ODCLCA QUICK FAX

(202) 482-7112 - Voice / (202 482-7153 - Fax)

10/1/96

TO: Diana Fortuna
Steve Warnath

FROM: Judy Chesser

COVER + 6 pages

This form is produced on reused paper

October 1, 1996

TO: Steve Warnath
    Diana Fortuna

FR: Judy Chesser

RE: Proof - Current SSA policy: Citizenship/40 Quarters

Attached is the list of monetary amounts necessary for different years as well as a list of documents or attestations which Social Security currently accepts to prove work history.

If agencies are to accept non-covered work, this list of possible proofs seems like a good place to start.

We should continue our discussions on the citizenship proofs which happen to be on same page as work history proofs. A more detailed explanation of those procedures was faxed to Steve on 9/24.

attachment: 5 pages

QUARTERS OF COVERAGE

Fact Sheet

THIS INFORMATION IS PROVIDED TO ASSIST YOU IN DETERMINING WHETHER YOUR CLIENT MEETS THE 40 QUARTER EXCEPTION AS DEFINED IN P.L. 104-193. WE RECOMMEND THAT ALL FINDINGS BASED ON THIS INFORMATION BE CONFIRMED WITH THE SOCIAL SECURITY ADMINISTRATION AFTER ITS AUTOMATED QC HISTORY RESPONSE SYSTEM IS OPERATIONAL.

ESTABLISHING EARNINGS

To establish wages, self employment income and/or tips for quarters of coverage purposes, you should be convinced that the earnings actually exist and that the evidence submitted to prove those earnings does, in fact, verify their existence. You should also be convinced that the amounts shown on the evidence is bonafide and belongs to the individual.

In addition to an individual's personal statements and records, the following documents may help you determine earnings exist:

- **Employer Statements/Records**
  - Forms W-2 and/or W-2C
  - Employer prepared wage statements
  - Signed statement by custodian of the employer's records
- **Tax and Other Official Records**
  - IRS Copy of the employee's tax return
  - Union records
  - Records of State unemployment insurance agencies
- **Other Records**
  - Pay vouchers, envelopes and similar unsigned employer wage statements to the individual, a State agency or a Federal agency
  - Individual's copy of Federal, State or local income tax returns
  - Statements of persons having knowledge of the individual's employment and/or wages
- **Personal Earnings and Benefit Estimate Statement (PEBES)** issued by the Social Security Administration (A PEBES can be obtained by calling 1-800-772-1213).
- **Self-Employment Income Records**
  - Form 1040 (Income Tax Return) filed with IRS; or
  - Schedule SE or other written statement which includes enough information to determine the amount of self-employment income; and
  - Proof of payment that taxes were paid.

ESTABLISHING QUARTERS

The term "quarter" means the 3 calendar month periods ending with March 31, June 30, September 30 and December 31 of any year.

Social Security credits (formerly called "quarters of coverage") are earned by working at a job covered by Social Security. Each worker can earn a maximum of 4 credits each year.

For 1978 and later, credits are based solely on the total yearly amount of earnings. All types of earnings follow this rule. The amount of earnings needed to earn a credit increases and is different for each year. For 1978 through 1996, the amount of earnings needed for each credit is:

1978	$250	1988	$470
1979	$260	1989	$500
1980	$290	1990	$520
1981	$310	1991	$540
1982	$340	1992	$570
1983	$370	1993	$590
1984	$390	1994	$620
1985	$410	1995	$630
1986	$440	1996	$640
1987	$460		

A current year quarter may be included in the 40 quarter computation. Use the current year amount as the divisor to determine the number of quarters available. DO NOT CREDIT CALENDAR QUARTERS THAT HAVE NOT ENDED.

If you need to use quarters before 1978, a credit was earned:

- For each calendar quarter in which an individual earned $50 or more in wages (including agricultural wages for years before 1955);
- For each calendar quarter in which an individual earned $100 or more in self-employment income (Net earnings for the year must be at least $400 before any quarters were credited); and/or
- For each $100 (limited to a total of 4) of agricultural wages earned during the year, regardless of the quarter they were earned, for years 1955 through 1977.

NOTE: Determinations made using this information are not binding on the Social Security Administration for programs administered by that Agency.

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.).

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TO: Steve Warnath
Diane Fortune

FROM: Judy Chesser

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October 1, 1996

TO: Steve Warnath
Diana Fortuna

FR: Judy Chesser

RE: Proof - Current SSA policy: 40 Quarters

At the risk of giving you something you have - attached is more detailed list of documents we accept for evidence of citizenship.

SOCIAL SECURITY ADMINISTRATION
DEPUTY COMMISSIONER FOR LEGISLATION
AND CONGRESSIONAL AFFAIRS
6401 SECURITY BOULEVARD
BALTIMORE, MD. 21235

FAX

TO:	FROM:	DATE: 10/1
JUDY CHESSER	TOM MILLER	NUMBER OF PAGES (INCLUDING COVER) 8
FAX:	FAX: 410-965-3520	
PHONE:	PHONE:	

REMARKS:

TIM KELLEY REFERRED TO ME YOUR QUESTION AS TO WHETHER THE LIST OF EVIDENCE OF U.S. CITIZENSHIP IN SECTION 1725 OF THE SOCIAL SECURITY HANDBOOK IS COMPLETE.

