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PROGRAM OPERATIONS MANUAL SYSTEM
PART 03 - Retirement and Survivors
CHAPTER 002 - Benefits and Payments
Subchapter 04 - September 1996 Lawful Presence Requirement

New Material	No. of Pages	Discard	No. of Pages Pages
Subchapter Table of Contents (00204.010-00204.095)..... 00204.010-00204.095.....		None.	

Background

On August 22, 1996, the President signed into law P.L. 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("Reconciliation Act of 1996"). The Reconciliation Act of 1996 changed policy with respect to payment of title II benefits to aliens. This new POMS subchapter introduces the lawful presence payment requirement for title II beneficiaries and provides instructions regarding this change. It obsolete the prior instruction provided in EM-96-128.

This chapter should be read in entirety as it contains new evidentiary requirements for establishing U.S. citizenship and lawfully present alien status, new initial and post-entitlement system's processing instructions, and new notice language.

Effective Date: Upon Receipt

Explanation of New Subchapter

00204.010 U.S. CITIZENSHIP/LAWFUL PRESENCE PAYMENT REQUIREMENT EFFECTIVE FOR CLAIMS FILED SEPTEMBER 1, 1996 OR LATER

This section provides general background information and policy on the T2 lawful presence requirement contained in the Reconciliation Act of 1996. Under the new law, each T2 claimant in the U.S. effectively filing on or after September 1, 1996 must establish U.S. citizenship or lawful alien presence to receive payment.

00204.015 DEVELOPING EVIDENCE OF U.S. CITIZENSHIP

This section provides procedure on establishing evidence of U.S. citizenship for T2 purposes from SSA's records and supplements current POMS procedure in GN 00303.300B.1. on establishing conclusive evidence of citizenship. If development for U.S. citizenship is necessary, the section provides instructions on accepting either conclusive or preferred evidence of citizenship.

00204.020 DEVELOPMENT OF LAWFUL PRESENCE OF AN ALIEN IN THE U.S.

This section provides policy and procedure on determining lawful presence, detecting and verifying fraudulent documents, and defines the new terms, an alien needing reverification and an alien not needing reverification, for T2 payment purposes.

00204.025 EVIDENCE REQUIREMENTS FOR LAWFUL PRESENCE

This section provides information on each category of lawfully present alien, as defined by the Attorney General, for purposes of paying T2 beneficiaries under this new law. It includes information on the specific evidence required to establish each class of lawful alien status as either an alien needing reverification or an alien not needing reverification. Also included is specific information on when verification of alien status with INS before adjudication is necessary and when reverification is required.

00204.030 LAWFUL PRESENCE FOR AN ENTIRE MONTH- BENEFICIARY IS OUTSIDE THE U.S.

This section contains policy and procedure on how this new law affects payment to aliens who receive benefits on the basis of being inside the U.S. but who are physically outside the U.S. and must return to the U.S. periodically to establish presence.

00204.035 LAWFUL PRESENCE PROCESSING CONSIDERATIONS FOR CLAIMS FILED ON OR AFTER SEPTEMBER 1, 1996

This section provides information on the effect of the lawful presence requirement in multiple claims situations, on

when the option of withdrawal should be discussed and on the importance of informing a claimant of the full effect of all MOE choices when lawful presence is a consideration.

00204.040 FIELD OFFICE (FO) PROCESSING OF INITIAL T2 CLAIMS FILED
SEPTEMBER 1, 1996 OR LATER

This section provides new FO initial claims procedure for documenting U.S. citizenship and alien status, for aliens not needing reverification, before processing such claims under current instructions. Also provided is new FO initial claims procedure for documenting and processing initial claims for lawful aliens whose status needs reverification, for aliens not lawfully present in the U.S. (including new procedure for LSDP claimants) and aliens who fail to cooperate in providing evidence of lawful presence.

Since current T2 systems are not designed to capture information on the U.S. citizenship/lawful presence of every T2 beneficiary, this section also introduces 4 new listing codes to identify aliens. (It is assumed that any T2 beneficiary with an effective filing date on or after 09/01/96 who is not listed is a U.S. citizen.)

Listing code 417 identifies LAPR aliens and other lawful aliens who do not need reverification of status. Listing code 418 identifies a lawful alien who needs reverification of status. Listing code 419 identifies an alien in the U.S. determined not to be lawfully present and whose benefits are suspended. Listing code 420 identifies an alien who has failed to cooperate in providing evidence of lawful presence in the U.S. and whose status is unknown.

00204.045 PROGRAM SERVICE CENTER (PSC) PROCESSING OF INITIAL T2
CLAIMS FILED SEPTEMBER 1, 1996 OR LATER

This section provides new PSC initial claims processing procedure for lawful aliens who need reverification of status, aliens not determined to be lawfully present and aliens who fail to cooperate and do not provide evidence of lawful presence.

00205.050 FO POSTENTITLEMENT (PE) ACTIONS ON T2 CLAIMS FILED
SEPTEMBER 1, 1996 OR LATER AND INVOLVING THE LAWFUL
PRESENCE REQUIREMENT

This section provides new FO postentitlement processing instructions for updating lawful presence status and processing address changes in foreign to domestic and domestic to foreign situations.

00204.055 PSC POSTENTITLEMENT (PE) ACTIONS ON T2 CLAIMS FILED
SEPTEMBER 1, 1996 OR LATER AND INVOLVING THE LAWFUL
PRESENCE REQUIREMENT

This section provides new PSC postentitlement processing instructions for updating lawful alien status and for processing maturing alien provision diaries. It also includes policy and procedure for processing address changes in foreign to domestic and domestic to foreign situations.

00204.060 TELESERVICE REPRESENTATIVE/SPIKE PROCESSING INSTRUCTIONS

This section provides new procedure for setting up T2 application appointments and processing foreign to domestic changes of address for individuals filing on or after September 1, 1996. It also includes an instruction to refer requests to suspend or reinstate benefits for reason of change in lawful presence to the FO for action.

00204.065 SEPTEMBER 1996 T2 ALIEN CHANGES- NOTICES- GENERAL

This section introduces and provides general instructions on new notice language on lawful presence.

00204.070 INITIAL TEMPORARY AWARD- LAWFUL ALIEN WHOSE STATUS NEEDS REVERIFICATION

This section provides notice information on awards to lawful aliens whose status needs reverification.

00204.075 INITIAL NO PAYMENT AWARD- ALIEN IS NOT LAWFULLY PRESENT

This section provides notice information on initial awards to aliens not lawfully present.

00204.080 POSTENTITLEMENT SUSPENSION- ALIEN IS NO LONGER LAWFULLY PRESENT

This section provides notice information on suspensions of aliens no longer lawfully present.

00204.085 POSTENTITLEMENT REINSTATEMENT- LAWFUL ALIEN WHOSE STATUS NEEDS REVERIFICATION

This section provides notice information on postentitlement reinstatements of lawful aliens whose status needs reverification.

00204.090 POSTENTITLEMENT REINSTATEMENT- LAWFUL ALIEN WHOSE STATUS DOES NOT NEED REVERIFICATION

This section provides notice information on postentitlement reinstatements of lawful aliens whose status does not need reverification.

00204.095 NOTICE LANGUAGE

This section provides new notice paragraph language necessary to prepare initial and postentitlement notices involving the lawful presence requirement.

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SEPTEMBER 1996 LAWFUL PRESENCE REQUIREMENT

**RS 00204.010 U.S. CITIZENSHIP/LAWFUL PRESENCE PAYMENT
REQUIREMENT EFFECTIVE FOR CLAIMS FILED SEPTEMBER
1, 1996 OR LATER**

Citation Public Law 104-193

A. INTRODUCTION

P.L. 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, signed into law on August 22, 1996 and effective for T2 purposes on September 1, 1996, changes policy with respect to the receipt of T2 benefits by aliens in the U.S. This transmittal provides interim instructions on the T2 provisions.

**B. POLICY- U.S. CITIZENSHIP/LAWFUL PRESENCE EVIDENCE
REQUIREMENT FOR PAYMENT**

The new law requires that, for T2 applications with effective filing dates of September 1, 1996 or later, each T2 claimant in the U.S., including a claimant applying for benefits from the U.S. under a totalization agreement, must provide evidence that he/she is a U.S. citizen or U.S. national, or an alien lawfully present in the U.S. as determined by the Attorney General, unless U.S. citizenship or lawful alien status is already established through SSA's records. (See GN 00204.007 for a definition of effective filing dates. For information on how to establish evidence from SSA's records, see RS 00204.015 for U.S. citizens and RS 00204.025A. for lawful permanent residents.)

Payment to an alien beneficiary filing September 1, 1996 or later who meets all other factors of entitlement, will be suspended for any month the alien is in the U.S. but not lawfully present in the U.S. for the entire month.

NOTE: This law does **not** affect:

- o payment to any T2 beneficiary outside the U.S.
- o payment to any T2 beneficiary in the U.S. filing an application for a T2 benefit before September 1, 1996.
- o entitlement to Medicare Part A by a T2 beneficiary.

C. POLICY- LAWFUL PRESENCE IN U.S. FOR AN ENTIRE MONTH

1. Lawful Presence in the U.S. for an Entire Month

To permit payment of T2 benefits to an alien in the U.S. under this law for any month, the alien must be lawfully present in the U.S. for the entire calendar month.

An alien whose benefits are suspended because he/she does not meet the lawful presence requirement for payment, and who leaves the U.S., is subject to the alien nonpayment provisions in section 202(t) of the Act based on presence outside the U.S. (See RS 00204.025 and RS 02610.000ff. for instructions when a beneficiary receives payment outside the U.S.)

2. Change of Status During the Month

For purposes of documenting U.S. citizenship or lawful presence as an alien and processing a claim, consider a lawfully present alien who changes to a different category of lawful alien, or to a U.S. citizen to be the latter for the entire month.

For example, a nonimmigrant who becomes lawfully admitted for permanent residence (LAPR) on 10/15/96 is considered to be LAPR for the entire month of 10/96. An LAPR alien who becomes a U.S. citizen on 10/15/96 is considered to be a citizen for 10/96.

D. POLICY- DETERMINING WHEN TO APPLY THE NEW LAW

1. New/Subsequent Claims and Dual-Entitlement Cases

A T2 claimant is considered to have applied for benefits on September 1, 1996 or later if the filing of an application is required for entitlement to the T2 benefit and the required application is effectively filed on or after September 1, 1996. Thus, evidence of U.S. citizenship or lawful presence as an alien is required for persons in the U.S. effectively filing new or subsequent claims, September 1, 1996 or later.

A claimant filing an application September 1, 1996 or later that will result in his/her dual-entitlement is required to establish U.S. citizenship or lawful presence to receive the additional benefit for which the new application is filed.

NOTE: A protective filing date is NOT material if it is only used to avoid application of the new law.

2. Lump Sum Death Payment (LSDP) Claims

If payment of the LSDP requires the filing of an application and the application is filed September 1, 1996 or later, a LSDP claimant must provide evidence of his/her U.S. citizenship or lawful presence during the entire calendar month of application. If an entitled beneficiary's LSDP is withheld because he/she is not lawfully present at the time of application, the payment may be released at any future

date if the beneficiary is able to give SSA evidence of lawful alien status for an entire month or if the beneficiary leaves the U.S.

3. Conversion of Benefit Claims

A person being converted from one benefit category to another does not need to provide evidence of U.S. citizenship or lawful presence because no new application is filed.

The SSA-1724 (Claim for Amounts Due in the Case of a Deceased Beneficiary), the SSA-25 (Certificate of Election for Reduced Spouse's Benefits) and the SSA-4111 (Certificate of Election for Reduced Widow(er)'s Benefits) are not applications. Therefore, claimants filing using these forms are not required to provide evidence of U.S. citizenship or lawful presence.

4. Disability Deferred Development Procedure

If evidence of U.S. citizenship or lawful presence is not yet determined when the disability claim is ready to send to the DDS for a medical decision, defer development of U.S. citizenship/lawful presence until a medical allowance is received.

RS 00204.015 DEVELOPING EVIDENCE OF U.S. CITIZENSHIP

A. PROCEDURE- ESTABLISHING EVIDENCE FROM SSA RECORDS

If possible, establish conclusive evidence of U.S. citizenship from SSA's records. (See current instructions in GN 00303.300B.1. on establishing conclusive evidence of U.S. citizenship.)

In addition, conclusive evidence of citizenship is established from SSA records if:

1. the Numident shows:
 - o a foreign POB (FCI indicator- will be displayed as an asterisk) and a CSP code of "A," or
 - o an IDN (evidence) code of "P" and the first Numident record (ETC:0) was established March 1, 1984 or later and the Numident shows the number holder alleged a U.S. place of birth).
2. the claimant's archived claim shows an allegation of birth in the U.S. and is annotated with an evidentiary document which establishes birth in the U.S.

3. the claimant alleges birth in the U.S. and an MBR establishes prior entitlement as a "J," "K," "M," or "T." beneficiary.

NOTE: A citizen of American Samoa or Swain's Island is a U.S. national. For SSA purposes, these persons are treated as U.S. citizens.

B. PROCEDURE- DEVELOPING EVIDENCE OF U.S. CITIZENSHIP

Develop evidence of U.S. citizenship only if the information on SSA's records (as indicated in A. above) or evidence submitted in connection with the current claim which verifies U.S. citizenship, e.g., a birth certificate showing birth in the U.S., Form FS-240 (Report of Birth Abroad of a Citizen of the United States), a U.S. passport or a naturalization certificate, does not already establish U.S. citizenship.

If development is necessary, accept any of the documents listed in GN 00303.300B. as evidence of U.S. citizenship. If conclusive evidence of U.S. citizenship is not readily available, accept readily available preferred evidence, rather than delay payment of the claim. Once U.S. citizenship has been established, assume, absent information to the contrary, that U.S. citizenship has not been lost.

C. REFERENCES

- o GN 00303.120A.- Who is considered a U.S. citizen at birth
- o GN 00303.100B.6.- Geographical definition of the U.S.
- o RM 00206.025- Reading a Numident query
- o SM 01601.475- Description of the PRSN screen on the SSI2 query

RS 00204.020 DEVELOPMENT OF LAWFUL PRESENCE OF AN ALIEN IN THE U.S.

A. POLICY- DETERMINATION OF LAWFUL PRESENCE

The determination of whether an alien meets the lawful presence requirement for T2 benefits is usually based on documents issued by the Immigration and Naturalization Service (INS) or information provided by that Agency. In general, an alien lawfully admitted must present the appropriate unexpired INS document as evidence of his/her status. However, there are some situations where expired documents may be accepted after verification with INS. (See RS 00204.025A. for specific evidence requirements for classes of lawfully present aliens.) A receipt or copy of an application form is not acceptable evidence.

B. PROCEDURE- DETECTING AND VERIFYING FRAUDULENT DOCUMENTS

Follow current procedures in RM00203.720A. for examining all documents presented by aliens applying for T2 benefits. In the case of aliens claiming to be LAPRs, SAVE offices should verify through SAVE (or through Form G-845 for non-SAVE FOs) only in the case of lost, expired, or suspicious documents. (See RM E0203.055 for SAVE procedures.)

In the case of nonimmigrants and temporary residents, verify only questionable documents with INS through the Form G-845 process. Finally, verify through the G-845 process all aliens who are refugees, asylees, aliens with current Temporary Protected Status (TPS) and Deferred Enforced Departure (DED), parolees, conditional entrants (pre-1980 refugees), Family Unity beneficiaries, Cuban-Haitian entrants, aliens currently in deferred action status, and spouses and children of U.S. citizens with approved visa petitions and pending adjustment of status application.

