

Public Comments (regulations.gov): [USCIS-2007-0029](https://www.regulations.gov/document/USCIS-2007-0029)60-day FRN Citation (federalregister.gov): [88 FR 73612](https://www.federalregister.gov/documents/2023/10/26/2023-22361)

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Comment #	Commenter ID	Comment	USCIS Response
1.		Commenter: Xuan Luo	
	0328	<p>I suggest that it be clarified whether a sponsor's spouse can file I-864A, if the sponsor's spouse does not live in the same residence as the sponsor. The sponsor's spouse must be counted as part of the sponsor's household size in I-864 Part 5 item 3, regardless of whether the spouse lives with the sponsor. So it would seem that a sponsor's spouse who did not live with the sponsor should be able to act as a household member and file I-864A. However, I-864A instructions, "What Is the Purpose of Form I-864A?" -> "Who May Be Considered a Household Member for Purposes of Form I-864A?" (on page 1), item 2, says, "2. The spouse, parent, child, adult son or daughter, or sibling relative of the sponsor, if that relative has the same principal residence as the sponsor; or", which seems to indicate that a sponsor's spouse who did not live with the sponsor could not file I-864A.</p> <p>In I-864 instructions, section "Specific Requirements" -> "How Can My Relatives and Dependents Help Me Meet the Income Requirements?", it says, "You may use the income of your spouse and/or any other relatives living in your residence if they are willing to be jointly responsible with you for the intending immigrants you are sponsoring". It is unclear whether the clause "living in your residence" applies only to "any other relatives" (in which case the spouse does not need to live in the same residence), or applies to "your spouse and/or any other relatives" (in which case the spouse does need to live in the same residence).</p> <p>In the 8 CFR 213a.1 definition for "Household income", it says, "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. It</p>	<p>Response:</p> <p>USCIS agrees that a sponsor's spouse may complete and sign Form I-864A even if they do not share a principal residence with the sponsor. See 8 CFR 213a.2(c)(2)(i)(C)(5). USCIS proposes the following clarifying changes (Current Text in Black font. Changes in Red font. Deletions in Strikethrough: the Form I-864A Instructions under "Who May Be Considered a Household Member for Purposes of Form I-864A?":</p> <p>For purposes of this contract, one or more of the following individuals may sign the Form I-864A as a household member if at least 18 years of age:</p> <ol style="list-style-type: none"> 1. The intending immigrant, if the sponsor seeks to rely on an the intending immigrant's continuing income to establish the sponsor's ability to support the intending immigrant's spouse or children; 2. The spouse of the sponsor; The parent, child, adult son or daughter, or sibling relative of the sponsor, if that relative has the same principal residence as the sponsor; or 3. The parent, child, adult son or daughter, or sibling relative of the sponsor, if that relative has the same principal residence as the sponsor; or Any other individual whom the sponsor has lawfully claimed as a dependent on the sponsor's most recent Federal income tax return even if that person does not live at the same residence as the sponsor. If more than one individual agrees

Form I-864-014 Revision - Responses to 60-day FRN Public Comments

Public Comments (regulations.gov): [USCIS-2007-0029](#)