ALTHOUGH THE LIST COVERS THE MORE COMMON SITUATIONS, IT IS NOT COMPLETE. ATTACHED ARE EXCERPTS FROM POMS WHICH CONTAIN A COMPLETE LIST. NOTE THAT SOME OF THE SITUATIONS COVERED IN POMS ARE RARE.

OPTIONAL FORM 99 (7-90)

FAX TRANSMITTAL | # of pages ▶ 8

To SANDY Cerato | From SMasimore
Dept/Agency OLCA | Phone # 57916
Fax # 53520 | Fax #

NSN 7540-01-317-7368 5099-101 GENERAL SERVICES ADMINISTRATION

1

A. POLICY PRINCIPLE (Cont.)

diplomatic or consular officer abroad; or ality before a U.S.

- Making a formal renunciation of nationality within the U.S. when the U.S. is in a state of war; or
- Being convicted of treason or bearing arms against the U.S. or similar acts.

B. PROCEDURE-QUESTIONABLE DUAL CITIZENSHIP

If an event has occurred which could result in the claimant's loss of U.S. citizenship and such loss would be material to the claim, follow the procedure indicated below.

NOTE: Because each country establishes criteria for citizenship independently, it is possible for a person to be officially recognized as a citizen of the U.S. and another country at the same time. A person does not automatically lose his/her U.S. citizenship if he/she is considered a citizen of another country.

If a person alleges dual citizenship or alleges U.S. citizenship but submits evidence to the contrary, such as a subsequently issued citizenship document from another country (i.e., a U.S. BC and a foreign passport) ask that person to explain his/her citizenship status.

Depending on the response, take one of the following actions:

1. Law of Return or Retention - Citizenship At Birth

If the individual alleges that dual citizenship was obtained by the law of return or retention of citizenship at birth, accept the allegation if there is no conflicting evidence. (Refer to RS 02640.080D. for examples of these dual entitlement situations.)

2. Naturalization

If dual citizenship was obtained by naturalization in another country, ask him/her to submit evidence to establish continuing U.S. citizenship. Evidence is:

a. A U.S. passport or any other document listed in GN 00303 300 issued later than the foreign document, or

b. A determination of citizenship from the State Department, for persons residing outside the U.S.; or INS, for persons residing in the U.S.

00303.300 ESTABLISHING U.S. CITIZENSHIP FOR ALL SSA PROGRAMS

CITATION

Immigration and Nationality Act, Section 104; Social Security Act, Section 1614; Regulations No. 16- Section 416.1600; 416.1610

A. POLICY

The INS has jurisdiction for determining U.S. citizenship for an individual in the U.S.

The State Department has jurisdiction for determining U.S. citizenship for an individual outside the U.S.

B. PROCEDURE - ESTABLISHING EVIDENCE

If the INS or State Department has made a determination of the individual's U.S. citizenship, accept the determination. If no determination has been made, make a determination of U.S. citizenship for SSA purposes only.

(2)

B. PROCEDURE - ESTABLISHING EVIDENCE (Cont.)

1. Conclusive Evidence

IMPORTANT: If U.S. citizenship needs to be established for payment into countries to which payment has been barred by Treasury regulations and/or SSA restrictions, refer to RS 02650.000 ff. for instructions.

Use the SSID as conclusive evidence of citizenship if the claimant is or was receiving title XVI benefits and:

- The payment status code on the SSR is not "N13," AND
- The AR code on the SSR is an "A" or "C", AND
- SSI payments to that claimant were made on record number one (the first payment record established on the SSR), AND
- Record number one was established September 1978 or later.

(Refer to SM 01601.000 ff. for information on how to read entries on an SSR query.)

Use the Numident as conclusive evidence of citizenship if a CSP code of "A" is shown and the first Numident record was established May 1981 or later.

Accept any of the following documents as conclusive evidence of U.S. citizenship for SSA purposes, unless there is some indication of loss of U.S. citizenship (refer to GN 00303.200):

a. A birth certificate showing birth in the U.S. (See GN 00303.120A. for information about who is considered a U.S. citizen at birth.)

b. U.S. Passport (current or expired) (Do not accept limited passports which are issued for periods of less than 5 years.)