Do not adjudicate a claim until a suspect document has been verified by the issuing agency and the identity of the individual has been established.

C. REFERENCES- IDENTIFYING FRAUDULENT DOCUMENTS

- o RM 00203.050, Verifying a Document (Sensitive Instructions)
- o RM 00203.720, Detecting Fraudulent INS Documents
- o MSOM 300-E, (Sensitive Instructions) Previously Disallowed SS-5 Applications
- o The Administrative Confidential Memorandum dated June 1993- for specific information about INS documents
- o INS pamphlet Form M-396 "What Color is Your Green Card?"

D. DEFINITIONS

For purposes of processing claims under the lawful presence payment requirement for aliens:

- o an **alien not needing reverification** is an alien INS has determined is lawfully present in the U.S and whose current authorized stay does not require future reverification. Reverification of alien status will be undertaken **only** if SSA has reason to believe the alien is no longer lawfully present in the U.S.
- o an **alien needing reverification** is an alien INS has determined is lawfully present in the U.S. and whose current authorized stay will expire. This alien entitled to T2 benefits must provide evidence of an extension of lawful status or a change of status to another lawfully present alien class in order to continue to receive T2 benefits in the U.S. after the expiration date shown on his/her INS document. If INS does not normally issue another current

document to a particular category of alien, SSA must verify the alien's status yearly with INS in order to continue to pay T2 benefits.

RS 00204.025 EVIDENCE REQUIREMENTS FOR LAWFUL PRESENCE

A. PROCEDURE- DEVELOPING EVIDENCE OF LAWFUL PRESENCE

This section provides information on each category of lawfully present alien, including information on the evidence required to establish an alien's status and information on when verification of evidence before adjudication is required and when subsequent reverification of status is required.

NOTE: These evidence requirements are for T2 payment purposes and do not change the current SSN card evidence requirements for aliens.

INS considers an alien to be lawfully present in the U.S. for T2 payment purposes if the alien is:

1. lawfully admitted for permanent residence (LAPR) under the Immigration and Nationality Act (INA).

Evidence:

Evidence of LAPR status is established without further development if the Numident shows an IDN code of "H" (permanent resident alien).

If development is necessary, develop LAPR status in accordance with GN 00303.440.

NOTE: Some LAPR aliens have conditional 2 year I-551s (Alien Registration Receipt Card), subject to the limitation that they must apply for removal of the conditional basis 90 days before the second anniversary of the admittance date to the U.S. Failure to do so results in termination of the alien's lawful status. A conditional I-551 is identified by an expiration date 2 years later than the admittance/ adjudication date and status must be reverified upon expiration. (See RM 00203.400F.1. and .2 and the Administrative Confidential Memo for descriptions of I-551 cards.

Verifying Evidence:

Non-SAVE FOs: If the alien presents an I-151 (which is technically an obsolete document, but with no expiration date), forward a copy of the I-151 to INS via G-845 procedures for verification of lawful permanent residency. Annotate the G-845 "Verify the lawful permanent resident

status of the alien identified by this I-151."

Do not accept an expired I-551. Advise the alien to contact INS to apply for a current document and ask that a temporary I-551 document be issued for SSA purposes.

SAVE FOs: Query the SAVE data base using the alien's "A" number, only in cases where the original INS document has expired, is lost, unavailable or questionable. Output of "Lawful Permanent Resident - Employment Authorized" confirms LAPR status. If secondary verification is necessary, follow non-SAVE procedures.

No subsequent reverification of the status of an LAPR alien, other than a conditional LAPR alien, is needed.

2. a refugee admitted under section 207 of the INA.

Evidence:

INS Form I-94 annotated: "Admitted as a refugee pursuant to section 207 of the INA. If you depart the U.S. you will need prior permission from INS to return. Employment authorized," (See RM 00203.460B.1. for a further description of Form I-94 for a refugee and RM 00203.450B.9 for an exhibit of a Form I-94 with a refugee stamp.) OR

EAD (Employment Authorization Document) (Form I-688B/I-766) annotated: 274a.12(a)(3), which is the provision of the law for employment authorization and indicates status as a refugee. (See RM 00203.500B.2. for a further description and exhibit of Form I-688B.) OR

INS Form I-571 (Refugee Travel Document), showing admission in refugee status.

Verifying Evidence: Verify status with INS before adjudication in all cases. No subsequent reverification of continuing lawful presence is needed after the FO initially verifies refugee status.

3. granted asylum under section 208 of the INA.

Evidence:

INS Form I-94 annotated either "Asylum status granted pursuant to section 208 of the INA valid to (date)" (the period will generally be "indefinite") or "Asylum status granted indefinitely pursuant to section 208 of the INA." (See RM 00203.460B.3. for a further description of Form I-94 for an asylee and RM 00203.450B.10 for an exhibit of a Form I-94 with an asylum stamp.) OR

EAD (Employment Authorization Document) (Form I-688B/I-766) annotated 274a.12(a)(5) as the provision of the law for employment authorization and indicates status as an asylee. (See RM 00203.500B.2. for a further description and exhibit of Form I-688B.)

VERIFYING EVIDENCE: Verify status with INS before adjudication in all cases. Reverify continuing lawful presence one year after initial verification of asylee status is received.

4. paroled into the U.S. under section 212(d)(5) of the INA for a period of at least 1 year.

Evidence: INS Form I-94 which shows the bearer has been paroled pursuant to section 212(d)(5) of the INA, with an expiration date of at least 1 year from the date issued or "indefinite." (See RM 00203.460B.2. for a further description of Form I-94 for a parolee and RM 00203.450B.8 for an exhibit of Form I-94 with a parole stamp.)

VERIFYING EVIDENCE: Verify status with INS before adjudication in all cases. Reverify continuing lawful presence one year after initial verification of parolee status is received. (Parolees whose documents show an "indefinite" expiration date are still subject to yearly verification of continuing lawful presence because lawful status is reevaluated yearly by INS.)

5. paroled into the U.S. under 212(d)(5) of the INA for less than one year unless they have been paroled into the U.S. for deferred inspection, as exclusion hearing, or prosecution in the U.S.

Persons paroled in order to determine whether or not they must be excluded under the Act are not lawfully present because no determination has been made as to the lawfulness of their presence and they are allowed into the U.S. to avoid detention while awaiting proceedings.

Evidence: INS Form I-94 (Arrival/Departure Record) endorsed to show the initial period of parole authorization under INS regulations at 8 CFR 212.5.

Verify Evidence: Verify status with INS before adjudication in all cases, for a determination on whether an alien paroled for less than one year is lawfully present within the meaning of INS regulations at 8 CFR 102.12(a)(3). Reverify continuing lawful presence upon expiration of the parole status.

6. an alien whose deportation has been withheld under section

243(h) of the INA.

Evidence:

An order from an immigration judge which shows deportation has been withheld under section 243(h) of the INA, OR

EAD (Employment Authorization Document) (Form I-688B/I-766) annotated "274a.12(a)(10)", which is the provision of the law for employment authorization and indicates status as an alien whose deportation has been withheld. (See RM 00203.500B.2. for a further description and exhibit of Form I-688B.)

VERIFYING EVIDENCE: Verify status with INS before adjudication in all cases. Reverify continuing lawful presence one year after initial verification of status is received.

7. granted conditional entry pursuant to section 203(a)(7) of the INA as in effect prior to April 1, 1980.

Evidence: INS Form I-94 bearing the stamped legend "REFUGEE-CONDITIONAL ENTRY" and a citation of section 203(a)(7) of the INA.

VERIFYING EVIDENCE: Verify status with INS before adjudication in all cases. Reverify continuing lawful presence one year after initial verification of status is received.

ALIEN INSPECTED AND ADMITTED AS A NONIMMIGRANT:

8. admitted in nonimmigrant classes A-S (or who has been granted change of status to one of these categories following admission into the U.S.) and who has not violated the terms of the status.

Evidence: INS Form I-94 (Arrival/Departure Record) - generally issued at the time of entry to the U.S., annotated with the nonimmigrant visa category under which the alien was admitted and the date to which the stay in the U.S. has been authorized. There are different versions of the form. Refer to current instructions at:

- o RM 00203.600 for a chart listing the visa classifications for all Form I-94s.
- o RM 00203.450B. for exhibits of various versions of Form I-94.
- o RM 00203.470 for additional evidence for foreign

students (F-1 and M-1).

- o RM 00203.480 for additional evidence for exchange visitors (J-1 and J-2).

Verifying Evidence: If the document is questionable, verify status with INS before adjudication. Reverify continuing lawful presence at the time the INS document expires.

9. admitted in a special class of nonimmigrants- Citizens of the Freely Associated States, Formerly Trust Territories of the Pacific Islands.

Evidence: Develop evidence of citizenship in a Compact of Free Association States in accordance with RM 00203.430 4. and RM 00203.600. (See GN 00303.400E. for information on residents of former Pacific Trust Territories, such as the Federated States of Micronesia, the Republic of Palau and the Republic of the Marshall Islands, who are considered to be admitted in a special class of nonimmigrants.)

Verifying Evidence: If the document is suspect, verify status with INS before adjudication. No reverification of status is needed.

10. considered a nonimmigrant without INS documentation, e.g. a Canadian born American Indian or a Mexican born Texas Band of Kickapoo Indian.

Evidence: Develop evidence of lawful status in accordance with RM 00203.430 2. and 3. and GN 00303.420A.1. and A.2.

Verifying Evidence: If documents are suspect or a determination cannot be made, refer the individual to INS for a determination of lawful status before adjudication. No reverification of status is needed.

11. lawfully admitted without INS documentation for up to 6 months., e.g. a citizen of Bermuda or Canada, or a resident of Canada or Bermuda who is a citizen of a British Commonwealth country.

Canadian citizens and permanent residents of Canada with common nationality are normally not issued INS Form I-94s for temporary visits up to 6 months for business or pleasure. They may, however, obtain Form I-94s upon request when they enter the U.S.

Evidence: Evidence of citizenship in the appropriate country, and evidence of residence in Canada or Bermuda for citizens of Commonwealth countries, as appropriate.

(See RM 00203.430 1., 7. and 8. for information on qualifying aliens.)

To determine if such an alien is lawfully present:

- o Ask the claimant if he/she has an INS document permitting them to be in the U.S.
- o If yes, evaluate the INS document presented as evidence of lawful status.
- o If no, ask the claimant how long he/she has been in the U.S. on his/her current visit?
- If less than 6 months, ask for evidence of citizenship in the appropriate country and evidence of residence in Canada or Bermuda, as appropriate. If evidence is submitted, assume the claimant is lawfully present and advise him/her that SSA can consider him/her lawfully present for T2 payment purposes for up to 6 months. Advise him/her that he/she is required to provide evidence of lawful presence in the U.S. at the end of the 6 month stay in order to continue to receive benefits in the U.S.
- If more than 6 months, explain that he/she is not lawfully present for T2 payment purposes and cannot receive benefits in the U.S. Advise him/her that if he/she leaves the U.S., he/she should notify SSA. If he/she returns to the U.S., he/she may request INS Form I-94 upon entry to the U.S. Refer any questions about the lawful presence of a citizen of Canada or Bermuda, making a temporary visit to the U.S., to INS.

Verifying Evidence: If documents are suspect or a determination cannot be made, refer the individual to INS for a determination of lawful alien status before adjudication.

Consider a citizen of Canada or Bermuda, or a resident of Canada or Bermuda who is a citizen of a Commonwealth country to be a lawful alien for six months. Reverify status at the end of 6 months.

12. admitted under the Visa Waiver Pilot Program under INA 217 (WB- Visitor for Business and WT- Visitor for Pleasure).

Evidence: INS Form I-94W (Nonimmigrant Visa Waiver Arrival/Departure Form) which shows the nonimmigrant category (WB or WT) and the period of authorized stay, generally for a maximum period of 90 days. (See RM 00203.450B.1.c. for a description of Form I-94W and RM

00203.600 for information on visa classifications.)

Verify evidence: If the document is suspect, verify status with INS before adjudication. Since the period of authorized stay is only 90 days, develop at the time of adjudication for evidence of continued lawful presence in the U.S.

13. a Canadian or Mexican citizen admitted as a professional under the North America Free Trade Agreement, NAFTA, ("TN" for principals; "TD" for dependents).

Evidence: INS Form I-94 (Arrival/Departure Record) which shows the nonimmigrant category ("TN" or "TD"), the name of the employer and the period of authorized stay, which generally is in 1-year increments.

Verifying Evidence: If the document is questionable, verify status with INS before adjudication. Reverify upon expiration of the document.

14. An alien holding a Border Crossing Card.

Evidence: Follow RM 00203.450C. to develop evidence of lawful admission for Canadian and Mexican nationals holding border crossing cards. Holders of Mexican border crossing cards admitted for more than 72 hours may have a Form I-94 and may remain in the U.S. until the date indicated on the form.

Verify Evidence: If the document is suspect, verify status with INS before adjudication.

REMEMBER: If the claimant provides evidence of lawful presence for less than one month, e.g., a Nonresident Alien Mexican Border Crossing Card authorizing a bearer to enter the U.S. for 72 hours or less, accept it as evidence of lawful presence only for the period shown, and assume the alien will be outside the U.S. for the remainder of that month. Since the alien will not have lawful presence status for an entire month, the alien may still be subject to the alien nonpayment provisions in section 202(t) of the Act based on presence outside the U.S. for that month (see RS 02610).

15. a Crew Member, holding a landing permit.

Evidence: INS Form I-95AB (Crewman's Landing Permit) which shows the nonimmigrant category ("D1" or "D2") and the period of authorized stay, generally a maximum stay of 29 days.

Verify Evidence: If the document is suspect, verify status with INS before adjudication.

ALIENS WHO BELONG TO A CLASS OF ALIENS PERMITTED TO REMAIN IN THE U.S. BECAUSE THE ATTORNEY GENERAL HAS DECIDED FOR HUMANITARIAN OR OTHER PUBLIC POLICY REASONS NOT TO INITIATE DEPORTATION OR EXCLUSION PROCEEDINGS, OR ENFORCE DEPARTURE:

16. currently in temporary resident status pursuant to INA 210 or INA 245A.

Evidence: INS Form I-688 (Temporary Resident Card). (See RM 00203.530B.2. for information on temporary resident status and RM 00203.530C.2. and D.2. for a description and exhibit of Form I-688.)

Verifying Evidence: Verify suspect documents with INS before adjudication. Reverify the I-688 with INS upon expiration.

17. an alien currently under Temporary Protected Status (TPS) pursuant to INA 244A.

Evidence:

INS Form I-94 (Arrival/Departure Record) endorsed "Registered for Temporary Protected Status under section 302 or 303 of IMMACT 90" with a TPS stamp, (See RM 00203.490.B.3. for additional information on TPS aliens and RM 00203.490D.2. for an exhibit of a Form I-94 with a TPS stamp.) OR

EAD (Employment Authorization Document) (Form I-688B/I-766) which shows the provision of law as 274a.12(a)(12) or 274a.12(c)(19). (See RM 00203.500B.2. for an exhibit of Form I-688B.)

VERIFYING EVIDENCE: Verify status with INS before adjudication in all cases. Reverify continuing lawful presence one year after initial verification of status is received.

If the alien claims that he/she is currently under TPS, but presents an expired I-94 or EAD, verify with INS.

18. a Cuban Haitian entrant, as defined in section 202(b) of Pub. L. 99-603, as amended.

