requirements

DHS is proposing to revise 8 CFR 213a.3 to require that all household members who execute a Contract must notify DHS within 30 days if they change their address. See proposed 8 CFR 213a.3. The current regulation only requires sponsors to submit an address change to DHS using Form I-865.<sup>167</sup> Since household members agree to accept the same obligations as a sponsor with regards to the intending immigrant, it is important that DHS has household members' current addresses and DHS is timely notified of any address changes. All household members, whether an alien, U.S. citizen or U.S. national, would be required, under the proposed rule, to notify DHS within 30 days of any change of address.<sup>168</sup> This provision does not alter the current requirement that most aliens in the United States must report each change of address and new address within ten days of such change.<sup>169</sup>

Upon request, DHS provides information about sponsors and household members to benefit-granting agencies to assist agencies in performing income deeming and/or to seek reimbursement for means-tested public benefits issued to sponsored immigrants. DHS needs to have current address information for household members, as well as sponsors, in order to perform this service for benefit-granting agencies. DHS also proposes to make household members subject to the same civil penalty imposed on sponsors if they fail to provide notice of an address change to DHS as required. See proposed 8 CFR 213a.3(b).

## G. Information Sharing Provisions

DHS is proposing to revise 8 CFR 213a.4 to update how certain information concerning sponsors and sponsored immigrants is submitted to or requested from USCIS.

<sup>167</sup> See 8 CFR 213a.3(a)(1).

<sup>168</sup> See INA section 213A(d), 8 U.S.C. 1183a(d). See also 8 CFR 213a.3.

<sup>169</sup> See INA section 265(a), 8 U.S.C. 1305(a). See also 8 CFR 265.1.

## 1. Eliminating Subpoena Requirement

To assist benefit-granting agencies and sponsored immigrants in holding sponsors and household members accountable for their support obligations, DHS proposes to revise 8 CFR 213a.4(a)(3) to make it easier for certain parties to obtain certified copies of Affidavits from USCIS. See proposed 8 CFR 213a.4(a)(3). Currently, USCIS will provide a certified copy of an Affidavit only after USCIS receives a duly issued subpoena.<sup>170</sup> However, it is burdensome, costly, and inefficient for parties to obtain subpoenas merely to get a copy of an Affidavit. The existing requirement may discourage benefit-granting agencies and sponsored immigrants from enforcing the support obligations and/or seeking reimbursement. Also, in signing an Affidavit, sponsors have already authorized “the release of information contained in [the] affidavit, in supporting documents, and in my USCIS or DOS records, to other entities and persons where necessary for the administration and enforcement of U.S. immigration law.”<sup>171</sup> Household members who sign a Contract also authorize the release of information contained in the Contract.<sup>172</sup> DHS proposes to eliminate the subpoena requirement to make the reimbursement process easier and to better ensure that sponsors and household members who execute a Contract are meeting their support obligations.<sup>173</sup> Instead, DHS proposes that it will provide a certified copy of an Affidavit or Contract after receipt of a formal request to a party or entity authorized to receive a certified copy of an Affidavit or Contract, such as bringing an action to enforce an Affidavit or Contract, so that the Affidavit or Contract may be used as evidence in any action to enforce the support obligation or as part of a request for reimbursement. Authorized parties or entities will make a formal request by submitting to USCIS a new form, Request for Certified Copy of Affidavit of Support Under Section 213A of the INA or Contract Between Sponsor and Household Member (Form G–1563)

(“request form”). The request form will not have a filing fee.

As an alternative, DHS considered leaving the subpoena requirement in the regulation. However, to better facilitate Congressional intent that sponsors fulfill their support obligations during the period of enforceability, DHS proposes eliminating the subpoena requirement in order to facilitate the initiation of repayment or reimbursement actions. This proposed change is also consistent with the Presidential Memo’s directive to establish procedures for data sharing, which will better ensure that existing immigration laws are enforced and that sponsors fulfill their support obligations during the period of enforceability.

DHS specifically requests public comments on the proposed change to eliminate the subpoena requirement. DHS is particularly interested in views and data concerning costs associated with obtaining a duly-issued subpoena, or if there are other potential alternatives that would help ensure that support obligations, including reimbursement of means-tested public benefits, are met. DHS also requests comment on the proposed request form and instructions.

## 2. Revising Reporting Processes

DHS proposes revising the reporting provisions in 8 CFR 213a.4(c) to provide more efficient mechanisms for fulfilling the reporting requirements. The current regulation requires parties that obtain final judgments against a sponsor to mail certified copies of judgments to the “Office of Program and Regulation Development” at USCIS’ headquarters in Washington, DC<sup>174</sup> However, the Office of Program and Regulation Development no longer exists and USCIS’ headquarters is expected to relocate in the near future. Similarly, 8 CFR 213a.4(c)(2) directs entities that administer means-tested public benefits to mail written notice of indigency determinations to the Office of Program and Regulation Development. DHS proposes to delete 8 CFR 213a.4(c)(3) in its entirety as the program office and mailing address in that provision are no longer appropriate. DHS also proposes to revise 8 CFR 213a.4(c)(1) and (2) to delete the outdated mailing instructions. Instead, reporting parties will do so in a manner to be described by DHS. See proposed 8 CFR 213a.4(c)(1) and (2).

### H. Revised Definitions

DHS proposes to add new definitions to 8 CFR 213a.1, revise current definitions of key terms in 8 CFR

213a.1, and also add alphabetical designations for each definition. See proposed 8 CFR 213a.1. By defining and clarifying key terms, this proposed rule would provide greater certainty regarding the eligibility criteria for sponsors and intending immigrants. Adding designations for each definition will enhance readability and clarity for the regulation.

- Add definition for active duty. DHS is proposing adding a definition for “active duty” to include: Full-time duty in the U.S. Armed Forces, other than active duty for training, full-time duty (other than for training purposes), as a commissioned officer of the Regular or Reserve Corps of the Public Health Service, full-time duty as a commissioned officer of the National Oceanic and Atmospheric Administration, and full-time duty as a cadet or midshipman at the United States Military Academy, United States Naval Academy, United States Air Force Academy, or the United States Coast Guard Academy. These added definitions clarify who is active duty as the term is used in section 213A(f)(3) of the Act, 8 U.S.C. 1183a(f)(3). DHS proposed this definition because it is consistent with a statutory definition of active duty created by Congress, which applies to Servicemembers and codified in 38 U.S.C. 1965.

- Add definition for active duty for training. DHS is proposing to add the definition for “active duty for training” to mean full-time duty in the U.S. Armed Forces performed by Reserves for training purposes, full-time duty for training purposes performed as a commissioned officer of the Reserve Corps of the Public Health Service, full-time duty as a member, cadet, or midshipman of the Reserve Officers Training Corps while attending field training or practice cruises, and, in the case of members of the National Guard or Air National Guard of any State, full-time duty under sections 316, 502, 503, 504, or 505 of the title 32, United States Code. The term “active duty for training” does not include duty performed as a temporary member of the Coast Guard Reserve. The added definition clarifies who is active duty for training as the term is used in section 213A(f)(3) of the Act, 8 U.S.C. 1183a(f)(3). DHS proposed this definition because it is consistent with a statutory definition of active duty for training duty created by Congress, which applies to Servicemembers codified in 38 U.S.C. 1965.

- Add definition for execute. DHS proposes to add the definition for “execute” to mean, for the purposes of 8 CFR 213a, an Affidavit of Support

<sup>170</sup> See 8 CFR 213a.4(a)(3).

<sup>171</sup> See Instructions for Affidavit of Support Under Section 213A of the INA, available at <https://www.uscis.gov/i-864> (last visited June 2, 2020).

<sup>172</sup> See Instructions for Contract Between a Sponsor and Household Member, available at <https://www.uscis.gov/i-864a> (last visited June 2, 2020).

<sup>173</sup> See Presidential Memorandum, *Enforcing the Legal Responsibilities of Sponsors of Aliens*, (May 23, 2019), available at <https://www.whitehouse.gov/presidential-actions/memorandum-enforcing-legal-responsibilities-sponsors-aliens/> (last visited May 24, 2019). See 8 CFR 213a.4(c)(1).

<sup>174</sup> See 8 CFR 213a.4(c)(1).



Under Section 213A of the INA or a Contract Between a Sponsor and Household Member is executed when a sponsor or household member signs and submits the appropriate forms in accordance with the form instructions to USCIS or the Department of State, as appropriate. This new definition replaces the definition in current 8 CFR 213a.2(a)(1)(ii), which defines the term execute only for the purposes of the Affidavit.

- Amend Federal poverty line definition. DHS proposes to revise the definition of “Federal poverty line” to replace the phrase “the Service” with “DHS”, which reflects the dissolution of the Immigration and Naturalization Service and the transference of its duties and responsibilities to the U.S. Department of Homeland Security through the Homeland Security Act of 2002.<sup>175</sup> DHS is also proposing to amend the Federal poverty line definition to clarify that the poverty guidelines as referenced in the definition is the Federal Poverty Guidelines (FPG) as issued annually by HHS.

- Amend household income definition. DHS is proposing to revise the definition of “household income” to mean the income used to determine whether a sponsor meets the minimum income requirements under sections 213A(f)(1)(E), 213A(f)(3), or 213A(f)(5) of the Act, 8 U.S.C. 1183a(f)(1)(E), (f)(3), or (f)(5). Under the proposed amended definition, household income will include all income, obtained from employment in a lawful enterprise or some other lawful source, of the sponsor, the sponsor’s spouse if the spouse submitted a Contract, and the intending immigrant’s income that will continue to be available to the intending immigrant after he or she acquires lawful permanent resident status. Household income will not include income from employment that has not yet actually begun, income derived from unlawful enterprises, such as proceeds from illegal gambling or drug sales, any intending immigrant income derived from employment that is not authorized under 8 CFR 274a.12, or income from means-tested public benefits, as defined in 8 CFR 213a.1(l). This proposed definition will clarify that household income will not include the income of household members other than the sponsor, the sponsor’s spouse who executed a Contract, or the intending immigrant, in order for the sponsor to meet the income requirements of section 213A of the Act, 8 U.S.C. 1183a. This

revision will better assist immigration officers and immigration judges in determining whether a sponsor has the means to maintain income of at least 125 percent of the Federal poverty line and whether the sponsor will be able to carry out their support obligations.

- Amend household size definition. DHS is proposing to revise the definition of “household size” to add the requirement that, in addition to the individuals included in the current definition, a sponsor must include any other aliens listed on an executed Affidavit that has not yet gone into effect, unless the sponsor has withdrawn the Affidavit, or the application associated with the Affidavit has been denied and any appeals have been exhausted or waived. DHS is also proposing to include in “household size” aliens for whom the sponsor has executed a Contract and the support obligation is still in effect, and any executed Contract that has not yet gone into effect, unless the sponsor has withdrawn the Contract, or the application associated with the Contract has been denied and any appeals have been exhausted or waived. The proposed amendment would also eliminate the sponsor’s ability to include the income of household members besides a spouse who executed Form I–864A and the intending immigrant in order to meet the income requirements of section 213A of the Act, 8 U.S.C. 1183a. DHS is proposing this change to correspond with the proposed amendment of the definition of household income, which would exclude the income of any individual other than the sponsor, the sponsor’s spouse, and the intending immigrant. These proposed amendments, consistent with the statute’s purpose of ensuring sponsors fulfill their support obligations, will provide a more accurate assessment of the number of individuals the sponsor is currently supporting or is seeking to support. The revised definition will assist DHS in determining if a sponsor meets the support requirements, has demonstrated the means to maintain income at the required income level, and will be able to meet their support obligations.

- Amend immigration officer definition. DHS is proposing to revise the definition of “immigration officer” by updating an incorrect reference. Immigration officer as defined for purposes of 8 CFR chapter I is currently found in 8 CFR 1.2, and not 8 CFR 103.1(j) as 8 CFR 213a.1 currently indicates. Proposed 8 CFR 213a.1(h) is revised to provide that, solely for purposes of this part, immigration

officer includes a consular officer, as defined by section 101(a)(9) of the Act, as well as an immigration officer, as defined by § 1.2 of the chapter. This is a technical correction that does not substantively change the definition of immigration officer as currently defined in 8 CFR 213a.1.

- Amend income definition. DHS is proposing to amend the definition of “income” to mean an individual’s total income (e.g., adjusted gross income for those who file an Income Tax Return for Single Filers With No Dependents) for purposes of the individual’s U.S. Federal income tax liability, including a joint income tax return, excluding any income earned or derived from unlawful enterprises, such as illegal gambling or drug sales. Only an individual’s Federal income tax return—that is, neither a state or territorial income tax return nor an income tax return filed with a foreign government—can be filed with an Affidavit or with a Contract, unless the individual had no duty to file a Federal income tax return, and claims his or her state, territorial or foreign taxable income is sufficient to establish the sufficiency of the Affidavit or the Contract. The proposed amendment, consistent with the statute, requires a sponsor to provide verified information regarding his or her income, and therefore provide reliable information regarding a sponsor’s ability to support the intending immigrant.

- Amend joint sponsor definition. DHS is proposing to revise the definition of “joint sponsor” to refer to the sponsor who filed the immigrant petition on behalf of the intending immigrant as the “petitioning sponsor”. This amendment corresponds with section 213A(f)(5)(A) of the Act, 8 U.S.C. 1183a(f)(5)(A), which uses the term “petitioning sponsor” and clarifies the identity of the intending immigrant’s sponsor.

- Add definition for petitioning sponsor. DHS is proposing to add a definition of “petitioning sponsor” to mean a sponsor who meets all the requirements of section 213A(f)(1)(A) through (E) of the Act; meets the requirements of section 213A(f)(1)(A), (B), (C), and (D) and (f)(2) of the Act; meets the requirements of section 213A(f)(1)(A), (B), (C), and (D) and (f)(3) of the Act; meets the requirements of section 213A(f)(1)(A), (B), (C), and (D) and (f)(4)(A) and (f)(4)(B)(i) of the Act; or meets the requirements of section 213A(f)(1)(A), (B), (C), (f)(4)(A) and (f)(4)(B)(ii) of the Act. This definition, consistent with the statute, differentiates between the petitioning sponsor, as proposed above, any joint sponsor who accepts joint and several

<sup>175</sup> See Homeland Security Act of 2002, Public Law 107–296 (Nov. 25, 2002).

liability with the petitioner,<sup>176</sup> and a substitute sponsor, who accepts the petitioning sponsor's support obligations if the petitioning sponsor dies after the immigrant petition was approved.<sup>177</sup> DHS proposes conforming edits throughout the regulation to be consistent with this new definition.

- Amend definition of sponsor. DHS is proposing to revise the definition of "sponsor" to include the three categories of sponsors: Petitioning sponsor, joint sponsor, and substitute sponsor. This proposed amendment, consistent with statute, clarifies the categories of sponsors and corresponds to the obligations defined in the statute of each category. DHS proposes conforming edits throughout the regulation to be consistent with this new definition.

- Add definition for U.S. Armed Forces, otherwise known as Armed Forces of the United States. DHS is proposing to add the definition of "U.S. Armed Forces" to mean Army, Navy, Air Force, Marine Corps, and Coast Guard as codified in 10 U.S.C. 101(a)(4). This definition, consistent with the statute, clarifies the key term in the statute definitions for "active duty" and "active duty for training."<sup>178</sup>

#### *I. Clarifying Affidavit Requirements for Certain Children of U.S. Citizens Acquiring U.S. Citizenship*

DHS proposes to clarify the exemption from the Affidavit requirement for foreign-born children who will automatically acquire U.S. citizenship under section 320 of the Act after admission to the United States as an LPR and taking up residence in the legal and physical custody of their U.S. citizen parent. DHS is not adding a new exemption, but rather, is identifying which immigrant categories of children need to file an Affidavit, and which do not, as described below. Accordingly, DHS proposes to amend 8 CFR 213a.2(a)(2)(ii)(E) to clarify that 8 CFR 213a.2(a)(1) does not apply if the intending immigrant:

- Is the child of a U.S. citizen, and the child's lawful admission for permanent residence and residence in the United States in the U.S. citizen parent(s)' legal and physical custody will result in the child's automatic acquisition of citizenship under section 320 of the Act, 8 U.S.C. 1431, as amended, unless the child is considered to be coming to the United States for

adoption under sections 101(b)(1)(F) and 101(b)(1)(G) of the Act, 8 U.S.C. 1101(b)(1)(F) and 1101(b)(1)(G).

The current regulation does not address the different ways that a child may come to the United States to be adopted as described in sections 101(b)(1)(E), 101(b)(1)(F), and 101(b)(1)(G) of the Act, 8 U.S.C. 1101(b)(1)(E), 1101(b)(1)(F), and 1101(b)(1)(G). Therefore, these clarifying edits provide the specific provisions under the INA that apply to adopted children who are and who are not subject to the Affidavit requirement.

Alien children of U.S. citizens, who must first establish eligibility for admission, are subject to section 212(a)(4) of the Act, 8 U.S.C. 1182(a)(4), even though they may later acquire U.S. citizenship upon meeting the requirements of section 320 of the Act, 8 U.S.C. 1431.<sup>179</sup> However, children of U.S. citizens who will automatically acquire citizenship under section 320 of the Act, 8 U.S.C. 1431, after admission to the United States as an LPR and taking up residence in the legal and physical custody of their U.S. citizen parent, are exempt from the Affidavit requirement under the current regulations and will continue to be exempt under the proposed regulations.<sup>180</sup>

The following categories of children automatically acquire citizenship after admission as lawful permanent residents and beginning to reside in the legal and physical custody of their U.S. citizen parent(s) and are exempt from filing an Affidavit:<sup>181</sup>

- Child of a U.S. citizen (IR-2/IR-7)—requires an approval of a Petition for Alien Relative, Form I-130. These children are generally admitted as lawful permanent residents or their

<sup>179</sup> Note that children born abroad to U.S. citizen parents may also acquire U.S. citizenship at birth under certain circumstances, such as where both parents are U.S. citizens and one parent had resided in the United States prior to the child's birth, or where one parent is a U.S. citizen who was physically present in the United States for at least five years, two of which were after age 14. Such children would enter the United States as U.S. citizens and would not be subject to an admissibility determination. See INA sections 301 and 309, 8 U.S.C. 1401 and 1409. These children would apply with DOS for a Consular Report of Birth Abroad and/or passport. See Department of State, Consular Reports on Birth Abroad, available at [https://travel.state.gov/content/congress-liaison-home/en/Congressional\\_Liaison/Americans-Abroad/consular-reports-of-birth-abroad.html](https://travel.state.gov/content/congress-liaison-home/en/Congressional_Liaison/Americans-Abroad/consular-reports-of-birth-abroad.html) (last visited June 2, 2020).

<sup>180</sup> See Child Citizenship Act, Public Law 106-395, 114 Stat. 1631 (Oct. 30, 2000). See also 8 CFR 213a.2(a)(2)(ii)(E). Stepchildren of U.S. citizens are not eligible for acquisition of citizenship under section 320 of the Act unless the child is adopted by the U.S. citizen step-parent. See INA section 101(c)(1), 8 U.S.C. 1101(c)(1).

<sup>181</sup> See 8 CFR 213a.2(a)(2)(ii)(E).

status is adjusted to that of lawful permanent resident. The child may then file an Application for Certificate of Citizenship, Form N-600, to receive the Certificate of Citizenship.<sup>182</sup> The certificate generally would be dated as of the date the child was admitted as a lawful permanent resident. Stepchildren of U.S. citizens are not eligible for acquisition of citizenship under section 320 of the Act, 8 U.S.C. 1431, unless the child is adopted by the U.S. citizen step-parent.<sup>183</sup>

- Orphan adopted abroad by a U.S. citizen (IR-3/IR-8)—requires an approval of a Petition to Classify Orphan as an Immediate Relative, Form I-600. These children are generally admitted as lawful permanent residents, and USCIS will send a Certificate of Citizenship to the child without a Form N-600 being filed or adjudicated, provided the child has taken up residence in the United States in the legal and physical custody of the adoptive parents.

- Hague Convention Adoptee adopted abroad by a U.S. citizen (IH-3/IH-8)—requires an approval of a Petition to Classify Convention Adoptee as an Immediate Relative, Form I-800. These children are generally admitted as lawful permanent residents and USCIS will send a Certificate of Citizenship to the child without a Form N-600 being filed or adjudicated, provided the child has taken up residence in the United States in the legal and physical custody of the adoptive parents.

Children who are considered to be coming to the United States for adoption, however, must generally take some additional steps to acquire citizenship and therefore are required to file a Form I-864 or Form I-864EZ under the current and proposed regulations. The proposed rule would clarify which children are considered to be coming to the United States for adoption and therefore subject to the Affidavit requirement. The following categories of children are considered to be coming to the United States for adoption and required to file a Form I-864 or Form I-864EZ:

- Orphan to be adopted by a U.S. citizen (IR-4/IR-9). These children are admitted as lawful permanent residents. Generally, the parent(s) must complete the adoption in the United States.<sup>184</sup>
- Hague Convention Adoptee to be adopted by a U.S. citizen (IH-4/IH-9).

<sup>182</sup> Except for stepchildren of U.S. citizens who are not eligible for acquisition of citizenship under section 320 of the Act or unless the child is adopted by the U.S. citizen step-parent. See INA section 101(c)(1), 8 U.S.C. 1101(c)(1).

<sup>183</sup> See INA section 101(c)(1), 8 U.S.C. 1101(c)(1).

<sup>184</sup> See 8 CFR 320.1.

<sup>176</sup> See INA section 213A(f)(2), 8 U.S.C. 1183a(f)(2). See INA section 213A(5)(A), 8 U.S.C. 1183a(5)(A).

<sup>177</sup> See INA section 213A(f)(5)(B), 8 U.S.C. 1183a(f)(5)(B).

<sup>178</sup> See 10 U.S.C. 101(a)(4).

These children are admitted as lawful permanent residents. Generally, the parent(s) must complete the adoption in the United States.<sup>185</sup>

Congress has enacted numerous laws over the last two decades to ensure that foreign-born children of U.S. citizens are not subject to adverse immigration consequences in the United States on account of their foreign birth. Most notably, the Child Citizenship Act of 2000<sup>186</sup> provides that children, including certain adopted children, of U.S. citizen parents automatically acquire U.S. citizenship if certain conditions are met.<sup>187</sup> The same year, Congress passed the Intercountry Adoption Act of 2000 (IAA)<sup>188</sup> to implement the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (Hague Adoption Convention or Convention),<sup>189</sup> which established international standards of practices for intercountry adoptions. The IAA protects the rights of children, birth families, and adoptive parents, and improves the Government's ability to assist U.S. citizens seeking to adopt children from abroad.<sup>190</sup>

<sup>185</sup> See INA section 101(b)(1), 8 U.S.C. 1101(b).

<sup>186</sup> See Public Law 106–395, section 101(a), 114 Stat. 1631, 1631 (codified at INA section 320(a)–(b), 8 U.S.C. 1431(a)–(b)); see also *Children Born Outside the United States; Applications for Certificate of Citizenship*, 66 FR 32137 (June 13, 2001). The CCA applies to children who were under 18 as of February 27, 2001. The law was passed after several high-profile cases in which children who were adopted abroad were subject to deportation despite having grown up in the United States and having believed that they were U. S. citizens.

<sup>187</sup> See 8 CFR part 320; see also Dep't of State, FAQ: Child Citizenship Act of 2000, available at [https://travel.state.gov/content/travel/en/Intercountry-Adoption/adopt\\_ref/adoption-FAQs/child-citizenship-act-of-2000.html](https://travel.state.gov/content/travel/en/Intercountry-Adoption/adopt_ref/adoption-FAQs/child-citizenship-act-of-2000.html) (last visited June 2, 2020).

<sup>188</sup> See Public Law 106–279, 114 Stat. 1631 (codified at 42 U.S.C. 14901–14954). See also *Hague Convention on Intercountry Adoption; Intercountry Adoption Act of 2000; Accreditation of Agencies; Approval of Persons*, 71 FR 8063 (Feb. 15, 2006).

<sup>189</sup> The United States signed the Convention in 1994, and the Convention entered into force for the United States on April 1, 2008. See *Deposit of Instrument of Ratification by the United States of the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption*, 72 FR 71730 (Dec. 18, 2007). For the full text of the Convention, see also Hague Conference, 33. Convention on Protection of Children and Co-Operation in Respects of Intercountry Adoption (Concluded May 29, 1993), available at <https://assets.hcch.net/docs/77e12f23-d3dc-4851-8f0b-050f71a16947.pdf> (last visited June 2, 2020).

<sup>190</sup> See IAA section 2, 42 U.S.C. 14901(a); see also 146 Cong. Rec. S8938–01, S8938 (daily ed. Sept. 21, 2000) (statement by Sen. Landrieu) (“I have said it before and I believe it rings true here, adoption brings people, whether they are Republican, Democrat, conservative, liberal, American, Russian or Chinese, together. United by the belief that all children deserve to grow in the love of a permanent

family. Adoption breaks down barriers and helps build families.”). A year earlier, Congress passed Public Law 106–139, 113 Stat. 1696 (1999), to amend the definition of “child” in section 101(b)(1)(E) of the INA, 8 U.S.C. 1101(b)(1)(E), a change that allowed children adopted abroad to maintain their familial relationship with their natural siblings, making it easier for siblings to be adopted together.

#### J. Miscellaneous Other Changes

DHS proposes deleting 8 CFR 213a.2(a)(1)(ii), which explains when an Affidavit is executed. There is no similar provision that explains when a Contract is executed. As noted in section H. above, DHS proposes to add a definition for the term “execute” in proposed 8 CFR 213a.1 that would apply to both Affidavits and Contracts, and would clarify what execute means throughout the proposed rule. Therefore, the provision in 8 CFR 213a.2(a)(1)(ii) would no longer be necessary and DHS proposes its deletion.