REMINDER: If a U.S. passport is presented as evidence of citizenship by a non-resident claiming birth abroad to a U.S. citizen parent, he/she must submit an unexpired passport.

c. Form I-197 (United States Citizen Identification Card). INS issued this form until April 7, 1983 to naturalized U.S. citizens living near the Canadian or Mexican border who needed it for frequent border crossings. (Formerly Form I-179, last issued in February 1974.)

d. Form FS-240 (Report of Birth Abroad of a Citizen of the United States). (See GN 00302.535.) The Department of State issues these to U.S. citizens. Children born outside the U.S. to U.S. military personnel usually have one of these.

e. Form FS-545 (Certification of Birth). (See GN 00302.635.) This form is issued by a foreign service post. If the applicant does not have a copy available, he/she can obtain a copy from the Department of State. (See GN 00308.001B. for the address.)

f. Form N-550 and N-570 (Certificate of Naturalization). INS issues this through Federal and State courts, or through

B. PROCEDURE - ESTABLISHING EVIDENCE (Cont.)

1. Conclusive Evidence (Cont.)

administrative naturalization after December 1990, to individuals who are individually naturalized. The N-570 is a replacement certificate issued when the N-550 has been lost, mutilated, or the individual's name changed.

g. Form N-560 and N-561 (Certificate of Citizenship). INS issues this upon request to individuals who derive U.S. citizenship through a parent. The N-561 is a replacement certificate issued when the N-560 has been lost, mutilated, or the individual's name changed.

h. Form DS-1350 (Certification of Report of Birth). This form is issued by the State Department. If the applicant does not have a copy available, he/she can obtain a copy from the Department of State. (See GN 00308.001B. for the address.)

i. Northern Mariana Identification Card. This card, first issued by INS in 1987, identifies collectively naturalized citizens born in the NMI before November 3, 1986.

j. American Indian Card. This card, first issued by INS in 1983, identifies U.S. citizen Kickapoo Indians living near the U.S.-Mexican border. Kickapoo Indians are members of the "Texas Band of Kickapoo," who are also known as the "Southern Kickapoo." A Class Code of "KIC" and statement on the back denote U.S. citizenship. A Class Code of "KIP" authorizes free passage between borders and establishes LAPR. (See GN 00303.440B.3. for LAPR development for persons with tribal cards issued by the Bureau of Indian Affairs.)

2. Individuals Born in U.S.

If conclusive evidence for persons alleging birth in the U.S. is non-existent, obtain one of the following types of evidence:

a. Preferred:

- FS-225 (Certificate of Identity and Registration). (Issued by Foreign Service Posts until June 1972.)
- A religious record of birth recorded in the U.S. within 3 months of birth, which indicates a U.S. place of birth. The document must show either the date of the birth or the individual's age at the time the record was made.
- Evidence of civil service employment by the U.S. government before June 1, 1976.
- Census record showing U.S. citizenship or a U.S. place of birth. (See GN 00302.700 - GN 00302.760 for information on U.S. census records.)
- Any non-SSA document established at least 5 years before the initial application date, which indicates a

(4)

B. PROCEDURE - ESTABLISHING EVIDENCE (Cont.)

2. Individuals Born in U.S. (Cont.)

U.S. place of birth. The place of birth on the non-SSA document and the application must agree.

b. If conclusive or preferred evidence is not available, obtain statements from at least two persons, indicating a reasonable basis for their knowledge about the individual's birth in the U.S.

NOTE: If an individual who is homeless, an amnesia victim or mentally impaired cannot provide evidence of U.S. citizenship, follow the procedure in RM 00203.001F. to develop U.S. citizenship.

3. Collective Naturalization

If conclusive evidence is non-existent, use the following to establish U.S. citizenship for collectively naturalized individuals:

a. Puerto Rico

- Evidence of birth in Puerto Rico and the claimant's statement that he/she was residing in the U.S., a U.S. possession or Puerto Rico on January 13, 1941; or
- Evidence that the individual was a Puerto Rican citizen and the claimant's statement that he/she was residing in Puerto Rico on March 1, 1917 and that he/she did not take an oath of allegiance to Spain.

b. Virgin Islands of the U.S.

- Evidence of birth in the Virgin Islands of the U.S., the claimant's statement of residence in the U.S., a U.S. possession or the Virgin Islands of the U.S. on February 25, 1927; or
- The claimant's statement indicating residence in the Virgin Islands of the U.S. as a Danish citizen on January 17, 1917 and residence in the U.S., a U.S. possession or the Virgin Islands of the U.S. on February 25, 1927, and that he/she did not make a declaration to maintain Danish citizenship; or
- Evidence of birth in the Virgin Islands of the U.S. and the claimant's statement indicating residence in the U.S., a U.S. possession or territory or the Canal Zone on June 28, 1932.

c. Guam

- Evidence of birth in Guam and the claimant's statement indicating residence in the U.S., Guam or a U.S. territory on August 1, 1950; or
- INS statement of citizenship if the individual was born in Guam before April 11, 1899 and resided outside the U.S. or its territories at any time prior to August 1, 1950.

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B. PROCEDURE - ESTABLISHING EVIDENCE (Cont.)

3. Collective Naturalization (Cont.)

d. Northern Mariana Islands (NMI) [formerly part of the Trust Territory of the Pacific Islands (TTPI)].

- Evidence of birth in the NMI, TTPI citizenship and residence in the NMI, the U.S., or a U.S. territory or possession on November 3, 1986 (NMI local time) and a statement that the individual did not owe allegiance to a foreign state on November 4, 1986 (NMI local time); or
- Evidence of TTPI citizenship, continuous residence in the NMI since before November 3, 1981 (NMI local time), voter registration prior to January 1, 1975 and a statement that the individual did not owe allegiance to a foreign state on November 4, 1986 (NMI local time); or
- Evidence of continuous domicile in the NMI since before January 1, 1974 and a statement that the individual did not owe allegiance to a foreign state on November 4, 1986 (NMI local time).