Evidence:

INS Form I-94 (Arrival/Departure Record) which shows no alien classification and the legend: "CH-6" or "Cuban Haitian Entrant (Status Pending) Renewable January 15, 1981 (or July 15, 1981)," and the period of authorized stay. (See RM 00203.460B.4. for additional information on Cuban Haitian entrants.) OR

EAD (Employment Authorization Document) (Form I-688B/I-766) which shows the provision of law as 274a.12(c)(14). (See RM 00203.500B.2. for an exhibit of Form I-688B.)

VERIFYING EVIDENCE: Verify status with INS before adjudication in all cases. Reverify continuing lawful presence at the end of the period of authorized stay, if known, or within one year.

19. a Family Unity program alien pursuant to section 301 of Pub. L. 101-649, as amended.

Evidence:

INS Form I-797 (Notice of Action) showing approval for voluntary departure under the Family Unity Program and an "A" number and "valid from (date) to (date)," (See RM 00203.490B.2. for additional information on Family Unity Program Aliens and RM 00203.490D.1. for an exhibit of a Form I-797.) OR

EAD (Employment Authorization Document) (Form I-688B/I-766) which show the provision of the law as 274a.12(a)(13). (See RM 00203.500B.2. for an exhibit of Form I-688B.) OR

INS Form I-94 (Arrival/Departure Record) showing status and a period of authorized stay.

Verifying Evidence: Verify status with INS before adjudication in all cases. Reverify continuing lawful presence at the end of the authorized stay, if known, or one year after initial verification of status is received.

20. currently under Deferred Enforced Departure (DED) pursuant to a decision made by the President.

Evidence:

INS Form I-94 (Arrival/Departure Record) endorsed to reflect DED status OR

EAD (Employment Authorization Document) (Form I-688B/I-766) reflecting the INS provision for employment authorization based on current DED status, 274a.12(c)(14). (See RM 00203.500B.2. for an exhibit of Form I-688B.)

Verifying Evidence: Verify status with INS before adjudication in all cases. Reverify continuing lawful presence one year after initial verification of status is received.

If the alien claims that he/she is covered under DED, but presents an expired I-94 or EAD, verify with INS. If an alien claims to be covered under the DED program for Persian Gulf evacuees (a group of aliens who arrived in the U.S. between 9/02/90 and 12/14/90, currently eligible for DED until 01/01/97), but presents an expired I-94 or EAD, verify with INS.

21. currently in deferred action status pursuant to INS Operations Instructions at OI 242.1(a) (22).

Evidence:

INS Form I-94 (Arrival/Departure Record) showing deferred action status and period of authorized stay, OR

EAD (Employment Authorization Document) (Form I-688B/I-766) citing INS regulations at 274a.12(c) (14). (See RM 00203.500B.2. for an exhibit of Form I-688B.)

Verifying Evidence: Verify status with INS before adjudication in all cases. Reverify continuing lawful presence at the end of the authorized stay.

22. the spouse or child of a U.S. citizen whose visa petition has been approved, and who has a pending application for adjustment of status.

Evidence:

INS Form I-797 (Notice of Action) OR

EAD (Employment Authorization Document) (Form I-688B/I-766) citing INS regulations at 274a.12(c) (9). (See RM 00203.500B.2. for an exhibit of Form I-688B.)

Verifying Evidence: Verify status with INS before adjudication in all cases. Reverify continuing lawful presence one year after initial verification of status is received.

U.S. citizens may file I-130 petitions for their noncitizen spouses and children as well as I-485 applications for adjustment of status, if the spouses and children are in the U.S. INS does not usually enforce departure of these persons if they are out of status while their applications are pending. Therefore, aliens presenting proof, such as a

filing receipt, that Forms I-130 and I-485 have been filed on their behalf may be considered lawfully present.

23. an alien with a pending Application for Asylum and Withholding of Deportation who has been granted work authorization or a child under age 14 with an Asylum and Withholding of Deportation Application pending at least 180 days.

Applicants for asylum and withholding of deportation are permitted to remain in the U.S because section 208(a) of the Act requires the INS to create a procedure for adjudicating claims for asylum made by aliens physically present in the U.S.

Evidence:

INS Form I-94 (Arrival/Departure Record) showing status and the period of authorized stay, OR

EAD (Employment Authorization Document) (Form I-688B/I-766) citing INS regulations at 274a.12(c)(8). (See RM 00203.500B.2. for an exhibit of Form I-688B.)

Verifying Evidence: Verify status with INS before adjudication in all cases. Reverify continuing lawful presence at the end of the period of authorized stay.

B. LIST- EXAMPLES OF ALIENS CURRENTLY NOT INCLUDED IN THE DEFINITION OF "LAWFULLY PRESENT IN THE U.S."

The following aliens are NOT among those aliens included in any of the lawfully present categories discussed above, unless they present acceptable documentation showing they are otherwise lawfully present in the U.S.:

1. Aliens with pending adjustment of status applications (INA 245 and 249), unless the alien is the spouse or child of a U.S. citizen and has an approved immediate relative petition and a pending adjustment of status application.
2. Aliens with pending legalization applications (INA 245A), including class members in ongoing litigation.
3. Aliens with pending suspension of deportation applications under INA 244.
4. Aliens granted a stay of deportation.
5. Aliens who have been ordered deported, or excluded and deported, but who remain in the U.S., whether or not under an order of supervision, or aliens who have absconded.

6. Aliens who enter without inspection (EWIs), overstays, and nonimmigrant status violators.
7. Aliens paroled into the U.S. for deferred inspection or exclusion hearings under INA 236, and criminal aliens paroled into the U.S. for prosecution.
8. Aliens with any form of voluntary departure.

**RS 00204.030 LAWFUL PRESENCE FOR AN ENTIRE MONTH- BENEFICIARY
IS OUTSIDE THE U.S.**

A. INTRODUCTION

The alien nonpayment provision (section 202(t) of the Social Security Act) provides, in general, that aliens outside the U.S. for 6 consecutive calendar months will not be paid benefits beginning with the 7th month of absence, unless the beneficiary meets one of several specific exceptions to the general rule of nonpayment (see RS 02610.001ff). As explained in section 202(t)(1)(B), we do not consider a person to be "outside the U.S.," and do not begin counting the 6-month period of absence, until the person has been outside the U.S. for 30 consecutive days.

As a practical matter, this means that a beneficiary may delay indefinitely the running of the 6-month period by returning to the U.S. on any part of one day before the elapsing of the 30-day period, since, by doing so, the beneficiary will not technically be "outside the U.S.," as explained above.

Once the beneficiary has been outside the U.S. for 30 consecutive days, he/she can interrupt the running of the 6-month period if he/she returns to the U.S. for 30 consecutive days before the end of the 6-month period. If the beneficiary does not return to the U.S. for 30 consecutive days before the end of the 6-month period, payments are suspended, and may only be resumed effective with the first full month throughout which the individual is in the U.S.

B. POLICY

Even though P.L.104-193 does not affect payment of benefits made to aliens outside the U.S. under the alien nonpayment provision (section 202(t)), it may affect payment to aliens receiving benefits on the basis of being inside the U.S. but who are physically outside the U.S. and who must return to the U.S. periodically to establish presence in order to continue receiving their benefits as described in A. above.

For claims filed on or after September 1, 1996, an alien beneficiary outside the U.S. who, under the alien nonpayment

provision, must return to the U.S. periodically to establish presence and thereby assure continuation of his/her benefits, must also be lawfully present in the U.S. for the relevant period of time (30 consecutive days or one full calendar month) in order to receive those benefits.

NOTE: It will not be necessary to require proof of lawful presence from a beneficiary who establishes presence in the U.S. on any part of one day every 30 days in order to delay the beginning of the 6-month period. Only an alien who has established lawful presence in the U.S. for the full month before the month he/she left the U.S. can delay the beginning of the 6-month period by returning to the U.S. on any part of one day every 30 days. Therefore, we will not require that he/she prove it again.

C. PROCEDURE- ESTABLISHING LAWFUL PRESENCE IN THE U.S.

1. Acceptable Evidence of Physical Presence in the U.S.

See RS 02610.023D for the types of evidence which may be used to establish an alien's physical presence in the U.S. for 30 consecutive days or one calendar month. Remember, **documentary evidence is always preferred to signed statements**, and must be requested (and the file documented) before signed statements may be accepted.

As explained in RS 02610.020B.3., a "full calendar month" means all of the first day of the calendar month through all of the last day of such month. A presence of "30 consecutive days" means presence for 24 hours of each day of a consecutive 30-day period.

2. Acceptable Evidence of Lawful Presence in the U.S.

For individuals who are entitled to benefits based on an application filed on or after September 1, 1996, and who must establish physical presence in the U.S. for 30 consecutive days or one calendar month, explain that they must **also** establish that they are **lawfully present in the U.S.** for the subject period.

Only those aliens who meet the definition of lawful presence as shown in RS 00204.025A. and who can submit the documentation shown therein may interrupt the running of the 6-month period or have their suspended benefits resumed based on lawful presence of 30 consecutive days or one calendar month in the U.S. Accept any evidence listed in RS 00204.025A. as evidence of lawful presence in the U.S. for purposes of interrupting the 6-month period or resuming benefits that have been suspended.

3. EXAMPLES

A young spouse beneficiary, who is a Mexican citizen and lives in Mexico with her husband (the insured worker) and two entitled minor children, must return to the U.S. with both children for 30 consecutive days in order to interrupt the running of the 6-month period outside the U.S. and the subsequent suspension of their benefits. Since they are entitled to benefits based on applications filed in March of 1996, they need only establish **physical** presence in the U.S. They do not need to also establish that they are lawfully present in the U.S. for the 30-day period.

In October 1996, the same spouse files an application for a child born to her and the insured worker in that same month. Since the child was born outside the U.S., the 6-month period begins effective with November (see RS 02610.001A.2.). The spouse is unable to bring the child to the U.S. until January of 1997. Since more than 30 days outside the U.S. have elapsed, the spouse must bring the child to the U.S. for 30 consecutive days to interrupt the running of the 6-month period, which ends on the last day of April 1997 (benefits would be suspended effective May 1997). Because the child was entitled based on an application filed on or after September 1, 1996, the spouse must establish **lawful presence** for that child only; for the other two children and for herself, she must only establish physical presence in the U.S.

**RS 00204.035 LAWFUL PRESENCE PROCESSING CONSIDERATIONS FOR
CLAIMS FILED ON OR AFTER SEPTEMBER 1, 1996**

1. Since each beneficiary on a record must meet the lawful presence requirement on his/her own to be paid for a given month, the alien status of the primary beneficiary on a record does not affect the payment of any auxiliary on a record.
2. Prepare a separate listing and/or diary for each alien subject to the lawful presence payment requirement.
3. If an auxiliary's benefits are suspended for failure to be lawfully present in the U.S., do not readjust the benefit rates of other auxiliaries on the record.

Consider the advantage, if any, of claims withdrawal of the affected beneficiary(ies) if that would be advantageous in providing a higher total family benefit payable to the household. (GN 00206.001ff contains the withdrawal policy.) However, do not consider withdrawal if the applicant must file because of SSI entitlement or CFMAX involvement.

4. During the initial interview process, provide each prospective claimant with pertinent information so that an informed decision can be made about his/her choice of MOE. When earnings are involved for the year of filing and after an annual report is received, the MOE may be changed to a month subject to suspension for not meeting the lawful presence requirement.

During the MOE discussion, inform the claimant of the full effect of all MOE options. Claimants must decide personally which of the options discussed in GN 00204.041 they wish to elect.

**RS 00204.040 FIELD OFFICE (FO) PROCESSING OF INITIAL T2 CLAIMS
FILED SEPTEMBER 1, 1996 OR LATER**

A. PROCEDURE- FO PROCESSING- INITIAL CLAIMS FOR U.S. CITIZENS

1. If evidence of U.S. citizenship is established based on the claimant's Numident (RS 00204.015), SSR or prior archived claim, enter an issue code of CITZ on the Remarks (RMKS) screen with the code (e.g., NUMI) as the document type used to prove citizenship/alien status; or,

If a document listed in GN 00303.300B is used to prove U.S. citizenship, enter an issue code of CITZ on the RMKS screen and the code for the document type used to prove citizenship/alien status (e.g., BC.) The document type and what to code on the RMKS screen are listed in GN 00301.288B.

NOTE: Do not enter an issue code of CITZ on the RMKS screen if a U.S. born citizen presents a public record of birth recorded before age 5, or our records indicate such evidence was previously presented (e.g., IDN code of P on the NUMI - RS 00204.015A.)

2. If evidence of citizenship is not available when the claim is received, enter an issue of LAWFUL on the Development Worksheet (DW01) screen. Do not SPORT a disability claim or adjudicate a claim, until this issue is resolved. If adjudication has been delayed and alien status has expired, recontact to determine current status.

If the claim will be denied because a factor of entitlement is not met (i.e., relationship), process as a regular denial.

If evidence of U.S. citizenship is not provided, follow the procedures in E. below to suspend for failure to cooperate.

3. Process the claim following current procedures. No listing, diaries, or special notice language is required.

B. PROCEDURE- FO PROCESSING - INITIAL CLAIMS FOR ALIEN NOT NEEDING REVERIFICATION OF STATUS

Use the MCS Earnings Computation (EC) facility or the automated 101 (A101) procedures to process these cases. Do not use the Claims Automated Processing System (CAPS).

1. If the claim can be processed through MCS EC, follow current instructions to adjudicate the claim and take the following additional actions:

- o Document the RMKS screen with the issue code CITZ and the code for the INS form number used to prove LAPR or other lawful alien not needing reverification of status as defined in RS 00204.025A. above (e.g., I-551, I-94.)
- o If evidence of lawful presence is not available when the claim is received, enter an issue of LAWFUL on the DW01 screen. Do not SPORT a disability claim or adjudicate a claim until this issue is resolved. If adjudication has been delayed and alien status has expired, recontact to determine current status.

If the claim will be denied because a factor of entitlement is not met (i.e., relationship), process as a regular denial.

- o If evidence of lawful presence is not provided, follow the procedures in E. below to suspend for failure to cooperate.
 - o Enter listing code 417 on the DECI screen. No diary or special notice language information is required.
- NOTE:** Listing code 417 identifies LAPR aliens and other aliens not needing reverification of lawful alien status. Identify with remark, "ALIEN- DO NOT REVERIFY STATUS."
- o Prepare an SSA-5015-U2 (paper) with the listing code 417 plus the remark "ALIEN- DO NOT REVERIFY STATUS".
 - o Prepare an SSA-3601, Non-CAPS Routing Sheet, and check "SSA-5015 needed." Also check "2." MCS Processing Completed but Additional Action Required:" Check the appropriate item a-d.

2. If the claim cannot be processed through EC (an MCS limitation or exclusion applies), process the claim using the A101 and take the following actions:

- o Document the RMKS screen with the issue code CITZ and

the code for the INS form number used to prove LAPR or other lawful alien status not needing reverification as defined in RS 00204.025A. above (e.g., I-551, I-94.)

- o If evidence of lawful presence is not available when the claim is received, enter an issue of LAWFUL on the DW01 screen. Do not SPORT a disability claim or adjudicate a claim until this issue is resolved. If adjudication has been delayed and alien status has expired, recontact to determine current status.

If the claim will be denied because a factor of entitlement is not met (i.e., relationship), process as a regular denial.

If evidence of lawful presence is not provided, follow the procedures in E. below to suspend for failure to cooperate.

- o Enter listing code 417 on the DECI screen. No diary or special notice language is required.
- o Enter the following in the REMARKS field of the BCF/Remarks/Notice (BCRN) screen:

LISTING CODE 417 - BIC " " ALIEN DO NOT REVERIFY STATUS.