DHS proposes deleting 8 CFR 213a.2(a)(1)(i)(B) as not necessary. Currently, the regulations require certain intending immigrants to file Form I–864W, Request for Exemption for Intending Immigrant's Affidavit of Support, to establish that they are exempt from the Affidavit requirement. However, DHS has determined these classes of intending immigrants must provide evidence that they are exempt from the Affidavit requirement as part of submitting the Form I–485, Application to Register Permanent Residence or Adjust Status.

As part of the adjustment of status process, USCIS is responsible for determining whether the applicant has met his or her burden of proof to establish eligibility for the benefit, which includes a determination of whether the alien has demonstrated that no inadmissibility grounds in section 212(a) of the Act, 8 U.S.C. 1182(a), apply.<sup>191</sup> Failure to submit an Affidavit when required results in a determination of inadmissibility based on the public charge ground irrespective of any other statutory factors.<sup>192</sup>

family. Adoption breaks down barriers and helps build families.”). A year earlier, Congress passed Public Law 106–139, 113 Stat. 1696 (1999), to amend the definition of “child” in section 101(b)(1)(E) of the INA, 8 U.S.C. 1101(b)(1)(E), a change that allowed children adopted abroad to maintain their familial relationship with their natural siblings, making it easier for siblings to be adopted together.

<sup>191</sup> See INA section 291, 8 U.S.C. 1361.

<sup>192</sup> See INA section 212(a)(4)(C) and (D), 8 U.S.C. 1182(a)(4)(C) and (D).

Therefore, an adjustment of status applicant already needs to provide evidence that he or she is exempt from filing an Affidavit, thereby eliminating the need for filing Form I–864W.

Removing the requirement for certain applicants to file a form and affirmatively request the exemption will be less burdensome for applicants as well as USCIS. Accordingly, DHS will eliminate the use and consideration of Form I–864W.

DHS proposes revising 8 CFR 213a.2(a)(2)(ii) to accurately identify all of the classes of intending immigrants who are exempt from the Form I–864 requirement. See proposed 8 CFR 213a.2(a)(2)(ii)(F)–(EE).

DHS proposes revising the support requirements in 8 CFR 213a.2(c)(1)(i) to be more consistent with section 213A(f)(1) of the Act, 8 U.S.C. 1183a(f)(1) and include the requirements that in general, a sponsor must be petitioning for the admission of the alien under section 204 of the Act and demonstrate the means to maintain an annual income equal to at least 125 percent of the Federal Poverty guidelines based on the sponsor's household size. See proposed 8 CFR 213a.2(c)(1)(i).

DHS proposes amending 8 CFR 213a.2(c)(2)(iii)(B) to clarify which types of assets may be considered significant assets for Affidavit purposes, including that non-cash assets must be able to be converted into cash within 12 months. See proposed 8 CFR 213a.2(c)(2)(iii)(B). This revision reflects USCIS' existing policy and the instructions for Form I–864.<sup>193</sup> How DHS calculates significant assets would not change by clarifying that the significant assets are calculated by reference to FPG as this revision reflects the proposed revision of the definition of Federal poverty line which would be based on the FPG. DHS also proposes adding 8 CFR 213a.6, adding a severability clause in the event that any of the provisions in this part are not implemented.

#### K. Transition Period

DHS proposes that all applications for adjustment of status and applications for immigrant visas postmarked (or if applicable, electronically submitted) before the effective date of the final rule will be adjudicated under the criteria currently found in 8 CFR part 213a as

<sup>193</sup> See Instructions for Affidavit of Support Under Section 213A of the INA, available at <https://www.uscis.gov/i-864>. See also USCIS Adjudicator's Field Manual, Chapter 20.5(k)(5)(B), available at <https://www.uscis.gov/sites/default/files/policymanual/afm/afm20-external.pdf> (last visited June 4, 2020).

promulgated by the 2006 final rule.<sup>194</sup> All applications for adjustment of status and applications for immigrant visas postmarked (or if applicable, electronically submitted) on or after the effective date of the final rule will be adjudicated according to the provisions of the final rule. DHS invites public comment on other possible approaches to the transition period between the current regulations and the proposed revisions.

## V. Statutory and Regulatory Requirements

### A. Executive Order 12866 (Regulatory Planning and Review) and Executive Order 13563 (Improving Regulation and Regulatory Review)

Executive Orders (E.O.) 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

This proposed rule is designated a “significant regulatory action” that is economically significant since it is estimated the proposed rule likely would have an annual effect on the economy of \$100 million or more, under section 3(f)(1) of E.O. 12866. Accordingly, the Office of Management and Budget (OMB) has reviewed this proposed regulation.

#### 1. Summary of Changes of the Proposed Rule

DHS is proposing to amend its regulations related to Affidavits at 8 CFR part 213a by revising sponsorship requirements to better ensure a sponsor has the means to support intending immigrants at the statutorily-required level. The proposed rule is intended to better ensure all sponsors and household members who execute an Affidavit or Contract can meet the support obligations under section 213A of the Act, 8 U.S.C. 1183a(a). This rule would also strengthen enforcement of Affidavits to hold sponsors and household members accountable if sponsored immigrants obtain means-tested public benefits during the period in which the obligations are in effect.

The proposed rule would update the evidentiary requirements for sponsors

submitting an Affidavit. The updated evidentiary requirements would provide immigration officers and immigration judges more effective ways to determine whether the sponsor has the means to maintain an annual income at or above the required income threshold, and whether the sponsor is able to provide financial support to the intending immigrant and meet all support obligations during the period the Affidavit is in effect. Specifically, the proposed rule would require sponsors and household members to provide Federal income tax returns for the 3 most recent tax years, instead of 1 tax return for the most recent tax year, recent credit reports and credit scores, and bank account information.

In addition, the proposed rule would revise policies related to a sponsor’s prior receipt of means-tested public benefits or default on another Affidavit or Contract support obligation. Sponsors who have themselves received means-tested public benefits may not have the financial means to support a sponsored immigrant. Similarly, a sponsor who has previously failed to fulfill their support obligations may be an unreliable source of support or repayment for Affidavit purposes. Specifically, this proposed rule would require a joint sponsor when a sponsor has received means-tested public benefits within the past 36 months and/or has had a judgment against him or her for a previous Affidavit.

Moreover, the proposed rule would revise who may execute a Contract. Currently, there is no limit on how many household members or which household members may execute a Contract. DHS intends to permit only a sponsor’s spouse or, in certain circumstances, the intending immigrant, to execute a Contract. An intending immigrant may only execute a Contract if he or she has an accompanying spouse or children; if the intending immigrant is the only immigrant being sponsored, the intending immigrant’s income may be included as part of the sponsor’s Affidavit if it meets the definition of household income.<sup>195</sup> DHS believes who may execute a Contract would better ensure that any income used by the petitioning sponsor to support the sponsored alien is actually available to the sponsor for the support of the intending immigrant. As data are unavailable demonstrating that non-spouse household members are less likely to uphold their contract obligations, DHS cannot provide examples of or other information concerning enforcement involving non-

spouse household members. This provision reflects DHS’ policy preference that intending immigrants should not rely upon a sponsor and a potentially unlimited group of household members to satisfy the requirements of INA 213A.

The proposed rule would update and improve how means-tested public benefit-granting agencies obtain immigration status information from USCIS about individuals who are seeking means-tested public benefits and how means-tested public benefit granting agencies provide information to USCIS. The current practices are outdated and burdensome, and discourage important information sharing and data collection. In order to address this specifically, the proposed rule would:

- Eliminate the requirement of a duly issued subpoena in order for USCIS to provide a certified copy of an Affidavit to a requesting party, and instead allow requesting parties to submit a formal request for an Affidavit or a Contract to USCIS. Eliminating this requirement would allow for a less cumbersome process than obtaining a subpoena.

- Implement the proposed new Form G–1563, Request for Certified Copy of Affidavit of Support Under Section 213A of the INA or Contract Between Sponsor and Household Member, for those from a party or entity authorized to bring an action to enforce an Affidavit or Contract making a formal request to USCIS to provide a certified copy of the requested Affidavit or Contract that has been executed on behalf of a sponsored immigrant for use as evidence in any action of enforcement.

- Remove an incorrect address and state that parties who obtain judgments against a sponsor or household member who executed a Contract Between Sponsor and Household Member, and Federal, state, or local program or private entities that make a determination under section 421(e) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 in the case of any sponsored immigrant, must notify USCIS in a manner to be designated by USCIS.

Lastly, DHS proposes to update the regulation to clarify which categories of aliens are exempt from the requirement to file an Affidavit, and to add and revise definitions to provide greater clarity within the regulations and conform to statutory changes made since the final rule was promulgated in 2006.

<sup>194</sup> See *Affidavits of Support on Behalf of Immigrants*, 71 FR 35731 (June 21, 2006).

<sup>195</sup> See 8 CFR 213a.1.

2. Summary of Costs and Benefits of the Proposed Rule

The proposed rule would impose new net costs on the population of sponsors executing an Affidavit using Form I-864 or Form I-864EZ as well as the population of household members who execute a Contract using Form I-864A so that a sponsor can use the household member's income and/or assets to demonstrate means to maintain income. Additionally, the proposed rule would impose new net costs on the population executing Form I-864A as a household member who would now be required to submit Form I-865 to provide notice of a change of address after moving. Moreover, the proposed rule would produce some cost savings for immigrants applying for adjustment of status who would have needed to request an exemption from filing an Affidavit as DHS is proposing to eliminate Form I-864W for use when filing Form I-485. Instead, individuals would be required to provide the information previously requested on Form I-864W when filing Form I-485. DHS has determined that the information an applicant provides on Form I-485 would be sufficient for an adjudications officer to be able to verify whether an immigrant is statutorily required to file an Affidavit.

This proposed rule also would impose new costs on those from a party or entity authorized to bring an action to enforce an Affidavit or Contract making a formal request using the proposed new Form G-1563 so that USCIS may provide a certified copy of the requested Affidavit or Contract that has been executed on behalf of a sponsored immigrant for use as evidence in any action of enforcement. DHS estimates the total cost for filing the proposed new Form G-1563 would be approximately \$779 annually.<sup>196</sup>

DHS estimates the total new quantified net costs imposed by the

proposed rule would be approximately \$240,314,623 annually for those executing an Affidavit for an intending immigrant using Form I-864, Form I-864EZ, for those executing a Contract using Form I-864A, and for those submitting a notice of a change of address after moving using Form I-865, for those filing Form G-1563 to make a formal request for a certified copy of and Affidavit or Contract, as well as accounting for the estimated cost savings for immigrants applying for adjustment of status who would have needed to request an exemption from filing an Affidavit as DHS is proposing to eliminate Form I-864W for use when filing Form I-485. The estimated new quantified net costs of the proposed rule would be based on an increased opportunity costs of time for completing Form I-864, Form I-864A, and Form I-864EZ,<sup>197</sup> as well as new requirements for completing these forms, including:

- Obtaining credit reports and credit scores,
- obtaining Internal Revenue Service (IRS)-issued certified copies or transcripts of Federal income tax returns for the 3 most recent taxable years, and
- opportunity cost of time to file IRS Form 4506, Request for Copy of Tax Return, to obtain IRS-issued certified Federal income tax returns for completing Form I-864 and Form I-864EZ.

The estimated new quantified net costs of the proposed rule also would be based on the proposed requirement that those who file Form I-864A use Form I-865 to provide notice of a change of address after moving.

Over the first 10 years of implementation, DHS estimates the total quantified new net costs of the proposed rule would be \$2,403,146,230 (undiscounted). DHS estimates that the 10-year discounted total net costs of this proposed rule would be about \$2,049,932,479 at a 3 percent discount

rate and about \$1,687,869,350 at a 7 percent discount rate.

The primary benefit of the proposed rule would be to better ensure that the sponsored immigrant is financially supported, as required by law, and that means-tested public benefit granting agencies can more efficiently seek reimbursement from sponsors or household members when a sponsored immigrant receives means-tested public benefits.

DHS also anticipates the proposed rule to produce benefits by strengthening the enforcement mechanism for Affidavits and Contracts through elimination of the subpoena requirement in 8 CFR 213a.4 to make it easier for means-tested public benefit granting agencies to recover payment for any means-tested public benefits that an intending immigrant receives during the period in which an Affidavit or a Contract is enforceable. The proposed rule would update the evidentiary requirements for sponsors submitting an Affidavit and household members submitting Contracts, which would provide immigration officers and immigration judges more effective ways to determine whether individuals have the means to maintain an annual income at or above the outlined income threshold and provide financial support to the intending immigrant and meet all support obligations during the period an Affidavit or Contract is in effect.

Additionally, the proposed rule would update and improve how means-tested public benefit granting agencies obtain information from USCIS about sponsors and household members who have a support obligation in effect and how means-tested public benefit granting agencies provide information to USCIS.

Table 2 provides a more detailed summary of the proposed provisions and their impacts.

TABLE 2—SUMMARY OF MAJOR CHANGES TO PROVISIONS AND ESTIMATED ECONOMIC IMPACTS OF THE PROPOSED RULE

| Provisions                                                                                 | Proposed provision                                                                                                                                                      | Estimated impact of proposed provision                                                                                                                                                                                                        |
|--------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Amending 8 CFR 213a.1. Definitions.<br>Revising 8 CFR 213a.2. Use of Affidavit of Support. | Adds new and updates existing definitions.<br>Outlines circumstances, requirements, and exemptions for executing an Affidavit of Support Under Section 213A of the INA. | Quantitative:<br>Costs:<br>• Total annual net costs of the proposed rule would be about \$240.3 million, including:<br>• \$226.6 million to applicants who must file Form I-864;<br>• \$10.63 million to those who must complete Form I-864A; |

<sup>196</sup> Calculation: \$31.17 (cost per filer to file Form G-1563) \* 25 (estimated annual population who would make a formal request using Form G-1563)

= \$779.25 = \$779 (rounded) annual total cost to file Form G-1563.

<sup>197</sup> The quantified cost of the new requirement to provide bank account information for those

individuals filing Forms I-864, I-864A, and I-864EZ are accounted for in the increased time burden estimate for completing these forms.

TABLE 2—SUMMARY OF MAJOR CHANGES TO PROVISIONS AND ESTIMATED ECONOMIC IMPACTS OF THE PROPOSED RULE—Continued

| Provisions                                                                                  | Proposed provision                                                                                                                                                                                                       | Estimated impact of proposed provision                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|---------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Adding 8 CFR 213a.3 Change of Address.                                                      | Requires sponsors and household members to notify USCIS of any change of address within 30 days while the sponsor's and/or household member's support obligation is in effect.                                           | <ul style="list-style-type: none"> <li>• \$6.75 million to applicants who must file Form I-864EZ;</li> <li>• \$3.68 million cost savings to applicants from eliminating Form I-864W;</li> <li>• \$2,751 to those who must file Form I-865; and</li> <li>• \$779 to those who file the proposed new Form G-1563.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| Amending 8 CFR 213a.4. Actions for reimbursement, public notice, and congressional reports. | Outlines process by which USCIS provides a certified copy of Affidavit of Support Under Section 213A of the INA or Contract Between Sponsor and Household Member that has been executed to a party or authorized entity. | <ul style="list-style-type: none"> <li>• Total net costs over a 10-year period would range from:</li> <li>• \$2.40 billion for undiscounted net costs;</li> <li>• \$2.05 billion at a 3 percent discount rate; and</li> <li>• \$1.69 billion at a 7 percent discount rate.</li> </ul> <p>Qualitative:</p> <p><i>Costs</i></p> <ul style="list-style-type: none"> <li>• The proposed rule may impose some costs if a joint sponsor must execute an Affidavit in cases where a sponsor has received any means-tested public benefits within 36 months of filing the Affidavit and/or has failed to meet the support or reimbursement obligations under an existing Affidavit or Contract.</li> <li>• There could be a reduction in the number of immigrants granted an immigration benefit in cases where the intending immigrant is unable to obtain a sponsor who can meet the new requirements under this proposed rule.</li> <li>• The proposed rule could result in some sponsors who may intend to sponsor a family member in the future to forego enrollment or disenroll from a means-tested public benefits program to avoid triggering the proposed additional requirements.</li> <li>• The proposed rule may result in an increased number of individuals with support obligations who are held accountable for the reimbursement of the cost of means-tested public benefits. Further, sponsors or household members would incur the cost of reimbursing the means-tested public benefits-granting agency and would likely incur the costs of legal representation if means-tested public benefits granting agencies choose to pursue legal action to recover the means-tested public benefits a sponsored individual received.</li> </ul> <p><i>Benefits</i></p> <ul style="list-style-type: none"> <li>• Update evidentiary requirements to provide USCIS with more effective ways to determine whether the sponsor has the means to maintain an annual income at or above the outlined income threshold. These updated requirements would better enable officers to determine whether the sponsor is able to provide financial support to the intending immigrant and meet all support obligations during the period the Affidavit is in effect;</li> <li>• Update and improve how means-tested public benefit-granting agencies obtain immigration status information from USCIS about individuals who are seeking means-tested public benefits and how means-tested public benefit-granting agencies provide information to USCIS. This proposed provision would eliminate the requirement of obtaining a duly issued subpoena before USCIS is authorized to provide a certified copy of Form I-864 or Form I-864EZ to a requesting party for use in any action to enforce the support obligation and instead allow a requesting party to submit a formal request for an Affidavit or a Contract directly to USCIS. This will strengthen the enforcement mechanism for Affidavits and Contracts, which would allow means-tested public benefits-granting agencies to recover payment for any means-tested public benefits that a sponsored alien receives during the period in which an Affidavit or Contract is enforceable; and</li> <li>• Revise the process for informing USCIS about judgments obtained against sponsors (for failing to meet prior support obligations as a sponsor or household member) and indigency determinations to give USCIS flexibility to determine a more efficient mechanism for information reporting, whereby USCIS would be permitted to provide a different mechanism for submitting copies of judgments and indigency determinations to ensure accuracy and efficiency.</li> </ul> |

Source: USCIS analysis.

DHS does not have sufficient data to quantify the expected benefits of the proposed rule. However, the Administration has identified enforcement of sponsorship obligations as a priority and DHS has made a policy determination that the proposed changes in this rule will assist with

better ensuring sponsors and household members who execute a Contract are capable of meeting their support obligations under section 213A of the INA, 8 U.S.C. 1183a, and strengthening the enforcement mechanism for the Affidavit and Contract so that sponsors and household members are held

accountable for those support obligations.

In addition to the impacts summarized above and as required by OMB Circular A-4, Table 3 presents the prepared accounting statement showing the costs associated with this proposed regulation.<sup>198</sup>

<sup>198</sup> See OMB Circular A-4 is available at <https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf> (last visited June 2, 2020).

TABLE 3—OMB A–4 ACCOUNTING STATEMENT (\$, 2019)

| Category                                                       | Primary estimate                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Minimum estimate | Maximum estimate | Source citation |
|----------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------|------------------|-----------------|
| Benefits:                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                  |                  |                 |
| Monetized Benefits .....                                       | N/A                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                  |                  | RIA.            |
| Annualized quantified, but un-monetized, benefits .....        | N/A                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                  |                  | RIA.            |
| Unquantified Benefits .....                                    | <p>DHS anticipates the proposed rule would produce qualitative benefits that would:</p> <ul style="list-style-type: none"> <li>• Update evidentiary requirements to provide USCIS more effective ways to determine whether the sponsor has the means to maintain an annual income at or above the outlined income threshold. These updated requirements would better enable USCIS to determine whether the sponsor is able to provide financial support to the intending immigrant and meet all support obligations during the period the Affidavit is in effect;</li> <li>• Update and improve how means-tested public benefit-granting agencies obtain immigration status information from USCIS about individuals who are seeking means-tested public benefits and how means-tested public benefit-granting agencies provide information to USCIS. This proposed provision would eliminate the requirement of obtaining a duly issued subpoena before USCIS is authorized to provide a certified copy of Form I–864 or Form I–864EZ to a requesting party for use in any action to enforce the support obligation and instead allow a requesting party to submit a formal request for an Affidavit or a Contract directly to USCIS. This will strengthen the enforcement mechanism for Affidavits and Contracts, which would allow means-tested public benefits-granting agencies to recover payment for any means-tested public benefits that a sponsored alien receives during the period in which an Affidavit or Contract is enforceable; and</li> <li>• Revise the process for informing USCIS about judgments obtained against sponsors (for failing to meet prior support obligations as a sponsor or household member) and indigency determinations to give USCIS flexibility to determine a more efficient mechanism for information reporting, whereby USCIS would be permitted to provide a different mechanism for submitting copies of judgments and indigency determinations to ensure accuracy and efficiency.</li> </ul> |                  |                  | RIA.            |
| Costs:                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                  |                  |                 |
| Annualized monetized net costs (discount rate in parenthesis). | (3%) \$240,314,623                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                  |                  | RIA.            |
|                                                                | (7%) \$240,314,623                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                  |                  |                 |
| Annualized quantified, but un-monetized, costs .....           | N/A                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                  |                  | RIA.            |
| Qualitative (unquantified) costs .....                         | <p>The proposed rule may impose some impacts and/or costs associated with the proposed provisions that a joint sponsor must execute an Affidavit in cases where a sponsor has received any means-tested public benefits within 36 months of filing the Affidavit and/or has failed to meet the support or reimbursement obligations under an existing Affidavit or Contract.</p> <p>There could be a reduction in the number of immigrants granted an immigration benefit in cases where the intending immigrant is unable to obtain a sponsor who can meet the new requirements under this proposed rule.</p> <p>The proposed rule could result in some sponsors who may intend to sponsor a family member in the future foregoing enrollment or disenrolling from a means-tested public benefits program to avoid triggering the proposed additional requirements.</p> <p>The proposed rule may result in an increased number of individuals with support obligations who are held accountable for the reimbursement of the cost of means-tested public benefits. Further, sponsors or household members would incur the cost of reimbursing the means-tested public benefits-granting agency and would likely incur the costs of legal representation if means-tested public benefits granting agencies choose to pursue legal action to recover the means-tested public benefits a sponsored individual received.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                  |                  | RIA.            |

TABLE 3—OMB A-4 ACCOUNTING STATEMENT (\$, 2019)—Continued

| Category                                                 | Primary estimate                                                                                                                                                                                                                                                                                                                                                        | Minimum estimate | Maximum estimate | Source citation        |
|----------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------|------------------|------------------------|
|                                                          | The proposed rule may cause the Department of State (DOS) to incur additional costs to provide adjudication services for Affidavits or Contracts. While it is difficult at this time to quantify these increased costs, DOS identified several sources of possible increased costs for these services resulting from this proposed rule such as contract modifications. |                  |                  |                        |
| <i>Miscellaneous Analyses/Category</i>                   | <i>Effects</i>                                                                                                                                                                                                                                                                                                                                                          |                  |                  | <i>Source Citation</i> |
| Effects on state, local, and/or tribal governments ..... | None.                                                                                                                                                                                                                                                                                                                                                                   |                  |                  |                        |
| Effects on small businesses .....                        | None                                                                                                                                                                                                                                                                                                                                                                    |                  |                  | RFA.                   |
| Effects on wages .....                                   | None.                                                                                                                                                                                                                                                                                                                                                                   |                  |                  |                        |
| Effects on growth .....                                  | None.                                                                                                                                                                                                                                                                                                                                                                   |                  |                  |                        |

### 3. Background and Purpose of the Rule

As discussed in the preamble, DHS is seeking to update the regulations at 8 CFR part 213a by amending sponsorship requirements to better ensure that all sponsors, as well as household members who execute a Contract, have the means to maintain income at the applicable income threshold and are capable of meeting their support obligations under section 213A of the INA, 8 U.S.C. 1183a, during the period in which the Affidavit or the Contract is enforceable and support the intended immigrant(s) at the statutorily required level. Sponsors may demonstrate that they have the means to maintain an annual income equal to at least 125 percent of the Federal poverty line, or 100 percent as applicable,<sup>199</sup> through a combination of income and/or significant assets.<sup>200</sup> This proposed rule seeks to expand the types of additional financial information required from sponsors to further help make such determinations. A more complete picture of the sponsor's and household member's financial situation would help immigration officers and immigration judges determine whether the sponsor can meet the requirements of section 213A of the Act, 8 U.S.C. 1183a, particularly whether the sponsor has demonstrated the means to maintain income as required by section 213A(f)(6), 8 U.S.C. 1183a(f)(6), and whether the sponsor and household member will actually fulfill his or her support obligation to the intending immigrant. USCIS believes that this will strengthen the integrity of the immigration process.

DHS notes that the baseline would include the number of sponsors who currently maintain support of an

immigrant according to the requirements of an Affidavit as well as the number of sponsors who have not met their financial obligations and from whom means-tested public benefits-granting agencies have sought reimbursement. However, DHS does not have data on reimbursement efforts or successful recoveries by benefits-granting agencies. USCIS receives limited information from benefit-granting agencies or other parties enforcing the Affidavit or Contract, despite the information sharing provisions in the statute and regulations and thus is unable to determine whether the proposed rule's benefits are likely to exceed its costs. However, the Administration has identified enforcement of the reimbursement requirement as a problem that needs fixing. Enforcing support obligations is a priority for the Administration.

DHS also is seeking to update the provisions to allow means-tested public benefit granting agencies to more easily obtain information from USCIS in order to seek reimbursement from a sponsor when the sponsored immigrant has received means-tested public benefits. Most family-based immigrants pursuant to section 212(a)(4)(C) of the Act, 8 U.S.C. 1182(a)(4)(C), and some employment-based immigrants under pursuant to section 212(a)(4)(D) of the Act, 8 U.S.C. 1182(a)(4)(D), are required to submit an Affidavit executed by the petitioning sponsor. This proposed change is intended to strengthen the enforcement mechanism for the Affidavit so that sponsors and household members who agree to use their income and assets to support the sponsored immigrant are held accountable if the sponsored immigrant ultimately receives means-tested public benefits during the period in which the Affidavit or the Contract is enforceable. USCIS receives limited information

from benefit-granting agencies or other parties enforcing the Affidavit or Contract, despite the information sharing provisions in the statute and regulations. Current DHS regulations for obtaining copies of Affidavits are burdensome and inefficient because they require a subpoena. Laws governing subpoenas vary by jurisdiction, but subpoenas often need to be issued by a court clerk or by a licensed attorney,<sup>201</sup> which requires additional time and resources. The requirements in the current regulations may have contributed to unintended difficulties for benefit-granting agencies and sponsored immigrants seeking to hold sponsors legally responsible for their obligations based on Affidavits.