IMPORTANT: If a person entered the NMI as a nonimmigrant and lived in the NMI since January 1, 1974, this does not constitute continuous domicile and the individual is not a U.S. citizen.

4. Derivative Citizenship

If conclusive evidence is non-existent, make a determination of derivative U.S. citizenship for SSA purposes in the following situations.

a. Claimant born abroad to U.S. citizen parents

Obtain:

- evidence of the U.S. citizenship of the parents and the relationship of the claimant to the parents, and evidence that at least one parent resided in the U.S. or an outlying possession prior to the claimant's birth; or
- a statement executed by a U.S. consular officer certifying the claimant to be a U.S. citizen and the bearer of a currently valid U.S. passport.

b. Claimant born abroad to a U.S. citizen parent and a noncitizen national

Obtain:

- evidence of U.S. citizenship for the U.S. citizen parent and of the U.S. national parent and evidence of the relationship of the claimant to the U.S. citizen parent and that the U.S. citizen parent resided in the U.S., a U.S. possession, American Samoa or Swain's Island for a period of at least 1 year prior to the claimant's birth; or

(6)

B. PROCEDURE - ESTABLISHING EVIDENCE (Cont.)

4. Derivative Citizenship (Cont.)

- a statement executed by a U.S. consular officer classifying the claimant to be a U.S. citizen and the bearer of a currently valid U.S. passport.

c. Claimant born out of wedlock abroad to a U.S. citizen mother. (For any other situation where an individual claims a U.S. citizen parent and an alien parent, refer to GN 00303.300B.4.e. INS must make a citizenship determination.)

Obtain:

- evidence of the U.S. citizenship of the mother, evidence of the relationship to the claimant and, for births on or before December 24, 1952, evidence that the mother resided in the U.S. prior to the claimant's birth or, for births after December 24, 1952 evidence that the mother had resided, prior to the child's birth, in the U.S. or a U.S. possession for a period of 1 year; or
- A statement executed by a U.S. consular officer classifying the claimant to be a U.S. citizen and the bearer of a currently valid U.S. passport.

d. Claimant born in Canal Zone or Republic of Panama

If conclusive evidence is unavailable, obtain:

- a birth certificate showing birth in the Canal Zone on or after February 26, 1904 and before October 1, 1979 and evidence that one parent was a U.S. citizen, at the time of the claimant's birth; or
- a birth certificate showing birth in the Republic or Panama on or after February 26, 1904 and before October 1, 1979 and evidence that at least one parent was a U.S. citizen and employed by the U.S. government or the Panama Railroad Company or its successor in title.

e. All Other Situations

Refer the individual to INS for a determination of U.S. citizenship.

If the individual is outside the U.S., refer him/her to the State Department for a U.S. citizenship determination.

5. Foreign Adoption by U.S. Citizen

Since foreign-born adopted children do not acquire U.S. citizenship by virtue of adoption by U.S. citizens, determine if the child has been granted U.S. citizenship by application to INS.

If the birth certificate shows a foreign place of birth and the individual cannot be determined to be a naturalized citizen under any of the above criteria, obtain other evidence of U.S. citizenship.

(7)

B. PROCEDURE - ESTABLISHING EVIDENCE (Cont.)

5. Foreign Adoption by U.S. Citizen (Cont.)

NOTE: When a foreign-born child is adopted some states issue a new birth certificate. The birth certificate will show the child's adoptive name and usually the foreign place of birth.

In the following instances accept the U.S. birth certificate as evidence of naturalization.

a. Louisiana

Accept only if the birth certificate does not contain the statement "not proof of citizenship."

b. Nevada

Accept if the birth certificate does not contain a statement that the document does not establish U.S. citizenship.

c. New Jersey

Accept if the birth certificate does not contain the statement "by adoption."

d. Wisconsin

Accept any Wisconsin birth certificate as evidence of U.S. citizenship if issued before November 1, 1986.

6. U.S. Citizenship By Marriage

SITUATION: A woman, who herself could have been lawfully naturalized, acquired U.S. citizenship through marriage before September 22, 1922 to a U.S. citizen.

Obtain:

- evidence of U.S. citizenship of the husband, and
- evidence of the relationship, showing the marriage occurred before September 22, 1922.

CAUTION: If the husband was an alien at the time of the marriage, and became naturalized before September 22, 1922, the wife also acquired naturalized citizenship. If the marriage terminated, the wife maintained her U.S. citizenship if she was residing in the U.S. at that time and continued to reside in the U.S.

7. INS Citizenship Evidence

If the claimant cannot present adequate evidence of U.S. citizenship, have the claimant complete Form G-639, Freedom of Information/Privacy Act Request.

NOTE: The claimant sends the form and search fee to the appropriate INS office. (See GN 00303.600.)

