



I. PURPOSE

The purpose of this Informational Letter is to clarify the conditions under which local districts are required to report to the Office of Temporary and Disability Assistance (OTDA) aliens known to be unlawfully present in the United States. These instructions describe two specific criteria to be used in determining when the district is responsible for forwarding information to the Division of Temporary Assistance as required under Welfare Reform.

II. BACKGROUND

97 ADM-23, Public Assistance (Family Assistance/Safety Net Assistance) Changes Resulting from the Welfare Reform Act of 1997, establishes the requirement that each social services district shall report to OTDA the name and address and other identifying information known to it with respect to any alien known to be unlawfully in the United States. (Section V-H.3.c). It also includes a form for submitting the information (Attachment IX).

In the spring of 1998 we reviewed data received from local districts during the first six months following implementation of this requirement. Upon completion of this review and prior to forwarding any information to the federal government as required under PRWORA, we wrote to the Commissioner of the Immigration and Naturalization Services (INS) inquiring as to exactly what information must be provided to document that an individual is "known to be unlawfully in the United States". Late in the year, INS advised that they were working with the Department of Health and Human Services to develop reporting requirement guidelines which will be published in the Federal Register. As of this date no guidelines have been published .

III. REPORTING GUIDELINES

Lacking federal guidelines, we have identified only two specific conditions which definitively establish that an alien is unlawfully present. Accordingly, your report of "Aliens Unlawfully in the United States" should only include aliens who meet either of the following two conditions:

1. Aliens with a final INS Order of Deportation outstanding. An outstanding order of deportation is final when it is not subject to appeal, either because (1) the relevant statutory appeal period (10 days) has expired, (2) there are no lawful grounds upon which an appeal may be based, or (3) the available administrative and/or judicial appeals have been exhausted and the order is not subject to review under the limited standards for reopening or reconsideration.
2. Aliens for which the SAVE response to a manually submitted INS G-845, (Document Verification Request) indicates that the person has submitted false immigration documents to the agency.

When either of the above situations is applicable to an applicant or recipient of temporary assistance (FA or SNA), you should submit the name(s) and address(es) of the individual(s), along with identification of the documentation establishing their being unlawfully present in the U.S., including copies of the documentation when possible, to:

NYS Office of Temporary and Disability Assistance  
Division of Temporary Assistance - 11th Floor  
40 North Pearl St.  
Albany, NY 12243

This information should be provided on a copy of the attached revised reporting form, "Aliens Unlawfully in the United States". You should submit the form within 10 days from the end of any month in which you identify "reportable" aliens.

NOTE: There are no reporting requirements for Medical Assistance (MA) or Food Stamps (FS). When an applicant is checked as being only for MA and/or FS, you should not include them on the report.

#### IV. REFERRAL REQUIREMENTS

Please note that instructions are provided in 97 ADM-23, Section V-H.3.b, Referral Requirements, whereby local districts should refer any alien requesting public assistance benefits who fails to furnish evidence that he or she is lawfully residing in the United States to the INS office, or the nearest consulate of the country of the applicant or recipient. Referral means informing the alien of the location of the nearest INS office or the nearest consulate and advising the alien that proper documentation should be secured. The proper documentation is required if you are to proceed with the processing of their PA application to determine what, if any, benefits the alien would be eligible to receive.

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Patricia A. Stevens  
Deputy Commissioner  
Division of Temporary Assistance