An Affidavit is a legally enforceable contract between the sponsor that completes the Affidavit and the U.S. Government. A sponsor must show on the Affidavit that he or she has the means to maintain income to support the intending immigrant at 125 percent of the Federal Poverty Guidelines (FPG) based on the sponsor's household size, or 100 percent of the FPG for an individual who is on active duty (other than active duty for training) in the Armed Forces of the United States and who is petitioning for his or her spouse or child. If a sponsored immigrant receives means-tested public benefits, the agency providing the means-tested public benefit may request the sponsor repay the cost of those benefits. The agency can also sue the sponsor for failure to repay the means-tested public benefits.

A petitioning sponsor must complete an Affidavit at one of the following points in the immigration process

<sup>199</sup> See INA section 213A(f)(3), 8 U.S.C. 1183a(f)(3).

<sup>200</sup> See INA section 213A(f)(6)(A)(i)-(ii), 8 U.S.C. 1183a(f)(6)(A)(i)-(ii).

<sup>201</sup> For example, the Federal Rules of Civil Procedure permit court clerks or attorneys (authorized to practice in the issuing court) to issue subpoenas. See Fed. R. Civ. P. Rule 45(a)(3).



depending on the type of immigration benefit the applicant is seeking:

- When the principal immigrant submits a visa application with a consular officer abroad;
- when the principal immigrant submits an application for adjustment of status to permanent resident status with USCIS; or,
- when directed by an immigration judge in the United States.

If necessary, a joint sponsor must also complete an Affidavit.

Sponsors complete either a Form I-864 or the shorter Form I-864EZ. Sponsors may use Form I-864EZ only in the following circumstances: The sponsor is the petitioner who filed the Form I-130, Form I-129F, or Form I-600, for the relative being sponsored; the relative being sponsored is the only person, other than the petitioner, listed on the petition; and the income the sponsor is using to qualify for the Affidavit is based entirely on the sponsor's salary or pension and is shown on one or more IRS Form W-2s. Household members who agree to use their income and/or assets to financially support an intending immigrant execute a Contract, along with using Form I-864A.

The information collected on Form I-864, Form I-864EZ, and Form I-864A is designed to ensure individuals are qualified to be sponsors or household members, respectively. Depending on the form type, sponsors and household members must also submit certain required evidence with the form. For example, sponsors must provide proof they are a U.S. citizen, a U.S. national, or a lawful permanent resident. All sponsors and household members must currently submit a copy of their Federal income tax return, including supporting documents, for the most recent tax year, or provide evidence demonstrating why they were not required to file a Federal tax return for that year.

If an Affidavit is deemed insufficient because the sponsor has not demonstrated that he or she has the means to maintain the required income level, the intending immigrant will be considered inadmissible based on the public charge ground under section 212(a)(4) of the Act, 8 U.S.C. 1182(a)(4). The intending immigrant will not be able to adjust status or obtain an immigrant visa.

When a sponsor executes Form I-864 in support of an intending immigrant, the sponsor agrees to undertake the support obligations as described in section 213A of the Act, 8 U.S.C. 1183a.

Categories of immigrants required to submit Form I-864 completed by a petitioning sponsor in order to

demonstrate eligibility for adjustment of status include: (1) Immediate relatives of U.S. citizens (spouses, unmarried children under 21 years of age, and parents of U.S. citizens 21 years of age and older); (2) family-based preference immigrants (unmarried sons and daughters of U.S. citizens, spouses and unmarried sons and daughters of lawful permanent residents, married sons and daughters of U.S. citizens, and brothers and sisters of U.S. citizens 21 years of age and older); and (3) employment-based preference immigrants in cases when a certain U.S. citizen, lawful permanent resident, or U.S. national relative filed the Immigrant Petition for Alien Workers, Form I-140, or such relative has a significant ownership interest (5 percent or more) in the entity that filed the Form I-140. However, certain immigrants are exempt from the requirement to submit Form I-864, as are intending immigrants who have earned or can receive credit for 40 qualifying quarters (credits) of work in the United States.

Form I-864 includes a supplemental contract, Form I-864A, which may be filed when a sponsor's income and assets do not meet the income requirements and the sponsor's household member chooses to combine his or her resources with the income and/or assets of a sponsor to meet those requirements. Currently, a separate Form I-864A must be completed for each household member whose income and/or assets the sponsor is using to meet the income requirements. The Form I-864A must be submitted with Form I-864. In addition, Form I-864A serves as a contractual agreement between the sponsor and household member that, along with the sponsor, the household member is responsible for the support obligations.

In cases where the petitioning sponsor or substitute sponsor cannot meet the income requirements by him or herself, an individual applying to adjust status may also meet the affidavit of support requirement by obtaining a joint sponsor who is willing to accept joint and several liability with the petitioning sponsor or substitute sponsor as to the obligation to provide support to the sponsored alien. The joint sponsor must demonstrate income or assets that independently meet the requirements to support the sponsored immigrant(s) as required under sections 213A(f)(2) and (f)(5) of the Act, 8 U.S.C. 1183a(f)(2) and (f)(5). The joint sponsor's income and assets may not be combined with the income/assets of the petitioning sponsor, substitute sponsor (if applicable), or the sponsored immigrant, *i.e.* the joint sponsor must have income

and assets of at least the required threshold. The petitioning sponsor (or substitute sponsor, if applicable), and the joint sponsor must each complete a Form I-864.

As data are unavailable demonstrating that non-spouse household members are less likely to uphold their contract obligations, DHS cannot provide examples of or other information concerning enforcement involving non-spouse household members. This provision reflects DHS' policy preference that intending immigrants should not rely upon a sponsor and a potentially unlimited group of household members to satisfy the requirements of INA 213A. DHS welcomes public comment regarding data, information, or examples that non-spouse household members are less likely to uphold their contract obligations.

Certain classes of immigrants currently are exempt from the requirement to file Form I-864 or Form I-864EZ. Based on the information provided in an underlying form, such as Form I-485, Application to Register Permanent Residence or Adjust Status, an officer can verify whether an alien is statutorily required to file an Affidavit.

Three different agencies review an Affidavit and Contract for sufficiency, each in a different context. USCIS reviews an Affidavit and Contract while adjudicating certain applications for adjustment of status. DOS consular officers review Affidavits and Contracts as part of the immigrant visa application process. An alien seeking an immigrant visa in a classification where an Affidavit is required must submit an Affidavit that complies with the terms and conditions established by the Secretary of Homeland Security. 22 CFR 40.41(a)(7). Immigration Courts, which are part of the U.S. Department of Justice (DOJ) Executive Office for Immigration Review (EOIR), may review Affidavits and Contracts in the context of an alien in removal proceedings who is seeking adjustment of status as a form of relief from removal, or when otherwise adjudicating an Affidavit or Contract filed in connection with a public charge ground of inadmissibility or deportability, but this rule also does not directly revise DOJ standards or processes.

#### 4. Population

The proposed rule would affect sponsors of most family-based sponsored immigrants and some employment-based intending immigrants filing Form I-864 or Form I-864EZ who are required to show that they have adequate means of financial

support and are not likely at any time to become a public charge.<sup>202</sup> The proposed rule also would affect household members filing Form I-864A whose income and/or assets would be used to help the sponsor demonstrate the means to maintain income. In such cases, a sponsor's income and assets do not meet the income requirements of Form I-864 and the qualifying household member chooses to combine his or her resources with the income and/or assets of a sponsor to meet the requirements.

Certain classes of aliens applying for admission or adjustment of status are required to submit an Affidavit executed by a sponsor in order to avoid being found inadmissible under section 212(a)(4) of the Act, 8 U.S.C. 1182(a)(4). When an Affidavit is submitted, a contract is established between the sponsor and the U.S. Government to establish a legally enforceable obligation to support the intending immigrant financially once the intending immigrant becomes an LPR.

DOS provided the estimates of the population of individuals who submit each Affidavit or Contract to DOS in conjunction with an immigrant visa application's pre-processing at the NVC. DOS extrapolated the data from recent electronic caseloads for each fiscal year. Legacy systems do not capture the number and type of Affidavits or Contracts. Specifically, the total receipts number from DOS reflects the cases sent from the NVC to consular posts during

each fiscal year as documentarily qualified for the immigrant visa application and required interview with a consular officer. DOS total receipts number does not include Affidavits or Contracts submitted to DOS for cases that were not documentarily qualified in the given timeframe and also does not include Affidavits or Contracts submitted directly to consular posts overseas, which DOS has no process of tracking. The number of Affidavits or Contracts submitted to DOS annually are higher than the numbers below because this data does not include the forms submitted directly to consular posts overseas. Cases submitted to the NVC rather than filed directly with a consular post overseas represent the vast majority of immigrant visa applications.<sup>203</sup>

#### a. Population of Sponsors Executing Form I-864

With this proposed rule, DHS intends to align sponsorship requirements with statutory provisions and to amend sponsorship requirements to better ensure a sponsor has demonstrated the means to maintain income to support intending immigrants at the statutorily required level. DHS also intends to ensure all sponsors and household members can meet the support obligations under section 213A of the Act, 8 U.S.C. 1183a. This proposed rule would also strengthen enforcement of the Affidavit and the Contract to hold sponsors and household members

accountable if sponsored immigrants obtain means-tested public benefits. Therefore, DHS estimates the population of individuals who execute Form I-864 as sponsors for intending immigrants.

Table 4 shows the total population in fiscal years 2014 to 2018 that filed Form I-864 for both USCIS receipts and DOS receipts. The annual population of sponsors filing Form I-864 increased from 786,495 filings in fiscal year 2014 to 1,213,367 filings in fiscal year 2016, an increase of almost 55 percent. Filings decreased to 1,110,986 in fiscal year 2018, a decrease of about 8 percent from fiscal year 2016. Over the 5-year period, the population of sponsors who filed Form I-864 ranged from a low of 786,495 in fiscal year 2014 to a high of 1,213,367 in fiscal year 2016. While the trend in the annual number of Affidavits executed was increasing from fiscal year 2014 to 2016, the trend decreased by about 8 percent in fiscal year 2018. DHS acknowledges this proposed new regulatory provision would likely reduce the number of individuals who would be eligible to qualify as a sponsor who may execute an Affidavit and, as a result, may reduce the number of Affidavits executed using Form I-864. However, DHS is unable to determine the magnitude of the reduction in Form I-864 filings annually at this time. Therefore, DHS uses the estimated annual average total population filing Form I-864 of 1,041,077 for the analysis in this proposed rule.

TABLE 4—TOTAL RECEIPTS FOR FORM I-864 BY USCIS AND DOS, FY 2014 TO FY 2018

| Fiscal year                 | USCIS form I-864 receipts | DOS form I-864 receipts | Total            |
|-----------------------------|---------------------------|-------------------------|------------------|
| 2014 .....                  | 357,055                   | 429,440                 | 786,495          |
| 2015 .....                  | 379,921                   | 635,467                 | 1,015,388        |
| 2016 .....                  | 438,605                   | 774,762                 | 1,213,367        |
| 2017 .....                  | 495,681                   | 583,468                 | 1,079,149        |
| 2018 .....                  | 451,163                   | 659,823                 | 1,110,986        |
| <b>Total .....</b>          | <b>2,122,425</b>          | <b>3,082,960</b>        | <b>5,205,385</b> |
| <b>5-year Average .....</b> | <b>424,485</b>            | <b>616,592</b>          | <b>1,041,077</b> |

Source: USCIS, Office of Intake and Document Production (OIDP); U.S. Department of State, Visa Office.

DHS welcomes public comments on our estimates of the total population that is required to submit an Affidavit using Form I-864 showing evidence of having adequate means of financial support.

#### b. Population of Household Members Filing Form I-864A

Form I-864A is submitted as an attachment to Form I-864 and is considered as supporting documentation. A separate Form I-864A must be used for each household member whose income and/or assets are

being used by a sponsor to qualify. Therefore, each Form I-864A is completed and signed by two individuals: A sponsor who is completing Form I-864 and a household member who is promising to make his or her income and/or assets available to the sponsor to help support the

<sup>202</sup> Employment-based preference immigrants must file an Affidavit only in cases when a U.S. citizen, lawful permanent resident, or U.S. national relative filed the immigrant visa petition or such

relative has a significant ownership interest (five percent or more) in the entity that filed the petition.

<sup>203</sup> DOS provided the total receipts for Forms I-864, I-864A, and I-864EZ. DOJ does not track any

data related the receipts of Affidavits and Contracts so DHS is unable to include these numbers in the population.

sponsored immigrants. When both the sponsor and the household member sign the form, it constitutes an agreement that the household member is responsible along with the sponsor for the support of the individuals named.

DHS estimates the population of applicants who file Form I-864A with USCIS is approximately 42,892 annually<sup>204</sup> and DOS is approximately 5,932 annually,<sup>205</sup> for a total of 48,824 annually. However, DHS does not have receipt data for Form I-864A as USCIS does not generate receipt numbers for this supplemental form, which makes it difficult to determine how many Form I-864A are submitted annually. As a result, USCIS would need to manually review applicant files to obtain Form I-864A data to more accurately determine the number of receipts of this form. Therefore, DHS relies on the likely number of Form I-864A respondents estimated through periodic and ongoing information collection efforts. Such collections of information rely on a combination of information USCIS obtains from databases, subject matter experts, and projected intakes from other collections of information, which may have a relationship to the form for which an estimate is provided. The agency uses this information and/or may use other data that might not be found in an official database to guide decision-making on an estimated number of respondents as it is the best information available at this time.

Moreover, DHS reiterates that this proposed rule would revise the current regulatory requirements concerning who

can qualify as a household member for purposes of executing a Contract using Form I-864A. Currently, there is no limitation on the number of household members who may execute a Form I-864A. However, DHS is proposing to permit only a sponsor's spouse or an intending immigrant with the same principal residence as the sponsor to execute Form I-864A. DHS acknowledges this proposed new regulatory provision may reduce the number of individuals who would be eligible to qualify as a household member who may submit a Contract and, as a result, may reduce the number of Contracts executed using Form I-864A. However, DHS is unable to determine the magnitude of the reduced number of Form I-864A filings annually at this time.

DHS welcomes public comments on our estimates of the total population that is required to execute a Contract showing evidence of having adequate means of financial support. In addition, DHS welcomes comments regarding the effect of the revision to the current regulatory requirements in this proposed rule concerning who may qualify as a household member for purposes of executing a Contract using Form I-864A.

c. Population of Sponsors Filing Form I-864EZ

Form I-864EZ is a shorter version of Form I-864 and is designed for cases that meet certain criteria. Like Form I-864, Form I-864EZ is legally required for many family-based immigrants to

show the intending immigrant has adequate means of financial support and is not inadmissible on the public charge ground. Individuals who meet all of the following criteria may file Form I-864EZ:

- The individual is the person who filed or is filing Form I-130, Form I-129F, or Form I-600 or Form I-800, Petition to Classify Convention Adoptee as an Immediate Relative, for a relative being sponsored;
- The relative being sponsored is the only person listed on the form, other than the petitioner; and
- The income the individual is using to qualify is based entirely on that individual's salary or pension and is shown on one or more IRS Form W-2s provided by the individual's employers or former employers.

Table 5 shows the total population in fiscal years 2014 to 2018 that filed Form I-864EZ with both USCIS and DOS. The annual population of sponsors filing Form I-864EZ increased from 24,545 in fiscal year 2014 to 36,909 in fiscal year 2016, an increase of about 26 percent. Filings decreased to 31,442 in fiscal year 2018, a decrease of about 16 percent. Over the 5-year period, the population of sponsors who filed Form I-864EZ ranged from a low of 24,545 in fiscal year 2014 to a high of 36,909 in fiscal year 2018. In addition, the average annual population of sponsors over 5 fiscal years who filed Form I-864EZ was 30,991. Therefore, DHS estimates the annual average total population filing Form I-864EZ would be 30,991 for this proposed rule.

TABLE 5—TOTAL RECEIPTS FOR FORM I-864EZ BY USCIS AND DOS, FY 2014 TO FY 2018.

| Fiscal year          | USCIS form I-864EZ receipts | DOS form I-864EZ receipts | Total   |
|----------------------|-----------------------------|---------------------------|---------|
| 2014 .....           | 10,238                      | 14,307                    | 24,545  |
| 2015 .....           | 9,924                       | 21,172                    | 31,096  |
| 2016 .....           | 11,097                      | 25,812                    | 36,909  |
| 2017 .....           | 11,524                      | 19,439                    | 30,963  |
| 2018 .....           | 9,459                       | 21,983                    | 31,442  |
| Total .....          | 52,242                      | 102,713                   | 154,955 |
| 5-year Average ..... | 10,448                      | 20,543                    | 30,991  |

Source: USCIS, Office of Intake and Document Production (OIDP); U.S. Department of State, Visa Office.

DHS is proposing to revise 8 CFR 213a.2(c)(2)(ii)(C) to require the applicant to submit a Form I-864 executed by a joint sponsor when the petitioning sponsor has received one or

more means-tested public benefits within the 36 months prior to executing the Form I-864EZ. See proposed 8 CFR 213a.2(c)(2)(ii)(C)(4)(ii). If a petitioner has received a means-tested public

benefit within the 36 months prior to filing Form I-864EZ, he or she would be considered unable to meet the income requirements of a sponsor.<sup>206</sup> In such cases, the petitioning sponsor would

<sup>204</sup> Source for Form I-864A population estimate based on USCIS receipts: See Paperwork Reduction Act (PRA) Affidavit of Support Under Section 213A of the INA (Forms I-864, I-864A, I-864EZ) (OMB control number 1615-0075). The PRA Supporting Statement A can be found at Question 12 on

Reginfo.gov at [https://www.reginfo.gov/public/do/PRAViewDocument?ref\\_nbr=201705-1615-004](https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201705-1615-004) (last visited June 2, 2020).

<sup>205</sup> Source: U.S. Department of State, Visa Office.

<sup>206</sup> A petitioning sponsor who is on active duty (other than active duty for training) in the Armed

Forces of the United States and is petitioning for his or her spouse or child under section 204 of the INA does not need a joint sponsor if he or she has received means-tested public benefits in the 36 month-period before filing the Affidavit.

still be required to complete the Affidavit, but a joint sponsor who has not received a means-tested public benefit in the past 36 months also must complete an Affidavit for the intending immigrant to not be found inadmissible.

DHS recognizes this new requirement may result in fewer annual filings of Form I-864EZ and may increase the number of filings of Form I-864 since both a sponsor needing a joint sponsor, for any reason, and the joint sponsor each would file an Affidavit using Form I-864. However, DHS is unable to estimate the potential number of Form I-864EZ filers who may be required to file Form I-864 with a joint sponsor due to receipt of means-tested public benefits within the 36 months prior to filing as this information is not collected in USCIS databases. Moreover, DHS acknowledges this proposed new regulatory provision would likely reduce the number of individuals who would be eligible to qualify as a sponsor who may execute an Affidavit and, as a result, may reduce the number of Affidavits executed using Form I-864EZ. As noted above, DHS is unable to determine the magnitude of the reduction in Form I-864EZ filings annually at this time. Therefore, as with the population estimate for Form I-864, DHS uses the estimated annual average total population filing Form I-864EZ of 30,991 for the analysis of this proposed rule.

DHS welcomes public comments on our estimates of the total population that is required to execute an Affidavit using Form I-864EZ showing evidence of having adequate means of financial support. In addition, DHS welcomes comments regarding the effect of the revision to the current regulatory requirements in this proposed rule concerning who may qualify to execute an Affidavit using Form I-864EZ.

#### d. Population of Filing Form I-864W

Certain classes of immigrants currently are exempt from the requirement to file Form I-864 or Form I-864EZ and therefore must file Form I-864W, Request for Exemption for Intending Immigrant's Affidavit of Support. However, DHS is proposing to eliminate Form I-864W and instead would require individuals to provide the information previously requested on the Form I-864W using Form I-485. Applicants, therefore, would not be required to file a separate Form I-864W apart from the Form I-485. Based on the information provided in the Form I-485, an officer can verify whether an

immigrant is statutorily required to file an Affidavit.

DHS estimates the population of immigrants who must file Form I-864W is approximately 98,119 annually.<sup>207</sup> Due to data limitations, DHS cannot easily determine the number of annual filings of Form I-864W. Therefore, DHS relies on the likely number of Form I-864W respondents estimated through periodic and ongoing information collection efforts. Such collections of information rely on a combination of information DHS obtains from databases, subject matter experts, and projected intakes from other collections of information, which may have a relationship to the form for which an estimate is provided. The agency uses this information and/or may use other data that might not be found in an official database to guide decision-making on an estimated number of respondents as it is the best information available at this time. DHS welcomes public comments on our estimates of the total population who must file Form I-864W.

#### e. Population of Filing Form I-865

Currently, all sponsors of immigrants in the United States who have executed an Affidavit using Form I-864 or I-864EZ at any time in the past must file Form I-865, Sponsor's Notice of Change Address, to report a change of address within 30 days of the change if the sponsorship agreement is still in force. The sponsorship agreement remains in force until the sponsored immigrant:

- Becomes a U.S. citizen;
- Receives credit for 40 quarters of work;
- Departs the United States permanently and either formally abandons lawful permanent resident status (by filing Form I-407, Record of Abandonment of Lawful Permanent Resident Status) or is formally held in a removal proceeding to have abandoned that status;
- In a removal proceeding, loses the lawful permanent resident status that the sponsored immigrant obtained based on the Form I-864; or
- Becomes deceased.

Table 6 shows the total annual receipts for filings of Form I-865 during

<sup>207</sup> Source for I-864W population: Paperwork Reduction Act (PRA) Affidavit of Support Under Section 213A of the INA (Forms I-864, I-864A, I-864EZ, I-864W) (OMB control number 1615-0075). The PRA Supporting Statement A can be found at Question 12 on [Reginfo.gov](https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201705-1615-004) at [https://www.reginfo.gov/public/do/PRAViewDocument?ref\\_nbr=201705-1615-004](https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201705-1615-004).

fiscal years 2014 to 2018. The total annual receipts of Form I-865 decreased over the period from a high of 8,055 in fiscal year 2014 to a low of 5,354 in fiscal year 2017, an overall decrease of about 34 percent. In fiscal year 2018, the total annual receipts of Form I-865 increased to 5,536, about a 3 percent increase compared to fiscal year 2017. In addition, the average number of receipts of Form I-865 over the 5-fiscal year period was about 6,089. While the total number of Form I-865 receipts was much greater in fiscal year 2014, the subsequent overall trend showed much more moderate decline and leading to an increase in filings in fiscal year 2018. Preliminary data for fiscal year 2019 show an increase in Form I-865 filing to about 6,007, an increase of almost 8 percent compared to fiscal year 2018.<sup>208</sup> Therefore, since a consistent increasing or decreasing trend cannot be observed, DHS uses the total annual average population filing Form I-865 of approximately 6,089 for the baseline of this proposed rule.

TABLE 6—TOTAL ANNUAL RECEIPTS OF FORM I-865, SPONSOR'S NOTICE OF CHANGE OF ADDRESS

| Fiscal year          | Receipts |
|----------------------|----------|
| 2014 .....           | 8,055    |
| 2015 .....           | 6,049    |
| 2016 .....           | 5,449    |
| 2017 .....           | 5,354    |
| 2018 .....           | 5,536    |
| Total .....          | 30,443   |
| 5-Year Average ..... | 6,089    |

Source: USCIS Office of Policy & Strategy, Policy Research Division search of the USCIS Computer-Linked Application and Information System 3 (CLAIMS 3) database.

Under the proposed rule, the population executing Form I-864A would also be required to file Form I-865 to provide notice of a change of address. In order to estimate the likely increase in the number of Form I-865 filings due to the new proposed requirement, DHS calculated the percentage of the total annual receipts of Form I-865 compared to the total average annual filings of Form I-864 and Form I-864EZ. DHS estimates that the current total average annual filings of Form I-864 and Form I-864EZ is

<sup>208</sup> Form I-865 receipts data for fiscal year 2019 are not shown in the table as the data is preliminary, but also to maintain a consistent period of analysis, to the extent possible, with other data presented in this economic analysis.

approximately 1,072,068.<sup>209</sup> On average, the annual number of filings of Form I-865 is about 0.6 percent of the number of filings of Form I-864 and Form I-864EZ.<sup>210</sup> DHS applies the 0.6 percent to the total annual average number of filings of Form I-864A of 48,824 (from Section 4.b of this analysis) to determine how many Form I-864A filers would likely be required to file Form I-865 under the new provision of the proposed rule. Based on the average annual percentage of the number of individuals who filed Form I-864 and Form I-864EZ that filed Form I-865, DHS estimates there would be an average of about 293 additional annual filings of Form I-865 from the Form I-864A filers under the proposed provision.<sup>211</sup> Therefore, DHS estimates the total annual average population filing Form I-865 for the proposed rule would be about 6,382.<sup>212</sup>

DHS welcomes public comments on our estimates of the total population that is required to submit Form I-865 to provide notice of a change of address, including the current and proposed populations that would be required to submit Form I-865 in the event of a change of address.

##### 5. Cost-Benefit Analysis

DHS expects this proposed rule to produce quantified costs associated with filing an Affidavit or Contract using Form I-864, Form I-864A, and Form I-864EZ; and quantified costs associated with filing Form I-865 for those who would now be required to provide notice of a change of address.