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.).

copy to Jeremy
Elena Kagan
Emily Bromberg

October 17, 1996

TO: Ken Apfel
Steve Warnath

FR: Judy Chesser

RE: 40 Quarters Letter

Attached is the long awaited letter from Archer and Clay saying that non-covered work should count toward 40 quarters.

attachment 2 pages

Wow!
Diana

COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515-6348

October 16, 1996

The Honorable Shirley S. Chater
Commissioner of Social Security
Social Security Administration
6401 Security Boulevard
Baltimore, MD 21235

Dear Commissioner Chater:

This letter is to give you guidance on the intent of Congress regarding the "40 qualifying quarters of coverage" exception to the eligibility of aliens for welfare benefits.

One of the overriding premises of the Congress in writing P.L. 104-193, and one stated in the legislation itself (sec. 400), is that self-sufficiency has been a basic principle of United States immigration law since the country's earliest immigration statutes. The "40 qualifying quarters of coverage" exception to the restriction on welfare benefits gives recognition to this overriding premise by encouraging and rewarding the self-sufficiency of noncitizens. If noncitizens avoid welfare and work legally for 40 quarters at the level of earnings required for Social Security coverage, they should be eligible for welfare on the same basis as citizens.

In drafting this exception, we did not intend to equate "has worked 40 qualifying quarters of coverage" with "has 40 quarters of coverage." Rather, it was the intent of the drafters to incorporate only the quarters of coverage calculation methodology of section 213 of the Social Security Act whereby a certain amount of earnings during a specified time period would equate to a specified number of quarters of coverage. It was not the intent of the drafters to also incorporate the restrictive definitions set out in other sections of the Social Security Act as to what earnings can be counted. The many exclusions in these definitions from what constitutes covered earnings under the Social Security Act bear no relationship to the self-sufficiency of a noncitizen.

Accordingly, any earnings of a noncitizen for work legally performed in the United States – not just covered earnings – should be used in the quarters of coverage calculation. Simply stated, the focus should be on whether the individual has worked legally and earned a certain level of earnings, not whether the individual worked in Social Security covered employment.

Sincerely,

Clay Shaw

E. Clay Shaw, Jr.
Chairman, Subcommittee
on Human Resources

Bill Archer

Bill Archer
Chairman
Committee on Ways and Means

United States Department of Agriculture

Food and Consumer Service

3101 Park Center Drive
Alexandria, VA
22302-1500

FOOD STAMP PROGRAM

DATAFAX COVER SHEET

DATE:

TO: Jeremy Ben-Ami

OFFICE:

PHONE:

FROM: Yvette

OFFICE:

PHONE:

SUBJECT:

REMARKS: Revised

NO. OF PAGES INCLUDING COVER SHEET:

FINAL VERSION!!

To: ELENA KAGAN
DIANA FORTUNA
STEVE WARNATH
EMILY ~~WARNATH~~ BROMBERG

United States Department of Agriculture

Food and Consumer Service

3101 Park Center Drive
Alexandria, VA
22302-1500

OCT 1 8 1996

SUBJECT: FSP - Verification of Immigrant Eligibility

TO: All Regional Administrator
Food and Consumer Service

The attached letter provides guidance to State agencies in implementing section 402 of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996. Please send this letter to State Commissioners immediately.

Yvette S. Jackson

Yvette S. Jackson
Deputy Administrator
Food Stamp Program

Attachments

All State Commissioners

This letter provides guidance for implementing section 402 of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996. Section 402 generally limits the eligibility of legal immigrants for the Food Stamp Program, but section 402(a)(2)(B) provides an exception for legal immigrants who have worked or can be credited with 40 quarters of qualified work in a job covered by Social Security. The law provides that quarters worked by a parent or a spouse may also be credited to the individual in determining the number of qualifying quarters.

Implementing this requirement will be challenging for the individual immigrants, eligibility workers, and the Social Security Administration (SSA) which is the primary source of quarters of coverage information. While some immigrants will already have 40 quarters clearly established in their Social Security records, others may have been employed in jobs covered by Social Security, but earnings may not have been appropriately reported. Many immigrants, particularly migrant workers, may have difficulty obtaining verification of employment, and SSA will have to work with them to establish quarters.

This letter and the enclosed procedures provide guidance to State agencies in administering the 40 quarters determination. These procedures have been developed in cooperation with SSA, and we are drafting regulations on 40 quarter verification that will be based on the guidance outlined in this letter. Until regulations are published, FCS and SSA expect State agencies to follow these procedures. Quality control reviews will be based on these certification procedures as well.

At this time, SSA is developing an automated system to provide State agencies, on an overnight basis, with information on quarters of coverage. Verification of quarters of coverage for most applicants and current recipients will be accomplished primarily by means of this automated system which SSA expects to be operational in January. Pending the implementation of the automated system, FCS and SSA have developed interim procedures for processing households with immigrant members.

The enclosed procedures authorize certification pending verification (CPV) for certain immigrants. Provided an immigrant, alone or in combination with his parents and/or spouse, has spent sufficient time in this country to have acquired 40 quarters of coverage, the individual's attestation to 40 quarters is sufficient. The individual need only state that he or she, alone or in combination with his or her parents and/or spouse, has met the work requirement. No further documentation of earnings is required at application.

