

Department of Social and Health Services

Olympia, Washington

WAC Manual and EAZ Manual

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Summary

WAC 388-450-0156 – “When am I exempt from deeming?”

WAC 388-450-0160 – “How does the department decide how much of my sponsor's income to count against my benefits?”

On January 29, 2010, the U.S. Department of Agriculture, Food and Nutrition Service (FNS) published final rules related to the Farm Security and Rural Investment Act of 2002 (FSRIA, commonly referred to as the Farm Bill) that established new eligibility and certification requirements for the receipt of food benefits.

Effective August 1, 2010:

1. Under the final rules for FSRIA 2002, sponsored immigrant households eligible for the indigence exemption will now have a choice on whether to use this exemption.

Households that choose to use this exemption do not have their sponsor's income deemed when determining eligibility. The department will be required to report the sponsor's information to the United States Attorney General.

Households that choose not to use this exemption will have their sponsor's income deemed to them using regular deeming rules. The department will not be required to report the sponsor's information to the United States Attorney General. Sponsored immigrants who do not provide information about their sponsor's income are not eligible to receive benefits.

Financial Service Specialists are responsible to thoroughly explain the options and the consequences of each choice to the applicant.

2. When determining the amount of the sponsor's income to budget against the Basic Food household, the old process was to divide the sponsor's deemed income by the number of sponsored immigrants, and budget only the portion allocated to the sponsored adult.

Under the final rules for FSRIA 2002, the sponsor's deemed income will also be allocated to **all children** in the Basic Food household, including U.S. citizen children, in addition to the all sponsored immigrants. However, because children under 18 are exempt from deeming, continue to budget only the portion allocated to sponsored adult.



WAC 388-450-0156

Effective August 1, 2010

WAC 388-450-0156 When am I exempt from deeming?

1. If you meet any of the following conditions, you are **permanently** exempt from deeming and we do not count your sponsor's income or resources against your benefits:
 - a. The Immigration and Nationality Act (INA) does not require you to have a sponsor. Immigrants who are not required to have a sponsor include those with the following status with Immigration and Naturalization Service (INS):
 - i. Refugee;
 - ii. Parolee;
 - iii. Asylee;
 - iv. Cuban entrant; or
 - v. Haitian entrant.
 - b. You were sponsored by an organization or group as opposed to an individual;
 - c. You do not meet the alien status requirements to be eligible for benefits under [Chapter 388-424 WAC](#);
 - d. You have worked or can get credit for forty qualifying quarters of work under Title II of the Social Security Act. We do not count a quarter of work toward this requirement if the person working received TANF, Basic Food, SSI, CHIP, or nonemergency Medicaid benefits. We count a quarter of work by the following people toward your

forty qualifying quarters:

- i. Yourself;
 - ii. Each of your parents for the time they worked before you turned eighteen years old (including the time they worked before you were born); and
 - iii. Your spouse if you are still married or your spouse is deceased.
 - e. You become a United States (U.S.) Citizen;
 - f. Your sponsor is dead; or
 - g. If INS or a court decides that you, your child, or your parent was a victim of domestic violence from your sponsor and:
 - i. You no longer live with your sponsor; and
 - ii. Leaving your sponsor caused your need for benefits.
2. You are exempt from the deeming process while you are in the same AU as your sponsor;
3. For Basic Food, you are exempt from deeming while you are under age 18.
4. For state family assistance, general assistance, state-funded Basic Food benefits, and state-funded medical assistance for legal immigrants you are exempt from the deeming process if:
 - a. Your sponsor signed the affidavit of support more than five years ago;
 - b. Your sponsor becomes permanently incapacitated; or
 - c. You are a qualified alien according to [WAC 388-424-0001](#) and you:
 - i. Are on active duty with the U.S. armed forces or you are the spouse or unmarried dependent child of someone on active duty;
 - ii. Are an honorably-discharged veteran of the U.S. armed forces or you are the spouse or unmarried dependent child of a honorably-discharged veteran;
 - iii. Were employed by an agency of the U.S. government or served in the armed forces of an allied country during a military conflict between the U.S. and a military opponent; or
 - iv. Are a victim of domestic violence and you have petitioned for legal status under the Violence Against Women Act.
5. If you, your child, or your parent was a victim of domestic violence, you are exempt from the deeming process for twelve months if:
 - a. You no longer live with the person who committed the violence; and
 - b. Leaving this person caused your need for benefits.
6. If your AU has income at or below one hundred thirty percent of the Federal Poverty Level (FPL), you are exempt from the deeming process for twelve months. This is called the "indigence exemption". You may choose to use this exemption or not to use this exemption in full knowledge of the possible risks involved. See risks in subsection (9) below. For this rule, we count the following as income to your AU:
 - a. Earned and unearned income your AU receives from any source; and
 - b. Any noncash items of value such as free rent, commodities, goods, or services you receive from an individual or organization.