For this proposed rule, DHS uses the unweighted mean hourly wage of \$25.72 for all occupations to estimate the opportunity cost of time for the populations in this economic analysis filing an Affidavit or Contract using

Form I-864, Form I-864A, and Form I-864EZ, and for those who must file Form I-865 to provide notice of a change of address.<sup>213</sup> For these populations, DHS assumes individuals are dispersed throughout the various occupational groups and industry sectors of the U.S. economy. However, the wage for all occupations (\$25.72) is an unweighted mean hourly wage that does not account for worker benefits. DHS accounts for worker benefits when estimating the opportunity cost of time by calculating a benefits-to-wage multiplier using the most recent Department of Labor (DOL), Bureau of Labor Statistics (BLS) report detailing the average employer costs for employee compensation for all civilian workers in major occupational groups and industries. DHS estimates the benefits-to-wage multiplier is 1.46 and, therefore, is able to estimate the full opportunity cost per applicant, including employee wages and salaries and the full cost of benefits such as paid leave, insurance, and retirement.<sup>214</sup> For the individuals filing an Affidavit or Contract, therefore, DHS calculates the average total rate of compensation as \$37.55 per hour, where the mean hourly wage is \$25.72 per hour worked and average benefits are \$11.83 per hour.<sup>215</sup>

##### a. Baseline Estimate of Current Costs

The baseline estimate of current costs is the best assessment of costs and benefits absent the regulatory action. For this proposed rule, DHS estimates the baseline according to current operations and requirements and compares that to the estimated costs and benefits of the provisions set forth in the proposed rule. Therefore, DHS defines the baseline by assuming “no change”

to DHS regulations to establish an appropriate basis for evaluating the provisions of the proposed rule. DHS notes that the baseline would include the number of sponsors who currently maintain support of an immigrant according to the requirements of an Affidavit as well as the number of sponsors who have not met their financial obligations and from whom means-tested public benefits-granting agencies have sought reimbursement. However, DHS does not have data on reimbursement efforts or successful recoveries by benefits-granting agencies. As previously noted, USCIS receives limited information from benefit-granting agencies or other parties enforcing the Affidavit or Contract, despite the information sharing provisions in the statute and regulations. Therefore, the costs detailed as part of the baseline include all current costs associated with completing and filing Form I-864, Form I-864A, Form I-864EZ, and Form I-865. As noted previously in the background section, the source of additional costs imposed by this proposed rule generally would come from increased time burden estimates for completing Form I-864, Form I-864A, and Form I-864EZ. An additional source of costs imposed by the proposed rule would come from the requirement to file Form I-865 to provide notice of a change of address. These costs are analyzed later in this economic analysis. However, DHS welcomes public comments or data on individuals executing an Affidavit or a Contract who have received means-tested public benefits. DHS welcomes public comments or references to studies on the correlation between sponsors' receipt of means-tested public benefits in the past and their failure to reimburse agencies for benefits received by immigrants they sponsor. Additionally, DHS welcomes public comments or data on enforcement actions by means-tested public benefit granting agencies for Affidavits and Contracts to recover payment for any means-tested public benefits that an intending immigrant receives during the period in which an Affidavit or a Contract is enforceable.

Table 7 shows the estimated population and annual costs of filing Form I-864, Form I-864A, Form I-864EZ, I-864W, and Form I-865 for the proposed rule.

<sup>209</sup> Calculation: (Estimated population for Form I-864) + (Estimated population for Form I-864EZ) = 1,041,077 + 30,991 = 1,072,068.

<sup>210</sup> Calculation: (5-Year average total annual receipts of Form I-865/Total average annual filings of Form I-864 and Form I-864EZ) \* 100 = (6,089/1,072,068) \* 100 = 0.568 = 0.6 percent (rounded)

<sup>211</sup> Calculation: (Estimated total average annual number of filings of Form I-864A) \* (Estimated average annual percentage of the number of individuals who filed Form I-864 and Form I-864EZ that filed Form I-865) = 48,824 \* 0.006 = 293 (rounded) additional filings of Form I-865 under the proposed rule for those who file Form I-864A.

<sup>212</sup> Calculation: (Estimated total annual average number of filings for Form I-865) + (Estimated additional filings of Form I-865 under the proposed rule for those who file Form I-864A) = 6,089 + 293 = 6,382 estimated proposed total annual average number of filings for Form I-865.

<sup>213</sup> The May 2019 national mean hourly wage across all occupations is \$25.72. See Department of Labor, Bureau of Labor Statistics, May 2019 National Occupational Employment and Wage Estimates, United States All Occupations, available at [https://www.bls.gov/oes/2019/may/oes\\_nat.htm](https://www.bls.gov/oes/2019/may/oes_nat.htm). (last visited June 2, 2020).

<sup>214</sup> The benefits-to-wage multiplier is calculated as follows: (Total Employee Compensation per hour)/(Wages and Salaries per hour) = \$37.10/\$25.47 = 1.457 = 1.46 (rounded). See Economic News Release, *Employer Cost for Employee Compensation (March 2020)*, U.S. Dept. of Labor, BLS, Table 1. Employer costs per hour worked for employee compensation and costs as a percent of total compensation: Civilian workers, by major occupational and industry group. March 19, 2020, available at [https://www.bls.gov/news.release/archives/ecec\\_03192020.pdf](https://www.bls.gov/news.release/archives/ecec_03192020.pdf) (last viewed June 2, 2020).

<sup>215</sup> The calculation of the weighted mean hourly wage for applicants: \$25.72 per hour \* 1.46 = \$37.5512 = \$37.55 (rounded) per hour.

TABLE 7—TOTAL AVERAGE ANNUAL BASELINE (CURRENT) COSTS OF THE PROPOSED RULE

| Form                                 | Estimated average annual population | Estimated total annual cost |
|--------------------------------------|-------------------------------------|-----------------------------|
| Form I-864 .....                     | 1,041,077                           | \$234,554,648               |
| Opportunity Cost of Time (OCT) ..... |                                     | 234,554,648                 |
| Form I-864A .....                    | 48,824                              | 3,208,225                   |
| OCT .....                            |                                     | 3,208,225                   |
| Form I-864EZ .....                   | 30,991                              | 2,909,435                   |
| OCT .....                            |                                     | 2,909,435                   |
| Form I-864W .....                    | 98,119                              | 3,684,368                   |
| OCT .....                            |                                     | 3,684,368                   |
| Form I-865 .....                     | 6,089                               | 57,176                      |
| OCT .....                            |                                     | 57,176                      |
| <b>Total Baseline Costs .....</b>    |                                     | <b>244,413,852</b>          |

Source: USCIS analysis.

As previously discussed, Form I-864 is required for most family-based immigrants and some employment-based immigrants to show they have adequate means of financial support and are not likely at any time to become a public charge.<sup>216</sup> Additionally, Form I-864 may be filed with Form I-864A, when a sponsor's income and assets do not meet the income threshold and the household member chooses to combine his or her resources with the income and/or assets of a sponsor to meet the applicable income threshold. Some petitioning sponsors may be able to file Form I-864EZ, provided they meet certain criteria. Moreover, certain classes of immigrants currently are exempt from the requirement to file Form I-864 or Form I-864EZ, but must file Form I-864W. Based on the information provided in an underlying form, such as Form I-485, an officer can verify whether an alien is statutorily required to file an Affidavit.

#### i. Current Baseline Cost Estimate of Filing Form I-864

There is currently no filing fee associated with filing Form I-864 with USCIS.<sup>217</sup> However, DHS estimates the

<sup>216</sup> Employment-based preference immigrants must file Form I-864 only in cases when a U.S. citizen, lawful permanent resident, or U.S. national relative filed the immigrant visa petition or such relative has a significant ownership interest (five percent or more) in the entity that filed the petition.

<sup>217</sup> The Department of State (DOS) charges a \$120 fee per case for reviewing Affidavit of Support forms (Forms I-864, I-864A, I-864W, and/or I-864EZ) when the form(s) is (are) filed in the United States and processed at the DOS National Visa Center (NVC). An applicant is charged only one fee, even if there are multiple financial sponsors associated with a single case. Moreover, DHS notes that three different agencies review an Affidavit and Contract for sufficiency, each in a different context. USCIS reviews an Affidavit and Contract while adjudicating certain applications for adjustment of status. DOS consular officers also review Affidavits and Contracts as part of the immigrant visa application process, and when an Affidavit is required, to assess potential ineligibility on public

time burden associated with a sponsor filing Form I-864 is 6 hours per filer, including the time for reviewing instructions, gathering the required documentation and information, completing Form I-864, preparing statements, attaching necessary documentation, and submitting Form I-864.<sup>218</sup> Therefore, using the average total rate of compensation of \$37.55 per hour, DHS estimates the opportunity cost of time for completing and submitting Form I-864 would be \$225.30 per petitioner.<sup>219</sup> DHS assumes the average rate of total compensation used to calculate the opportunity cost of time for Form I-864 is appropriate since the sponsor of an immigrant, who is agreeing to provide financial and material support, is instructed to complete and submit the form. Using the estimated annual total population of 1,041,077 individuals filing an affidavit of support using Form I-864, DHS estimates the opportunity cost of time associated with completing and submitting Form I-864 is \$234,554,648 annually.<sup>220</sup>

charge grounds. See 22 CFR 40.41. Immigration Courts, which are part of the U.S. Department of Justice (DOJ) Executive Office for Immigration Review (EOIR), may review Affidavits and Contracts in the context of an alien in removal proceedings who is seeking adjustment of status as a form of relief from removal, or when otherwise adjudicating an Affidavit or Contract filed in connection with a public charge ground of inadmissibility or deportability, but this rule does not directly revise DOJ standards or processes.

<sup>218</sup> See Instructions for Affidavit of Support Under Section 213A of the INA, Form I-864, for time burden estimate in the Paperwork Reduction Act section. OMB No. 1615-0075. Expires 3/31/2020. Available at <https://www.uscis.gov/i-864> (last June 2, 2020).

<sup>219</sup> Calculation opportunity cost of time for completing and submitting Form I-864: (\$37.55 per hour \* 6 hours) = \$225.30 per filer.

<sup>220</sup> Calculation: (Form I-864 estimated opportunity cost of time) \* (Estimated annual population filing Form I-864) = \$225.30 \* 1,041,077 = \$234,554,648.10 = \$234,554,648 (rounded) total annual opportunity cost of time for filing Form I-864.

#### ii. Current Baseline Cost Estimate of Filing Form I-864A

There is also no filing fee associated with filing Form I-864A with USCIS.<sup>221</sup> However, DHS estimates the time burden associated with filing Form I-864A is 1 hour and 45 minutes (1.75 hours) per filer, including the time for reviewing instructions, gathering the required documentation and information, completing the Contract, preparing statements, attaching necessary documentation, and submitting the Contract.<sup>222</sup> Therefore, using the average total rate of compensation of \$37.55 per hour, DHS estimates the opportunity cost of time for completing and submitting Form I-864A is approximately \$65.71 per petitioner.<sup>223</sup> DHS assumes the average

<sup>221</sup> The Department of State (DOS) charges a \$120 fee per case for reviewing Affidavit of Support forms (Forms I-864, I-864A, I-864W, and/or I-864EZ) when the form(s) is (are) filed in the United States and processed in the DOS National Visa Center (NVC). An applicant is charged only one fee, even if there are multiple financial sponsors associated with a single case. Moreover, DHS notes that three different agencies review an Affidavit and Contract for sufficiency, each in a different context. USCIS reviews an Affidavit and Contract while adjudicating certain applications for adjustment of status. DOS consular officers also review Affidavits and Contracts as part of the immigrant visa application process, and when an Affidavit is required, to assess potential ineligibility on public charge grounds. See 22 CFR 40.41. Immigration Courts, which are part of the U.S. Department of Justice (DOJ) Executive Office for Immigration Review (EOIR), may review Affidavits and Contracts in the context of an alien in removal proceedings who is seeking adjustment of status as a form of relief from removal, or when otherwise adjudicating an Affidavit or Contract filed in connection with a public charge ground of inadmissibility or deportability, but this rule does not directly revise DOJ standards or processes.

<sup>222</sup> See Instructions for Contract Between Sponsor and Household Member, Form I-864A, for time burden estimate in the Paperwork Reduction Act section. OMB No. 1615-0075. Expires 3/31/2020. Available at <https://www.uscis.gov/i-864a> (last visited June 2, 2020).

<sup>223</sup> Calculation opportunity cost of time for completing and submitting Form I-864A: (\$37.55

Continued

total rate of compensation used for calculating the opportunity cost of time for Form I-864A since both the sponsor and another household member agree to provide financial support for an intending immigrant. However, the household member also may be the intending immigrant. Using the estimated annual total population of 48,824 for individuals that would file Form I-864A as a household member, DHS estimates the opportunity cost of time associated with completing and submitting Form I-864A is \$3,208,225 annually.<sup>224</sup>

### iii. Current Baseline Cost Estimate of Filing Form I-864EZ

As with Form I-864, there is no filing fee associated with filing Form I-864EZ with USCIS.<sup>225</sup> However, DHS estimates the time burden associated with filing Form I-864EZ is 2 hours and 30 minutes (2.5 hours) per filer, including the time for reviewing instructions, gathering the required documentation and information, completing the Form I-864EZ, preparing statements, attaching necessary documentation, and submitting the Form I-864EZ.<sup>226</sup> Therefore, using the average total rate of compensation of \$37.55 per hour, DHS

per hour \* 1.75 hours) = \$65.713 = \$65.71 (rounded) per petitioner.

<sup>224</sup> Calculation: (Form I-864A estimated opportunity cost of time) \* (Estimated annual population filing Form I-864A) = \$65.71 \* 48,824 = \$3,208,225.04 = \$3,208,225 (rounded) total annual opportunity cost of time for filing Form I-864A.

<sup>225</sup> The Department of State (DOS) charges a \$120 fee per case for reviewing Affidavit of Support forms (Forms I-864, I-864A, I-864W, and/or I-864EZ) when the form(s) is (are) filed in the United States and processed in the DOS National Visa Center (NVC). An applicant is charged only one fee, even if there are multiple financial sponsors associated with a single case. Moreover, DHS notes that three different agencies review an Affidavit and Contract for sufficiency, each in a different context. USCIS reviews an Affidavit and Contract while adjudicating certain applications for adjustment of status. DOS consular officers also review Affidavits and Contracts as part of the immigrant visa application process, and when an Affidavit is required, to assess potential ineligibility on public charge grounds. See 22 CFR 40.41. Immigration Courts, which are part of the U.S. Department of Justice (DOJ) Executive Office for Immigration Review (EOIR), may review Affidavits and Contracts in the context of an alien in removal proceedings who is seeking adjustment of status as a form of relief from removal, or when otherwise adjudicating an Affidavit or Contract filed in connection with a public charge ground of inadmissibility or deportability, but this rule does not directly revise DOJ standards or processes.

<sup>226</sup> See Instructions for Affidavit of Support Under Section 213A of the INA, Form I-864EZ, for time burden estimate in the Paperwork Reduction Act section. OMB No. 1615-0075. Expires 3/31/2020. Available at <https://www.uscis.gov/i-864ez> (last visited June 2, 2020).

estimates the opportunity cost of time for completing and submitting Form I-864EZ is \$93.88 per petitioner.<sup>227</sup> Using the estimated annual total population of 30,991 individuals filing an affidavit of support using Form I-864EZ, DHS estimates the opportunity cost of time associated with completing and submitting Form I-864EZ is \$2,909,435 annually.<sup>228</sup>

### iv. Current Baseline Cost Estimate of Filing Form I-864W

DHS is proposing to eliminate Form I-864W and would instead require individuals to provide the information previously requested on the Form I-864W using Form I-485. Applicants, therefore, would not be required to file a separate Form I-864W apart from the Form I-485. Based on the information provided in the Form I-485, an officer can verify whether an immigrant is statutorily required to file an Affidavit. While the information currently collected using Form I-864W would be collected using Form I-485 under this proposed rulemaking, DHS does not anticipate an increase in the fee, time burden, or other changes in the requirements for completing and filing Form I-485.

There is no filing fee associated with filing Form I-864W with USCIS.<sup>229</sup> However, DHS estimates the time

<sup>227</sup> Calculation opportunity cost of time for completing and submitting Form I-864EZ, Affidavit of Support Under Section 213A of the INA: (\$37.55 per hour \* 2.5 hours) = \$93.875 = \$93.88 per filer.

<sup>228</sup> Calculation: (Form I-864EZ estimated opportunity cost of time) \* (Estimated annual population filing Form I-864EZ) = \$93.88 \* 30,991 = \$2,909,435.08 = \$2,909,435 (rounded) total annual opportunity cost of time for filing Form I-864EZ.

<sup>229</sup> The Department of State (DOS) charges a \$120 fee per case for reviewing Affidavit of Support forms (Forms I-864, I-864A, I-864W, and/or I-864EZ) when the form(s) is (are) filed in the United States and processed in the DOS National Visa Center (NVC). An applicant is charged only one fee, even if there are multiple financial sponsors associated with a single case. Moreover, DHS notes that three different agencies review an Affidavit and Contract for sufficiency, each in a different context. USCIS reviews an Affidavit and Contract while adjudicating certain applications for adjustment of status. DOS consular officers also review Affidavits and Contracts as part of the immigrant visa application process, and when an Affidavit is required, to assess potential ineligibility on public charge grounds. See 22 CFR 40.41. Immigration Courts, which are part of the U.S. Department of Justice (DOJ) Executive Office for Immigration Review (EOIR), may review Affidavits and Contracts in the context of an alien in removal proceedings who is seeking adjustment of status as a form of relief from removal, or when otherwise adjudicating an Affidavit or Contract filed in connection with a public charge ground of inadmissibility or deportability, but this rule does not directly revise DOJ standards or processes.

burden associated with filing this form is 60 minutes (1 hour) per petitioner, including the time for reviewing instructions, gathering the required documentation and information, completing the request, preparing statements, attaching necessary documentation, and submitting the request.<sup>230</sup> Therefore, using the average total rate of compensation of \$37.55 per hour, DHS estimates the opportunity cost of time for completing and submitting Form I-864W is approximately \$37.55 per filer.<sup>231</sup> Using the estimated annual total population of 98,119 for individuals who would file Form I-864W as a Household Member, DHS estimates the opportunity cost of time associated with completing and submitting Form I-864W is approximately \$3,684,368 annually.<sup>232</sup>

### v. Current Baseline Cost Estimate of Filing Form I-865

Form I-865 is currently identified by OMB as exempt from control under the Paperwork Reduction Act (PRA). However, as recently as 2015, Form I-865 was an OMB-approved collection for which DHS estimated the time burden associated with filing the form was 15 minutes (0.25 hours), including the time for reviewing instructions, and completing and submitting the form.<sup>233</sup> Therefore, using the average total rate of compensation of \$37.55 per hour, DHS estimates the opportunity cost of time for completing and submitting Form I-865 is approximately be \$9.39 per filer.<sup>234</sup>

<sup>230</sup> See Instructions for Request for Exemption for Intending Immigrant's Affidavit of Support, Form I-864W, for time burden estimate in the Paperwork Reduction Act section. OMB No. 1615-0075. Expires 3/31/2020. Available at <https://www.uscis.gov/i-864w> (last accessed Oct. 22, 2019).

<sup>231</sup> Calculation of opportunity cost of time for completing and submitting Form I-864W: (\$37.55 per hour \* 1.0 hours) = \$37.55.

<sup>232</sup> Calculation: (Form I-864W estimated opportunity cost of time) \* (Estimated annual population filing Form I-864W) = \$37.55 \* 98,119 = \$3,684,368.45 = \$3,684,368 (rounded) total annual opportunity cost of time for filing Form I-864W.

<sup>233</sup> See Paperwork Reduction Act (PRA) Supporting Statement for Form I-865. The PRA Supporting Statement A can be found at Question 12 on [Reginfo.gov](https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201209-1615-010) at [https://www.reginfo.gov/public/do/PRAViewDocument?ref\\_nbr=201209-1615-010](https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201209-1615-010) (last viewed June 2, 2020). DHS notes this is the supporting statement for Form I-865 prior to the form becoming exempt from control under the PRA. This supporting statement provides the best estimate of the time burden to complete Form I-865.

<sup>234</sup> Calculation of opportunity cost of time for completing and submitting Form I-865: (\$37.55 per hour \* 0.25 hours) = \$9.388 = \$9.39 (rounded).

Using the estimated annual total population of 6,089 for individuals who would file Form I-865 to provide notice of a change of address, DHS estimates the opportunity cost of time associated with completing and submitting Form I-865 is approximately \$57,176 annually.<sup>235</sup>

**b. Costs of the Proposed Regulatory Changes**

The primary source of quantified new costs for the proposed rule would be from increases in the estimated time

burdens to complete Form I-864, I-864A, and Form I-864EZ, as well as new filing requirements such as providing additional tax transcripts and credit reports and credit scores. The proposed rule would also impose new costs on the population executing a Contract as household members would now be required to submit Form I-865 to provide notice of a change of address after moving. Moreover, the proposed rule also would impose new costs on those using the proposed new Form G-

1563 to make a formal request from a party or entity authorized to bring an action to enforce an Affidavit or Contract so that USCIS may provide a certified copy of the requested Affidavit or Contract that has been executed on behalf of a sponsored immigrant for use as evidence in any action of enforcement. Table 8 shows the estimated annual new quantified costs the proposed rule would impose on individuals filing Form I-864, I-864A, Form I-864EZ, and Form I-865.

**TABLE 8—TOTAL NEW QUANTIFIED COSTS OF THE PROPOSED RULE**

| Form                                                                                                                                                      | Estimated annual population | Total annual cost  |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|--------------------|
| Form I-864                                                                                                                                                | 1,041,077                   | \$226,621,641      |
| Opportunity Cost of Time (OCT)—Additional to Baseline (Current) Costs                                                                                     |                             | 19,551,426         |
| Cost of obtaining credit report and credit score                                                                                                          |                             | 20,811,129         |
| Cost to obtain Internal Revenue Service (IRS)-issued certified copies or transcripts of Federal income tax returns (3 most recent taxable years required) |                             | 156,161,550        |
| OCT to file IRS Form 4506 to obtain IRS-issued certified Federal income tax returns                                                                       |                             | 30,097,536         |
| Form I-864A                                                                                                                                               | 48,824                      | 10,628,009         |
| OCT—Additional to Baseline (Current) Costs                                                                                                                |                             | 916,915            |
| Cost of obtaining credit report and credit score                                                                                                          |                             | 975,992            |
| Cost to obtain Internal Revenue Service (IRS)-issued certified copies or transcripts of Federal income tax returns (3 most recent taxable years required) |                             | 7,323,600          |
| OCT to file IRS Form 4506 to obtain IRS-issued certified Federal income tax returns                                                                       |                             | 1,411,502          |
| Form I-864EZ                                                                                                                                              | 30,991                      | 6,745,811          |
| OCT—Additional to Baseline (Current) Costs                                                                                                                |                             | 581,701            |
| Cost of obtaining credit report and credit score                                                                                                          |                             | 619,510            |
| Cost to obtain Internal Revenue Service (IRS)-issued certified copies or transcripts of Federal income tax returns (3 most recent taxable years required) |                             | 4,648,650          |
| OCT to file IRS Form 4506 to obtain IRS-issued certified Federal income tax returns                                                                       |                             | 895,950            |
| Form I-865                                                                                                                                                | 6,382                       | 2,751              |
| Expanded population subject to the requirement to file Form I-865 to provide notice of change of address                                                  |                             | 2,751              |
| Form G-1563                                                                                                                                               | 25                          | 779                |
| OCT to file                                                                                                                                               |                             | 779                |
| <b>Total New Quantified Costs of the Proposed Rule</b>                                                                                                    |                             | <b>243,998,991</b> |

Source: USCIS analysis.

The proposed rule would require individuals completing Affidavits using Form I-864 to read additional instructions and provide additional information, which increases the estimated time to complete the form. The current estimated time to complete Form I-864 is 6 hours per filer. For the proposed rule, DHS estimates the time burden for completing Form I-864 will increase by 30 minutes to account for the additional time petitioners will spend on reviewing instructions, gathering the required documentation

and information, completing the request, preparing statements, attaching necessary documentation, and submitting the request. The 30 minutes of increased time burden to complete the form takes into account the proposed new requirement to provide USCIS with bank account information as well as credit reports and credit scores.<sup>236</sup> Therefore, the proposed time burden to complete Form I-864 is estimated to be 6.5 hours per filer.

For the proposed rule, DHS estimates the opportunity cost of time for

completing and filing Form I-864 would be \$244.08 per individual based on the 30-minute increase in the time burden estimate.<sup>237</sup> Therefore, using the total population estimate of 1,041,077 annual filings for Form I-864, DHS estimates the total opportunity cost of time associated with completing and filing Form I-864 is approximately \$254,106,074 annually.<sup>238</sup>

The new costs imposed by this proposed rule would be the difference between the proposed estimated opportunity cost of time to complete

<sup>235</sup> Calculation: (Form I-865 estimated opportunity cost of time) \* (Estimated annual population filing Form I-865) = \$9.39 \* 6,089 = \$57,175.71 = \$57,176 (rounded) total annual opportunity cost of time for filing Form I-865.

<sup>236</sup> DHS notes that some low-income individuals may be “unbanked” and do not have bank accounts and/or credit reports and credit scores. Therefore, such individuals would not be able to provide this information and may not incur this opportunity

cost of time. See Federal Deposit Insurance Corporation (FDIC). “FDIC National Survey of Unbanked and Underbanked Households,” Appendix Tables, Table A.1 Banking Status by Household Characteristics, 2017, available at <https://www.fdic.gov/householdsurvey/2017/2017appendix.pdf>, (last visited June 2, 2020).