- o Prepare an SSA-5015-U2 (paper) with the listing code 417 plus the remark "ALIEN DO NOT REVERIFY STATUS."
- o Check the DIARY ACTION NEEDED-SSA-5015 ENCLOSED field on the ROUTING SHEET (COVR).

C. PROCEDURE- FO PROCESSING OF INITIAL CLAIMS- ALIEN NEEDING REVERIFICATION

Use the MCS Earnings Computation (EC) facility or the automated 101 (A101) procedures to process these claims. Do not use the Claims Automated Processing (CAPS) system.

1. If the claim can be processed through MCS EC, follow current processing instructions and take the following additional actions:
 - o Document the RMKS screen with the issue code CITZ and the code for the INS form number used to prove lawful presence as defined in RS 00204.025A. above (e.g., I-94.)
 - o If evidence of lawful presence is not available when the claim is received, enter an issue of LAWFUL on the

DW01 screen. Do not SPORT a disability claim or adjudicate a claim until this issue is resolved. If adjudication has been delayed and alien status has expired, recontact to determine current status.

If the claim will be denied because a factor of entitlement is not met (i.e., relationship), process as a regular denial.

- o If the document presented indicates that lawful alien status will expire within 60 days from the date the application is received:
 1. Explain to the alien that if he/she plans to stay in the U.S. beyond the expiration date, he/she must contact INS to update his/her lawful status and provide evidence of status extension or a change in status to SSA. Explain that if the evidence of status extension or change in status is not presented to SSA timely, benefits will be suspended.
 2. Designate the dictated text UTI of INFD02 on the Notice 3 (NOT3) screen and annotate the cover sheet with the need for special language involving lawful presence paragraphs S24 and J13.
 3. Enter a listing code of 418 on the DECI screen.

NOTE: Listing code 418 identifies aliens needing reverification of lawful presence. Identify with remark, "ALIEN- REVERIFY STATUS."
 4. Prepare an SSA-5015 (paper) with the listing code 418 plus the remark "ALIEN- REVERIFY STATUS."
 5. Prepare a separate 5015-U2 with the remark "SUSPEND BENEFITS S9 MMYW WITH AN RFST OF LEGISL." (e.g., if document expires 1/19/97, benefits should be suspended 01/97).
 6. Prepare an SSA-3601, Non-CAPS Routing Sheet, and check "SSA-5015 needed."
- o If the document presented indicates that lawful alien status will expire more than 60 days from the date the application is received:
 1. Enter diary code 25 and a due date in the diary field of the DECI screen of:

60 days prior to the expiration date on the INS

document, or in the case of "indefinite" stay (unless otherwise specified in RS 00204.025A.), 1 year from the date the claim is adjudicated.

2. Designate the dictated text UTI of INFD02 on the Notice 3 (NOT3) screen and annotate the cover sheet with the need for special language involving lawful presence paragraphs S24 and J13.
 3. Enter a listing code of 418 on the DECI screen.
 4. Prepare an SSA-5015-U2 (paper) with the listing code 418 plus the remark "ALIEN- REVERIFY STATUS."
 5. Prepare a separate 5015-U2 with diary code 25 and the diary due date plus the remark "SUSPEND BENEFITS S9 MMYW WITH AN RFST OF LEGISL." (e.g., if document expires 1/19/97, benefits should be suspended 01/97).
 6. Prepare an SSA-3601, Non-CAPS Routing Sheet, and check "SSA-5015 needed."
2. If the case cannot be processed through EC (an MCS limitation or exclusion applies), process the case using the A101 and take the following additional actions:
- o Document the RMKS screen with the issue code CITZ and the code for the INS form number used to prove lawful presence as defined in RS 00204.025A. (e.g., I-94.)
 - o If evidence of lawful presence is not available when the claim is received, enter an issue of LAWFUL on the DW01 screen. Do not SPORT a disability claim or adjudicate a claim until this issue is resolved. If adjudication has been delayed and alien status has expired, recontact to determine current status.
- If the claim will be denied because a factor of entitlement is not met (i.e., relationship), process as a regular denial.
- o If the document presented indicates that lawful alien status will expire within 60 days from the date the application is received:
 1. Explain to the alien that if he/she plans to stay in the U.S. beyond the expiration date, he/she must contact INS to update his/her

lawful status and provide evidence of status extension or a change in status to SSA. Explain that if the evidence of status extension or change in status is not presented to SSA timely, benefits will be suspended.

2. Prepare an SSA 5015-U2 (paper) with listing code 418 plus the remark "ALIEN- REVERIFY STATUS", and a separate SSA-5015 with TOE code 210 "SUSPEND BENEFITS S9 MMYW WITH AN RFST OF LEGISL." (e.g., if document expires 1/19/97, benefits should be suspended 01/97).
3. Annotate the cover sheet with the need for an SSA-5015-U2 listing code 418 plus remark "ALIEN- REVERIFY STATUS- SUSPEND BENEFITS S9 MMYW WITH AN RFST OF LEGISL."
4. Enter the following in the REMARKS field of the BCRN screen:

LISTING CODE 418 - BIC " " ALIEN- REVERIFY STATUS.

- o If the document presented indicates that lawful alien status will expire more than 60 days from the date the application is received:

1. Enter diary code 25 and a due date in the diary field on the DECI screen of:

60 days prior to the expiration date on the INS document, or in the case of "indefinite" stay (unless otherwise specified in RS 00204.025D.), 1 year from the date the claim is adjudicated.
2. Prepare an SSA 5015-U2 (paper) with listing code 418 plus the remark "ALIEN- REVERIFY STATUS", and a separate SSA-5015 with TOE code 210 and diary due date stating "SUSPEND BENEFITS S9 MMYW WITH AN RFST OF LEGISL." (e.g., if document expires 1/19/97, benefits should be suspended 01/97).
3. Annotate the cover sheet with the need for an SSA-5015-U2 listing code 418 plus remark "ALIEN- REVERIFY STATUS"; and enter diary code 25 and due date stating "SUSPEND BENEFITS S9 MMYW WITH AN RFST OF LEGISL."

4. Enter the following in the REMARKS field of the BCRN screen:

LISTING CODE 418 - BIC " " ALIEN- REVERIFY STATUS, DIARY 25 DUE DATE MMY.

5. Designate an incomplete notice on the NOT2 screen and annotate the cover sheet with the need for special language involving lawful presence paragraphs S24 and J13.
6. Check the DIARY ACTION NEEDED-SSA-5015 ENCLOSED field on the ROUTING SHEET (COVR).

D. PROCEDURE- FO PROCESSING- INITIAL CLAIMS FOR ALIENS NOT LAWFULLY PRESENT IN THE U.S.

If the document presented indicates the claimant is not lawfully present in the U.S. for any or all months of entitlement, process the case as an MCS limitation using the A101 and take the following additional actions:

- o Enter listing code 419 on the DECI screen.

NOTE: Listing code 419 identifies an alien in the U.S. determined not to be lawfully present and whose benefits are suspended. Identify with remark "ALIEN-NOT LAWFULLY PRESENT."

- o Prepare an SSA-5015-U2 (paper) with listing code 419 plus remark "ALIEN- NOT LAWFULLY PRESENT- BENEFITS SUSPENDED."
- o Enter the following in the REMARKS field of the BCRN screen:

LISTING CODE 419 - BIC " " ALIEN NOT LAWFULLY PRESENT-S9 APPLIES EFF MMY AND CONTINUING."

In dual entitlement cases, when the other entitlement is based on an application filed before September 1, 1996, also enter the following:

"THIS ACTION DOES NOT AFFECT ENTITLEMENT ON (SSN) (BIC)."

In a Lump Sum Death Payment (LSDP) only claim, enter the following:

"LISTING CODE 419 - BIC " " ALIEN NOT LAWFULLY PRESENT. CODE THE RFD FIELD X AND ADD A SPECIAL MESSAGE FIELD TO THE MBR "LSDP DEATH PAYMENT NOT

RELEASED, ALIEN NOT LAWFULLY PRESENT IN THE U.S."

- o Designate an incomplete notice on the NOT2 screen and the cover sheet with the need for special language paragraphs S24, S25 and G46.
- o Check the DIARY ACTION NEEDED-SSA-5015 ENCLOSED field on the ROUTING SHEET (COVR).

E. PROCEDURE- FO PROCESSING- INITIAL CLAIMS INVOLVING FAILURE TO COOPERATE (FTC)

If the alien fails to cooperate and does not provide evidence of lawful presence in the U.S., process the case as an MCS limitation using the A101 and take the following additional actions:

- o Enter listing code 420 on the DECI screen.

NOTE: Listing code 420 identifies an alien who has failed to cooperate in providing evidence of lawful presence in the U.S. and whose status is unknown. Identify with remark, "ALIEN FTC- LAWFUL PRESENCE UNKNOWN."

- o Prepare an SSA-5015 (paper) with listing code 420 plus remark "ALIEN FTC- LAWFUL PRESENCE UNKNOWN - BENEFITS SUSPENDED.
- o Enter the following in the REMARKS field of the BCRN screen:

LISTING CODE 420 - BIC " " ALIEN FTC- LAWFUL PRESENCE UNKNOWN. S9 APPLIES EFF MMY AND CONTINUING."

In dual entitlement cases, when the other entitlement is based on an application filed before September 1, 1996, also enter the following:

"THIS ACTION DOES NOT AFFECT ENTITLEMENT ON (SSN) (BIC)."

In a Lump Sum Death Payment (LSDP) only claim, enter the following:

"LISTING CODE 420 - BIC " " ALIEN FTC-LAWFUL PRESENCE UNKNOWN. CODE THE RFD FIELD X AND ADD A SPECIAL MESSAGE FIELD TO THE MBR "LSDP DEATH PAYMENT NOT RELEASED, ALIEN FTC-LAWFUL PRESENCE UNKNOWN."

- o Designate an incomplete notice on the NOT2 screen and the cover sheet with the need for special language

involving lawful presence paragraphs S24, S25 and G46.

- o Check the DIARY ACTION NEEDED-SSA-5015-U2 ENCLOSED field on the ROUTING SHEET (COVR).

RS 00204.045 PROGRAM SERVICE CENTER (PSC) PROCESSING OF INITIAL T2 CLAIMS FILED SEPTEMBER 1, 1996 OR LATER

A. PROCEDURE- PSC- INITIAL CLAIMS- ALIEN NEEDS REVERIFICATION

If the field office indicates on the A101 that benefits should be awarded but alien provisions may affect payment in the future ("alien needs reverification") the following procedures apply:

1. a. If you are in a PCACS module:
 - o Establish a diary using the DIARY ALERT (DIAR) screen with TOEL1 = STATUS and TOEL2 = ALIEN. Diary for the period indicated on the A101.
 - o Establish a listing shown on the A101 using the LISTING (LIST) screen.
 - o In the award notice, include MADCAP paragraphs S24 and J13.
 - o Add a special message to the MBR using the CIP-M screen with the legend "ALIEN NEEDS REVERIFICATION - MMY TO MMY".
- b. If you are not in a PCACS module:
 - o Establish a diary using form SSA-5015-U2 with TOE code 210. Diary for the period indicated on the A101.
 - o Establish a listing shown on the A101 using form SSA-5015-U2.
 - o In the award notice, include M-TEXT paragraphs S24 and J13.
 - o Add a special message to the MBR using the CIP-M screen with the legend "ALIEN NEEDS REVERIFICATION - MMY TO MMY".

B. PROCEDURE- PSC- INITIAL CLAIMS- ALIEN NOT DETERMINED TO BE LAWFULLY PRESENT

If the field office indicates on the A101 that benefits

should be suspended under the alien provisions:

- o Suspend benefits for the designated beneficiary for the months indicated on the A101 using LAF S9 with RFST of LEGISL.

NOTE: LEGISL identifies a suspension for reason of failure to meet the lawful presence requirement.

- o Establish a listing shown on the A101 using the PCACS LIST screen (if your module is under PCACS) or prepare a SSA-5015-U2 with the listing code, no diaries needed.
- o In the award notice, include M-TEXT paragraphs S24, S25 and G46.
- o Add a special message to the MBR using the CIP-M screen with the legend "BENEFITS FOR BIC " " SUSPENDED EFF MM/YY UNDER ALIEN PROVISIONS OF PL 104-193."
- o In LSDP only claims, code the RFD field X and add a special message field to the MBR "LSDP DEATH PAYMENT NOT RELEASED, ALIEN NOT LAWFULLY PRESENT."

C. PROCEDURE- PSC- INITIAL CLAIMS- FAILURE TO COOPERATE (FTC) - ALIEN DOES NOT PROVIDE EVIDENCE OF LAWFUL PRESENCE IN THE U.S.

If the field office indicates on the A101 that the beneficiary should be awarded but suspended for FTC because the beneficiary did not furnish information about lawful presence:

- o Suspend the beneficiary with LAF S9 and RFST of LEGISL from the month of entitlement.
- o Establish a listing shown on the A101 using the PCACS LIST screen (if your module is under PCACS) or prepare a SSA-5015-U2 with the listing code, no diaries needed.
- o In the award notice include M-TEXT paragraphs S24, S25 and G46.
- o Add a special message to the MBR using the CIP-M screen with the legend "BENEFITS FOR BIC " " SUSPENDED FOR FTC -LAWFUL ALIEN STATUS UNKNOWN."
- o In LSDP only claims, "code the RFD field X and add a special message field to the MBR "LSDP DEATH PAYMENT NOT RELEASED, ALIEN FTC-LAWFUL PRESENCE UNKNOWN."

RS 00204.050 FO POSTENTITLEMENT (PE) ACTIONS ON T2 CLAIMS FILED
SEPTEMBER 1, 1996 OR LATER AND INVOLVING THE
LAWFUL PRESENCE REQUIREMENT

A. DEFINITION- THROUGHOUT THE MONTH

To permit payment of T2 benefits to an alien in the U.S. under the alien provisions of this law, the alien must be lawfully present in the U.S. for the entire calendar month.

Example: If an alien's lawfully present status expires 01/19/97, benefits are suspended 01/97.

B. PROCEDURE- FO PE PROCESSING- UPDATING LAWFUL PRESENCE STATUS

When a beneficiary submits evidence of updated or changed lawful presence status, take the following actions:

Enter a manual development worksheet (MDW) to transfer a 2560 request to the PC following current procedures and the following specific instructions:

ISSUE: LAWFUL
CATEGORY: 2560HP
REMARKS: Y with the remarks listed in 1-5 below and any other "Remarks" entries required by current MDW 2560 procedures.

1. If a lawful alien status which will expire continues:
"Cancel current diary and rediary for MMY. Add special message field with the beginning and ending dates of temporary lawful alien status."
2. If status is changing from a lawful alien status which will expire to a lawful alien status which will not require reverification:
"Cancel current diary and change listing code to 417 ALIEN- DO NOT REVERIFY STATUS. No future diary required."
3. If status is changing from a lawful alien status which will expire to a naturalized citizen:
"Cancel current diary. No future diary required."
4. If benefits are in suspense and should be reinstated to a lawful alien status which will expire:
"Reinstate benefits for MMY (list all months benefits should be reinstated) and rediary for MMY. Add a

special message to the MBR with the beginning and ending dates of lawful alien status and send reinstatement notice. Include paragraphs R02, S24 and J13.

5. If benefits are in suspense and should be reinstated to a lawful alien whose status does not need reverification:

"Reinstate benefits for MMY (list all months benefits should be reinstated). No future diary required. Change listing code to 417 "ALIEN- DO NOT REVERIFY STATUS" and send reinstatement notice. Include paragraph R02.