Within 3 months after the month in which the SSA system is operational, the State agency shall submit the required information for each CPV individual to SSA. SSA will report back a quarters of coverage history for each individual and applicable family member requested.

If SSA's existing records do not verify that an individual claiming 40 quarters in fact has them and the individual believes SSA's records are not correct, SSA will work with the individual to determine whether additional quarters can be established. Individuals in this situation should be advised of this option and that they will be allowed to participate for 6 more months provided SSA certifies that it is working to clarify their records. The individual will be required to provide a document from SSA indicating that the number of quarters is under review. SSA is developing a document to meet this requirement.

If SSA cannot establish additional earnings and the individual does not have 40 qualifying quarters, the State agency shall establish an inadvertent household error claim for the overissuance, unless the individual knowingly provides false information.

We hope that these procedures will go a long way toward easing implementation difficulties and ensuring that the law is implemented in a fair and effective manner. Please contact your FCS regional office if you have any questions.

Sincerely,

(Regional Administrator)

Enclosures

cc: Food Stamp Program Director

Certification Pending Verification Procedures for Legal Immigrants

The following procedures are for legal immigrants who believe that they have a work history that meets the 40 quarters exemption in the law. These procedures need not be followed for those legal immigrants who qualify for other exemptions in the law (refugees, asylees, deportees, or applicants with a claim to eligibility based on military service).

To determine eligibility based on social security coverage, the State agency should ascertain the applicant's understanding as to the following:

1. How many years has the applicant, the applicant's spouse, or the applicant's parents (before the applicant turned 18) lived in this country.

   (If the answer to question 1 is less than 10 years, the State agency does not need to ask question 2.)

2. In how many of the years reported in answer to question 1, did the applicant, the applicant's spouse, or the applicant's parent earn money through work.

   (To determine whether the applicant's earnings were sufficient to establish "quarters of coverage" in those years, the State agency may wish to refer to the attached chart.)

If the answer to question 2 is 10 years or more, the State agency shall verify, from INS documents, the date of entry into the country of the applicant, spouse and/or parent. If the dates are consistent with having 10 or more years of work, no further documentation is required at this time; the State agency shall include the immigrant in the household pending verification from SSA. The State agency shall inform these immigrants that a claim will be established for any benefits to which they were not entitled. The State agency shall keep a record of each individual certified pending verification from SSA.

If the dates of entry are inconsistent with having 10 or more years of work, the State agency shall determine the individual ineligible. The State agency shall then inform the applicant of his or her fair hearing rights.

The applicant shall also provide, for purposes of future verification, the full name, social security number, date of birth, and sex of each individual (self, parent or spouse) whose work history is relevant to the determination of eligibility. In addition, the applicant shall provide a release form signed by each such individual (copy attached) giving SSA permission to release information on that individual to the State agency and/or the applicant. This form shall be retained in the case file to document the individual's consent.

SSA is drafting an addendum to the current Computer Matching and Privacy Protection Act agreement between SSA and each State agency. In accordance with that revised agreement, and within 3 months after the month in which the SSA verification system becomes operational, the State agency will send the identifying information provided by the applicant to SSA for overnight processing. In its response, SSA will provide information about qualifying quarters of work. If the immigrant believes the information from SSA is inaccurate or incomplete, the State agency shall refer the applicant to SSA for review. SSA will give the individual a document indicating that the number of quarters is under review. An immigrant who provides the State agency with this document can continue to receive benefits for 6 months from the date of SSA's initial response or until SSA has completed its review, whichever is earlier.

ESTABLISHING QUARTERS

The term "quarter" means the 3 calendar month periods ending with March 31, June 30, September 30 and December 31 of any year.

Social Security credits (formerly called "quarters of coverage") are earned by working at a job covered by Social Security. Each worker can earn a maximum of 4 credits each year.

For 1978 and later, credits are based solely on the total yearly amount of earnings. All types of earnings follow this rule. The amount of earnings needed to earn a credit increases and is different for each year. For 1978 through 1996, the amount of earnings needed for each credit is:

1978	$250	1988	$470
1979	$260	1989	$500
1980	$290	1990	$520
1981	$310	1991	$540
1982	$340	1992	$570
1983	$370	1993	$590
1984	$390	1994	$620
1985	$410	1995	$630
1986	$440	1996	$640
1987	$460		

A current year quarter may be included in the 40 quarter computation. Use the current year amount as the divisor to determine the number of quarters available. DO NOT CREDIT CALENDAR QUARTERS THAT HAVE NOT ENDED.

If you need to use quarters before 18 years ago:

- A credit was earned for each calendar quarter in which an individual was paid $50 or more in wages (including agricultural wages for 1951-1955);
- Four credits were earned for each taxable year in which an individual's net earnings from self-employment were $400 or more; and/or
- A credit was earned for each $100 (limited to a total of 4) of agricultural wages paid during the year for years 1955 through 1977.