<sup>237</sup> Calculation opportunity cost of time for completing and submitting Form I-864: (\$37.55 per

hour \* 6.5 hours) = \$244.075 = \$244.08 (rounded) per filer.

<sup>238</sup> Calculation: (Form I-864 estimated opportunity cost of time for proposed rule) \* (Estimated annual population filing Form I-864) = \$244.08 \* 1,041,077 = \$254,106,074.16 = \$254,106,074 (rounded) proposed rule total annual estimated opportunity cost of time for filing Form I-864.



Form I-864 and the current estimated opportunity cost of time to complete the form due to the increased time burden estimate. As a result, DHS estimates the proposed rule would impose additional annual new costs of approximately \$19,551,426 to Form I-864 filers.<sup>239</sup>

In addition to the opportunity cost of time associated with completing and filing Form I-864, filers must bear the cost of obtaining a credit report and credit score from any one of the three major credit bureaus in the United States to be submitted with the Affidavit.<sup>240</sup> Consumers may obtain a free credit report once a year from each of the three major consumer reporting agencies (*i.e.*, credit bureaus) under the Fair Credit Reporting Act (FCRA).<sup>241</sup> However, consumers are not necessarily entitled to a free credit score, for which consumer reporting agencies may charge a fair and reasonable fee.<sup>242</sup> DHS does not assume all individuals are able to obtain a free credit report under FCRA specifically for fulfilling the requirements of filing Form I-864 and acknowledges obtaining a credit score would be an additional cost. Therefore, DHS assumes each individual would bear the cost of obtaining a credit report and credit score from at least one of the three major credit bureaus. DHS estimates the cost of obtaining a credit report and credit score is \$19.99 per applicant, as this is the maximum amount the three major credit bureaus charge.<sup>243</sup> DHS notes all individuals

<sup>239</sup> Calculation of estimated new costs for completing Form I-864: Proposed rule estimate of opportunity cost of time to complete Form I-864 (\$254,106,074)—Current estimate of opportunity cost of time to complete Form I-864 (\$234,554,648) = \$19,551,426 estimated annual new costs of the proposed rule.

<sup>240</sup> The three major credit bureaus are Equifax, Experian, and TransUnion. Each of these bureaus is a publicly-traded, for-profit company that is not owned by the Federal Government. DHS notes that there may be differences in the information contained in the credit reports from each of the three major credit bureaus since one credit bureau may have unique information on a consumer that is not captured by the other credit bureaus.

<sup>241</sup> See Fair Credit Reporting Act (FCRA), Section 612, *Charges for Certain Disclosures*. 15 U.S.C. 1681j, available at <https://www.consumer.ftc.gov/articles/pdf-0111-fair-credit-reporting-act.pdf> (last visited June 2, 2020).

<sup>242</sup> See FCRA, Section 609(f)(8), *Disclosures to Consumers, Disclosure of Credit Scores*. 15 U.S.C. 1681g, available at <https://www.consumer.ftc.gov/articles/pdf-0111-fair-credit-reporting-act.pdf> (last visited June 2, 2020).

<sup>243</sup> Each of the three major credit charge the following prices for a credit report, including a credit score:

Experian—\$19.99, available at <https://www.experian.com/consumer-products/compare-credit-report-and-score-products.html> (last visited Nov. 7, 2019);

Equifax—\$15.95, available at <https://www.equifax.com/personal/products/credit/report-and-score> (last visited Nov. 7, 2019); and

who file an Affidavit will also be required to comply with this requirement, unless he or she is applying in a category exempt from the public charge inadmissibility ground. Therefore, based on the estimated average annual population of 1,041,077, DHS estimates the total annual cost associated with obtaining a credit report and credit score as part of the requirements for filing Form I-864 would be approximately \$20,811,129.<sup>244</sup>

DHS is proposing a new requirement that those filing Form I-864 would be required to provide IRS-issued certified copies or transcripts of their Federal income tax returns for the 3 most recent taxable years.<sup>245</sup> See proposed 8 CFR 213a.2(c)(2)(i)(A). Consistent with the Act, DHS is proposing to clarify in the regulation that tax returns must be certified copies issued by the IRS.<sup>246</sup> Individuals may request certified copies from the IRS for the current tax year and the prior six years. DHS proposes conforming edits to the regulation to be consistent with these revisions. See proposed 8 CFR 213a.2(c)(2)(i)(B), (c)(2)(i)(C)(4), and (c)(2)(i)(D). Sponsors currently have the option of submitting tax returns for the 3 most recent tax years, but are only required to submit tax returns for the most recent tax year.<sup>247</sup>

A transcript summarizes return information and includes Adjusted Gross Income (AGI). They are available for the most current tax year after the IRS has processed the return. IRS-certified copies of a tax return are available for the current tax year and as far back as six years. The fee per copy for each return requested is \$50. Individuals requesting IRS-certified copies of a tax return must complete and mail IRS Form 4506 to the appropriate IRS office listed on the form.

TransUnion—\$11.50, available at <https://disclosure.transunion.com/dc/disclosure/disclosure.jsp> (last visited Nov. 7, 2019).

<sup>244</sup> Calculation: (Estimated cost for credit score and credit report) \* (Estimated annual population filing Form I-864) = \$19.99 \* 1,041,077 = \$20,811,129.23 = \$20,811,129 (rounded) annual estimated costs for obtaining a credit report and credit score as part of the requirements for filing Form I-864.

<sup>245</sup> A tax transcript summarizes return information and they are available for the most current tax year after the IRS processes the return. Taxpayers can also get them for the past 3 years. See *How to Get Tax Transcripts and Copies of Tax Returns from the IRS*, available at <https://www.irs.gov/newsroom/how-to-get-tax-transcripts-and-copies-of-tax-returns-from-the-irs> (last visited June 2, 2020).

<sup>246</sup> See INA section 213A(f)(6)(A)(i), 8 U.S.C. 1183a(f)(6)(A)(i).

<sup>247</sup> See INA section 213A(f)(6)(B), 8 U.S.C. 1183a(f)(6)(B); see also 8 CFR 213a.2(c)(2)(i)(A).

Using the estimated annual total population of 1,041,077 individuals filing Form I-864, DHS estimates the cost to obtain three tax transcripts using IRS Form 4506 in accordance with the proposed requirement for submitting Form I-864 would be approximately \$156,161,550 annually.<sup>248</sup>

The estimated time burden associated with filing IRS Form 4506 is 46 minutes (.77 hours) per filer, including learning about the law or form, preparing the form, and copying, assembling, and sending the form to the IRS. Therefore, using the total rate of compensation of \$37.55 per hour, DHS estimates the opportunity cost of time for completing and submitting IRS Form 4506 would be \$28.91 per applicant.<sup>249</sup> Using the total population estimate of 1,041,077 annual filings for Form I-864, DHS estimates the total opportunity cost of time associated with completing and submitting IRS Form 4506 would be approximately \$30,097,536 annually.<sup>250</sup>

In sum, DHS estimates the total proposed new cost to complete and file Form I-864 would be approximately \$226,621,641 annually.<sup>251</sup> The total estimated annual new costs include those associated with the opportunity cost of time to complete the form, obtaining a credit report and credit score, obtaining IRS-issued certified copies or transcripts of Federal income tax returns for the 3 most recent taxable years using IRS Form 4506, and the opportunity cost of time to file IRS Form 4506 for the total population estimate of 1,041,077 annual filings for Form I-864.

The current estimated time to complete Form I-864A is 1 hour and 45 minutes (1.75 hours) per filer.<sup>252</sup> For the proposed rule, DHS estimates the time

<sup>248</sup> Calculation: (Cost per IRS-certified tax transcript) \* (Proposed number of transcripts required [3]) \* (Estimated annual population filing Form I-864) = \$50 \* 3 \* 1,041,077 = \$156,161,550 total proposed cost to obtain IRS-certified tax transcripts for filing Form I-864.

<sup>249</sup> Calculation of opportunity cost of time to file IRS Form 4506 for those filing Form I-864: (\$37.55 per hour \* .77 hours) = \$28.914 = \$28.91 (rounded) per filer.

<sup>250</sup> Calculation: (Estimated opportunity cost of time for IRS Form 4506) \* (Estimated annual population filing Form I-864) = \$28.91 \* 1,041,077 = \$30,097,536.07 = \$30,097,536 (rounded) annual opportunity cost of time for filing IRS Form 4506 for those filing Form I-864.

<sup>251</sup> Calculation: \$19,551,426 (Opportunity cost of time to complete Form I-864) + \$20,811,129 (Cost of credit report and credit score) + \$156,161,550 (Cost to obtain Internal Revenue Service (IRS)-issued certified copies or transcripts of Federal income tax returns) + \$30,097,536 (Opportunity cost of time to file IRS Form 4506 to obtain IRS-issued certified Federal income tax returns = \$226,621,641 total proposed estimated annual cost to complete and file Form I-864.

<sup>252</sup> See USCIS Instructions for Form I-864A, Contract Between Sponsor and Household Member available at <https://www.uscis.gov/i-864a>.

burden for completing Form I-864A will increase by 30 minutes to account for the additional time petitioners will spend on reviewing instructions, gathering the required documentation and information, completing the request, preparing statements, attaching necessary documentation, and submitting the request. The 30 minutes of increased time burden to complete the form takes into account the proposed new requirement to provide USCIS with bank account information as well as credit reports and credit scores.<sup>253</sup> Therefore, the proposed time burden to complete Form I-864A is estimated to be 2 hours and 15 minutes (2.25 hours) per filer.

For the proposed rule, DHS estimates the opportunity cost of time for completing Form I-864A would be \$84.49 per application based on the 30-minute increase in the time burden estimate.<sup>254</sup> Therefore, using the total population estimate of 48,824 for individuals who would complete and submit Form I-864A as a household member,<sup>255</sup> DHS estimates the total opportunity cost of time associated with completing Form I-864A would be approximately \$4,125,140 annually.<sup>256</sup>

The new costs imposed by this proposed rule would be the difference between the proposed estimated

opportunity cost of time to complete Form I-864A and the current estimated opportunity cost of time to complete the form due to the increased time burden estimate. As a result, DHS estimates the proposed rule would impose additional annual new costs of \$916,915 to Form I-864A filers.<sup>257</sup>

In addition to the opportunity cost of time associated with completing Form I-864A, filers must bear the cost of obtaining a credit report and credit score from any one of the three major credit bureaus in the United States to be submitted with the Contract. DHS estimates the cost of obtaining a credit report and credit score is \$19.99 per applicant, as this is the maximum amount the three major credit bureaus charge.<sup>258</sup> Therefore, DHS estimates the total proposed new cost to those filing Form I-864A would be approximately \$19.99 per filer. Based on the total population estimate of 48,824 for individuals would file Form I-864A as a household member, DHS estimates the total annual cost associated with obtaining a credit report and credit score as part of the requirements for filing Form I-864A would be \$975,992.<sup>259</sup>

DHS is also proposing that those filing Form I-864A would be required to provide IRS-issued certified copies or transcripts of their Federal income tax returns for the 3 most recent taxable years. See proposed 8 CFR 213a.2(c)(2)(i)(A). The fee per copy for each return requested is \$50. DHS estimates the cost to obtain tax transcripts for the 3 most recent taxable years using IRS Form 4506 in accordance with the proposed requirement for submitting Form I-864A is \$150 for each individual filing Form I-864A. Using the estimated

annual total population of 48,824 individuals filing Form I-864A, DHS estimates the cost to obtain three tax transcripts using IRS Form 4506 in accordance with the proposed requirement for submitting Form I-864A would be approximately \$7,323,600 annually.<sup>260</sup>

The estimated time burden associated with filing IRS Form 4506 is 46 minutes (.77 hours) per filer, including learning about the law or form, preparing the form, and copying, assembling, and sending the form to the IRS. Therefore, using the total rate of compensation of \$37.55 per hour, DHS estimates the opportunity cost of time for completing and submitting IRS Form 4506 would be \$28.91 per filer.<sup>261</sup> Using the total population estimate of 48,824 annual filings for Form I-864A, DHS estimates the total opportunity cost of time associated with completing and submitting IRS Form 4506 would be approximately \$1,411,502 annually.<sup>262</sup>

In sum, DHS estimates the total proposed new cost to complete Form I-864A would be approximately \$10,628,009 annually.<sup>263</sup> The total proposed estimated annual new costs include those associated with the opportunity cost of time to complete the form, obtaining a credit report and credit score, obtaining IRS-issued certified copies or transcripts of Federal income tax returns for the 3 most recent taxable years using IRS Form 4506, and the opportunity cost of time to file IRS Form 4506 for the total population estimate of 48,824 annual filings for Form I-864A. DHS notes we are unable to determine the exact number filings of Form I-864A since not all individuals filing I-864 need to file Form I-864A with a household member. Therefore,

<sup>253</sup> DHS notes that some low-income individuals may be “unbanked” and do not have bank accounts and/or credit reports and credit scores. Therefore, such individuals would not be able to provide this information and may not incur this opportunity cost of time. See Federal Deposit Insurance Corporation (FDIC), “FDIC National Survey of Unbanked and Underbanked Households,” Appendix Tables, Table A.1 Banking Status by Household Characteristics, 2017, available at <https://www.fdic.gov/householdsurvey/2017/2017appendix.pdf>, (last visited June 2, 2020).

<sup>254</sup> Calculation opportunity cost of time for completing and submitting Form I-864A: (\$37.55 per hour \* 2.25 hours) = \$84.488 = \$84.49 (rounded) per application.

<sup>255</sup> DHS again notes that this proposed rule would revise the current regulatory requirements concerning who can qualify as a household member for purposes of submitting and executing a Contract using Form I-864A. Currently, there is no limitation on the number of household members who may execute a Form I-864A. However, DHS is proposing to permit only a sponsor's spouse or an intending immigrant with the same principal residence as the sponsor to execute Form I-864A. DHS acknowledges this proposed new regulatory provision would reduce the number of individuals who would be eligible to qualify as a household member who may submit a Contract and, as a result, may reduce the number of Contracts submitted using Form I-864A. However, DHS is unable to determine the magnitude of the reduced number of Form I-864A filings annually. Therefore, the estimated new costs of the proposed rule for those filing Form I-864A are likely overstated.

<sup>256</sup> Calculation: (Form I-864A estimated opportunity cost of time for proposed rule) \* (Estimated annual population filing Form I-864A) = \$84.49 \* 48,824 = \$4,125,139.76 = \$4,125,140 (rounded) proposed rule total annual estimated opportunity cost of time for filing Form I-864A.

<sup>257</sup> Calculation of estimated new costs for completing Form I-864A: Proposed rule estimate of opportunity cost of time to complete Form I-864A (\$4,125,140)—Current estimate of opportunity cost of time to complete Form I-864A (\$3,208,225) = \$916,915 estimated annual new costs of the proposed rule.

<sup>258</sup> Each of the three major credit charge the following prices for a credit report, including a credit score:

Experian—\$19.99, available at <https://www.experian.com/consumer-products/compare-credit-report-and-score-products.html> (last visited Nov. 7, 2019);

Equifax—\$15.95, available at <https://www.equifax.com/personal/products/credit/report-and-score> (Nov. 7, 2019); and

TransUnion—\$11.50, available at <https://disclosure.transunion.com/dc/disclosure/disclosure.jsp> (last visited Nov. 7, 2019).

<sup>259</sup> Calculation: (Estimated cost for credit score and credit report) \* (Estimated annual population filing Form I-864A) = \$19.99 \* 48,824 = \$975,991.76 = \$975,992 (rounded) annual estimated costs for obtaining a credit report and credit score as part of the requirements for filing Form I-864A.

<sup>260</sup> Calculation: (Cost per IRS-certified tax transcript) \* (Proposed number of transcripts required [3]) \* (Estimated annual population filing Form I-864A) = \$50 \* 3 \* 48,824 = \$7,323,600 total proposed cost to obtain IRS-certified tax transcripts for filing Form I-864A.

<sup>261</sup> Calculation of opportunity cost of time to file IRS Form 4506 for those filing Form I-864EZ: (\$37.55 per hour \* .77 hours) = \$28.914 = \$28.91 (rounded) per filer.

<sup>262</sup> Calculation: (Estimated opportunity cost of time for IRS Form 4506) \* (Estimated annual population filing Form I-864A) = \$28.91 \* 48,824 = \$1,411,501.84 = \$1,411,502 (rounded) annual opportunity cost of time for filing IRS Form 4506 for those filing Form I-864.

<sup>263</sup> Calculation: \$916,915 (Opportunity cost of time to complete Form I-864A) + \$975,992 (Cost of credit report and credit score) + \$7,323,600 (Cost to obtain Internal Revenue Service (IRS)-issued certified copies or transcripts of Federal income tax returns) + \$1,411,502 (Opportunity cost of time to file IRS Form 4506 to obtain IRS-issued certified Federal income tax returns) = \$10,628,009 total proposed estimated annual cost to complete and file Form I-864.

the costs for Form I-864A are likely to be overestimated.

The current estimated time to complete Form I-864EZ is 2 hours and 30 minutes (2.5 hours) per filer.<sup>264</sup> For the proposed rule, DHS estimates the time burden for completing Form I-864EZ will increase by 30 minutes to account for the additional time petitioners will spend on reviewing instructions, gathering the required documentation and information, completing the request, preparing statements, attaching necessary documentation, and submitting the request. The 30 minutes of increased time burden to complete the form takes into account the proposed new requirement to provide USCIS with bank account information as well as credit reports and credit scores.<sup>265</sup> Therefore, the proposed time burden to complete Form I-864EZ is estimated to be 3 hours per filer.

For the proposed rule, DHS estimates the opportunity cost of time for completing Form I-864EZ would be \$112.65 per application based on the 30-minute increase in the time burden estimate.<sup>266</sup> Therefore, using the total population estimate of 30,991 applicants would file an Affidavit using Form I-864EZ, DHS estimates the total opportunity cost of time associated with completing Form I-864EZ would be approximately \$3,491,136 annually.<sup>267</sup>

The new costs imposed by this proposed rule would be the difference between the proposed estimated opportunity cost of time to complete Form I-864EZ and the current estimated opportunity cost of time to complete the form due to the increased time burden estimate. As a result, DHS estimates the proposed rule would impose additional

<sup>264</sup> See USCIS Instructions for Form I-864EZ, Affidavit of Support Under Section 213A of the Act available at <https://www.uscis.gov/i-864ez> (last visited June 2, 2020).

<sup>265</sup> DHS notes that some low-income individuals may be “unbanked” and do not have bank accounts and/or credit reports and credit scores. Therefore, such individuals would not be able to provide this information and may not incur this opportunity cost of time. See Federal Deposit Insurance Corporation (FDIC), “FDIC National Survey of Unbanked and Underbanked Households,” Appendix Tables, Table A.1 Banking Status by Household Characteristics, 2017, available at <https://www.fdic.gov/householdsurvey/2017/2017appendix.pdf>, (June 2, 2020).

<sup>266</sup> Calculation opportunity cost of time for completing and submitting Form I-864EZ: (\$37.55 per hour \* 3.0 hours) = \$112.65 per application.

<sup>267</sup> Calculation: (Form I-864EZ estimated opportunity cost of time for proposed rule) \* (Estimated annual population filing Form I-864EZ) = \$112.65 \* 30,991 = \$3,491,136.15 = \$3,491,136 (rounded) proposed rule total annual estimated opportunity cost of time for filing Form I-864EZ.

annual new costs of \$581,701 to Form I-864EZ filers.<sup>268</sup>

In addition to the opportunity cost of time associated with completing Form I-864EZ, filers must bear the cost of obtaining a credit report and credit score from any one of the three major credit bureaus in the United States to be submitted with the Affidavit. Therefore, based on the estimated average annual population of 30,991, DHS estimates the total annual cost associated with obtaining a credit report and credit score as part of the requirements for filing Form I-864EZ would be \$619,510.<sup>269</sup>

DHS is also proposing that those filing Form I-864EZ would be required to provide IRS-issued certified copies or transcripts of their Federal income tax returns for the 3 most recent taxable years. See proposed 8 CFR 213a.2(c)(2)(i)(A). The fee per copy for each return requested is \$50. Using the estimated annual total population of 30,991 individuals filing Form I-864EZ, DHS estimates the cost to obtain three tax transcripts using IRS Form 4506 in accordance with the proposed requirement for submitting Form I-864EZ is \$4,648,650 annually.<sup>270</sup>

The estimated time burden associated with filing IRS Form 4506 is 46 minutes (.77 hours) per filer, including learning about the law or form, preparing the form, and copying, assembling, and sending the form to the IRS. Therefore, using the average total rate of compensation of \$37.55 per hour, DHS estimates the opportunity cost of time for completing and submitting IRS Form 4506 would be \$28.91 per applicant.<sup>271</sup> Using the total population estimate of 30,991 annual filings for Form I-864EZ, DHS estimates the total opportunity cost of time associated with completing and

<sup>268</sup> Calculation of estimated new costs for completing Form I-864EZ: Proposed rule estimate of opportunity cost of time to complete Form I-864EZ (\$3,491,136) – Current estimate of opportunity cost of time to complete Form I-864EZ (\$2,909,435) = \$581,701 estimated annual new costs of the proposed rule.

<sup>269</sup> Calculation: (Estimated cost for credit score and credit report) \* (Estimated annual population filing Form I-864EZ) = \$19.99 \* 30,991 = \$619,510.09 = \$619,510 (rounded) annual estimated costs for obtaining a credit report and credit score as part of the requirements for filing Form I-864EZ.

<sup>270</sup> Calculation: (Cost per IRS-certified tax transcript) \* (Proposed number of transcripts required [3]) \* (Estimated annual population filing Form I-864EZ) = \$50 \* 3 \* 30,991 = \$4,648,650 total proposed cost to obtain IRS-certified tax transcripts for filing Form I-864EZ.

<sup>271</sup> Calculation of opportunity cost of time to file IRS Form 4506 for those filing Form I-864EZ: (\$37.55 per hour \* 0.77 hours) = \$28.914 = \$28.91 (rounded) per applicant.

submitting IRS Form 4506 is approximately \$895,950 annually.<sup>272</sup>

In sum, DHS estimates the total proposed new cost to complete and file Form I-864EZ would be approximately \$6,745,811 annually.<sup>273</sup> The total proposed estimated annual new costs include those associated with the opportunity cost of time to complete the form, obtaining a credit report and credit score, obtaining IRS-issued certified copies or transcripts of Federal income tax returns for the 3 most recent taxable years using IRS Form 4506, and the opportunity cost of time to file IRS Form 4506 for the total population estimate of 30,991 annual filings for Form I-864EZ.

Additionally, DHS is proposing to revise Sponsor’s Notice of Change of Address (Form I-865). If the address of a sponsor or household member (who executed a Contract Between a Sponsor and a Household Member [Form I-864A]) changes while the sponsor’s or household member’s support obligation is in effect, the sponsor or household member (who executed a Contract) would be required to file a change of address notice within 30 days with USCIS.

There is currently no fee to file Form I-865. In addition, Form I-865 has been identified as exempt from control under the Paperwork Reduction Act (PRA). However, as recently as 2015, Form I-865 was an OMB-approved collection for which DHS estimated the time burden associated with filing the form was 15 minutes (0.25 hours), including the time for reviewing instructions, and completing and submitting the form.<sup>274</sup> Therefore, using the average total rate of compensation of \$37.55 per hour, DHS estimates the opportunity cost of time

<sup>272</sup> Calculation: (Estimated opportunity cost of time for IRS Form 4506) \* (Estimated annual population filing Form I-485) = \$28.91 \* 30,991 = \$895,949.81 = \$895,950 (rounded) annual opportunity cost of time for filing IRS Form 4506 for those filing Form I-864EZ.

<sup>273</sup> Calculation: \$581,701 (Opportunity cost of time to complete Form I-864EZ) + \$619,510 (Cost of credit report and credit score) + \$4,648,650 (Cost to obtain Internal Revenue Service (IRS)-issued certified copies or transcripts of Federal income tax returns) + \$895,950 (Opportunity cost of time to file IRS Form 4506 to obtain IRS-issued certified Federal income tax returns) = \$6,745,811 total proposed estimated annual cost to complete and file Form I-864EZ.

<sup>274</sup> See Paperwork Reduction Act (PRA) Supporting Statement A can be found at Question 12 on [Reginfo.gov](https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201209-1615-010) at [https://www.reginfo.gov/public/do/PRAViewDocument?ref\\_nbr=201209-1615-010](https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201209-1615-010) (last viewed June 2, 2020). DHS notes this is the supporting statement for Form I-865 prior to the form becoming exempt from control under the PRA. This supporting statement provides the best estimate of the time burden to complete Form I-865.

for completing and submitting Form I-865 would be \$9.39 per applicant.<sup>275</sup>

As part of this proposed rulemaking, household members who execute a Contract would be required to submit Form I-865 in the event of a change of address. DHS estimated the current annual total population that would file Form I-865 to provide notice of a change of address is approximately 6,089. For the proposed rule, as previously calculated, DHS estimates the total annual average number of filings of Form I-865 would be approximately 6,382 annually, an increase of 293 filings.