NOTE: Diary will be either 60 days prior to expiration date on the document or in the case of an "indefinite" stay, 1 year from the date status is updated (unless otherwise specified in RS 00204.025A.)

C. PROCEDURE- FO PE PROCESSING- FOREIGN TO DOMESTIC ADDRESS CHANGE AND DCF IS 09/96 OR LATER

If a request for a foreign to domestic change of address is received directly from a beneficiary or as a result of the receipt of an MDW issue from the TSC or PC, contact the beneficiary to come in and present evidence of lawful presence status.

1. If beneficiary presents evidence of LAPR or other lawful alien whose status does not need reverification:

- o using PSLT input, change the address if not already done by the TSC or PC,
- o enter a manual development worksheet (MDW) to transfer a 2560 request to the PC following current procedures and the following specific instructions:

ISSUE: LAWFUL
CATEGORY: 2560HB
REMARKS: Y with the following remark

"Establish listing code 417 ALIEN- DO NOT REVERIFY STATUS."

2. If beneficiary presents evidence of a lawful alien status which will expire:

- o using PSLT input, change the address if not already done by the TSC or PC,

- o enter a manual development worksheet (MDW) to transfer a 2560 request to the PC following current procedures and the following specific instructions:

ISSUE: LAWFUL
 CATEGORY: 2560HB
 REMARKS: Y with the following remarks

"Cancel current diary and rediary for MMY. Add a special message to the MBR with the beginning and ending dates of lawful alien status. Establish listing code 418 "ALIEN- REVERIFY STATUS."

3. If the evidence presented does not establish lawful presence:

- o using PSLT input, change the address if not already done by the TSC or PC,
- o enter a manual development worksheet (MDW) to transfer a 2560 request to the PC following current procedures and the following specific instructions:

ISSUE: LAWFUL
 CATEGORY: 2560HB
 REMARKS: Y with the following remarks

"Suspend benefits S9 effective MMY with RFST code of LEGISL; establish listing code 419 plus the remark "ALIEN- NOT LAWFULLY PRESENT- BENEFITS SUSPENDED". Add a special message to the MBR "BENEFITS FOR BIC " " SUSPENDED EFF MM/YY UNDER ALIEN PROVISIONS OF PL 104-193; include MADCAP paragraph S26 and J15 in the suspension notice."

4. If the beneficiary does not come in with evidence to establish lawful presence:

- o using PSLT input, change the address if not already done by the TSC or PC,
- o enter a manual development worksheet (MDW) to transfer a 2560 request to the PC following current procedures and the following specific instructions:

ISSUE: LAWFUL
 CATEGORY: 2560HB
 REMARKS: Y with the following remarks

"Suspend benefits S9 effective MMY with RFST code of LEGISL; establish listing code 420 plus the remark "ALIEN FTC- LAWFUL PRESENCE UNKNOWN-BENEFITS SUSPENDED "FTC". Add a special message to the MBR - BENEFITS FOR BIC " " SUSPENDED FOR FTC-LAWFUL ALIEN STATUS UNKNOWN; include MADCAP paragraphs S26 and J15 in the suspension notice.

D. PROCEDURE- FO PE PROCESSING- DOMESTIC TO FOREIGN ADDRESS CHANGE AND DCF IS 09/96 OR LATER

An alien whose benefits are suspended because he/she does not meet the lawful presence requirement for benefits in the U.S. may nevertheless receive benefits effective with the first full month he/she is outside the U.S. and continuing, subject to the alien nonpayment provisions (section 202(t)).

- o If an alien in the U.S. was in current pay for the month before the month he/she left the U.S., process the change of address according to GN 02605.400ff.
- o If an alien in the U.S. was in suspense for the month before the month he/she left the U.S. because he/she had not established lawful presence in the U.S., process the change of address according to GN 02605.400ff, but resume benefits only effective with the first full month the beneficiary has been outside the U.S.

EXAMPLE

An alien becomes entitled to retirement benefits based on an application filed in October 1996. However, since he cannot establish proof of lawful presence in the U.S., his benefits are suspended effective November 1996, his initial month of entitlement. He reports a change of address to Jamaica to the FO in January 1997, indicating that he will leave the U.S. permanently on January 10, 1997.

The first month for which he may receive benefits in Jamaica is February 1997, the first full month during all of which he is outside the U.S. He will have to complete an SSA-21 (See GN 00205.170) to determine whether benefits may continue to be paid to him under the alien nonpayment provision, section 202(t) of the Act.

RS 00204.055 PSC POSTENTITLEMENT (PE) ACTIONS ON T2 CLAIMS FILED SEPTEMBER 1, 1996 OR LATER AND INVOLVING THE LAWFUL PRESENCE REQUIREMENT

A. DEFINITION- THROUGHOUT THE MONTH

To permit payment of T2 benefits to an alien in the U.S. under

the alien provisions of this law, the alien must be lawfully present in the U.S. for the entire calendar month.

Example: If an alien's lawfully present status expires 01/19/97, benefits would be suspended 01/97.

B. PROCEDURE- PSC PE PROCESSING- UPDATING LAWFUL ALIEN STATUS

When a 2560 is received from the FO via the MDW with an issue of LAWFUL, take the following actions:

1. If lawful alien status which will expire continues:

Cancel current diary and rediary or NAN as indicated by the FO and add a special message field to the MBR using the CIP-M screen with the beginning and ending dates of lawful alien status.

2. If status is changing from a lawful alien status which will expire to a lawful alien whose status does not need reverification:
Cancel current diary and change listing code to 417
"ALIEN- DO NOT REVERIFY STATUS." No diary is required.

3. If status is changing from a lawful alien status which will expire to a naturalized citizen:

Cancel current diary. No future diary required.

4. If benefits are in suspense and should be reinstated to a lawful alien whose status will expire:

Reinstate benefits for all months indicated by the FO, rediary for MMY, and change listing code to 418
"ALIEN- REVERIFY STATUS." Add a special message field to the MBR using the CIP-M screen with the beginning and ending dates of lawful alien status, send reinstatement notice and include paragraphs R02, S24 and J13.

5. If benefits are in suspense and should be reinstated to a lawful alien whose status does not need reverification:

Reinstate benefits for all months listed by the FO. No future diary required. Change listing code to 417
"ALIEN- DO NOT REVERIFY STATUS", send reinstatement notice and include paragraph R02.

C. PROCEDURE- PSC PE PROCESSING- MATURING ALIEN PROVISION DIARY

Check the MDW to determine if lawful presence development is in transit from the FO. If not:

1. Suspend benefits for the designated beneficiary for the month lawful alien status expires (see A above for definition of Throughout The Month) using LAF S9 with a RFST of LEGISL.
2. In the suspension notice, include MADCAP paragraphs S26 and J15.
3. Establish a listing code of 419 using the PCACS LIST screen (if your module is under PCACS) plus the remark "ALIEN- NOT LAWFULLY PRESENT - BENEFITS SUSPENDED", or prepare a SSA-5015 with 419 listing code plus the remark "ALIEN- NOT LAWFULLY PRESENT - BENEFITS SUSPENDED".
4. Add a special message to the MBR using the CIP-M screen with the legend "BENEFITS FOR BIC " " SUSPENDED EFF MM/YY UNDER ALIEN PROVISIONS OF PL 104-193."

D. PROCEDURE- PSC PE PROCESSING- FOREIGN TO DOMESTIC ADDRESS CHANGE AND DCF IS 09/96 OR LATER

1. If the change of address is received directly from the beneficiary and the date of filing (DOF) is 9/96 or later:
 - o if the most recent ACOC on the AL TAX line on the MBR is '001' (i.e., U.S. citizen), process the address change following current procedure. No diary, listing, special message or special language is needed.
 - o if the most recent ACOC on the AL TAX line on the MBR is other than '001', change the address and refer to the FO via the MDW to develop lawful presence issue.
2. If the information provided by the FO indicates the beneficiary is a lawful alien whose status does not need reverification:
 - o prepare an SSA-5015 with listing code 417 plus the remark "ALIEN- DO NOT REVERIFY STATUS.",
 - o change the address, if not already changed by the FO.
3. If the information provided by the FO indicates the beneficiary is a lawful alien whose status needs

reverification:

- o prepare an SSA-5015 with listing code 418 and the remark "ALIEN- REVERIFY STATUS."
 - o change the address, if not already changed by the FO.
4. If the information provided by the FO indicates the beneficiary has not established lawful presence:
- o process via MACADE to suspend benefits S9 effective with the MMY provided by the FO and change the address, if not already changed by the FO,
 - o code RFST of LEGISL,
 - o include MADCAP paragraph S26 and J15 in the suspension notice,
 - o prepare SSA-5015 with listing code 419 and remark "ALIEN- NOT LAWFULLY PRESENT AND BENEFITS ARE SUSPENDED",
 - o add special message to the MBR using the CIP-M screen with the legend "BENEFITS FOR BIC " " SUSPENDED EFF MM/YY UNDER ALIEN PROVISIONS OF PL 104-193.
5. If the information provided by the FO indicates the beneficiary has not presented evidence (failed to cooperate):
- o process via MACADE to suspend benefits S9 effective with the MMY provided by the FO and to change address, if not already changed by the FO,
 - o code RFST of LEGISL,
 - o include MADCAP paragraph S26 and J15 in the suspension notice,
 - o prepare SSA-5015 with listing code 420 and remark "ALIEN FTC- LAWFUL PRESENCE UNKNOWN - BENEFITS SUSPENDED,
 - o add special message to the MBR using the CIP-M screen with the legend "BENEFITS FOR BIC " " SUSPENDED FOR FTC-LAWFUL ALIEN STATUS UNKNOWN.

E. POLICY- PE- DOMESTIC TO FOREIGN ADDRESS CHANGE - DCF IS 9/96

OR LATER

An alien who becomes entitled to benefits based on an application filed on or after September 1, 1996, must be lawfully present in the U.S. within the meaning of P.L. 104-193 for an entire month in order to receive benefits for that month. An alien whose benefits are suspended because he/she does not meet the lawful presence requirement for payment in the U.S. may nevertheless receive benefits effective with the first full month he/she is outside the U.S and continuing, subject to the alien nonpayment provisions (section 202(t)).

F. PROCEDURE- PSC PE PROCESSING- DOMESTIC TO FOREIGN ADDRESS CHANGE- DCF IS 9/96 OR LATER

1. If the beneficiary is in current pay for the month before the month he/she left the U.S., process the change of address as currently instructed. If necessary, transfer the file to OIO.
2. If the beneficiary is in LAF S9 with an RFST other than LEGISL or in any other LAF status, process the change of address as currently instructed. If necessary, transfer the file to OIO.
3. If the beneficiary is in LAF S9 with an RFST of LEGISL, process the change of address and leave the beneficiary in S9. If necessary, transfer the file to OIO.

G. PROCEDURE- PSC PE PROCESSING- DOMESTIC TO DOMESTIC ADDRESS CHANGE AND DCF IS 09/96 OR LATER

1. If the beneficiary is in other than LAF S9 with an RFST of LEGISL, process the change of address as currently instructed.
2. If the beneficiary is in LAF S9 with an RFST of LEGISL and evidence has not been received to change the beneficiary to a lawfully present status, process the change of address and leave in LAF S9.
3. If the beneficiary is in LAF S9 with an RFST of LEGISL and evidence has been received verifying lawfully present status, follow instructions in B.2, B.3, or B.4 above.

RS 00204.060 TELESERVICE REPRESENTATIVE/SPIKE PROCESSING INSTRUCTIONS

A. PROCEDURE- INITIAL CLAIMS

Use this procedure when setting up title II application appointments for individuals filing on or after September 1, 1996. To determine if a claim is being filed on or after September 1, 1996, use the earliest protective filing date.

1. Follow instructions in the CLAIMS LEADS/APPOINTMENTS chapter of the TSCOG to refer the claim to an FO and to set up an interview appointment.
2. Ask the caller/applicant if they were born in the U.S.
 - o If yes,
 - advise the caller to be prepared to present a U.S. birth certificate or other evidence of citizenship **and**
 - enter "CITIZENSHIP REQUESTED" in the REMARKS field on the LPFP screen. STOP.

NOTE: See GN 00303.300B. for documents SSA accepts as evidence of U.S. citizenship.

- o If no, query the Numident.
3. Does the Numident show a foreign place of birth and a CSP code of "A"?
 - o If yes, enter "NUMIDENT SHOWS CSP CODE OF A" in the REMARKS field on the LPFP screen.
 - o If no,
 - advise the caller to be prepared to present evidence of his/her citizenship or lawful presence in the U.S. as an alien, **and**
 - enter "CITIZENSHIP/LAWFUL PRESENCE REQUESTED" in the REMARKS field on the LPFP screen.

NOTE: See RS 00204.025A. for INS documents SSA accepts as evidence of lawful presence.

B. PROCEDURE- CHANGE OF ADDRESS- FOREIGN TO DOMESTIC

Use this procedure when processing a title II change of address from a foreign to a domestic address for any beneficiary whose initial filing date is on or after September 1, 1996.

1. Query the MBR.
2. Does the Benefit (BENEFIT) data line show a date of filing (DOF) of 09/96 or later?
 - o If yes, go to step 3.

- o If no, process the change of address using the instructions in the CHANGE OF ADDRESS chapter of the TSCOG. STOP.
- 3. Does the most recent Alien Tax Withholding History (AL TAX) data line show the code "001" (indicates U.S. citizen) in the Alien Country of Citizenship (ACOC) field?
 - o If yes, process the change of address using the instructions in the CHANGE OF ADDRESS chapter of the TSCOG.
 - o If no, process the change of address using the instructions in the CHANGE OF ADDRESS chapter of the TSCOG and refer to the FO via MDW to develop the lawful presence issue. Advise the caller that the law now requires an alien to be lawfully present in the U.S. to receive a monthly T2 benefit payment and that the FO will contact the beneficiary for additional information needed to process his/her change of address.

Include the following on the MDW:

- the 3rd party contact name in the CONTACT NAME field,
- the contact's phone number in one of the PHONE fields,
- the word "Contact" in one of the INFO fields (for the FO to contact if the beneficiary cannot be reached),
- enter "LAWFUL PRESENCE AT ISSUE, FOREIGN TO DOMESTIC COA" in the MISC field, and enter the beneficiary's new domestic address and phone number, if any.

C. PROCEDURE - POST ENTITLEMENT ACTIONS

Until further notice refer any request to suspend or reinstate benefits for reason of change in lawful presence to the FO via MDW.

RS 00204.065 SEPTEMBER 1996 TITLE II ALIEN CHANGES- NOTICES- GENERAL

The POMS sections that follow give new notice language defining the lawful presence payment requirement for aliens.

When you must include new paragraphs in an existing initial claim (IC) or posteligibility (PE) notice, follow current IC and PE notice formats. Include new language under the appropriate caption as indicated, along with all the captions and paragraphs needed for a particular case.

In explaining the reason for reconsideration notices, adapt the notice language for payment of benefits or continued suspension.

RS 00204.070 INITIAL AWARD- LAWFUL ALIEN WHOSE STATUS NEEDS REVERIFICATION

This notice provides due process language to a beneficiary who has provided evidence of lawful alien status, but whose alien status will expire. Responsibility is placed on the beneficiary to come into the field office to provide evidence of continuing lawful presence in the U.S. when his/her current lawful status is extended or changed.

UTIs: Request S24 and J13.