Social Security Administration

Consent for Release of Information

TO: Social Security Administration

______________________ ______________________ ______________________

Name Date of Birth Social Security Number

I authorize the Social Security Administration to release information or records about me to:

NAME	ADDRESS
______________________	______________________
______________________	______________________
______________________	______________________
______________________	______________________

I want this information released because:

____

____

____

____

(There may be a charge for releasing information.)

Please release the following information:

____ Social Security Number
____ Identifying information (includes date and place of birth, parents' names)
____ Monthly Social Security benefit amount
____ Monthly Supplemental Security Income payment amount
____ Information about benefits/payments I received from ________ to ________
____ Information about my Medicare claim/coverage from ________ to ________
(specify) ____
____ Medical records
____ Record(s) from my file (specify) ____
____
____ Other (specify) ____

I am the individual to whom the information/record applies or that person's parent (if a minor) or legal guardian. I know that if I make any representation which I know is false to obtain information from Social Security records, I could be punished by a fine or imprisonment or both.

Signature: ____
(Show signatures, names, and addresses of two people if signed by mark.)
Date: ______________________ Relationship: ______________________

SSA-3288

United States Department of Agriculture

Food and Consumer Service

3101 Park Center Drive
Alexandria, VA
22302-1500

FOOD STAMP PROGRAM

DATAFAX COVER SHEET

DATE: Oct 16, 1996

TO: Jeremy Ben-Ami / Diana Fortuna

OFFICE:

PHONE:

FROM: Yvette Jackson

OFFICE:

PHONE:

SUBJECT: Re-drafted guidance memo on Verification of Immigrant Eligibility

REMARKS: Call me immediately, we have a problem.

NO. OF PAGES INCLUDING COVER SHEET: 6

202-456-~~4431~~ 1026

SUBJECT: FSP - Verification of Immigrant Eligibility

TO: Regional Administrator
All Regions

The attached letter provides guidance to State agencies in implementing section 402 of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996. Please send this letter to State Commissioners immediately.

Yvette S. Jackson
Deputy Administrator
Food Stamp Program

Attachments

cc: Regional Director
Food Stamp Program
All Regions

All State Commissioners

This letter provides guidance for implementing section 402 of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996. Section 402 generally limits the eligibility of legal immigrants for the Food Stamp Program, but section 402(a)(2)(B) provides an exception for legal immigrants who have worked or can be credited with 40 quarters of qualified work in a job covered by Social Security. The law provides that quarters worked by a parent or a spouse can be credited to the individual in determining the number of qualifying quarters.

Implementing this requirement will be challenging for the individual immigrants, eligibility workers, and Social Security Administration (SSA) which is the primary source of verification of quarters worked. While some immigrants may already have 40 quarters clearly established in their Social Security records, others may have been employed in jobs covered by Social Security, but earnings may not have been appropriately reported. Many immigrants, particularly migrant workers, may have difficulty obtaining verification of employment, and SSA will have to work with them to establish quarters. Finally, the definition of a "quarter" of work may cause some confusion as "quarters" are credited on the basis of annual earnings rather than on months worked.

This letter and the enclosed procedures provide guidance to State agencies in administering the 40 quarters determination. These procedures have been developed in cooperation with SSA, and we are drafting regulations on 40 quarter verification that will be based on the guidance outlined in this letter. Until regulations are published, FCS and SSA expect State agencies to follow these procedures. Quality control reviews will be based on these certification procedures as well.

Verification of 40 quarters information for most applicants and current recipients will primarily be accomplished by means of an automated system that SSA is developing to provide State agencies, on an overnight basis, with information on quarters of coverage. SSA expects that system to be operational in January. Pending the implementation of the automated system, FCS and SSA have developed interim procedures for processing households with immigrant members.

The enclosed procedures authorize certification pending verification (CPV) for certain immigrants. Provided an immigrant, alone or in combination with his parents and/or spouse, has spent sufficient time in this country to have acquired 40 quarters of coverage, the individual's attestation to 40 quarters is sufficient. The individual need only state that he or she, alone or in combination with his or her parents and/or spouse, has met the work requirement. No further documentation of earnings is required at application.

Within 3 months after the month in which the SSA verification system is operational, the State agency shall submit the required information for each CPV individual to SSA. SSA will report back the number of quarters that can be credited to the individual and applicable family members.

If SSA's existing records cannot verify that an individual has 40 quarters, SSA will work with the individual to determine whether quarters can be established. Individuals in this situation should be advised of this option and that they will be allowed to participate for 6 more months provided SSA certifies that it is are working to clarify their records. The individual will be required to provide a document from SSA indicating that the number of quarters is under review. SSA is developing a document to meet this requirement.

If SSA verification finally indicates that an individual does not have 40 qualifying quarters, the State agency shall establish an inadvertent household error claim for the overissuance, unless the individual knowingly provides false information.

We hope that these procedures will go a long way toward easing the implementation difficulties and ensuring that the law is implemented in a fair and effective manner. Please contact your FCS regional office if you have any questions.