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		includes the income of the sponsor, and of the sponsor's spouse and any other person included in determining the sponsor's household size, if the spouse or other person is at least 18 years old and has signed the form designated by USCIS for this purpose, on behalf of the sponsor and intending immigrants. [...]". Here, it seems to indicate that the income of the sponsor's spouse can be included if the sponsor's spouse completes the required form (I-864A), with no qualifications regarding whether the spouse needs to live in the same residence as the sponsor.	to help support the sponsored immigrant, each individual must sign a separate Form I-864A. 4. Any other individual whom the sponsor has lawfully claimed as a dependent on the sponsor's most recent Federal income tax return even if that person does not live at the same residence as the sponsor. If more than one individual agrees to help support the sponsored immigrant, each individual must sign a separate Form I-864A.
2.		Commenter: Catholic Legal Immigration Network, INC (See comments broken down as Items 2a. – 2e.)	NOTE: The commenter uploaded a letter to regulations.gov at this link 0329 . USCIS reviewed the six recommendations provided in the letter and listed them as items 2a. – 2e. in this matrix so USCIS may easily review and if needed, address each recommendation.
2a.	0329	A. CLINIC Recommends the Following Adjustments to the Proposed Changes to Form I-864 On Page 5, Part 5, the proposed Form I- 864 makes various changes to the current language and would read as follows: "Enter the total number immigrants you are sponsoring on this affidavit which includes the principal immigrant listed in Part 3, any immigrants listed in Part 4, Item Numbers 4-7, and any additional sponsored immigrants you listed in Part 11, Additional Information. Do not count the principal immigrant if you are only sponsoring family members entering more than six months after the principal immigrant." This language is confusing and not as accurate as the current language. The following persons may complete and file an I-864: (1) petitioner/sponsors filing for the principal beneficiary and any accompanying derivative family members; (2) petitioner/sponsors filing for the derivative family members (and not the principal beneficiary); (3) joint sponsors filing for the	Response: USCIS will not make changes based on this comment. The proposed language in the form is consistent with the regulations at 8 CFR 213a.1, which defines household size to include the intending immigrants to be sponsored under the current affidavit of support (i.e., the principal immigrant listed in Part 3, any immigrants listed in Part 4, Item Numbers 4-7, and any immigrants to complete such list in the Additional Information section (Part 11). The proposed language then indicates that a sponsor does not need to count the principal immigrant if they are only sponsoring family members entering more than six months after the principal immigrant. The only individual in this section who may or may not be included in the calculation, depending on the

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		principal beneficiary and one or more derivative beneficiaries; (4) joint sponsors filing for the principal beneficiary (and not any derivative family members); (5) joint sponsors filing for one or more derivative family members (and not the principal beneficiary); and substitute sponsors filing for the principal beneficiary and/or derivative family members. Given the different beneficiaries on whose behalf the I-864 can be filed, it is inaccurate to state that the number must include “the principal immigrant listed in Part 3, any immigrants listed in Part 4, Item Numbers 4-7, and any additional sponsored immigrants you listed in Part 11.” It may or may not include them. It would be more accurate and less confusing to state it the following way (proposed changes in italics): “Enter the total number immigrants you are sponsoring on this affidavit, which may include the principal immigrant listed in Part 3, any immigrants listed in Part 4, Item Numbers 4-7, and any additional sponsored immigrants ...”	situation, is the principal immigrant. The other immigrants listed in Parts 4 and 11 are listed as family members who are being sponsored in this Form I-864. Adding “may” at the beginning of this instruction would introduce more confusion than a qualifying sentence at the end, as sponsors would be uncertain if the “may” applies to just the principal immigrant or to all of the immigrants listed in Parts 3, 4, and 11.
2b.	0329	A. CLINIC Recommends the Following Adjustments to the Proposed Changes to Form I-864 (<i>continued</i>) In addition, the proposed new Form I-864 no longer includes Part 11. The final part of the revised form is Part 9, Additional Information. So, that portion of the same paragraph needs to be revised to read: “...you listed in Part 9, Additional Information. Do not count the principal immigrant if you are only sponsoring family members entering more than six months after the principal immigrant.”	Response: An error in the form shows that the Additional Information Section was incorrectly labeled as “Part 9.” As this section falls after Part 10, USCIS will renumber the Additional Information section to Part 11 in the form.
2c.	0329	B. CLINIC Recommends the Following Adjustments to the Proposed Changes to Form I-864 Instructions Page 2 of the proposed changed Instructions identifying the exceptions as to who needs to submit Form I864 includes: “4. Self-petitioning battered spouses and children who have an approved Form I-360 (VAWA self-petitioners).” VAWA self-petitioners have been “exempted” from filing Form I-864	Response: USCIS will not make changes based on this comment. USCIS agrees that applicants applying for adjustment of status based on an approved petition under VAWA are exempt from the public charge ground of inadmissibility and that they do not need to submit an Affidavit of