RS 00204.075 INITIAL NO PAYMENT AWARD- ALIEN IS NOT LAWFULLY PRESENT

This notice provides language to a beneficiary who is entitled but cannot be paid because he/she is not lawfully present in the U.S. The notice provides information about the lawfully present alien classes as defined by the Attorney General. The beneficiary is advised of his/her responsibility to notify SSA if his/her alien status changes or if he/she leaves the U.S.

UTIs: Request S24, S25 and G46.

RS 00204.080 POSTENTITLEMENT SUSPENSION- ALIEN IS NO LONGER LAWFULLY PRESENT

This notice provides language for suspension notices issued by the PSC once a determination is made that the beneficiary is no longer lawfully present in the U.S. The beneficiary is advised to contact SSA if he/she become a U.S. citizen or lawfully present alien.

UTIs: Request S26 and J15.

RS 00204.085 POSTENTITLEMENT REINSTATEMENT- LAWFUL ALIEN WHOSE STATUS NEEDS REVERIFICATION

This notice provides language to advise a beneficiary who was previously suspended for not being lawfully present and whose status as a lawfully present alien will end. The beneficiary is further notified that it is his/her responsibility to contact SSA when his/her alien status is extended or changed. If evidence is not received timely, the PSC will suspend benefits.

UTIs: Request R02, S24 and J13.

RS 00204.090 POSTENTITLEMENT REINSTATEMENT- LAWFUL ALIEN WHOSE STATUS DOES NOT NEED REVERIFICATION

This notice provides language to advise the beneficiary that his/her benefits have been reinstated and his/her alien status has now changed to a lawful alien whose status does not need reverification.

UTI: Request R02.

RS 00204.095 NOTICE LANGUAGE

This section provides paragraphs, identified by universal text identifier (UTI) numbers, necessary to prepare initial and postentitlement notices involving the lawful presence requirement.

UTI G46: Payment Possible To Other Family Member- Benefits Delayed- Beneficiary Not Lawfully Present in U.S.

Even though we cannot pay you benefits, we may be able to pay other individuals if they are entitled on this record.

This UTI will be generated whenever UTI S24 is requested on input. Sequence under heading "Rules for Lawful Presence in the U.S.," immediately following UTI S25.

UTI J13: Reminder To Inform Us If Alien Status Changes

Based on the information we have, your lawfully present status will end (fill-in). To receive benefits after that date, you must give us new evidence by (fill-in) about your status. This evidence must show that your status has been extended or changed to another lawfully present category. If we do not receive this evidence by (fill-in) we will stop your benefits.

Fill-in: (Date lawful alien status expires)

Request on input. When requested, this UTI will immediately follow the opening statement (G49).

UTI J15: Alien Suspension- Requirements for Resumption of Benefits

Let us know right away if you become a U.S. citizen, if your alien status changes, or if you leave the U.S. To receive benefits in the U.S., you must be a U.S. citizen or national, or lawfully present in the U.S. as defined by the Attorney General as an alien:

- o lawfully admitted for permanent residence;
- o admitted as a refugee under section 207 of the Immigration and Nationality Act (INA);
- o granted asylum under section 208 of the INA;
- o paroled under section 212(d)(5) of the INA (except for aliens paroled for an exclusion hearing or prosecution in the U.S.);
- o whose deportation is being withheld under section 243(h) of the INA;
- o granted conditional entry as a refugee under section 203(a)(7) of the INA as in effect prior to April 1, 1980;
- o inspected and admitted to the U.S. and who has not violated the applicable terms of his/her status;
- o with a pending application for political asylum under section 208 of the INA or a pending application for withholding of deportation under section 243(h) of the INA, and employment authorization; or
- o belonging to any specific class of aliens permitted to remain in the U.S. under U.S. law or policy, for humanitarian or other public policy reasons.

Request on input and place under heading "Information We Need From You."

UTI R02: Reinstatement- Alien Provided Evidence That He Is Lawfully in U.S.

We have started to pay you again because you have provided evidence that you are lawfully present in the U.S.

Request on input and sequence immediately following UTI G53.

UTI S24: Benefits Delayed- Beneficiary Not Lawfully Present in U.S.

Under the law we can pay you for any month you are lawfully present in the U.S. To receive benefits, you must be a U.S. citizen or national, or lawfully present in the U.S., defined by the Attorney General as an alien:

- o lawfully admitted for permanent residence;
- o admitted as a refugee under section 207 of the Immigration and Nationality Act (INA);
- o granted asylum under section 208 of the INA;
- o paroled under section 212(d)(5) of the INA (except for aliens paroled for an exclusion hearing or prosecution in the U.S.);
- o whose deportation is being withheld under section 243(h) of the INA;
- o granted conditional entry as a refugee under section 203(a)(7) of the INA as in effect prior to April 1, 1980;
- o inspected and admitted to the U.S. and who has not violated the applicable terms of his/her status;
- o with a pending application for political asylum under section 208 of the INA or a pending application for withholding of deportation under section 243(h) of the INA, and employment authorization; or
- o belonging to any specific class of aliens permitted to remain in the U.S. under U.S. law or policy, for humanitarian or other public policy reasons.

Request on input and place as the 1st UTI under the caption "Rules for Lawful Presence in the U.S."

UTI S25: Requirement Not Met For Payment As An Alien Lawfully Present in the U.S.

Based on the information we have, you do not meet the above requirement. We may begin to pay you benefits if your alien status changes or if you leave the U.S. We will send you another letter if we begin your benefits.

This UTI will be systems generated whenever UTI S24 is requested on input. Sequence under the caption "Rules for Lawful Presence in the U.S.," immediately following UTI S24.

UTI S26: Benefits Suspended- Failure to Meet Requirements To Be Considered Lawfully Present In U.S.

We are stopping your benefits because you are not lawfully

present in the U.S.

Request on input and place under heading "Your Benefits."

\t2aliens.POM (9/23)

	SSI	Food Stamps	TANF/SSBG/ Medicaid	Means Tested Benefits	State and Local Benefits
Effective Date	Now – new apps By 8/23/97 for current recipients.	Now – new apps Current recips start 4/1/97 done by 8/23/97	State option to exercise as of 1/1/97	Applies to new entrants to the country after 8/23/96	State option to impose as of 1/1/97
Who administers/ what regulations govern/what level federal authority	Social Sec Admin	Federal program/ State-run under USDA regs	Federal/State programs run under HHS regs	Federal programs to be defined – run by many different actors – often w/ fed regs	Generally speaking no federal dollars or direct control
1) Status Determination: citizen, qualified alien	SSA has regs on citizenship determination (1)	Food Stamps also has a reg that governs this determination (1)	No existing regs or guidelines (2)	No existing regs or guidelines (2)	(3) <i>Auth?</i>
2a) 40 Quarters Exception – the Social Security information process	Pre 1/1/97 -- SSA needs interim system (4) to provide 40 quarters info. Post 1/1/97 -- SSA to provide overnight batch turnaround. This simply answers question of whether SSA records confirm 40 quarters.			Not applicable	See SSI/Food Stamps/TANF
2b) 40 Quarters Exception – SSA info incomplete	SSA needs procedures (5)	USDA needs <i>with</i> procedures to deal with appeals (5)	Guidance/regs? needed (2)	Not applicable	Guidance? (3)
3) Refugees and Asylees Exception	INS to prepare and disseminate guidance on how to determine refugee/asylee status. Guidance to be available to all federal, state and local programs needing to make such determinations. (6)				
4) Veterans Exception	VA needs to prepare and disseminate similar guidance on how to determine veteran status. Guidance to be available to all federal, state and local programs needing to make such determinations. (7)				

D65?

Issue 1: Are the regs USDA and SSA have in place to answer question 1 appropriate/sufficient? What's their potential as a model for other programs, agencies?

Issue 2: For other federally funded programs that do not currently have guidelines or regs to govern the citizenship/status determination, what process should be used? Same question for dealing with administering the 40 quarters exception. Should there be uniform federal guidelines established? By whom? How?

Issue 3: For state/local programs, what authority does the federal government have to provide guidance in this determination? *DOJ-OLC guidance*

Issue 4: SSA is proposing POMS to deal immediately with new applicants. Awaiting review and clearance.

Issue 5: SSA and Food Stamps need to work out process immediately and provide guidance to field. Meeting to take place by 10/4 and proposal to be developed.

*Elena - can we impose
SSI*

Issue 6: INS developing guidance on refugee/asylee determination. By when? Dissemination process?

Issue 7: VA to develop such guidance. Dissemination process also an issue here? Should there be a single dissemination with all pieces of this guidance? Perhaps an AG memo?

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 requires the Attorney General, in consultation with the Secretary of Health and Human Services, to promulgate new regulations on verification of alienage for purposes of eligibility for federal public benefits within 18 months of enactment -- i.e., by December 1997. States have 24 months after the regulations have been adopted to implement a verification system consistent with the regulations.

INS currently provides immigration status information to benefit-granting agencies through the SAVE system (Systematic Alien Verification for Entitlements). Section 121 of the Immigration Reform and Control Act of 1986 (IRCA) requires verification of immigration status of noncitizens applying for benefits under certain federally funded programs (Public Law 99-603, Part C, Section 121). INS established and implemented the SAVE program in accordance with the IRCA requirement for a cost-effective system to verify the status of noncitizens applying for certain federal benefits. The INS provides information only on a person's immigration status; it does not make determinations of a noncitizen's eligibility for a specific benefit.

The law mandates participation in the verification of noncitizens' documentation by the following programs: Food Stamp Program (Department of Agriculture); Aid to Families with Dependent Children, Medicaid, and Territorial Assistance Programs (Department of Health and Human Services); Unemployment Compensation (Department of Labor); Educational Assistance (Department of Education); and Housing Assistance (Department of Housing and Urban Development). Mandatory participation in the SAVE program may be waived (by the Secretary responsible for the federal program) if an agency can demonstrate that its participation is not cost effective. Currently, there are waivers in 7 states for one or more programs: Hawaii, Maine, Michigan (conditional), Minnesota (conditional), New York, Vermont, and Washington. There are waivers for Food Stamps in all of these states; 4 states have waivers for AFDC and Medicaid as well.

While IRCA only mandates selected programs to participate in SAVE, any Federal, state or local benefit issuing authority or federal or state licensing bureau that seeks verification of noncitizen immigration status may apply for participation in the SAVE program. The nonmandated agencies which presently participate in the SAVE program are: General Services Administration; National Aeronautics and Space Administration; Department of Defense Manpower Data; Social Security Administration; Federal Emergency Management Agency; Arizona Health Care Cost Containment System Program; California Department of Motor Vehicles; and Alaska Department of Revenue. There are presently 129 SAVE users located at over 32,000 sites throughout the nation.

To implement the SAVE program, INS established the Alien Status Verification Index (ASVI), a nationally accessible database of selected immigration status information on over 50 million records. This database is stored and maintained by a private contractor, Lockheed Martin Information System.

The first step of verification under the SAVE program involves an automated process known as primary verification. The SAVE user accesses the database by inserting an alien registration number into the system through one of a number of possible access methods (see the chart attached). If a corresponding record is found in ASVI, the system will provide the user with information to verify the alien's identity and immigration status within seconds. This information can be tailored to meet the needs of the participating agency.

The SAVE program requires participating agencies and institutions to use a manual process, known as secondary verification, when directed by an ASVI system message during primary verification or when the automated check or initial inspection of a noncitizen's documentation reveals material discrepancies. This involves copying and transmitting copies of documents to INS for further review and comparison with INS databases. INS responds to these inquiries within 10 working days. Agencies that have received waivers from mandatory participation in the SAVE program because the use of ASVI is not cost-effective in their state may also submit requests through the secondary verification process.

Since the SAVE program was implemented in fiscal year 1989, there have been over 24 million queries into the ASVI database.

In addition, federal, state, and local agencies may request verification of an alien's immigration status from INS outside the SAVE system by filing Form G-845 with an INS district office. For example, INS provides federal law enforcement officials with status information on people under arrest or investigation.

Steps to Join the SAVE Program

1. The requesting agency provides INS with information on the estimated alien population and number of applicants for program benefits in its geographical location. This information is important to INS for assessing the workload impact to the INS District Offices which would support the SAVE secondary verification process.
2. The requesting agency executes an agreement with INS in order to access ASVI. The Memorandum of Understanding (MOU) identifies the rights, duties, and restrictions regarding the ASVI data to which the SAVE user agency and INS must agree prior to INS authorization to access the system. INS prepares the MOU and transmits it to the requesting entity for official signature.
3. INS provides a briefing to the benefit issuing agency on the various methods to access the ASVI database. The requesting agency determines the best access method in light of the size and scope of the estimated alien population.
4. After execution of the MOU with INS, the requesting agency prepares a purchase order or funding obligation document for teleprocessing services and mails it to the INS SAVE

Branch at the following address: Immigration and Naturalization Service, ATTN: SAVE Branch, 425 I Street N.W., ULLICO, Fourth Floor, Washington, DC 20536.

5. INS reviews and approves the purchase order and mails the information to Lockheed Martin Information Systems, the private contractor the administers ASVI.

6. Lockheed Marietta enrolls the user in ASVI and provides the requesting agency with appropriate user identification numbers, authorization codes and access telephone numbers.

SAVE Usage, FY96

<u>Program</u>	<u>Primary Queries</u>	<u>Secondary Queries</u>
Food Stamps	126,633	43,416
DoEd	774,053	82,707
AFDC	193,799	49,404
HUD	273,579	76,867
Medicaid	62,899	21,108
FS, AFDC, Medicaid	1,012,507	114,958
DOL	1,039,335	151,086
Social Security	488,844	207,903
Cal. DMV	626,559	289,694

<u>System Resource Unit</u>	<u>Units of Measurement</u>	<u>Base Rate</u>	<u>Prime Time Unit Charge</u>	<u>Non-Prime Time Unit Charge</u>
1 3270	<i>per query</i>	\$0.16	\$0.16	\$0.16
2 Asynch Dial-in Connect Surcharge	<i>per minute</i>	\$0.37	\$0.37	\$0.37
3 Asynch Access Query Cost	<i>per query</i>	\$0.15	\$0.15	\$0.15
4 Touch Tone/Voice	<i>per query</i>	\$0.79	\$0.79	\$0.79
5 Touch Tone/Voice Repeat	<i>per query</i>	\$0.25	\$0.25	\$0.25
6 Point-of-Sale Device	<i>per query</i>	\$0.23	\$0.23	\$0.23
7 PC Transfer File	<i>per query</i>	\$0.06	\$0.06	\$0.06
8 Remote Job Entry (RJE)	<i>per query</i>	\$0.02	\$0.02	\$0.02
9 Magnetic Tape	<i>per query</i>	\$0.01	\$0.01	\$0.01

A minimum of \$25 is charged per month for query of the Alien Status Verification Index (AVSI) regardless of the number of queries. However, if no query of AVSI is completed during the month, there is no charge.

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

09-Oct-1996 02:32pm

TO: (See Below)

FROM: Stephen C. Warnath
Domestic Policy Council

SUBJECT: meeting with SSA

Diane Blackmun called to say that the meeting this afternoon has to be cancelled. I do not know what is going on, but I infer that SSA may view our meeting to try to understand what the POMS means as unwelcome. This is based upon Diane saying that we would hear from people "higher" than her about this.

If anyone had any opportunity to glance at the POMS you will note, e.g. that it provides a preliminary definition of "means-tested programs" and instructs field workers how to verify eligible veterans, 40 quarters, etc. under the new law. I still don't understand how SSA attends meetings where these issues are being discussed and fails to flag the issue that an SSA operational manual that it has plans to distribute imminently has resolved these issues. They may very well have solved all of the issues and that would be great, but I don't know what they think all of these other meetings and attempts to figure out how to comply with the new law are about.