7. If you ~~are exempt from deeming because your AU does not have income over one hundred thirty percent of the FPL, we give the United States Attorney General the following information use the indigence exemption, and are eligible for a federal program, we are required by law to~~ give the United States attorney general the following information:
 - a. The names of the sponsored people in your AU;
 - b. That you are exempt from deeming due to your income; ~~and~~
 - c. Your sponsor's name; and
 - d. The effective date that your twelve-month exemption began.
8. If you use the indigence exemption, and are eligible for a state program, we do not report to the United States attorney general.
9. If you choose not to use the indigence exemption:
 1. You could be found ineligible for benefits for not verifying your sponsor's income and resources; or
 2. You will be subject to regular deeming rules under WAC 388-450-0160.

This is a reprint of the official rule as published by the [Office of the Code Reviser](#). If there are previous versions of this rule, they can be found using the [Legislative Search page](#).

CLARIFYING INFORMATION

1. **SSA qualifying work quarters:** SSA decides how much income someone must earn in order to earn a qualifying quarter of work. See [WAC 388-424-0008](#) for information on how to decide if someone has 40 qualifying quarters of work.

If an immigrant has 40 qualifying quarters of work using their spouse's work quarters, they keep the exemption even if they divorce their spouse at a later date.

2. **Minor child of a naturalized citizen:** If a minor child has become a citizen automatically because their parent has naturalized, the statement of the citizen parent and copy of the parent's certificate of naturalization is acceptable proof of the child's citizenship.
3. **Children are exempt from deeming for Basic Food:** For Basic Food, we do not deem a sponsor's income or resources to children in the sponsored immigrant's household even if the child is a sponsored immigrant or a U.S. citizen. When the child turns age 18, we must deem the sponsor's income unless the child is exempt for some other reason. See example of deeming of sponsor's income under WAC 388-450-0160 when there are exempt children in the sponsored immigrant's household.
4. **Deeming is time-limited for state-funded benefits:** For state funded benefits, we only deem a sponsor's income to the immigrant for five years from the date the sponsor signed the affidavit of support. For federal benefits, we continue deeming a sponsor's income and resources until the immigrant is exempt from deeming under WAC 388-450-0156.
5. **Using in-kind income:** We do not deem in-kind income to the client. We add the sponsored immigrant's in-kind and other income **outside of ACES** and compare against 130% of the FPL to decide if they are exempt from the deeming process. The United States Department of Health and Human Services (HHS) publishes the federal poverty level on the Internet at:

<http://aspe.os.dhhs.gov/poverty>

6. **Value of in-kind income:** We use the amount someone would normally pay for items or services (the market rate) as the value of free rent, commodities, goods, or services when we look at a client's in-kind income to decide if they are exempt from the deeming process.
 7. **Alien Emergency Medical:** If a non-citizen isn't eligible for other medical benefits, they may be eligible for AEM. We don't deem a sponsor's income or resources for AEM. See [WAC 388-438-0110](#).
 8. **Special Immigrants:** Immigrants from Iraq or Afghanistan who were granted Special Immigrant status under section 101 (a)(27) of the INA are not required to have a sponsor, and therefore, not subject to deeming rules.
 9. **Reporting Indigence Exemptions:** The requirement to report indigence exemptions to the U.S. Attorney General described in WAC 388-450-0156 (7) applies only to recipients of federal benefits and is only done after giving them the opportunity to opt out and decline the exemption. Sponsored immigrants must be told the consequences of opting out of the deeming exemption to avoid indigence reporting. Although recipients of state benefits are also eligible for the exemption, they will not be reported. See Worker Responsibilities #5 for instructions.
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WORKER RESPONSIBILITIES

1. **When a sponsor abandons an immigrant:**

- a. If the sponsor abandoned the client, look to see if the client meets the exemption for having income at or below 130% of the FPL and explain to the client about the requirement to notify the U.S. Attorney General if they decide to use the indigence exemption.
- b. If the client meets this exemption, the department must notify the U.S. Attorney General only after giving the client the opportunity to opt out of using the exemption. See Notifying U.S. Attorney General.

2. **Deciding if a sponsor is permanently incapacitated:**

Unless it is questionable, accept the client's statement that their sponsor is permanently incapacitated. If you think the sponsor may not be incapacitated, request a note from the sponsor's doctor.