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		<p>given the unique nature of their relationship to the abuser. Since they are self-petitioning, they do not have a petitioning sponsor like other family- or employment-based beneficiaries. Instead, they have been allowed to file Form I-864W, Request for Exemption for Intending Immigrant's Affidavit of Support. The current regulations still reference victims of domestic violence self-petitioners who were granted relief under the Violence Against Women Act (VAWA) as exempt from the affidavit of support requirement at the adjustment of status stage.² But subsequent legislation actually exempted them from the public charge ground of inadmissibility.³ Applicants exempt from public charge are also exempt from the affidavit of support requirements and do not have to separately claim an exemption to filing an I-864. But at the present time, VAWA self-petitioners are still required to complete and file an I-864W, even though they shouldn't be required to. Fortunately, the final DHS regulations defining public charge officially designated VAWA recipients as exempt from public charge.⁴ CLINIC proposes that the agency eliminate this fourth designation of VAWA self-petitioners as exempted from filing Form I-864 since it is no longer accurate; all adjustment of status applicants exempted from public charge are exempted from filing Form I-864.</p>	<p>Support Under Section 213A of the INA.</p> <p>However, if an applicant who has an approved Form I-360 under VAWA is applying for adjustment of status as an alien worker under certain employment-based preference categories and a certain relative (as defined by 8 CFR 213a.1) either filed Form I-140 for the intending immigrant or has a five percent or more ownership interest in the business that filed Form I-140 for the intending immigrant, the applicant is not subject to INA 212(a)(4) but must still submit Form I-864. See 8 CFR 212.23(b). Such applicants are adjusting based on an approved Form I-140 and the statute does not exempt them from submitting a Form I-864, despite their exemption from the public charge ground of inadmissibility.</p>
2d.	0329	<p>B. CLINIC Recommends the Following Adjustments to the Proposed Changes to Form I-864 Instructions (<i>continued</i>)</p> <p>2. Page 3 of the proposed changed Instructions identifying other applicants not required to submit Form I-864 includes 33 categories of applicants exempt from public charge. This lengthens the instructions by two full pages. CLINIC believes that such detail, especially the eight subcategories (1. A-H) regarding employment-based applicants who rarely need an I-864, are unnecessary and should be eliminated. Instead, CLINIC proposes the agency include a sentence</p>	<p>Response:</p> <p>USCIS will not make changes based on this comment. While the addition of the categories of applicants who do not need to submit Form I-864 lengthens the instructions, USCIS added this list to minimize confusion among applicants and ensure the instructions are inclusive, rather than requiring applicants to reference the regulations in order to determine if they fall under an exempt category.</p>

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		indicating that applicants who are exempt from public charge do not need to file an I-864: "Other Applicants Not Required to Submit Form I-864 Applicants who are not subject to the public charge ground of inadmissibility are not required to submit a Form I-864. For a full list of these applicants, see 8 CFR 212.23(a)."	
2e.	0329	<p>B. CLINIC Recommends the Following Adjustments to the Proposed Changes to Form I-864 Instructions (<i>Continued</i>)</p> <p>3. Page 9 of the Instructions makes two references to Part 11, Additional Information. This part of the revised Form I-864 is now Part 9, Additional Information and needs to be revised.</p>	<p>Response:</p> <p>An error in the form shows that the Additional Information Section was incorrectly labeled as "Part 9." As this section falls after Part 10, USCIS will renumber the Additional Information section to Part 11 in form.</p>
3.		Commenter: Anonymous	
	0330	<p>I think discontinuing the use of the Request for Exemption for Intending Immigrant's Affidavit of Support in its adjudications and instead including the exemption option in the form itself is a good idea. Several people applying for immigration benefits do not speak English and must navigate the forms by themselves if they do not have any help. Having separate forms can get confusing and not be efficient for immigration offices and the immigrants. This will let people be able to have an easier time to apply for their applications or petitions. A lot of people are even unaware that a separate form needs to be filled with the application because it is in the instructions which are in English language. This will also save immigration offices time and maybe resources because they do not need to go through and check the separate forms.</p> <p>Also, this might reduce the number of requests for evidence that people get from immigration for these forms. And those request for evidence slows down the process and can make immigrants wait longer to receive answers about their cases. Also, some people were filing the exemption form but</p>	<p>Response: USCIS will not make changes based on this comment. These forms are submitted by two different parties. The Form I-864 is a contract that is executed by the sponsor. The Form I-864W is a request for an exemption from the requirement that a sponsor execute an Affidavit of Support Under Section 213 of the INA and is completed by the intending immigrant. Combining these forms would make a longer and more complicated form that requires different sections to be completed by different parties, with different sets of required evidence, instructions, and certifications.</p>

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		receiving letters indicating that they did not file the form. The more forms people are required to fill out makes it more possible for mistakes. I think having the option to check off the box that requests an exemption is an efficient way for this already difficult process.	
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