Distribution:

TO: Elena Kagan
TO: Kenneth S. Apfel
TO: Jeremy D. Benami
TO: Diana M. Fortuna
TO: Keith J. Fontenot
TO: Jack A. Smalligan
TO: Richard E. Green

ODCLCA QUICK FAX
(202) 482-7112 - Voice / (202) 482-7153 - Fax)

TO: Elena Kagan

FROM: Judy Chesser

COVER + 1 pages

Elena -

If you have any
Comments, please call me.

482-7148.

Note: The Social Security Administration has asked for guidance about the meaning of "qualifying quarter" in the noncitizens title of the welfare reform law. The welfare reform law exempts from changes noncitizens who have worked for at least 40 quarters (10 years), or who can be credited with a spouse's or a parent's work history. The Social Security Administration wants to clarify that individuals who worked in jobs not covered by Social Security may be credited with work, so long as the amount of work rises to the income level otherwise needed for the crediting of a quarter in covered employment during the year.

Draft letter from Archer and Shaw to Chater

This letter is to give you guidance on the intent of Congress on the definition of "qualifying quarters" for purposes of exemptions from eligibility changes affecting noncitizens in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L.104-193).

The definition of a "qualifying quarter" hinges on the amount of work performed, not whether the individual worked or is working in a job actually covered by Social Security. For example, individuals in non-covered work can be credited with a quarter of work so long as their salary during that quarter rises to the level of what normally is considered a qualifying quarter's worth of work. Again, the focus should be on whether the individual has worked and earned a certain level of earnings, not on whether the individual worked in Social Security covered employment.

m/mwquarter

Suggestions?
Matt

SSA document

Effect of the 40 Quarter of Coverage Exception

Background

The welfare reform legislation prohibits eligibility for Supplemental Security Income (SSI) benefits and various other Federally funded, needs-tested benefits (including Food Stamps, Medicaid, and the new block grant programs) for all noncitizens, with certain exceptions. The exceptions include lawful permanent residents who have earned 40 quarters of coverage (QCs) for Social Security purposes. An individual under age 18 would be credited with all QCs earned by his or her parent, and a married individual (including widow(er)) would be credited with QCs earned by his or her spouse during the marriage.

Equity Considerations

The exception was provided as a matter of equity for workers who had a substantial attachment to the work force and had paid taxes in the United States.

Not all work is, or, in the past, was covered by Social Security. In view of the intent of the exception, it seems inequitable and illogical that individuals who had been employed for at least 10 years (40 QCs) will be denied Federally funded benefits simply because their work was not covered by Social Security. These individuals would have had the same substantial attachment to the work force as those who worked in covered employment and paid the same taxes that support such benefits, yet could not meet the exception because their earnings will not appear on SSA records.

Practical Considerations

There are a number of practical considerations that would need to be taken into account if it were decided to include noncovered work for purposes of meeting the exception:

- o Currently, about 96 percent of jobs are covered and the only substantial amount of noncovered work is State and Local government employment. However, since Social Security coverage has gradually expanded over the years, the percentage of covered jobs declines as past periods of work are considered (about 60 percent were covered in 1950).
- o Agencies would have to determine what kinds of evidence of noncovered employment would be acceptable. Employers might be required to search their records where there is an allegation of such employment, since the individual may not have acceptable evidence, especially for periods in the past.
- o The administrative burden on agencies administering the need-tested programs of dealing with allegations of noncovered employment could be substantial. The agency

might be required to give the individual assistance in obtaining evidence to support an allegation. Evidence would have to be evaluated to determine whether or not it supports the allegation of work, and decisions concerning the acceptability of such evidence might be subject to appeal.

SSA/Immigration Issues

1. Notice of what proof of citizenship to bring
 2. Instructions to states with state supplementation agreements re turning in illegals
 3. 40 quarters calculation definition: don't specify now?
 4. False documents
 5. Invitation to Calif. State Senate hearing
-

NCLR

NATIONAL COUNCIL OF LA RAZA

Raul Yzaguirre, President

National Office
1111 19th Street, N.W., Suite 1000
Washington, DC 20036
Phone: (202) 785-1670
Fax: (202) 776-1792

MEMORANDUM

TO: Ken Apfel
Jeremy Ben-Ami
FROM: Cecilia Muñoz
RE: Welfare Reform Implementation
DATE: 9/17/96

I thought you might be interested in the attached memo from my colleague Bruce Goldstein of the Farmworker Justice Fund. It outlines concerns and recommendations for implementing the 40-quarter exemption under welfare reform. The focus of the memo is farmworkers; however, many of the concerns hold equally true for other immigrants whose work histories will be difficult to demonstrate through SSA data.

We're trying not to over burden you with requests for meetings, out of respect for the fact that you have more than enough to do and that you have been very generous with your time. However, of the urgent implementation issues, this is one which we haven't discussed thoroughly. We would appreciate an opportunity to talk these issues through at your earliest possible convenience.

I will contact your offices within the next few days; thanks again for your attention to these issues.

cc: Bruce Goldstein
Steven Warnath
Josh Bernstein
Diana Aviv
Abigail Price
Karen Narasaki



Program Offices: Phoenix, Arizona • San Antonio, Texas • Los Angeles, California • Chicago, Illinois
LA RAZA: The Hispanic People of the New World

FARMWORKERS' SPECIAL NEEDS REQUIRE ADMINISTRATION ATTENTION TO ENSURE THAT ELIGIBLE LEGAL IMMIGRANTS OBTAIN FOOD STAMPS

The new welfare legislation denies public benefits to most legal immigrants but creates eligibility for lawful permanent resident aliens who have 40 quarters of qualifying work as defined by the Social Security Act and the welfare bill itself. Contrary to popular belief, most farmworkers are legal immigrants and have been working legally in the United States for at least the last 10 years (i.e. forty quarters). Farmworkers will face unique difficulties in gathering proof of that employment, however, due to the nature of their work. The Administration must anticipate these difficulties so that eligible farmworkers do not suffer delays and denials when applying for food stamps.

Legal Immigrant Farmworkers Dominate the Agricultural Labor Force

There are about 1.6 million migrant and seasonal farmworkers in the United States. Most (about 70-75%) are lawful resident permanent aliens,¹ partly because about 1.1 million farmworkers were legalized under the 1986 immigration reform. IRCA's "special agricultural worker" or "SAW" program granted temporary and later permanent legal status to persons who showed that they had worked at least 90 days in seasonal agricultural work during the one year ending May 1, 1986. 8 U.S.C. § 1160; 8

¹ The Department of Labor estimates that about 25% of migrant and seasonal farmworkers are unauthorized. Other farmworkers are United States citizens. See written testimony of Deputy Administrator John Fraser, Wage and Hour Division, U.S. Department of Labor, Guest Worker Programs, Hearing before subcommittee on Immigration and Claims of the Committee on the Judiciary, House of Representatives, Dec. 7, 1995 at 12; U.S. Department of Labor, U.S. Farmworkers in the Post-IRCA Period: Based on Data from the National Agricultural Workers Survey (NAWS) (March 1993) ("NAWS").

C.F.R. Part 210. Although the SAWs are now eligible for citizenship, educational and economic barriers depress their naturalization rates.

Most farmworkers have been working in the United States for at least 10 years or the equivalent of forty quarters. A major study, based on data from 1989-91, found that farmworkers had "a median of eight years experience in [seasonal farmwork]." NAWS (1993) at 11. Most farmworkers who legalized as SAWs have remained in agriculture and, consequently, have been working in the United States for at least 10 years. Report of the Commission on Agricultural Workers, pp. 1, xxi. Of course, many farmworkers also worked in undocumented status and deserve credit for such quarters.

Farm Jobs Pay So Poorly That Many Farmworkers Need Public Benefits

Nearly half (46%) of farmworkers live below the poverty line, with average annual earnings of \$6,500. NAWS (1993) at 13; Report of Commission on Agricultural Workers at 100. The majority of farmworkers are males who are accompanied by a spouse and/or child (NAWS at 11). Yet 71% of the farmworker households living in poverty do not use public benefits (food stamps, WIC, AFDC, General Assistance, subsidized housing).

The program most used by farmworkers is food stamps approximately 17% of farmworker households report receiving food stamps during the past two years. Farmworkers typically only apply for food stamps on a seasonal basis, often in emergencies when expedited agency procedures are critically important.

The Importance of Work Quarters

The welfare bill provides that a permanent resident alien is not barred from

receiving public benefits if he or she has "worked 40 qualifying quarters of coverage as defined under title II of the Social Security Act or can be credited with such qualifying quarters as provided under section 435 [of this Act]." § 402(a)(2)(B), 402(b)(2)(B).

Under section 435 of the welfare bill, applicants may include not only their own quarters of employment, but also those of their spouse and, while they were minors, of their parents.

The Social Security Act's lenient definition of "qualifying quarters" will mean that most farmworkers, despite low wages and frequent periods of unemployment, will satisfy the standard. At the average farmworker's yearly earnings of \$6,500, most farmworkers would be credited with four quarters of coverage each year. Because most farmworkers have been working in the United States since at least 1985-86, they will have worked forty qualifying quarters or the equivalent.

Farmworkers' Obstacles In Proving Their Employment Histories

Many farmworkers, unlike members of other occupational groups, will not be able to prove their forty quarters of employment merely by requesting an earnings report from the Social Security Administration. Records from Social Security, the Internal Revenue Service and Unemployment Insurance are likely to be incomplete.

First, many farmworkers who legalized under the 1986 law lacked a valid Social Security number prior to filing their immigration applications in 1987-88. Thus, quarters worked prior to that time are unlikely to have been reported.

Second, agricultural employers are notorious for failing to provide workers with earnings statements, neglecting to prepare or maintain pay records, and failing to

report workers' income to Social Security and the IRS. Indeed, agricultural employers are at least three times as likely as other employers not to report or to under report their employees' earnings to Social Security. U.S. General Accounting Office, Hired Farmworkers: Health at Risk, p. 5 (1992).²

Women farmworkers who wish to prove their employment record suffer disproportionately because many employers' payrolls only list the pay of an entire family or crew in the name of a single worker, usually a male. See, e.g., Antunez v. G & C Farms, 126 Labor Cases (CCH) ¶ 33,015 (D.N.M. 1993).

These problems are especially true for workers employed through farm labor contractors, or "crewleaders." An increasing portion of the farm labor force, now about 28% of farmworkers nationally, is employed through farm labor contractors. NAWS (1993) at 59; Commission on Agricultural Workers at 120--25. Many crewleaders are financially insolvent and difficult to locate. Crewleaders are known for failing to keep proper records and to pay into funds established for the benefit of workers, such as Social Security and Unemployment. Philip Martin & J. Edward Taylor, "Merchants of Labor: Farm Labor Contractors and Immigration Reform," (Urban Institute, May 1995) at 12, 17 n. 6. In California in 1990, the Employment Development Department logged

² Some of the many lawsuits caused by these problems include, Calderon v. Witvoet, 999 F.2d 1101, 1105 (7th Cir. 1993) (employer failed to deduct or pay Social Security taxes); Beliz v. McCleod, 756 F.2d 1317 (5th Cir. 1985) (employer failed to pay Social Security taxes); Antunez v. G&C Farms, 126 Labor Cases (CCH) ¶ 33,015 (D.N.M. 1993) (same); Sanchez v. Overmyer, 845 F. Supp. 1183, 1188 (N.D. Ohio 1993) (same); Bresgal v. Brock, 637 F. Supp. 271, 277 (D.Ore. 1985), *aff'd*, 843 F.2d 1163 (9th Cir. 1987) (same); Certilus v. Peebles, 101 Lab. Ca. (CCH) ¶ 34,587 (M.D. Fla. 1984) (same).

nearly 5,000 claims for unemployment benefits linked to unlicensed contractors who failed to pay into the fund. Special Report: Fields of Pain, Part II, Sacramento Bee, Monday Dec. 9, 1991 p. 7; Martin & Taylor at 12. See also, Castillo v. Givens, 704 F.2d 181 (5th Cir. 1983), cert. denied 464 U.S. 850 (1983) (illiterate crewleader assigned task of keeping records failed to do so).

It will be difficult and time-consuming for farmworkers to prove their past employment, just as it was during the SAW application process when they were obligated to prove their work history during the 1985-86 period. Even when farmworkers have been provided with pay records, most lack the space and other resources needed to retain those records during their frequent relocations.

To secure other evidence of their past employment -- records, statements of witnesses, etc. -- farmworkers will be hampered by inadequate education and English language ability, geographic isolation, limited access to telephones, and lack of legal counsel. Moreover, the sheer number of former employers is daunting. Farmworkers usually make their living each year by patching together a series of relatively short-term jobs. NAWS at 27-28. This is particularly true for hundreds of thousands of harvest jobs. About four out of five harvest workers piece together three or more short-term jobs in a year. Id. at 60, 27.

To sum up:

1. These and other obstacles mean that when eligible, legal-immigrant farmworkers apply for food stamps many of them will not possess proof of their forty quarters of employment.

2. When such farmworkers seek records from the Social Security Administration and other government agencies, those records will often be incomplete.

3. Farmworkers will need the opportunity and the time to supplement government records with other evidence, including statements by the applicants and witnesses regarding their past employment. Reconstruction of farmworkers' employment histories is difficult and time-consuming.

4. Eligible farmworkers with urgent needs for food stamps should not be prevented from promptly obtaining them due to delays associated with securing employment records to corroborate the applicants' claims. Applicants should not be penalized for their employers' unlawful conduct or carelessness.

**Solutions to Ensure That Eligible Farmworkers
Receive Food Stamps In a Timely Manner**

The Administration has significant flexibility in establishing the procedural and evidentiary rules for workers seeking to prove that they have forty quarters of qualifying employment.³ It must ensure that eligible farmworkers -- many of whom proved their employment ten years ago to secure lawful permanent resident alien status -- secure food stamps. It is especially important, in light of the seasonality and low pay of farmworkers' employment, that food stamps be issued promptly. We offer the following outline of solutions:

³ Fortunately, the welfare bill does not contain the Social Security Act's sometimes-onerous procedural provisions, evidentiary presumptions and statutory limitations for correcting Social Security records. See 42 U.S.C. § 405(c); Breeden v. Weinberger, 493 F.2d 1002 (4th Cir. 1974) (approving farmworkers' claim of qualifying employment despite absence from Social Security records).

1. Food stamp officials should accept Social Security earnings reports as conclusive evidence of employment, but should not reject applications solely because such reports lack evidence of employment. The USDA should stress to officials that government records often do not contain evidence of all farmworkers' employment.

2. USDA should emphasize to food stamp officials that four quarters in a year shall be credited, as required by the Social Security statute and the welfare bill, if a person has earned the minimum amount set by the Social Security Administration for that year (e.g., \$2,560 in 1996), regardless of how many quarters were actually worked in that year.

3. Officials should be informed of the need to credit quarters of work performed by the applicant's spouse, and of the applicant's parents when the applicant was a minor, even if that results in more than four quarters of credit in a single year. Many farmworkers worked as children and should be credited with their own work and their parents' work.

4. Officials should be informed that the Social Security Administration often has a one to two year delay in recording earnings information that it has received. This lag time means that some SSA records may not reveal 4 to 8 quarters of the farmworkers' most recent employment.

5. Farmworkers who lack adequate records should be permitted to submit statements -- of themselves and of other witnesses, including family members, co-workers, crewleaders and growers -- to show that they have worked the requisite amount of quarters.