Therefore, using the estimated total annual average number of Form I-865 filings of 6,382, DHS estimates the proposed total opportunity cost of time associated with completing and filing Form I-865 would be approximately \$59,927 annually.<sup>276</sup>

The new costs imposed by this proposed rule would be the difference between the proposed estimated opportunity cost of time to complete Form I-865 and the current estimated opportunity cost of time to complete the form due to the increased population estimate. As a result, DHS estimates the proposed rule would impose additional annual new costs of approximately \$2,751 for filing Form I-865.<sup>277</sup>

Moreover, this proposed rule would also impose new costs on those from a party or entity authorized to bring an action to enforce an Affidavit or Contract making a formal request using the proposed new Form G-1563 so that USCIS may provide a certified copy of the requested Affidavit or Contract that has been executed on behalf of a sponsored immigrant for use as evidence in any action of enforcement. With the creation of this proposed new form, DHS estimates the time burden associated with filing Form G-1563 is 50 minutes (0.83 hours) per filing to make a formal request for a certified copy of an Affidavit or Contract, including the time for reviewing instructions and completing and submitting the form. Using the average total rate of compensation of \$37.55 per

hour, DHS estimates the opportunity cost of time for completing and submitting Form G-1563 would be \$31.17 per filer.<sup>278</sup> While the process for using the proposed Form G-1563 would be new and historical data are not available, DHS estimates there would be approximately 25 formal requests to USCIS for certified copies of an Affidavit or Contract annually. Therefore, DHS estimates the total cost to file Form G-1563 would be approximately \$779 annually.<sup>279</sup>

Since the proposed Form G-1563 would be new and historical data are not available, DHS welcomes public comment and data regarding the potential number of formal requests for certified copies of Affidavits or Contracts that have been executed on behalf of a sponsored immigrant for use as evidence in any action of enforcement.

#### c. Cost Savings of the Proposed Regulatory Changes

DHS anticipates that the proposed rule would produce some cost savings as DHS is proposing to eliminate Form I-864W for use in filing an adjustment application. DHS would instead require individuals to provide the information previously requested on the Form I-864W when filing Form I-485. Applicants, therefore, would not be required to file Form I-864W when filing Form I-485. DHS has determined that the information an applicant provides on Form I-485 would be sufficient for an adjudications officer to be able to verify whether an immigrant is statutorily required to file an Affidavit. While the information currently collected using Form I-864W would be collected using Form I-485 under this proposed rulemaking, DHS does not anticipate an increase in the fee, time burden, or other changes in the requirements for completing and filing Form I-485.

Currently, there is no filing fee associated with filing Form I-864W. However, DHS estimates the time burden associated with filing this form is 60 minutes (1 hour) per applicant.<sup>280</sup>

Using the average total rate of compensation of \$37.55 per hour, DHS estimates the amount of cost savings that would accrue from eliminating Form I-864W is about \$37.55 per applicant, which equals the opportunity cost of time for completing Form I-864W.<sup>281</sup>

For the proposed rule, DHS estimates the cost for completing Form I-864W is approximately \$3,684,368 annually,<sup>282</sup> based on the opportunity cost of time for the estimated annual total population of 98,119 for individuals who would file Form I-864W.

Since immigrants filing for adjustment of status using Form I-485 will no longer need to submit Form I-864W to request an exemption from filing an Affidavit, the proposed rule would produce some cost savings from this population. The estimated total cost savings of the proposed rule for immigrants filing for adjustment of status who would have needed to request an exemption from filing an Affidavit would be equal to the current estimated cost of filing Form I-864W for this population. Therefore, DHS estimates the total cost savings of the proposed rule for immigrants applying for adjustment of status who would have needed to request an exemption from filing an Affidavit would be approximately \$3,684,368 annually.

#### d. Net Costs of the Proposed Regulatory Changes

The primary source of quantified new costs for the proposed rule would be from increases in the estimated time burdens to complete Form I-864, I-864A, and Form I-864EZ, as well as new filing requirements such as providing additional tax transcripts and credit reports and credit scores. The proposed rule would also impose new costs on the population executing a Contract as household members would now be required to submit Form I-865 to provide notice of a change of address after moving. DHS estimates the total new costs of the proposed rule would be approximately \$243,998,212 annually.

In addition, DHS anticipates that the proposed rule would produce cost savings with the proposal to eliminate Form I-864W for use in filing an adjustment application where individuals instead would be required

<sup>275</sup> Calculation of opportunity cost of time to file Form I-865: (\$37.55 per hour \* 0.25 hours) = \$9.388 = \$9.39 (rounded) per filer.

<sup>276</sup> Calculation: (Form I-865 estimated opportunity cost of time for proposed rule) \* (Estimated annual population filing Form I-865) = \$9.39 \* 6,382 = \$59,926.98 = \$59,927 (rounded) proposed rule total annual estimated opportunity cost of time for filing Form I-865.

<sup>277</sup> Calculation of estimated new costs for completing Form I-864: Proposed rule estimate of opportunity cost of time to complete Form I-864 (\$59,927) - Current estimate of opportunity cost of time to complete Form I-865 (\$57,176) = \$2,751 proposed estimated annual new costs for filing Form I-865.

<sup>278</sup> Calculation of opportunity cost of time to file Form G-1563: (\$37.55 per hour \* 0.83 hours) = \$31.167 = \$31.17 (rounded) per filer.

<sup>279</sup> Calculation: \$31.17 (cost per filer to file Form G-1563) \* 25 (estimated annual population who would make a formal request using Form G-1563) = \$779.25 = \$779 (rounded) annual total cost to file Form G-1563.

<sup>280</sup> Source for I-864W time burden estimate: Paperwork Reduction Act (PRA) Affidavit of Support Under Section 213A of the INA (Forms I-864, I-864A, I-864EZ, I-864W) (OMB control number 1615-0075). The PRA Supporting Statement can be found at Question 12 on [Reginfo.gov](https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201705-1615-004) at [https://www.reginfo.gov/public/do/PRAViewDocument?ref\\_nbr=201705-1615-004](https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201705-1615-004).

<sup>281</sup> Calculation opportunity cost of time for completing and submitting Form I-864W: (\$37.55 per hour \* 1.0 hours) = \$37.55.

<sup>282</sup> Calculation: (Form I-864W estimated opportunity cost of time) \* (Estimated annual population filing Form I-864W) = \$37.55 \* 98,119 = \$3,684,368.45 = \$3,684,368 (rounded) total annual opportunity cost of time for filing Form I-864W.

to provide the information previously requested on this form when filing Form I-485. DHS estimates the total cost savings of the proposed rule would be approximately \$3,684,368 annually.

In comparing the estimated costs and costs savings of the proposed rule, the estimated costs are greater than the estimated cost savings. Therefore, the net costs of the proposed rule are positive. DHS estimates the net costs of the proposed rule would be approximately \$240,313,844 annually.

e. Qualitative Impacts of the Proposed Regulatory Changes

The proposed rule may impose some qualitative impacts and/or costs/transfers associated with the proposed provisions that a joint sponsor must execute an Affidavit in cases where a sponsor has received any means-tested public benefits within 36 months of filing the Affidavit and/or has failed to meet the support or reimbursement obligations under an existing Affidavit or Contract. While this proposed requirement would better ensure that a sponsor has demonstrated the means to maintain income at the requisite level to support that intending immigrant, the indirect impact of this proposed provision could be a reduction in the number of immigrants granted an immigration benefit in cases where the intending immigrant is unable to submit a sufficient Affidavit. Additionally, the proposed provision could result in increased costs to sponsors for executing Affidavits, as those who agree to execute Affidavits as joint sponsors

must comply with all of the requirements of executing Form I-864.

Moreover, it may be possible that the proposed provision could result in some sponsors and joint sponsors who may intend to sponsor a family member in the future foregoing enrollment or disenrolling from a means-tested public benefits program to avoid triggering the proposed additional requirements. This could result in additional indirect impacts incurred from the change of behavior due to this proposed rule. The disenrollment or foregone enrollment of individuals in public benefits programs could reduce the transfer payments from the Federal and state government to sponsors who might otherwise receive public benefits.

The proposed rule may also impose impacts and/or costs associated with the proposed provisions to update and improve how means-tested public benefit granting agencies obtain information from USCIS about sponsors and household members who have a support obligation in effect and how means-tested public benefit granting agencies provide information to USCIS. Specifically, as discussed above, the proposed rule seeks to eliminate the requirement in current regulations that a duly issued subpoena be issued in order for USCIS to provide a certified copy of an Affidavit to a requesting party for use in any action to enforce the support obligation,<sup>283 284</sup> and instead allow requesting parties to submit a formal request for an Affidavit or a Contract to USCIS. Eliminating this

requirement may allow for a less cumbersome process than obtaining a subpoena and it may result in an increased number of individuals with support obligations who are held accountable for the reimbursement of the cost of means-tested public benefits. Further, if means-tested public benefits granting agencies choose to pursue legal action to recover the means-tested public benefits a sponsored individual received, those sponsors or household members would incur the cost of reimbursing the means-tested public benefits-granting agency and would likely incur the costs of legal representation. DHS welcomes public comment on duly issued subpoenas that are issued in order for USCIS to provide a certified copy of an Affidavit to a requesting party for use in any action to enforce the support obligation. Specifically, DHS welcomes public comment on the number of subpoenas issued annually, the costs associated with obtaining a subpoena, and what costs are incurred to request and obtain a subpoena.

f. Discounted Direct Costs

To compare costs over time, DHS applied a 3 percent and a 7 percent discount rate to the total estimated net costs associated with the proposed rule. Table 9 presents a summary of the quantified net costs of the proposed rule as well as the estimated total net costs in undiscounted dollars and total costs discounted at 3 percent and 7 percent rates over a 10-year period.

TABLE 9—TOTAL ESTIMATED NET COSTS OF THE PROPOSED RULE WITH TOTAL ESTIMATED NET COSTS DISCOUNTED AT 3 PERCENT AND 7 PERCENT

| Form               | Source of costs and cost savings                                                                                                                                                                                                                            | Total estimated annual costs and cost savings (undiscounted) | Total estimated net costs over 10-year period |
|--------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------|-----------------------------------------------|
| Form I-864 .....   | —Opportunity cost of time (OCT) associated with the increased time burden for completing form;. —Obtaining credit reports/credit scores; —Obtaining IRS-issued certified Federal income tax returns; and —OCT associated with obtaining income tax returns. | \$226,621,641                                                | \$2,266,216,410                               |
| Form I-864A .....  | —OCT associated with the increased time burden for completing form;. —Obtaining credit reports/credit scores; —Obtaining IRS-issued certified Federal income tax returns; and —OCT associated with obtaining income tax returns.                            | 10,628,009                                                   | 106,280,090                                   |
| Form I-864EZ ..... | —OCT associated with the increased time burden for completing form;.                                                                                                                                                                                        | 6,745,811                                                    | 67,458,110                                    |

<sup>283</sup> See 8 CFR 213a.4(a)(3). This provision indicates that upon the receipt of a duly issued subpoena, USCIS may provide a certified copy of an Affidavit that has been filed on behalf of a specific alien for use as evidence in any action to enforce an Affidavit, and may also disclose the last known address and Social Security number of the sponsor, substitute sponsor, or joint sponsor, but that regulation currently does not provide an

address or office to which the subpoena should be sent.

<sup>284</sup> Current DHS regulations for obtaining copies of Affidavits are burdensome and inefficient because they require a subpoena. Laws governing subpoenas vary by jurisdiction, but subpoenas often need to be issued by a court clerk or by a licensed attorney, which requires additional time and resources. The requirements in the current

regulations may have contributed to unintended difficulties for benefit-granting agencies and sponsored immigrants seeking to hold sponsors legally responsible for their obligations based on Affidavits. Similarly, current regulations for reporting judgments against sponsors and indigency determination information to USCIS are confusing as there are multiple addresses to send notifications to, some of which are no longer current.

TABLE 9—TOTAL ESTIMATED NET COSTS OF THE PROPOSED RULE WITH TOTAL ESTIMATED NET COSTS DISCOUNTED AT 3 PERCENT AND 7 PERCENT—Continued

| Form                                        | Source of costs and cost savings                                                                                                                                                                                                                                     | Total estimated annual costs and cost savings (undiscounted) | Total estimated net costs over 10-year period |
|---------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------|-----------------------------------------------|
| Form I-864W .....                           | —Obtaining credit reports/credit scores;<br>—Obtaining IRS-issued certified Federal income tax returns; and<br>—OCT associated with obtaining income tax returns.<br>—Cost savings for OCT associated with time burden for completing form that is being eliminated. | – 3,684,368                                                  | – 36,843,680                                  |
| Form I-865 .....                            | —Expanded population subject to the requirement to file Form I-865 to provide notice of change of address.                                                                                                                                                           | 2,751                                                        | 27,510                                        |
| Form G-1563 .....                           | —OCT for filing .....                                                                                                                                                                                                                                                | 779                                                          | 7,790                                         |
| Total Undiscounted Net Costs.               | .....                                                                                                                                                                                                                                                                | 240,314,623                                                  | 2,403,146,230                                 |
| Total Net Costs at 3 Percent Discount Rate. | .....                                                                                                                                                                                                                                                                | .....                                                        | 2,049,932,479                                 |
| Total Net Costs at 7 Percent Discount Rate. | .....                                                                                                                                                                                                                                                                | .....                                                        | 1,687,869,350                                 |

Source: USCIS analysis.

Over the first 10 years of implementation, DHS estimates the quantified net costs of the final rule would be about \$2,403,146,230 (undiscounted). In addition, DHS estimates the 10-year discounted net cost of this final rule to individuals subject to this proposed rule would be about \$2,049,932,479 at a 3 percent discount rate and about \$1,687,869,350 at a 7 percent discount rate.

This economic analysis presents the quantified net costs of the proposed rule based on the estimated populations that are subject to the Affidavit requirement, agree to submit a Contract, and/or must file a notice of a change of address. The quantified net costs of the proposed rule include the opportunity cost of time associated with the increased time burden estimate for completing Form I-864, Form I-864A, and Form I-864EZ; the costs to obtain credit reports and credit scores; the cost of obtaining IRS-issued certified copies or transcripts of Federal income tax returns for the 3 most recent taxable years; the opportunity cost of time for filing IRS Form 4506 to obtain IRS-issued certified Federal income tax returns; the increased population required to submit Form I-865 to provide notice of a change of address. The quantified net costs shown in the table also include the estimated cost savings for the opportunity cost of time associated with filing Form I-864W, which would be eliminated, as well as the estimated total cost for filing the proposed new Form G-1563.

g. Costs to the Federal Government

The INA provides for the collection of fees at a level that will ensure recovery of the full costs of providing adjudication and naturalization services by DHS, including administrative costs and services provided without charge to certain applicants and petitioners.<sup>285</sup> DHS notes USCIS establishes its fees by assigning costs to an adjudication based on its relative adjudication burden and use of USCIS resources. Fees are established at an amount that is necessary to recover these assigned costs such as clerical, officers, and managerial salaries and benefits, plus an amount to recover unassigned overhead (e.g., facility rent, IT equipment and systems among other expenses) and immigration benefits provided without a fee charge. Consequently, since USCIS immigration fees are based on resource expenditures related to the benefit in question, USCIS uses the fee associated with an information collection as a reasonable measure of the collection's costs to USCIS. Most of the forms affected by this proposed rule do not currently charge a filing fee, such as the Affidavit of Support forms (Form I-864, Form I-864A, and Form I-864EZ) as well as Sponsor's Notice of Change of Address (Form I-865). DHS notes the time necessary for USCIS to review the information submitted with each of these forms includes the time to adjudicate the underlying benefit request. While each of these forms does not charge a fee, the cost to USCIS is captured in the fee for the underlying

<sup>285</sup> See INA section 286(m), 8 U.S.C. 1356(m).

benefit request form. DHS notes that the proposed rule may increase USCIS' costs associated with the adjudicating immigration benefit requests. Future adjustments to the fee schedule maybe necessary to recover these additional operating costs and will be determined at USCIS' next comprehensive biennial fee review. DHS invites public comments on the potential impacts of these additional operating costs.

For most immigrant visa applications, Affidavits and Contracts are submitted to the NVC. DOS charges a \$120 fee to ensure that the Affidavit is properly completed before it is forwarded to a consular post for adjudication of an immigrant visa.<sup>286</sup> An applicant is charged only one fee in certain circumstances. For example, Affidavits from an individual concurrently sponsoring an immediate relative spouse and child would be the same in substance, and essentially duplicative and therefore only one fee is charged. When the Affidavits and Contracts are submitted directly to a consular post overseas, no fee is charged.

Pursuant to statute, DOS sets the fee for Affidavits and Contracts based on the costs to the DOS for providing these services in order to ensure Affidavits and Contracts are properly completed and forwarded to a consular post for adjudication of an immigrant visa by a

<sup>286</sup> The fee authority is contained in 8 U.S.C. 1183a Note, added by Public Law 106-113, Div. B, 1000(a)(7) [Div. A, Title II, sec. 232], Nov. 29, 1999, 113 Stat. 1536, 1501A-425, as amended Public Law 107-228, Div. A, Title II, sec. 211(b), Sept. 30, 2002, 116 Stat. 1365.

consular officer.<sup>287</sup> DOS expects that it will incur additional costs to provide this service as a result of this proposed rule. While it is difficult at this time to quantify these increased costs, DOS identified several sources of possible increased costs for these services resulting from this proposed rule such as contract modifications. Many of the additional costs that DOS would incur under this proposed rule would ultimately be factored into the fee DOS would charge to those submitting an Affidavit or Contract when fees are revised and, if so, these costs would be borne by applicants in the form of higher fees.

#### h. Benefits of Proposed Regulatory Changes

DHS anticipates that the proposed rule would produce some qualitative benefits. DHS anticipates the proposed rule to produce benefits by strengthening the enforcement mechanism for Affidavits and Contracts through elimination of the subpoena requirement in 8 CFR 213a.4, which would make it easier for means-tested public benefits granting agencies to recover payment for any means-tested public benefits that an intending immigrant receives during the period in which an Affidavit or a Contract is enforceable.<sup>288</sup> The changes DHS is proposing would hold accountable sponsors and household members who agree to use their income and assets to support an intending immigrant if an intending immigrant ultimately receives means-tested public benefits.

Additionally, the proposed rule would update the evidentiary requirements for sponsors submitting an Affidavit and household members submitting Contracts. The updated evidentiary requirements would provide immigration officers and immigration judges more effective ways to determine whether the sponsor has the means to maintain an annual income at or above the outlined income threshold, and whether the sponsor is able to provide financial support to the intending immigrant and meet all support obligations during the period an Affidavit is in effect. DHS welcomes

<sup>287</sup> DOS determines this fee based on the costs to DOS in doing this review.

<sup>288</sup> See 8 CFR 213a.4(a)(3). This provision indicates that upon the receipt of a duly issued subpoena, USCIS may provide a certified copy of an Affidavit that has been filed on behalf of a specific alien for use as evidence in any action to enforce an Affidavit, and may also disclose the last known address and Social Security number of the sponsor, substitute sponsor, or joint sponsor, but that regulation currently does not provide an address or office to which the subpoena should be sent.

public comment regarding reimbursement from sponsors as well the frequency in which sponsors have insufficient means to reimburse benefits-granting agencies.

Moreover, the proposed rule would update and improve how means-tested public benefit-granting agencies obtain immigration status information from USCIS about individuals who are seeking means-tested public benefits and how means-tested public benefit-granting agencies provide information to USCIS. The current regulations require a duly issued subpoena before USCIS is authorized to provide a certified copy of Form I-864 or Form I-864EZ to a requesting party for use in any action to enforce the sponsorship obligation.<sup>289</sup> The proposed rule would eliminate this requirement and instead allow a requesting party to submit a formal request for an Affidavit or a Contract directly to USCIS. DHS also is proposing to revise the process for informing USCIS about judgments obtained against sponsors and indigency determinations to give USCIS flexibility to determine a more efficient mechanism for information reporting. The current regulations require that copies of judgments and indigency determinations be mailed to a specific USCIS office in Washington, DC.<sup>290</sup> The proposed rule would remove the address specified in the regulation<sup>291</sup> and permit USCIS to provide a different mechanism for submitting copies of judgments and indigency determinations.

#### i. Regulatory Alternatives

DHS considered various regulatory alternatives to a number of the provisions of the proposed rule. First, DHS considered permanently barring an individual who had ever received means-tested public benefits from executing an Affidavit. However, DHS concluded such a policy would unreasonably restrict an individual from petitioning for eligible family members as is permitted by section 204 of the Act, 8 U.S.C. 1154. DHS welcomes public comments or data on individuals executing an Affidavit or a Contract who have received means-tested public benefits. DHS welcomes public comments or references to studies on the correlation between sponsors' receipt of means-tested public benefits in the past and their failure to reimburse agencies for benefits received by immigrants they sponsor.

<sup>289</sup> See 8 CFR 213a.4(a)(3).

<sup>290</sup> See 8 CFR 213a.4(c).

<sup>291</sup> See 8 CFR 213a.4(c)(3).

A study conducted by the U.S. Census Bureau examined participation in government assistance programs from 2009 to 2012.<sup>292</sup> According to the study, the average monthly participation rate in one or more major means-tested assistance programs over this period was approximately 52.2 million people in 2012, which was about 21.3 percent of the U.S. population. In the context of the proposed rule, if we applied this percentage to the estimated total population of 1,072,068 executing an Affidavit using Form I-864 and Form I-864EZ, approximately 228,350 fewer individuals annually could execute an Affidavit and serve as sponsors to intending immigrants.<sup>293</sup>

DHS requests public comments on the economic effect of the proposed requirement for a joint sponsor when the petitioning sponsor or substitute sponsor has received any means-tested public benefits within 36 months of executing an Affidavit. DHS is particularly interested in views and data that would inform us about the economic effect that DHS should consider concerning the receipt of means-tested public benefits by petitioning sponsors and substitute sponsors.

Another regulatory alternative DHS considered was to permanently bar an individual who had previously defaulted on a support obligation from executing an Affidavit. However, because section 213A(f)(1)(D) of the Act, 8 U.S.C. 1183a(f)(1)(D), requires that the petitioner for family-based immigrants execute an Affidavit, DHS concluded that such a policy would unreasonably restrict an individual from petitioning for eligible family members as permitted by section 204 of the Act, 8 U.S.C. 1154. Instead, DHS is proposing to require a joint sponsor execute an Affidavit in this circumstance.

DHS requests public comments on the economic effect of the proposed requirement for a joint sponsor if the petitioning sponsor or substitute sponsor has previously defaulted on any support obligation. DHS is particularly interested in views and data that would inform us about the economic effect that

<sup>292</sup> See U.S. Census Bureau, Dynamics of Economic Well-Being: Participation in Government Programs, 2009–2012: Who Gets Assistance? (May 2015), available at <https://www.census.gov/content/dam/Census/library/publications/2015/demo/p70-141.pdf> (last visited June 2, 2020).

<sup>293</sup> Calculation: (Estimated total population executing an Affidavit using Forms I-864 or I-864EZ) \* (Average monthly participation rate in one or more major means-tested assistance programs) = 1,072,068 \* 21.3 percent = 228,350.484 = 228,350 (rounded) fewer individuals annually could execute an Affidavit and serve as sponsors to intending immigrants.

DHS should consider regarding previous defaults on support obligations by a petitioning sponsor or substitute sponsor.

DHS also considered eliminating the Contract entirely, and consider only the sponsor's income and assets for the purposes of the Affidavit, which would prevent any individual who is unable to meet the applicable income threshold based solely on his or her own income and assets from undertaking a support obligation without a joint sponsor agreeing to be jointly and severally liable for the sponsored immigrant. This alternative is consistent with section 213A(f)(6)(A) of the Act, 8 U.S.C. 1183a(f)(6)(A), which references only the income and assets of intending immigrants and sponsors. Additionally, it is consistent with one of the aims of this rule—better ensuring that sponsors can meet their support obligations, insofar as the household member is not required to demonstrate the means to maintain income at the applicable income threshold or that the income is actually available to the sponsor to use to support the intending immigrant. In cases in which the household member does not have income over the income threshold, it is possible that neither the sponsor nor the household member can meet the support obligations alone, even though agreeing to be jointly and severally liable.

However, DHS did not want preclude the immigration of an intending immigrant's minor children because the petitioning sponsor could not use the income and assets of the intending immigrant parent. Furthermore, DHS recognizes that dual income households are a common and accepted way for households to meet their needs. Accordingly, DHS decided to retain the option of the Contract, but limit the individuals who are eligible to execute it.

In the context of the proposed rule, the estimated annual total population of household members who execute a Contract by filing Form I-864A is approximately 48,824. Therefore, the regulatory alternative to eliminate the Contract altogether could prevent as many as approximately 48,824 immigrants annually from being able to obtain sponsorship through executed Affidavits in need of support of household members by executing a Contract.

Currently, any household member who meets the criteria set forth in the current household income definition may execute a Contract. Under the proposed definition, household income would only include all income of the sponsor and the sponsor's spouse (if the

sponsor's spouse executes a Form I-864A) obtained from employment in a lawful enterprise or some other lawful source. See proposed 8 CFR 213a.1(f). DHS believes that limiting household income to the income of the sponsor, the sponsor's spouse, and, in certain circumstances, the intending immigrant, more accurately reflects income that will be available to the sponsor to support the intending immigrant under the support obligation. Moreover, DHS believes there is a greater likelihood that the income of the sponsor's spouse (compared to other household members) would actually be available to the sponsor to support the intending immigrant because spouses often share financial resources with each other. DHS further believes that there is a greater likelihood that the income of an intending immigrant would actually be available to the sponsor if the intending immigrant is accompanied by his or her spouse or children because the intending immigrant has a vested interest in his or her own family's success and well-being in the United States.

DHS requests public comments on the economic effect of the proposed changes to the household income definition, including the proposed limitation on who may execute a Contract. DHS is particularly interested in views and data that would inform us about the economic effect that DHS should consider regarding the definition of household income and the availability of household income to a sponsor to support an intending immigrant.

Finally, DHS considered maintaining in the regulation the requirement that USCIS will provide a certified copy of an Affidavit only after USCIS receives a duly issued subpoena.<sup>294</sup> By maintaining this provision, a requesting party would be required to continue navigating a burdensome and costlier process for obtaining a subpoena just to receive a copy of an Affidavit. Additionally, the existing requirement may discourage benefit-granting agencies and sponsored immigrants from enforcing the support obligations and/or seeking reimbursement from those who have received public benefits and were not eligible to receive them.