3. **When a sponsored immigrant gets long-term care services:** See [WAC 388-513-1325](#), [WAC 388-513-1340](#), and [WAC 388-513-1350](#) for information on how to treat income and resources for a client who gets long-term care services.

4. **Deciding if the AU has more than 130% of FPL:**

- a. Start with the AU's earned and unearned income;
- b. Add any cash or in-kind benefits the client receives from any source.
- c. The result is the client's total cash and in-kind income.
- d. Multiply the current FPL based on the client's AU size by 1.3.
- e. Compare the total cash and in-kind income to 130% of FPL.
- f. If the client's total income is at or below 130% of FPL, exempt the client from deeming for 12 months. See Notifying the U.S. Attorney General.

EXAMPLE

A sponsored-immigrant family of four applies for benefits. The family gets \$250 a month from their sponsor and stay in an apartment furnished by the sponsor's church. The apartment has been rented for \$600 a month. The husband earns \$450 a month and the wife earns \$200 monthly.

\$450	Husbands income
200	Wife's income
250	Monthly income from sponsor
<u>+600</u>	In-kind income (free-rent) from church
\$1500	Total cash and in-kind income
1509	2002 Monthly FPL for a family of four
<u>X 1.3</u>	130%
\$1961	130% of FPL to decide on exemption

In this example, the client's cash and in-kind income of \$1500 is less than \$1961. The client is exempt from the deeming process for twelve months. This exemption can be renewed if the client's income remains at or under 130% of the monthly FPL.

EXAMPLE

A sponsored-immigrant family of two applies for benefits. The sponsor does not give them money, but they give the clients \$300 worth of food and household items each month. The immigrant earns \$1200 monthly from their job.

\$1200	Immigrant's income
<u>+300</u>	In-kind income from sponsor
\$1500	Total cash and in-kind income

\$995	2002 Monthly FPL for two people
x 1.3	130%
\$1294	130% of FPL to decide on exemption

In this example, the client's cash and in-kind income of \$1500 is more than \$1294. The client is **not** exempt from the deeming process. Calculate how much of the sponsor's income to deem under WAC 388-450-0160.

NOTE: A client is not automatically eligible for benefits by being exempt from deeming.

5. **Notifying the U.S. Attorney General:**

- a. Each time you approve federal benefits for a client who is exempt from deeming for having income at or below 130% of the FPL, the department program staff must notify the U.S. Attorney General (USAG). Before taking steps to notify program staff, explain to the client:

1. the purpose of the 130% FPL household income determination;
2. that they have the right to "opt out" of the deeming exemption; and
3. that the consequences of not giving their consent to the USAG notification is the department counting a part of their sponsor's income toward the budget used to decide their eligibility and benefit level.

b. If the client gives their consent to the USAG notification take the following steps:

1. Write a memo with the following information:
 - o Name of the sponsored immigrant(s) who have been approved for federal benefits;
 - o Name of the sponsor;
 - o That you decided the immigrant is exempt from deeming because their combined cash and in-kind income is at or below 130% of the federal poverty level; and
 - o Start date of the 12-month exemption from deeming requirements.
2. Send the memo to:

Administrator
Program Planning & Policy Section
Community Services Division
Mail Stop 45470
3. Document that the client is exempt from deeming and that you referred the case to program staff to notify the Attorney General.

4. Set a user-generated alert to review the exemption in twelve months.

NOTE:	Don't refer a client if they are exempt for any reason other than having income under 130% of FPL (e.g., the client was sponsored by an organization.) Don't refer a client who is receiving only state benefits.
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WAC 388-450-0160

Effective August 1, 2010

WAC 388-450-0160 How does the department decide how much of my sponsor's income to count against my benefits?