5. An applicant's submission of information should be judged based on whether it is "more probable than not" that an applicant earned the required amount of wages over the period in question. The applicant need not show proof "beyond a reasonable doubt" or to "a substantial certainty." There should be no penalty for farmworkers who supply evidence to supplement inadequate government records.

6. Farmworkers who were granted lawful immigrant status under the Special Agricultural Worker ("SAW") program of the Immigration Reform and Control Act of 1986, and who state that they have continued working in the United States since that time, should be presumed to have worked forty quarters.

7. Applicants who have previously provided food stamp officials in one state or area shall not be required to prove repeatedly that they have worked forty quarters when applying in other states or areas. Local officials must seek such records from other offices.

8. Agency officials should be informed that farmworkers often need temporary, emergency food stamps at the beginning of a crop season before work has begun or before the amount of work has become substantial enough to provide enough earnings to purchase food. In such urgent circumstances, food stamp officials should consider that adequate employment has been proved if the applicant provides credible information about past employment and states that he or she will secure additional evidence to show such employment.

Bruce Goldstein, Farmworker Justice Fund, Inc.
1111 19th Street, N.W. Suite 1000
Washington, D.C. 20036 (202) 776-1757

September 16, 1996

SSA document

ec gp.

Effect of the 40 Quarter of Coverage Exception

Background

The welfare reform legislation prohibits eligibility for Supplemental Security Income (SSI) benefits and various other Federally funded, needs-tested benefits (including Food Stamps, Medicaid, and the new block grant programs) for all noncitizens, with certain exceptions. The exceptions include lawful permanent residents who have earned 40 quarters of coverage (QCs) for Social Security purposes. An individual under age 18 would be credited with all QCs earned by his or her parent, and a married individual (including widow(er)) would be credited with QCs earned by his or her spouse during the marriage.

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The exception was provided as a matter of equity for workers who had a substantial attachment to the work force and had paid taxes in the United States.

Not all work is, or, in the past, was covered by Social Security. In view of the intent of the exception, it seems inequitable and illogical that individuals who had been employed for at least 10 years (40 QCs) will be denied Federally funded benefits simply because their work was not covered by Social Security. These individuals would have had the same substantial attachment to the work force as those who worked in covered employment and paid the same taxes that support such benefits, yet could not meet the exception because their earnings will not appear on SSA records.

Practical Considerations

There are a number of practical considerations that would need to be taken into account if it were decided to include noncovered work for purposes of meeting the exception:

- o Currently, about 96 percent of jobs are covered and the only substantial amount of noncovered work is State and Local government employment. However, since Social Security coverage has gradually expanded over the years, the percentage of covered jobs declines as past periods of work are considered (about 60 percent were covered in 1950).
- o Agencies would have to determine what kinds of evidence of noncovered employment would be acceptable. Employers might be required to search their records where there is an allegation of such employment, since the individual may not have acceptable evidence, especially for periods in the past.
- o The administrative burden on agencies administering the need-tested programs of dealing with allegations of noncovered employment could be substantial. The agency

might be required to give the individual assistance in obtaining evidence to support an allegation. Evidence would have to be evaluated to determine whether or not it supports the allegation of work, and decisions concerning the acceptability of such evidence might be subject to appeal.

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

26-Sep-1996 01:43pm

TO: (See Below)

FROM: Diana M. Fortuna
 Domestic Policy Council

SUBJECT: Illinois issue on 40 quarters verification

A voice mail I just got has alarmed me that we should try to quickly get out something to the states on interim verification. Hope I'm not overreacting.

Bruce Goldstein of the Farmworker Justice Fund called. I think I had sent you all a letter from him arguing that Social Security's records would be incomplete for most farm workers.

He says that the state of Illinois is taking the position that only the Social Security Administration can verify the 40 quarters count and that no other evidence counts. The state is blaming this on the failure of USDA to tell them otherwise.

I know we are a long way from resolving this issue, but:

Couldn't we quickly draft something to states saying that there are many questions we must answer on verification, but that in the interim they can use their judgment or choose from a variety of options to verify eligibility? This would include considering the use of things like attestations by the client, and the other types of things that SSA has said they are already using (knowledgeable people swearing that the person was working).

Perhaps doing this would be just as hard as giving definitive guidance; and perhaps it would sow confusion and risk making us look like we don't have our act together.

But our silence may allow states to blame us.

I think we should meet on this tomorrow.

Distribution:

TO: Elena Kagan

9/27/96

TO : Diana Fortuna

Per your request, here is information on the evidence required to establish earnings that are not already posted to a person's Social Security earnings record.

Tim Kelley

Tim Kelley
SSA/OLCA
410-965-3293

cc: Judy Chesser
Diane Garro
Tom Miller

Soc Sec 40 Q rules

*cc Elena Kagan - Rm 125 R
Jeremy
Richard Green
Steve W*

fax 5-0851

office, which is designed to bring out all the information about the claimant's total income from all sources during the appropriate period, the cost of the claimant's support during the same period, and the amount and frequency of the worker's contributions.

1725. EVIDENCE OF U.S. CITIZENSHIP may be required in certain cases, for instance, to determine coverage status of people working in foreign countries (see §962), the applicability of the alien nonpayment provision (see §1843), the eligibility to hospital or medical insurance protection of a person who is not entitled to cash benefits (see §2402), or the eligibility to special age 72 payments (see §§346-348).

A person may be a citizen of the U.S. by birth or by naturalization. The most acceptable evidence is a birth certificate showing birth within the U.S. Other acceptable evidence of U.S. citizenship includes:

- A. Form N-550 and N-570 (Certificate of Naturalization issued by the Immigration and Naturalization Service (INS)); or
- B. A U.S. passport issued by the U.S. Department of State (DOS); or
- C. Form I-197 (U.S. Citizen Identification Card issued by INS); or
- D. Form FS-240 (Report of Birth Abroad of a Citizen of the U.S. issued by DOS); or
- E. Form FS-545 (Certification of Birth issued by a foreign service post); or
- F. Form N-560 and N-561 (Certificate of Citizenship issued by INS); or
- G. Form DS-1350 (Certification of Report of Birth issued by DOS).

* 1726. EVIDENCE OF THE AMOUNT OF WAGES PAID to a worker and the period in which paid must be submitted if the wages are not recorded in the earnings record maintained by SSA or the Railroad Retirement Board or if there is reason to believe that the amounts recorded are

not correct. This evidence must be based directly on the employer's records, if available, and may consist of:

- A. Form W-2 (Wage and Tax Statement); or
- B. Notice from SSA to a worker showing wages credited to the worker's earnings record, e.g., Form SSA-L987 (Social Security Earnings Information); or
- C. SSA-7011 (Statement of Employer) used in claims and earnings discrepancy cases as evidence of nonagricultural wages, if signed by employer or custodian of employer's records; or
- D. SSA-1002 (Statement of Agricultural Employer) used in claims and earnings discrepancy cases as evidence of agricultural wages, if signed by employer or custodian of employer's records; or
- E. Any other statement signed by an employer; or
- F. Statement signed by custodian of employer's records; or
- G. Certification by SSA of contents of employer's records; or
- H. Certification by SSA of contents of employer tax returns in possession of IRS; or
- I. Certification by SSA of report of IRS audit of employer's records; or
- J. SSA-4500-U6 (Federal Determination of Error in State's Wage Reports) when signed by an authorized State or local official.

1727. WHEN EVIDENCE BASED DIRECTLY ON EMPLOYER RECORDS IS NOT AVAILABLE, two or more of the following may be submitted:

- A. Pay envelopes, vouchers, and similar unsigned employer wage statements given to the employee, a State agency, or another Federal agency (see §1728).
- B. Union records (see §1729).
- C. The worker's income tax returns (see §1730).
- D. Records of State unemployment compensation agencies based on evidence other than the employer's records (see §1731).
- E. Statements of persons having knowledge of the facts (see §1732).

- F. The worker's personal records (see §1733).
- G. Other acceptable evidence.

The types of evidence listed in this section must show clearly the amount of wages paid and when they were paid, and must be supported by at least one other piece of evidence of the kinds listed.

1728. PAY ENVELOPES, VOUCHERS, AND SIMILAR UNSIGNED EMPLOYER WAGE STATEMENTS MUST:

- A. Show the worker's and the employer's names; and
- B. Show the amount of wages paid and dates of payment or employment; and
- C. Be accompanied by the claimant's signed statement showing:
 1. When the employer furnished the voucher or wage statements; and
 2. Whether the employer made all the entries; and
 3. Whether this information correctly shows the wages paid and dates of employment.

1729. WHEN UNION RECORDS ARE USED AS EVIDENCE OF WAGES, the information submitted must include:

- A. The worker's and employer's names;
- B. The beginning and ending dates of employment;
- C. The amount of wages paid;
- D. Breakdown by calendar quarters of amounts shown on union records;
- E. The name and title of the union official giving the information and the name and local number of the union;
- F. Whether the amounts shown in the records were reported by the employer, shop steward, or employee, etc.; and
- G. Intervals at which the reports are made.

If the amounts shown on the union records are dues rather than wages paid, the information should show whether the dues are fixed or based on wages actually paid to the

worker and whether any charges not related to wages are also included in the dues figure. When the recorded amounts are total wages, the evidence should also show whether they are the actual wages paid or whether they were figured by using the prevailing union rate of pay.

1730. CERTIFIED COPIES OF THE WORKER'S STATE OR FEDERAL INCOME TAX RETURNS may be used as evidence of wages if they show the actual wages paid to the worker. Certified copies of Federal income tax returns may be obtained from IRS for a small fee.

Uncertified copies of State or Federal income tax returns may be used as supporting evidence only if a certified copy is not obtainable.

1731. FINDINGS BY STATE UNEMPLOYMENT COMPENSATION AGENCIES based on evidence other than the employer's records may be used as evidence if they are based on evidence which is acceptable to SSA. A copy or certification of the State agency's findings showing the employer's name, wages paid to the worker, and a description of the evidence on which the finding was based must be submitted.

1732. STATEMENTS OF PERSONS WHO KNOW ABOUT THE EMPLOYMENT AND WAGES should be made on a Form SSA-795 (Statement of Claimant or Other Person), available at all Social Security offices. Sources for these statements include the worker's:

- A. Supervisors;
- B. Fellow employees;
- C. Banks, or others who regularly cashed the worker's pay checks;
- D. Employment agencies;
- E. Union officials, etc.

The statements must set out the facts on which the person bases his or her conclusions about the wages paid to the worker and the periods for which the wages were paid. Statements by persons who have personal knowledge of the amount of the wages paid to the worker or of the periods when payment was made may be supported by other evidence which establishes the additional facts.

1733. PERSONAL RECORDS OF THE WORKER of wages paid to him or her are not of high probative value. However, regular, complete, and genuine records may be used to support other types of evidence. A statement must be furnished showing:

- A. Who made the entries;
- B. When they were made;
- C. The basis for the entries;
- D. What happened to any wage statements which were given to the worker by the employer; and
- E. An explanation of all discrepancies and inaccuracies in the records.

1734. WHEN EVIDENCE OF WAGES CANNOT BE OBTAINED an individual's allegation as to the amount of wages may be accepted and the earnings credited to the earnings record if all of the following conditions are met:

- A. The year in question is 1978 or later.
- B. Only one year is involved in the allegation.
- C. The year in question is not the current year or the year immediately preceding the current year, i.e., the "lag" year.
- D. There are postings from the same employer in the year immediately before and/or after the year in question.
- E. The amount of earnings alleged is consistent with the earnings posted both prior to and after the year in question.
- F. All attempts to obtain any other evidence have been exhausted.
- G. No contradictory evidence exists.

H. In claims cases, the missing wage amount affects insured status or the benefit amount.

1735. IF A COPY OF THE FORM 1040, SCHEDULE SE AND SCHEDULE C OR SCHEDULE F IS NOT AVAILABLE, but is needed to establish the amount of self-employment income, IRS may be asked to furnish the information in its files. Normally, the Social Security office will request the information from IRS. If the return cannot be located but the claimant knows one was filed, he or she may complete and sign a written request asking IRS to furnish a statement of the amount of self-employment income for the year in question. Complete identifying information, place of filing, etc. must be furnished so that the tax return can be located.

1736. IF THE SELF-EMPLOYED PERSON IS A PARTNER, Form 1065 (Partnership Return) may need to be submitted to show, for example, whether the partner's distributive share of the partnership income contains any income not includable in earnings from self-employment (such as capital gains, rent, etc.).

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

27-Sep-1996 05:42pm

TO: Jeremy D. Benami
TO: Stephen C. Warnath
TO: Elena Kagan
TO: Richard E. Green

FROM: Diana M. Fortuna
 Domestic Policy Council

SUBJECT: judy chesser says

that ways and means majority staff is working on a letter saying that congress didn't mean to exclude state and local workers when they wrote the "40 quarters" language. They gave her a draft and asked for her comments. Elena, I asked her to fax it to you or call her.

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

18-Sep-1996 08:02pm

TO: (See Below)

FROM: Diana M. Fortuna
 Domestic Policy Council

SUBJECT: interim verification and SSA

Steve Warnath and I are concerned that SSA is not on the same wave length as USDA or HHS in terms of implementing the legal immigrant provisions. Since their actual cutoffs don't begin to happen until next year, we haven't focused on them. But they keep sending me stuff for clearance that could foreclose some of the kinds of options USDA is looking at. For some reason, they are very hot to trot on getting paper out to the world.

For example, they are already pushing to put in flyers exactly what documentation people may have to bring to prove citizenship, even as USDA is saying that it will probably allow recipients to sign something attesting they are eligible.

I have talked to Brian Coyne about this, but I am not sure that succeeded. I hate to say we need another meeting. Perhaps we can meet with them right after (or before) our next subgroup meeting on Tuesday at 3. We don't necessarily need our whole gang, but Elena and Steve would be most helpful here.

I would propose this -- unless people think that we need a meeting focused on the whole subject of interim verification with INS, SSA, USDA, maybe HHS.

Distribution:

TO: Elena Kagan
TO: Stephen C. Warnath
TO: Kenneth S. Apfel

CC: Jeremy D. Benami
CC: Emily Bromberg
CC: Keith J. Fontenot

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

18-Sep-1996 08:12pm

TO: (See Below)

FROM: Jeremy D. Benami
 Domestic Policy Council

SUBJECT: RE: interim verification and SSA

I agree with your recommendation. We need a specific meeting with Brian, Judy and Carolyn prior to the subgroup meeting. It would be good to set aside a half hour just to do this. We need a verification meeting, but that should be separate I think.

Distribution:

TO: Diana M. Fortuna

CC: Elena Kagan
CC: Stephen C. Warnath
CC: Kenneth S. Apfel
CC: Emily Bromberg
CC: Keith J. Fontenot

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

18-Sep-1996 08:14pm

TO: (See Below)

FROM: Stephen C. Warnath
 Domestic Policy Council

SUBJECT: RE: interim verification and SSA

Diana is right about SSA.

I should be finished with my interim verification memo COB tomorrow. Last week, I had said that I wanted to have it ready to distribute early this week, but I got caught up in the immigration bill craziness. As soon as I have the draft finished, I will circulate it to all of you who want to have input/comment on it -- which I assume is most all of you. I know that DOJ has been thinking about this as well and I will want to distribute it to them (OLC, Civil Rights and other offices) and the other most relevant agencies for comment. Perhaps that will effect the timing of any meeting we want to have.

Thanks.

Distribution:

TO: Diana M. Fortuna

CC: Elena Kagan
 Kenneth S. Apfel
 Jeremy D. Benami
 Emily Bromberg
 Keith J. Fontenot