Consistent with Congressional intent that sponsors fulfill their support obligations during the period of enforceability, DHS is proposing to eliminate the subpoena requirement in order to facilitate the initiation of repayment or reimbursement actions. This proposed change is also consistent with the Presidential Memorandum's

directive to establish procedures for data sharing, which will better ensure that existing immigration laws are enforced and that sponsors fulfill their support obligations during the period of enforceability. As a result of eliminating this requirement, it would be less costly, less burdensome, and more efficient to instead allow requesting parties to submit a formal request for an Affidavit or a Contract to USCIS.

#### 6. Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs

This proposed rule is expected to be an E.O. 13771 regulatory action. Details on the estimated costs of this proposed rule can be found in the rule's economic analysis.

#### B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121 (March 29, 1996), requires Federal agencies to consider the potential impact of regulations on small businesses, small governmental jurisdictions, and small organizations during the development of their rules. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, or governmental jurisdictions with populations of less than 50,000.<sup>295</sup>

This proposed rule seeks to amend its regulations related to the Affidavit. The proposed rule changes certain requirements for the Affidavit and is intended to better ensure that all sponsors, as well as household members who execute a Contract, have the means to maintain income at the applicable income threshold and are capable of meeting their support obligations under section 213A of the Act, 8 U.S.C. 1183a, during the period in which the Affidavit is enforceable. This rule is also aimed at strengthening the enforcement mechanism for the Affidavit and Contract, which would allow means-tested public benefits granting agencies to recover payment for any means-tested public benefits that an intending immigrant receives during the period in which the Affidavit or Contract is enforceable.

This proposed rule would make changes to the process of filing an Affidavit or Contract and the requirements sponsors and household

<sup>294</sup> See 8 CFR 213a.4(a)(3).

<sup>295</sup> A small business is defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act, 15 U.S.C. 632.



members must fulfill, including updating the evidentiary requirements for sponsors and household members submitting an Affidavit or Contract, specifying that a sponsor's prior receipt of means-tested public benefits and a sponsor's failure to meet support obligations on another executed Affidavit or Contract can impact the determination as to whether the sponsor has the means to maintain the required income threshold to support the intending immigrant, who would be considered as a household member for purposes of submitting and executing a Contract, updating and improving how means-tested public benefit-granting agencies obtain from and provide information to USCIS, and clarifying which categories of aliens are exempt from the Affidavit requirement.

Of the categories of immigrants where a sponsor is required to submit Form I-864 for an immigrant, there may be employment-based immigrants in cases where a U.S. citizen, lawful permanent resident, or U.S. national relative filed the employment-based immigrant visa petition or such relative has a significant ownership interest (five percent or more) in the entity that filed the petition.<sup>296</sup> In such employment-based immigrant cases, the relative and not the entity is the sponsor (or a sponsor if the relative needs a joint sponsor), and submits a Form I-864. The entities are an avenue for such immigrants to enter into the country, however, the entities themselves are not the sponsors of such intending immigrants. The relative in these circumstances is the sponsor (or a sponsor if the relative needs a joint sponsor), and must meet the financial obligations of Form I-864. In such a scenario where a U.S. citizen, U.S. national, or lawful permanent resident employer who owns a small entity that has a legitimate business need for an alien worker and petitions for an immigrant relative to obtain an employment-based immigrant visa would also need to agree to be that immigrant's sponsor by submitting an Affidavit using Form I-864. Similarly, where a small business entity that has a legitimate business need for an alien worker files an employment-based immigrant petition for an alien who is

<sup>296</sup> The other categories include: (1) All immediate relatives of U.S. citizens (spouses, unmarried children under 21 years of age, and parents of U.S. citizens 21 years of age and older); and (2) All family-based preference immigrants (unmarried sons and daughters of U.S. citizens, spouses and unmarried sons and daughters of lawful permanent residents, married sons and daughters of U.S. citizens, and brothers and sisters of U.S. citizens 21 years of age and older).

a relative of a U.S. citizen, U.S. national, or lawful permanent relative who owns five percent or more of that small business entity, the U.S. citizen, U.S. national, or lawful permanent relative of the alien would also need to agree to be that immigrant's sponsor by submitting an Affidavit using Form I-864. Therefore, this proposed rule regulates individuals and individuals are not defined as a "small entity" by the RFA. Based on the evidence presented in this RFA and throughout this preamble, DHS certifies that this rule will not have a significant economic impact on a substantial number of small entities.

#### C. Small Business Regulatory Enforcement Fairness Act of 1996

This proposed rule is a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This proposed rule likely would result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

#### D. Congressional Review Act

This proposed rule is a major rule as defined by 5 U.S.C. 804, also known as the "Congressional Review Act," as enacted in section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104-121, 110 Stat. 847, 868 *et seq.* Accordingly, this rule, if enacted as a final rule, would be effective at least 60 days after the date on which Congress receives a report submitted by DHS under the Congressional Review Act, or 60 days after the final rule's publication, whichever is later.

#### E. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (UMRA) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of UMRA requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may directly result in a \$100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector. The inflation-adjusted value of \$100 million in 1995 is approximately \$168

million in 2019 based on the Consumer Price Index for All Urban Consumers.<sup>297</sup>

This proposed rule does not contain such a mandate. The requirements of Title II of UMRA, therefore, do not apply, and DHS has not prepared a statement under UMRA.

#### F. Executive Order 13132: Federalism

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. DHS does not expect this proposed rule would impose substantial direct compliance costs on State and local governments, or preempt State law. Therefore, in accordance with section 6 of Executive Order 13132, it is determined this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

#### G. Executive Order 12988: Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

#### H. Paperwork Reduction Act

USCIS Form I-864

Under the Paperwork Reduction Act of 1995, Public Law 104-13, all agencies are required to submit to OMB, for review and approval, any reporting requirements inherent in a rule. DHS and USCIS invite comments on the impact to the proposed collection of information. In accordance with the PRA, the information collection notice is published in the **Federal Register** to obtain comments regarding the proposed edits to the information collection instrument.

Comments are encouraged and will be accepted until December 1, 2020. All submissions received must include the agency name and OMB Control Number

<sup>297</sup> See U.S. Bureau of Labor Statistics, *Historical Consumer Price Index for All Urban Consumers (CPI-U): U.S. City Average, All Items, available at <https://www.bls.gov/cpi/tables/supplemental-files/historical-cpi-u-202003.pdf>* (last visited June 2, 2020).

Calculation of inflation: (1) Calculate the average monthly CPI-U for the reference year (1995) and the current year (2019); (2) Subtract reference year CPI-U from current year CPI-U; (3) Divide the difference of the reference year CPI-U and current year CPI-U by the reference year CPI-U; (4) Multiply by 100 = [(Average monthly CPI-U for 2019—Average monthly CPI-U for 1995)/(Average monthly CPI-U for 1995)] \* 100 = [(255.657 - 152.383)/152.383] \* 100 = (103.274/152.383) \* 100 = 0.6777 \* 100 = 67.77 percent = 68 percent (rounded)

Calculation of inflation-adjusted value: \$100 million in 1995 dollars \* 1.68 = \$168 million in 2019 dollars.

1615–0075 in the body of the submission. Comments on this information collection should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Overview of information collection:*

(1) *Type of Information Collection:* Revision of a Currently Approved Collection

(2) *Title of the Form/Collection:*

- Affidavit of Support Under Section 213A of the INA, Form I–864

- Affidavit of Support Under Section 213A of the INA, Form I–864EZ

- Contract Between Sponsor and Household Member, Form I–864A

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Form I–864, Form I–864EZ, and Form I–864A; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

- *Form I–864:* Primary: Individuals: This form was developed for sponsors to submit for intending immigrants who are required to submit Form I–864 with their application for adjustment of status or an immigrant visa. Supporting documentation demonstrating sponsor eligibility must be submitted with the form. The form instructions list the relevant documentation. USCIS is revising this form and accompanying instructions to correspond with revisions related to information about a sponsor's receipt of means-tested public benefits, default on prior Affidavits of Support Under Section 213A of the INA or Contracts Between Sponsor and Household Member, requiring 3 years of tax returns, requiring credit reports and credit scores, and changes to household members.

- *Form I–864EZ:* Primary: Individuals: This form was developed for sponsors to submit for intending

immigrants who are required to submit Form I–864 with their application for adjustment of status or an immigrant visa. A sponsor may use Form I–864EZ only if the sponsor is (1) sponsoring only one intending immigrant, and (2) relying solely on income to demonstrate their ability to maintain the necessary level of income. Supporting documentation demonstrating sponsor eligibility must be submitted with the form. The form instructions list the relevant documentation. USCIS is revising this form and accompanying instructions to correspond with revisions related to information about a sponsor's receipt of means-tested public benefits, default on prior Affidavits of Support Under Section 213A of the INA or Contracts Between Sponsor and Household Member, requiring 3 years of tax returns, requiring credit reports and credit scores, and changes to who can file the form.

- *Form I–864A:* Primary: Individuals: Form I–864A was developed for household members who have agreed to use their income and assets to help a sponsor support an intending immigrant. Supporting documentation demonstrating financial ability must be submitted with the form. The form instructions list the relevant documentation. USCIS is revising this form and accompanying instructions to correspond with revisions related to which individuals can be household members for Affidavit of Support Under Section 213A of the INA purposes, and requiring 3 years of tax returns.

- *Form I–864W:* USCIS is proposing to eliminate the Form I–864W instrument. The information from this form will instead be collected on Form I–485.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The Paperwork Reduction Act requires an agency to provide an estimated number of likely respondents for each collection of information. USCIS relies on a combination of information obtained from databases, subject matter experts, and projected intakes from other collections of information, which may have a relationship to the form for which an estimate is provided. The agency uses this information and/or may use other data that might not be found in an official database to guide decision-making on an estimated number of respondents. Since the estimates for purposes of PRA submissions may be made while official projections are still in progress, it should be understood that these estimates are subject to being updated as more data become available.

The estimated total number of respondents for the information collection Form I–864 is 446,313 and the estimated hour burden per response is 6.5 hours. The estimated total number of respondents for the information collection Form I–864A is 42,892 and the estimated hour burden per response is 2.25 hours. The estimated total number of respondents for the information collection Form I–864EZ is 114,860 and the estimated hour burden per response is 3 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection of information is 3,342,122 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is \$147,995,925.00.

USCIS Form I–485

Under the Paperwork Reduction Act of 1995, Public Law 104–13, all agencies are required to submit to OMB, for review and approval, any reporting requirements inherent in a rule. DHS and USCIS invite comments on the impact to the proposed collection of information. In accordance with the PRA, the information collection notice is published in the **Federal Register** to obtain comments regarding the proposed edits to the information collection instrument.

Comments are encouraged and will be accepted until December 1, 2020. All submissions received must include the agency name and OMB Control Number 1615–0023 in the body of the submission. Comments on this information collection should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology,

e.g., permitting electronic submission of responses.

*Overview of information collection:*

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application to Register Permanent Residence or Adjust Status.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Form I-485; Form I-485A; Form I-485J; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. The information on Form I-485 is used to request and determine eligibility for adjustment of permanent residence status or an immigrant visa. Supplement A is used to adjust status under section 245(i) of the Immigration and Nationality Act (Act).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I-485 is 382,264 and the estimated hour burden per response is 6.42 hours. The estimated total number of respondents for the information collection I-485, Supplement A is 36,000 and the estimated hour burden per response is 1.25 hour. The estimated total number of respondents for the information collection I-485, Supplement J is 28,309 and the estimated hour burden per response is 1 hour. The estimated total number of respondents for the information collection of Biometrics is 305,811 and the estimated hour burden per response is 1.17 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 2,885,243 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is \$131,116,552.

USCIS Form G-1563

Under the Paperwork Reduction Act of 1995, Public Law 104-13, all agencies are required to submit to OMB, for review and approval, any reporting requirements inherent in a rule. DHS and USCIS invite comments on the impact to the proposed collection of information. In accordance with the PRA, the information collection notice is published in the **Federal Register** to obtain comments regarding the

proposed edits to the information collection instrument.

Comments are encouraged and will be accepted until December 1, 2020. All submissions received must include the agency name and OMB Control Number 1615-NEW in the body of the submission. Comments on this information collection should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Overview of information collection:*

(1) *Type of Information Collection:* Request for New Information Collection.

(2) *Title of the Form/Collection:* Request for Certified Copy of Affidavit of Support Under Section 213A of the INA or Contract Between Sponsor and Household Member.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* G-1563; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or entities. Individuals and entities who are authorized to receive a certified copy of an Affidavit or Contract, such as when the certified copy is for use in any action to enforce an Affidavit or Contract against a sponsor or against a household member who executed a Contract, will complete G-1563 to request a certified copy of an Affidavit or Contract pertaining to a specific alien. USCIS will use the information collected on the form to determine if the requestor is authorized to receive a certified copy of an Affidavit or Contract executed on behalf of a specific alien. See Proposed 8 CFR 213a.4(a)(3). This information collection will replace the requirement for a duly issued subpoena that is currently in the regulations, which will enable USCIS to more accurately and efficiently respond to requests for certified copies of Affidavits and

Contracts, and will facilitate the enforcement of the support obligations and/or seeking reimbursement.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection G-1563 is 25 and the estimated hour burden per response is 0.833 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 21 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is \$1,250.

*I. Family Assessment*

DHS has reviewed this proposed rule in line with the requirements of section 654 of the Treasury General Appropriations Act, 1999, Public Law 105-277. With respect to the criteria specified in section 654(c)(1), DHS has determined that the proposed rule may decrease disposable income and increase the poverty of certain families and children, including U.S. citizen children. For the reasons stated elsewhere in this preamble, however, DHS has determined that the benefits of the action justify the financial impact on the family. Further, the proposed action modifies the sponsorship requirement of demonstration of means to maintain income. As a result, the proposed regulatory action, if finalized, may increase the number of aliens found inadmissible under section 212(a)(4) of the Act, 8 U.S.C. 1182(a)(4).

*J. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

*K. National Environmental Policy Act (NEPA)*

DHS assesses proposed actions to determine whether NEPA applies and the appropriate level of NEPA review. DHS Directive 023-01, Rev. 01 and DHS Instruction Manual 023-01-001-01, Rev. 01, *Implementation of the National*

*Environmental Policy Act*, establish the procedures DHS and its components use to comply with NEPA and the Council on Environmental Quality (CEQ) regulations for implementing NEPA, codified in 40 CFR parts 1500 through 1508. The CEQ regulations allow Federal agencies to establish, with CEQ review and concurrence, categories of actions (“categorical exclusions”) which experience has shown do not individually or cumulatively have a significant effect on the human environment and, therefore, do not require an Environmental Assessment or Environmental Impact Statement. 40 CFR 1507.3(b)(2)(ii) and 1508.4. DHS has established categorical exclusions in Appendix A of the Instruction Manual.

Under DHS NEPA implementing procedures, for an action to be categorically excluded, it must satisfy each of the following three conditions: (1) The entire action clearly fits within one or more of the categorical exclusions; (2) the action is not a piece of a larger action; and (3) no extraordinary circumstances exist that create the potential for a significant environmental impact. Instruction Manual, section V.B(2)(a–c).

This action is the promulgation of proposed amendments to the existing Affidavits of Support on Behalf of Immigrants regulations codified in 8 CFR part 213a. Under section 213A of the Immigration and Nationality Act (INA), 8 U.S.C. 1183a, certain immigrants are required to submit an Affidavit of Support Under Section 213A of the INA (Affidavit) executed by a sponsor who promises to provide financial support for the sponsored immigrant and accepts liability for reimbursing the costs of any means-tested public benefits a sponsored immigrant receives while the Affidavit is in effect. The proposed amendments change certain requirements for the Affidavit and are intended to better ensure that all sponsors, as well as household members who execute a Contract Between Sponsor and Household Member (Contract), have the means to maintain income at the applicable threshold and are capable of meeting their support obligations as required under section 213A of the Act, 8 U.S.C. 1183a. The amendments would make changes to the following: When an applicant is required to submit an Affidavit from a joint sponsor; who may be a household member for purposes of executing a Contract; the evidentiary requirements for sponsors completing an Affidavit and household members completing a Contract; and who is considered as part of a sponsor’s household size. The amendments would

also update procedural requirements for reporting and information sharing between authorized parties and USCIS.

In general, the proposed amendments would require a more in-depth administrative evaluation of the evidence submitted as part of the applicant’s immigration benefit application by an officer when determining whether an Affidavit would be accepted as sufficient, and could result in more adjudicative findings of ineligibility for adjustment of status, due to inadmissibility based on the public charge ground. There is a high demand for immigrant visas. Even if a greater number of aliens were found to be inadmissible on the public charge ground, there may be some replacement effect from others who would, in turn, be considered for the existing visas. DHS cannot estimate with any degree of certainty the extent to which increased findings of inadmissibility on the public charge ground would result in fewer individuals being admitted to the United States. DHS does not anticipate that the revised administrative evaluation of Affidavits would result in an increase in the number of individuals found to be eligible for adjustment of status. Therefore, DHS foresees no change in any environmental effect of the existing 8 CFR part 213a regulations.

DHS has determined that this action clearly falls within categorical exclusions A3(a) because the proposed amended regulations are strictly administrative or procedural in nature and A3(d) because the proposed amendments will not change any environmental effect of the existing 8 CFR part 213a regulations. Furthermore, the proposed amendments are not part of a larger action and do not present extraordinary circumstances creating the potential for significant environmental impacts. Therefore, this action is categorically excluded from further NEPA review.

#### *L. National Technology Transfer and Advancement Act*

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus

standard bodies. This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### *M. Signature*

The Acting Secretary of Homeland Security, Chad F. Wolf, having reviewed and approved this document, is delegating the authority to electronically sign this document to Chad R. Mizelle, who is the Senior Official Performing the Duties of the General Counsel for DHS, for purposes of publication in the **Federal Register**.

#### **List of Subjects in 8 CFR Part 213a**

Administrative practice and procedure, Immigration, Reporting and recordkeeping requirements.

#### **Proposed Regulatory Amendments**

Accordingly, DHS proposes to amend part 213a of chapter I of title 8 of the Code of Federal Regulations as follows:

#### **PART 213a—AFFIDAVITS OF SUPPORT ON BEHALF OF IMMIGRANTS**

■ 1. The authority citation for part 213a continues to read as follows:

**Authority:** 8 U.S.C. 1183a; 8 CFR part 2.

■ 2. Section 213a.1 is amended by:

- a. Designating the definitions as paragraphs (a) through (o);
- b. Redesignating newly designated paragraphs (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), and (o) as paragraphs (c), (e), (f), (g), (h), (i), (j), (k), (l), (n), (o), (p), (q), (r), and (s), respectively;
- c. Adding new paragraphs (a) and (b);
- d. Revising newly redesignated paragraph (c);
- e. Adding a new paragraph (d);
- f. Revising newly redesignated paragraphs (e) through (i) and (k);
- g. Adding a new paragraph (m);
- h. Revising newly redesignated paragraph (q); and
- i. Adding paragraph (t).

The additions and revisions read as follows:

#### **§ 213a.1 Definitions.**

\* \* \* \* \*

(a) *Active duty* means:

(1) Full-time duty in the U.S. Armed Forces, other than active duty for training;

(2) Full-time duty (other than for training purposes) as a commissioned officer of the Regular or Reserve Corps of the Public Health Service;

(3) Full-time duty as a commissioned officer of the National Oceanic and Atmospheric Administration; and

(4) Full-time duty as a cadet or midshipman at the United States

Military Academy, United States Naval Academy, United States Air Force Academy, or the United States Coast Guard Academy.

(b) *Active duty for training* means:

(1) Full-time duty in the U.S. Armed Forces performed by Reserves for training purposes;

(2) Full-time duty for training purposes performed as a commissioned officer of the Reserve Corps of the Public Health Service;

(3) Full-time duty as a member, cadet, or midshipman of the Reserve Officers Training Corps while attending field training or practice cruises; and

(4) In the case of members of the National Guard or Air National Guard of any State, full-time duty under sections 316, 502, 503, 504, or 505 of title 32, United States Code. The term “active duty for training” does not include duty performed as a temporary member of the Coast Guard Reserve.

(c) *Domicile* means the place where a sponsor has his or her principal residence, as defined in section 101(a)(33) of the Act, with the intention to maintain that residence for the foreseeable future.

(d) *Execute*, for the purpose of this part, means signing and submitting an Affidavit of Support Under Section 213A of the INA or a Contract Between a Sponsor and Household Member on the appropriate forms in accordance with the form instructions to USCIS or the Department of State, as appropriate.

(e) *Federal poverty line* means the level of income in the Federal Poverty Guidelines, as issued by the Secretary of Health and Human Services in accordance with 42 U.S.C. 9902, that is applicable based on the household size involved. For purposes of considering the Affidavit of Support Under Section 213A of the INA, DHS and Consular Posts will use the most recent poverty guidelines published in the **Federal Register** by the U.S. Department of Health and Human Services. These guidelines are updated annually, and DHS and Consular Posts will begin to use updated guidelines on the first day of the second month after the date the guidelines are published in the **Federal Register**.

(f) *Household income* means the income used to determine whether the sponsor meets the minimum income requirements under sections 213A(f)(1)(E), 213A(f)(3), or 213A(f)(5) of the Act.

(1) Household income includes all income, obtained from employment in a lawful enterprise or some other lawful source, of the sponsor and the sponsor’s spouse, if the spouse is at least 18 years old and has executed a Contract

Between Sponsor and Household Member.

(2) Household income does not include the income of an intending immigrant unless:

(i) The intending immigrant is either the sponsor’s spouse or has the same principal residence as the sponsor; and

(ii) The preponderance of the evidence shows that the intending immigrant’s income results from employment in a lawful enterprise or some other lawful source and such employment is authorized pursuant to 8 CFR 274a.12 and will continue to be available to the intending immigrant after acquiring lawful permanent resident status.

(iii) The prospect of employment in the United States that has not yet actually begun will not be sufficient to meet the requirement of this paragraph (f)(2).

(3) Household income also does not include any income accrued or earned from unlawful enterprises or unlawful activities, such as proceeds from illegal gambling or drug sales, or from means-tested public benefits, as defined in paragraph (l) of this section.

(g) *Household size* means the number obtained by adding the number of individuals specified in this paragraph (g). In calculating the sponsor’s household size, each individual is only counted once. If the intending immigrant’s spouse or child is a U.S. citizen or already holds the status of an alien lawfully admitted for permanent residence, then the sponsor should not include that spouse or child in determining the total household size, unless the intending immigrant’s spouse or child is a dependent of the sponsor, or is otherwise part of the sponsor’s household size as outlined in this section.

(1) In all cases, the household size includes:

(i) The sponsor;

(ii) The sponsor’s spouse;

(iii) All of the sponsor’s children, as defined in section 101(b)(1) of the Act (other than a stepchild who meets the requirements of section 101(b)(1)(B) of the Act, if the stepchild does not reside with the sponsor, is not claimed by the sponsor as a dependent for tax purposes, and is not seeking to immigrate based on the stepparent/stepchild relationship), unless these children have reached the age of majority under the law of the place of domicile and the sponsor did not claim them as dependents on the sponsor’s Federal income tax return for the most recent tax year;

(iv) Any other individuals (whether related to the sponsor or not) whom the

sponsor has claimed as dependents on the sponsor’s Federal income tax return for the most recent tax year, even if such individuals do not have the same principal residence as the sponsor, plus the number of aliens the sponsor has sponsored under any other Affidavit of Support Under Section 213A of the INA for whom the sponsor’s support obligation has not terminated (including any aliens for whom the sponsor has executed an Affidavit of Support Under Section 213A of the INA that has not yet become effective in accordance with § 213a.2(e)(1), unless the sponsor has either timely withdrawn the Affidavit of Support Under Section 213A of the INA or the adjustment of status application or immigrant visa application associated with that Affidavit of Support Under Section 213A of the INA has been denied and any appeal exhausted or waived); and

(v) All aliens to be sponsored under the current Affidavit of Support Under Section 213A of the INA, even if such aliens do not or will not have the same principal residence as the sponsor, plus the number of aliens for whom the sponsor executed a Contract Between Sponsor and Household Member for whom the support obligation has not terminated (including any aliens for whom the sponsor has executed a Contract Between Sponsor and Household Member that has not yet become effective in accordance with § 213a.2(e)(1), unless that Contract Between Sponsor and Household Member has been timely withdrawn or the adjustment of status application or immigrant visa application associated with that Contract Between Sponsor and Household Member has been denied and any appeal exhausted or waived).

(2) If a child, as defined in section 101(b)(1) of the Act, or spouse of the principal intending immigrant is an alien who does not currently reside in the United States and who either is not seeking to immigrate at the same time as, or will not seek to immigrate within six months of the principal intending immigrant’s immigration, the sponsor may exclude that child or spouse in calculating the sponsor’s household size.

(h) *Immigration officer*, solely for purposes of this part, includes a consular officer, as defined by section 101(a)(9) of the Act, as well as an immigration officer, as defined in 8 CFR 1.2.

(i) *Income* means an individual’s total income (adjusted gross income for those who file an Income Tax Return for Single Filers With No Dependents) for purposes of the individual’s U.S. Federal income tax liability, including a

joint income tax return, excluding any income earned or derived from unlawful enterprises or unlawful activities, such as proceeds from illegal gambling or drug sales, or from means-tested public benefits, as defined in paragraph (l) of this section. Only an individual's Federal income tax return—that is, neither a state or territorial income tax return nor an income tax return filed with a foreign government—can be filed with an Affidavit of Support Under Section 213A of the INA, or with the Contract Between Sponsor and Household Member, unless the individual had no duty to file a Federal income tax return, and claims his or her state, territorial, or foreign taxable income is sufficient to establish the sufficiency of the Affidavit of Support Under Section 213A of the INA or Contract Between Sponsor and Household Member.