1. We must count some of your sponsor's income as unearned income to your assistance unit (AU) if:
 - a. Your sponsor signed the INS affidavit of support form [I-864](#) or [I-864A](#); and
 - b. You are not exempt from the deeming process under [WAC 388-450-0156](#)
2. We take the following steps to decide the monthly amount of your sponsor's income we deem as your income and count against your benefits:
 - a. We start with your sponsor's earned and unearned income that is not excluded under [WAC 388-450-0015](#);
 - b. If your sponsor's spouse signed the affidavit of support, we add all of the spouse's earned and unearned income that is not excluded under [WAC 388-450-0015](#);
 - c. We subtract twenty percent of the above amount that is earned income under [WAC 388-450-0030](#);
 - d. For cash and medical assistance, we subtract the need standard under [WAC 388-478-0015](#). We count the following people who live in your sponsor's home as a part of your sponsor's AU to decide the need standard:
 - i. Your sponsor;
 - ii. Your sponsor's spouse; and
 - iii. Everyone else in their home that they could claim as a dependent for Federal income tax purposes.
 - e. For food assistance, we subtract the maximum gross monthly income under [WAC 388-478-0060](#). We count the following people that live in your sponsor's home as a part of your sponsor's AU to decide the maximum gross monthly income:
 - i. Your sponsor;
 - ii. Your sponsor's spouse; and
 - iii. Everyone else in their home that they could claim as a dependent for Federal income tax purposes.
 - f. If you can show that your sponsor has sponsored other people as well, we divide the result by the total number of people who they sponsored including any member of

[your household that is exempt from deeming according to WAC 388-450-0156.](#)

3. After we have decided how much income to deem to you, we count the greater amount of the following against your benefits:
 - a. The amount of income calculated from deeming; or
 - b. The amount of money your sponsor actually gives you for your needs.

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WORKER RESPONSIBILITIES

Calculate the amount of income to deem for cash assistance, medical programs, or Basic Food as follows:

1. Total the sponsor's countable earned income (and the earned income of the spouse if appropriate). Subtract 20% from this amount.
2. Total the sponsor's countable unearned income (and the unearned income of the spouse if appropriate) and add this to the result of a. above.

3. **For cash assistance and medical programs:** Subtract the **need standard** based on the number of people in the sponsor's AU ([WAC 388-478-0015](#));

For Basic Food: Subtract the **maximum gross monthly income** based on the number of people in the sponsor's AU ([WAC 388-478-0060](#));

4. If the sponsor completed an [I-864](#) or [I-864A](#) for more than one person:
 - a. For Basic Food, divide the countable income by the number of immigrants that are sponsored by the sponsor and any U.S. citizen children in the immigrant's household under the age of 18;
 - b. For cash and medical assistance, divide the countable income by the number of immigrants that are sponsored by the sponsor;
 - c. Multiply by the number of **non-exempt** immigrants they sponsored that are in this AU.
5. Document the calculation you just completed:

EXAMPLE

The client is a single sponsored immigrant. The client's sponsor and their spouse have combined earned income of \$2300 and \$231 unearned income each month. The sponsor, their spouse, and 12-year old son live in the sponsor's home. The sponsor has signed an I-864 for one other immigrant.

Cash Assistance and Medical Programs

\$1840 \$2300 earnings - \$460 (20%) =

Basic Food

\$1840 \$2300 earnings - \$460 (20%) = \$1840

\$1840			
+ 231 Unearned income		+ 231 Unearned income	
\$2071 Combined earned and unearned income		\$2071 Combined earned and unearned income	
- 1247 Need standard for 3 people		-1533 Maximum gross monthly income	
\$ 824 Income deemed from the sponsor		\$ 538 Income deemed from the sponsor	
/ 2 # of immigrants for whom sponsor signed I-864		/ 2 # of immigrants for whom sponsor signed I-864	
\$412 Income we deem to the client for cash assistance and medical programs		\$ 269 Income we deem to the client for Basic Food	

EXAMPLE

The client is a single pregnant sponsored immigrant with no income. The client's sponsor and their spouse have combined earned income of \$2800 each month. They have no unearned income. The sponsor and their spouse live alone. The sponsor hasn't signed any other affidavit of support.

Cash Assistance and Medical Programs		Basic Food	
\$2240	\$2800 earnings - \$560 (20%) = \$2250	\$2240	\$2800 earnings - \$560 (20%) = \$2250
- 1008	Need standard for 2 people	- 1219	Maximum gross monthly income for 2 people
\$1232	Income we deem to the client for cash assistance and medical programs	\$1021	Income we deem to the client for Basic Food

NOTE: Because the deemed income is under 185% of the FPL, the pregnant woman is eligible for pregnancy medical benefits.

EXAMPLE

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Example with exempt children in the household: A Basic Food household consists of one sponsored adult, one sponsored child, and one U.S. citizen child. After applying the

allowable disregards and deductions to the sponsor's income, \$900 of the sponsor's income is deemed to the household.

For Basic Food: Divide the deemed income by the number of sponsored immigrants and all children in the Basic Food household, and count only the portion for the sponsored adult.

- $\$900 \div 3$ (1 adult, 2 children) = \$300

$\$300 \times 1$ sponsored adult = \$300 (amount budgeted against the BF household)