\* \* \* \* \*

(k) *Joint sponsor* refers to any individual who meets the requirements of section 213A(f)(1)(A), (B), (C), and (E) of the Act and 8 CFR 213a.2(c)(1)(i), and who, as permitted by section 213A(f)(5)(A) of the Act, executes an Affidavit of Support Under Section 213A of the INA in which he or she accepts joint and several liability with the petitioning sponsor or substitute sponsor, in any case in which the petitioning sponsor's or substitute sponsor's household income is not sufficient to satisfy the requirements of section 213A of the Act.

\* \* \* \* \*

(m) *Petitioning sponsor* refers to any individual who meets all the requirements of section 213A(f)(1)(A) through (E) of the Act; meets the requirements of section 213A(f)(1)(A), (B), (C), and (D) and (f)(2) of the Act; meets the requirements of section 213A(f)(1)(A), (B), (C), and (D) and (f)(3) of the Act; meets the requirements of section 213A(f)(1)(A), (B), (C), (f)(4)(A) and (f)(4)(B)(i) of the Act; or meets the requirements of section 213A(f)(1)(A), (B), (C), (f)(4)(A) and (f)(4)(B)(ii) of the Act.

\* \* \* \* \*

(q) *Sponsor* refers to any individual who is a petitioning sponsor, joint sponsor, or substitute sponsor, as defined in this part, unless otherwise specified.

\* \* \* \* \*

(t) *U.S. Armed Forces*, otherwise known as Armed Forces of the United States, means Army, Navy, Air Force, Marine Corps, and Coast Guard.

■ 3. Section 213a.2 is amended by:

■ a. Removing paragraph (a)(1)(i)(B) and redesignating paragraph (a)(1)(i)(A) as paragraph (a)(1)(i).

■ b. Removing paragraph (a)(1)(ii) and redesignating paragraphs (a)(1)(iii) through (v) as paragraphs (a)(1)(ii) through (iv).

■ c. Revising paragraphs (a)(2)(ii), (c)(1)(i), (c)(2)(i)(A) through (D), (c)(2)(ii)(C), (c)(2)(iii)(B), and (c)(2)(v).

The revisions and additions read as follows:

**§ 213a.2 Use of affidavit of support.**

(a) \* \* \*

(2) \* \* \*

(ii) Paragraph (a)(1) of this section does not apply if the intending immigrant:

(A) Filed a visa petition on his or her own behalf pursuant to section 204(a)(1)(A)(ii), (iii), or (iv) or section 204(a)(1)(B)(ii) or (iii) of the Act, or who seeks to accompany or follow-to-join an immigrant who filed a visa petition on his or his own behalf pursuant to section 204(a)(1)(A)(ii), (iii), or (iv) or section 204(a)(1)(B)(ii) or (iii) of the Act;

(B) Seeks admission as an immigrant on or after December 19, 1997, in a category specified in paragraph (a)(2)(i) of this section with an immigrant visa issued on the basis of an immigrant visa application filed with the Department of State officer before December 19, 1997;

(C) Establishes, on the basis of the alien's own Social Security Administration record or those of his or her spouse or parent(s), that he or she has already worked, or under section 213A(a)(3)(B) of the Act, can already be credited with, 40 qualifying quarters of coverage as defined under title II of the Social Security Act, 42 U.S.C. 401, *et seq.*;

(D) Is a child admitted under section 211(a) of the Act and 8 CFR 211.1(b)(1);

(E) Is the child of a U.S. citizen and the child's lawful admission for permanent residence and residence in the United States in the U.S. citizen parent(s)' legal and physical custody will result in the child's automatic acquisition of citizenship under section 320 of the Act, as amended, unless the child is considered to be coming to the United States for adoption under section 101(b)(1)(F) or 101(b)(1)(G) of the Act;

(F) Is a VAWA Self-Petitioner unless adjusting status based on an employment-based petition that requires an Affidavit of Support Under Section 213A of the INA as described in section 212(a)(4)(D) of the Act;

(G) Is in valid T nonimmigrant status under section 101(a)(15)(T) of the Act at the time the alien seeks adjustment and maintains that status through time of adjudication, unless adjusting status

based on an employment-based petition that requires an Affidavit of Support Under Section 213A of the INA as described in section 212(a)(4)(D) of the Act;

(H) Is in valid U nonimmigrant status under section 101(a)(15)(U) of the Act at the time the alien adjusts status and maintains that status through time of adjudication, unless adjusting status based on an employment-based petition that requires an Affidavit of Support Under Section 213A of the INA as described in section 212(a)(4)(D) of the Act;

(I) Seeks admission based on Section 13 of Public Law 85–316 (September 11, 1957), as amended by Public Law 97–116 (December 29, 1981);

(J) Is in valid S nonimmigrant status under section 101(a)(15)(S) of the Act and seeks to adjust status based on Section 245(j) of the Act;

(K) Seeks admission based on the Amerasian Act, Public Law 97–359 (October 22, 1982);

(L) Seeks admission as an Afghan and Iraqi interpreter, or Afghan or Iraqi national employed by or on behalf of the U.S. Government as described in section 1059(a)(2) of the National Defense Authorization Act for Fiscal Year 2006 Public Law 109–163 (Jan. 6, 2006), as amended, and section 602(b) of the Afghan Allies Protection Act of 2009, Public Law 111–8, title VI (Mar. 11, 2009), as amended, 8 U.S.C. 1101 note, and section 1244(g) of the National Defense Authorization Act for Fiscal Year 2008, as amended Public Law 110–181 (Jan. 28, 2008);

(M) Is an alien applying for adjustment of status under the Cuban Adjustment Act, Public Law 89–732 (Nov. 2, 1966), as amended, 8 U.S.C. 1255 note;

(N) Is a Haitian applying for adjustment of status under section 902 of the Haitian Refugee Immigration Fairness Act of 1998, Public Law 105–277, 112 Stat. 2681 (Oct. 21, 1998), as amended, 8 U.S.C. 1255 note;

(O) Is a Lautenberg parolee as described in section 599E of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1990, Public Law 101–167, 103 Stat. 1195, title V (Nov. 21, 1989), as amended, 8 U.S.C. 1255 note;

(P) Is a national of Vietnam, Cambodia, and Laos applying for adjustment of status under section 586 of Public Law 106–429 under 8 CFR 245.21;

(Q) Is an alien who entered the United States prior to January 1, 1972, and who meets the other conditions for being granted lawful permanent residence

under section 249 of the Act and 8 CFR part 249 (Registry);

(R) Is an individual born in the U.S. under diplomatic status under 8 CFR 101.3;

(S) Is an applicant adjusting status who qualifies for a benefit under section 1703 of the National Defense Authorization Act, Public Law 108–136, 117 Stat. 1392 (Nov. 24, 2003), 8 U.S.C. 1151 note (posthumous benefits to surviving spouses, children, and parents);

(T) Is an Amerasian under Amerasian Homecoming Act, Public Law 100–202 (Dec. 22, 1987);

(U) Is a Polish and Hungarian Parolee who was paroled into the United States from November 1, 1989 to December 31, 1991 under section 646(b) of the IIRIRA, Public Law 104–208, Div. C, Title VI, Subtitle D (Sept. 30, 1996), 8 U.S.C. 1255 note;

(V) Is an American Indian born in Canada determined to fall under section 289 of the Act;

(W) Is an asylee or refugee adjusting status under section 209 of the Act;

(X) Is an employment-based immigrant who is not seeking admission or adjustment of status based on an employment-based petition that requires an Affidavit of Support Under Section 213A of the INA as described in section 212(a)(4)(D) of the Act;

(Y) Is a Haitian adjusting status under the Help Haitian Adoptees Immediately to Integrate Act of 2010 (Help HAITI Act), Public Law 111–293, 124 Stat. 3175 (December 9, 2010);

(Z) Is a Diversity Immigrant;

(AA) Is a qualified alien described in section 431(c) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 8 U.S.C. 1641(c), under section 212(a)(4)(E)(iii) of the Act unless adjusting status based on an employment-based petition that requires an Affidavit of Support Under Section 213A of the INA as described in section 212(a)(4)(D) of the Act;

(BB) Is a Cuban and Haitian entrant applying for adjustment of status under section 202 of the Immigration Reform and Control Act of 1986 (IRCA), Public Law 99–603, 100 Stat. 3359 (Nov. 6, 1986), as amended, 8 U.S.C. 1255a note;

(CC) Is a Nicaraguan and other Central American applying for adjustment of status under sections 202(a) and section 203 of the Nicaraguan Adjustment and Central American Relief Act (NACARA), Public Law 105–100, 111 Stat. 2193 (Nov. 19, 1997), as amended, 8 U.S.C. 1255 note;

(DD) Is a special immigrant juvenile as described in section 245(h) of the Act;

(EE) Is a Liberian adjusting under the Liberian Refugee Immigration Fairness Act, Section 7611 of the National Defense Authorization Act for Fiscal Year 2020, Public Law 116–92 (December 20, 2019); or

(FF) Any other category of aliens not required to file an Affidavit of Support Under Section 213A of the INA under section 212(a)(4)(C) or (D) of the Act.

\* \* \* \* \*

(c) \* \* \*

(1)(i) *General.* A sponsor must meet the following requirements:

(A) Be at least 18 years of age;

(B) Be domiciled in the United States or any territory or possession of the United States;

(C) Be a U.S. citizen, U.S. national, or an alien who is lawfully admitted for permanent residence;

(D) Is petitioning for the admission of the alien under section 204 of the Act; and

(E) Demonstrate the means to maintain an annual income equal to at least 125 percent of the Federal Poverty Guidelines based on the sponsor’s household size.

\* \* \* \* \*

(2) \* \* \*

(i) \* \* \*

(A) The sponsor must include with the Affidavit of Support Under Section 213A of the INA an Internal Revenue Service-issued transcript or Internal Revenue Service-transcript or Internal Revenue Service-issued certified copy of his or her complete Federal income tax return for the 3 most recent taxable years (counting from the date of signing, rather than the date of filing of the Affidavit of Support Under Section 213A of the INA). Along with the Internal Revenue Service (IRS)-issued transcript or certified copy, the sponsor must also submit as initial evidence copies of all schedules filed with each return and (if the sponsor submits certified copies, rather than IRS transcripts of the tax return(s)) all Forms W–2 (if the sponsor relies on income from employment) and Forms 1099 (if the sponsor relies on income from sources documented on Forms 1099) in meeting the income threshold. The sponsor may also include as initial evidence: Letter(s) evidencing his or her current employment and income, paycheck stub(s) showing earnings for the most recent six months, financial statements, or other evidence of the sponsor’s anticipated household income for the year in which the intending immigrant files the application for an immigrant visa or adjustment of status. By executing an Affidavit of Support Under Section 213A of the INA, the

sponsor certifies under penalty of perjury under United States law that the evidence of his or her current household income is true and correct and that each transcript or photocopy of each income tax return is a true and correct transcript or photocopy of the return that the sponsor filed with the Internal Revenue Service for each taxable year.

(B) If the sponsor had no legal duty to file a Federal income tax return for one or more of the 3 most recent tax years, the sponsor must explain why he or she had no legal duty to file a Federal income tax return for each year. If the sponsor claims he or she had no legal duty to file for any reason other than the level of the sponsor’s income for that year, the initial evidence submitted with the Affidavit of Support Under Section 213A of the INA must also include any evidence of the amount and source of the income the sponsor claims was exempt from taxation and a copy of the provisions of any statute, treaty, or regulation that supports the claim he or she had no duty to file an income tax return with respect to that income. If the sponsor had no legal obligation to file a Federal income tax return, he or she may submit other evidence of annual income. The fact a sponsor had no duty to file a Federal income tax return does not relieve the sponsor of the duty to file an affidavit of support.

(C)(1) The sponsor’s ability to meet the income requirement in this paragraph (c)(2)(i) will be determined based on the sponsor’s household income. In demonstrating he or she has sufficient household income, the sponsor may rely entirely on his or her individual income, if it is sufficient to meet the income requirement in this paragraph (c)(2)(i). The sponsor may also rely on the income of his or her spouse, or any intending immigrant who shares the same principal residence, if the spouse or intending immigrant is at least 18 years old and has completed and signed a Contract Between Sponsor and Household Member. The spouse does not need to be a U.S. citizen, national, or alien lawfully admitted for permanent residence in order to sign Contract Between Sponsor and Household Member.

(2) Each individual who signs a Contract Between Sponsor and Household Member agrees, in consideration of the sponsor’s signing of the Affidavit of Support Under Section 213A of the INA, to provide to the sponsor as much financial assistance as may be necessary to enable the sponsor to maintain the intending immigrants at the annual income level required by section 213A(a)(1)(A) of the Act, to be jointly and severally liable for any

reimbursement obligation that the sponsor may incur, and to submit to the personal jurisdiction of any court that has subject matter jurisdiction over a civil suit to enforce the contract or the affidavit of support, and understands that a failure to meet all sponsorship obligations may prevent him or her from sponsoring intending immigrants in the future. The sponsor, as a party to the contract, may bring suit to enforce the contract with the spouse. The intending immigrants and any Federal, state, or local agency or private entity that provides a means-tested public benefit to an intending immigrant are third party beneficiaries of the contract between the sponsor and the spouse on whose income the sponsor relies and may bring an action to enforce the contract in the same manner as third party beneficiaries of other contracts.

(3) If there is no spouse or child immigrating with the intending immigrant, then there will be no need for the intending immigrant to sign a Contract Between Sponsor and Household Member, even if the sponsor will rely on the continuing income of the intending immigrant to meet the income requirement in this paragraph (c)(2)(i). If, however, the sponsor seeks to rely on an intending immigrant's continuing income to establish the sponsor's ability to support the intending immigrant's spouse or children, then the intending immigrant whose income is to be relied on must sign a Contract Between Sponsor and Household Member.

(4) If the sponsor relies on the income of any individual who has signed a Contract Between Sponsor and Household Member, the sponsor must also include with the Affidavit of Support Under Section 213A of the INA and the Contract Between Sponsor and Household Member, with respect to the person who signed the Contract Between Sponsor and Household Member, the initial evidence required under paragraph (c)(2)(i)(A) of this section. The household member must submit transcripts or certified copies of tax returns for the same 3 most recent taxable years as the sponsor (except the household member need not submit a tax return for any taxable year if he or she had no legal duty to file). If the sponsor had no legal duty to file a tax return for a given year, the household member must nonetheless submit transcripts or certified copies for that taxable year, unless the household member also had no legal duty to file a tax return. An individual who signs a Contract Between Sponsor and Household Member certifies, under penalty of perjury, that the submitted

transcripts or certified copies of the tax returns are true and correct transcripts or certified copies of the Federal income tax returns filed with the Internal Revenue Service, and that the information concerning that person's employment and income is true and correct.

(D) If a sponsor or household member did not file a Federal income tax return for any year for which transcripts or certified copies must be provided, the Affidavit of Support Under Section 213A of the INA or Contract Between Sponsor and Household Member will not be considered sufficient to satisfy the requirements of section 213A of the Act, even if the household income meets the requirements of section 213A of the Act, unless the sponsor or household member proves, by a preponderance of the evidence, that he or she had no legal duty to file. If the sponsor or household member cannot prove he or she had no legal duty to file, then the Affidavit of Support Under Section 213A of the INA or Contract Between Sponsor and Household Member will not be considered sufficient to satisfy the requirements of section 213A of the Act until the sponsor or household member proves he or she has satisfied the obligation to file the Federal income tax return(s) and provides transcripts or certified copies of the Federal income tax return(s).

(ii) \* \* \*

(C) *Means to maintain annual income.* (1) Except as provided in this paragraph (c)(2)(ii)(C), or in paragraph (a)(1)(v)(B) of this section, a sponsor's Affidavit of Support Under Section 213A of the INA will be considered sufficient to satisfy the requirements of section 213A of the Act and this section if the reasonably expected household income for the year in which the intending immigrant filed the application for an immigrant visa or adjustment of status, calculated under paragraph (c)(2)(iii)(A) of this section, would equal at least 125 percent of the Federal Poverty Guidelines for the sponsor's household size as defined in § 213a.1(g), under the Federal Poverty Guidelines in effect when the intending immigrant filed the application for an immigrant visa or for adjustment of status, except that the sponsor's income need only equal at least 100 percent of the Federal poverty line for the sponsor's household size, if the sponsor is on active duty (other than for active duty for training) in the U.S. Armed Forces and the intending immigrant is the sponsor's spouse or child.

(2) The sponsor's household income for the year in which the intending immigrant filed the application for an

immigrant visa or adjustment of status will be given the greatest evidentiary weight; any tax return and other information relating to the sponsor's financial history, including the sponsor's credit history and credit score, will serve as evidence tending to show whether the sponsor is likely to be able to maintain his or her income in the future.

(3) Even if the sponsor's projected household income for the year in which the intending immigrant filed the application for an immigrant visa or adjustment of status meets the applicable income threshold, the Affidavit of Support Under Section 213A of the INA may be determined to be insufficient on the basis of the sponsor's household income based on facts that suggest that the sponsor cannot maintain income at the income threshold for the sponsor's household size, including, but not limited to the following:

(i) Evidence of a material change in employment or income history of the sponsor or household member;

(ii) The number of intending immigrants included in any Affidavit of Support Under Section 213A of the INA or Contract Between Sponsor and Household Member that the sponsor has executed but for whom the support obligation has not yet become effective in accordance with paragraph (e) of this section; and

(iii) Any other relevant facts.

(4) Even if the sponsor's projected household income for the year in which the intending immigrant filed the application for an immigrant visa or adjustment of status meets the applicable income threshold, the Affidavit of Support Under Section 213A of the INA will be determined to be insufficient on the basis of the sponsor's household income if:

(i) Unless otherwise provided in this paragraph (c)(2)(ii)(C)(4), the sponsor or household member received means-tested public benefits on or after [DATE 60 DAYS FROM DATE OF PUBLICATION OF THE FINAL RULE] and within the 36-month period before the Affidavit of Support Under Section 213A of the INA was executed; or

(ii) The sponsor or household member had a judgment entered against him or her at any time for failing to meet the support or reimbursement obligations under an existing Affidavit of Support Under Section 213A of the INA.

(5) Receipt of means-tested public benefits by petitioning sponsors who, at the time of receipt, are on active duty, as defined in § 213a.1(a), will not be considered when determining whether the petitioning sponsor has the means to



maintain an annual income at the income threshold for the petitioning sponsor's household size.

(iii) \* \* \*

(B) *Significant assets.* The sponsor may submit evidence of the sponsor's ownership of significant assets, such as checking and savings accounts; stocks; bonds; certificates of deposit; net cash value of real estate holdings minus the sum of all loans secured by a mortgage, trust deed, or other lien on the home; annuities; securities; retirement and educational accounts; and any other assets that can easily be converted into cash. Non-cash assets must be able to be converted into cash within 12 months. An intending immigrant may submit evidence of the intending immigrant's assets as a part of the petitioning sponsor's Affidavit of Support Under Section 213A of the INA, even if the intending immigrant is not required to sign an Contract Between Sponsor and Household Member. The assets of any person who has signed a Contract Between Sponsor and Household Member may also be considered in determining whether the assets are sufficient to meet the requirement of this paragraph (c)(2)(iii)(B). To qualify as significant assets the combined cash value of all the assets (the total value of the assets less any offsetting liabilities) must be at least:

(1) If the intending immigrant is the spouse or child of a United States citizen (and the child has reached his or her 18th birthday), three times the difference between the sponsor's household income and 125 percent of the Federal poverty line (or 100 percent when permitted under section 213A(f)(3) of the Act) for the sponsor's household size (including all immigrants sponsored in any Affidavit of Support Under Section 213A of the INA in force or submitted under this section);

(2) If the intending immigrant is an orphan or Hague Convention adoptee who is considered to be coming to the United States for adoption, the difference between the sponsor's household income and 125 percent of the Federal poverty line (or 100 percent of the Federal poverty line when permitted under section 213A(f)(3) of the Act) for the sponsor's household size (including all immigrants sponsored in any Affidavit of Support Under Section 213A of the INA in force or submitted under this section); or

(3) In all other cases, five times the difference between the sponsor's household income and 125 percent of the Federal poverty line (or 100 percent of the Federal poverty line when permitted under section 213A(f)(3) of

the Act) for the sponsor's household size (including all immigrants sponsored in any Affidavit of Support Under Section 213A of the INA in force or submitted under this section).

\* \* \* \* \*

(v) *Verification of employment, income, and assets.* (A) The Federal Government may pursue verification of any information provided on or with an Affidavit of Support Under Section 213A of the INA or Contract Between Sponsor and Household Member, with an employer, financial or other institutions, the Internal Revenue Service, or the Social Security Administration, including, but not limited to, information about:

- (1) Employment;
- (2) Income;
- (3) Assets; or
- (4) Bank account(s) (including, but not limited, to bank account numbers and routing numbers).

(B) To facilitate the verification process described in paragraph (c)(2)(v)(A) of this section, sponsors or household members must sign and submit any necessary waiver form when directed to do so by the immigration officer, immigration judge, or consular officer who has jurisdiction to adjudicate the case to which the Affidavit of Support Under Section 213A of the INA or Contract Between Sponsor and Household Member relates. The failure or refusal of a sponsor or household member (who executed a Contract Between a Sponsor and a Household Member) to sign any waiver needed to verify the information when directed to do so constitutes a withdrawal of the Affidavit of Support Under Section 213A of the INA or Contract Between Sponsor and Household Member, so that, in adjudicating the intending immigrant's application for an immigrant visa or adjustment of status, the Affidavit of Support Under Section 213A of the INA or Contract Between Sponsor and Household Member will be deemed not to have been filed.

\* \* \* \* \*

■ 4. Section 213a.3 is amended by revising paragraphs (a)(1) through (4) and (b) to read as follows:

**§ 213a.3 Change of address.**

(a) \* \* \*

(1) *Filing requirements.* If the address of a sponsor or household member (who executed a Contract Between a Sponsor and a Household Member) changes while the sponsor's support obligation is in effect, the sponsor or household member (who executed a Contract Between a Sponsor and a Household

Member) must file a change of address notice within 30 days, in accordance with instructions provided by USCIS.

(2) *Proof of mailing.* USCIS will accept a photocopy of the change of address form together with proof of the form's delivery to USCIS as evidence that the sponsor or household member (who executed a Contract Between a Sponsor and a Household Member) has complied with the requirement in paragraph (a)(1) of this section.

(3) *Electronic notices.* USCIS will provide the sponsor or household member (who executed a Contract Between a Sponsor and a Household Member) with a receipt notice for an address change.

(4) *Alien sponsors and household members.* If the sponsor or household member (who executed a Contract Between a Sponsor and a Household Member) is an alien that is not exempted by section 263(b) of the Act, the sponsor or household member (who executed a Contract Between a Sponsor and a Household Member) must still comply with the requirements of 8 CFR 265.1.

(b) *Civil penalty.* If the sponsor or household member (who executed a Contract Between a Sponsor and a Household Member) fails to give notice in accordance with paragraph (a) of this section, DHS may impose on the sponsor or household member (who executed a Contract Between a Sponsor and a Household Member) a civil penalty in an amount within the penalty range established in section 213A(d)(2)(A) of the Act. Except, if the sponsor or household member (who executed a Contract Between a Sponsor and a Household Member), knowing that the sponsored immigrant has received any means-tested public benefit, fails to give notice in accordance with paragraph (a) of this section, DHS may impose on the sponsor or household member (who executed a Contract Between a Sponsor and a Household Member) a civil penalty in an amount within the penalty range established in section 213A(d)(2)(B) of the Act. The procedure for imposing a civil penalty is established at 8 CFR part 280.

■ 5. Section 213a.4 is amended by revising paragraphs (a)(3) and (c)(1) and (2) to read as follows:

**§ 213a.4 Actions for reimbursement, public notice, and congressional reports.**

(a) \* \* \*

(3) *Role of USCIS and DHS.* Upon the receipt of a formal request from a party or entity authorized to bring an action to enforce an Affidavit of Support Under Section 213A of the INA or Contract

Between Sponsor and Household Member, in the manner and on the form designated by USCIS for this purpose, USCIS may provide a certified copy of an Affidavit of Support Under Section 213A of the INA or Contract Between Sponsor and Household Member that has been executed on behalf of a sponsored immigrant for use as evidence in any action to enforce an Affidavit of Support Under Section 213A of the INA or Contract Between Sponsor and Household Member (including, but not limited to, requests for reimbursement), and may also disclose the last known address and Social Security number of the sponsor and household member. Requesting information through the Systematic Alien Verification for Entitlement (SAVE) Program is sufficient, and a subpoena is not required to obtain the sponsored immigrant's current immigration or citizenship status, or the name, Social Security number and last

known address of a sponsor or household member.

\* \* \* \* \*

(c) \* \* \*

(1) For purposes of section 213A(i)(3) of the Act, USCIS will consider a sponsor or household member to be in compliance with the financial obligations of section 213A of the Act unless a party that has obtained a final judgment enforcing the sponsor's obligations under section 213A(a)(1)(A) or 213A(b) of the Act has provided a certified copy of the final judgment to the USCIS. Failure to file a certified copy of the final civil judgment in accordance with this section has no effect on the plaintiff's ability to collect on the judgment pursuant to law.

(2) If a Federal, state, or local agency or private entity that administers any means-tested public benefit makes a determination under section 421(e) of the Personal Responsibility and Work

Opportunity Reconciliation Act of 1996 in the case of any sponsored immigrant, the program official must provide notice of such determination, including the name of the sponsored immigrant and of the sponsor, to USCIS in a manner to be designated by USCIS.

\* \* \* \* \*

■ 6. Add § 213a.6 to read as follows:

**§ 213a.6 Severability.**

The provisions in this part are intended to be independent severable sections. In the event that any provision in this part is not implemented, DHS intends that the remaining provisions be implemented as an independent rule.

**Chad R. Mizelle,**

*Senior Official Performing the Duties of the General Counsel, U.S. Department of Homeland Security.*

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