Sincerely,

(Regional Administrator)

Enclosures

cc: Food Stamp Program Director

Certification Pending Verification Procedures for Legal Immigrants

The following procedures are for legal immigrants who attest that they have a work history that meets the 40 quarters exemption in the law. These procedures need not be followed for those legal immigrants who qualify for other exemptions in the law (refugees, asylees, deportees, or applicants with a claim to eligibility based on military service).

Legal immigrants who claim eligibility based on social security coverage during the application process should be asked to answer the following questions:

1. How many years have you lived in this country? Your spouse? Your parents before you reached the age of 18?
2. In how many of the years reported in answer to question 1, did you, your spouse, or your parent earn at least $1,000 through work?

(If the answers to question 1 total less than 10 years, the State agency does not need to ask question 2.)

If the answer to question 2 is 10 years or more, the State agency shall verify the date of entry of the individuals for whom work is reported from their INS documents. If the date is consistent with having 10 years of work, no further documentation is necessary at this time. If the responses indicate the possibility that a total of 40 quarters of coverage exist, the State agency shall include the immigrant in the household pending verification from SSA. The State agency shall inform these immigrants that a claim will be established for any benefits to which they were not entitled. The State agency shall keep a record of each individual certified pending verification from SSA.

If the individual's circumstances are clearly inconsistent with having 40 creditable quarters, the State agency shall determine the individual ineligible. The State agency shall inform the immigrants of their fair hearing rights.

The individual shall also provide the full name, social security number, date of birth, and sex of each individual for whom quarters are claimed. Within 3 months after the month in which the SSA verification system is operational the State agency shall submit this information information for each CPV individual to SSA. In addition. each individual claiming quarters must sign a release form (copy enclosed) giving SSA permission to release information to the State agency and the applicant. This form shall be retained in the case file to document an individual's consent to release of information when these cases are verified with SSA.

An addendum to the current Computer Matching and Privacy Protection Act agreement between SSA and each State agency is being drafted by SSA. In accordance with that revised agreement, the State agency will send identifying information for immigrants to SSA for overnight processing when the system is operational. In its response, SSA will provide information about qualifying quarters of work. If the immigrant believes the information from SSA is inaccurate or incomplete, the State agency shall refer the immigrant to SSA for a review.

These procedures will be used until the SSA verification system is operational and State agencies are able to obtain 40 quarters verification within the 30-day processing standard. After the system is in operation, the procedures will continue to be in effect for immigrants who provide verification that SSA is conducting an investigation to determine the number of quarters that can be credited. These individuals will be allowed to participate for up to 6 months pending clarification of their status.

DEPARTMENT OF AGRICULTURE
OFFICE OF CONGRESSIONAL RELATIONS
WASHINGTON, D.C. 20250-0100

COVER SHEET

Copies to Richard Green
fax 5-0851
Emily
Elena

Date: 10/11/96

Cover sheet plus 4 pages

TO: Diana Fortuna

FAX # 456-7028

PHONE #

FROM: Cheryl Yates Macias

USDA - Congressional Relations
Room 213A, Administration Bldg.
Jefferson Drive, SW
Washington, DC 20250
(202) 720-7095

REMARKS:

DRAFT

SUBJECT: FSP - Verification of Noncitizen Eligibility

TO: Regional Administrators
All Regions

This memorandum is to provide guidance to State agencies in implementing section 402 of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996. Please transmit this information to your State agencies immediately.

Under section 402(a)(2)(B) of the PRWORA, a legal immigrant who has worked or can be credited with 40 qualifying quarters of social security coverage is eligible to participate in the Food Stamp Program. In counting the 40 quarters, the individual can also be credited with quarters worked by a parent or spouse.

The Social Security Administration (SSA) is the primary source of verification of quarters worked. However, SSA has requested that we avoid sending a large number of clients to SSA offices. We also want to avoid burdening eligibility workers with the task of estimating quarters of coverage. Some immigrants may already have verification of their social security quarters. Others may have been employed in jobs covered by social security, but the earnings may not have been reported to social security (unreported earnings). Still others may have worked in jobs not covered by the social security system (noncovered employment). Many immigrants, particularly migrants, may have difficulty obtaining verification of employment, and SSA will have to work with them to establish quarters.

Recognizing the burden that 40-quarter verification creates for both SSA and noncitizens, FCS and SSA have developed an interim procedure for processing households with immigrant members until a verification system is available. The attached procedures authorize certification pending verification (CPV) for immigrants who have been in the country long enough to acquire 40 quarters of coverage. No further documentation of earnings is required for individuals who meet this requirement, and the individual's attestation to 40 quarters is sufficient. Individuals who do not have enough quarters on their own may claim quarters through the work of a parent or spouse. Quality control review procedures will be based on these certification procedures.

SSA is developing an automated system to provide State agencies with individual quarters of coverage information through overnight batch processing and expects the system to be operational in January. In any case, within 3 months after the month in which the SSA verification system is operational, the State agency shall submit the required information for each CPV individual to SSA. SSA will report back the number of quarters that can be credited to the individual and applicable family members. If the information shows that an individual was certified who could not be credited with 40 quarters, the State agency shall establish an inadvertent household error claim for the overissuance.

If SSA verification indicates that an individual does not have 40 qualifying quarters, but the individual is working with SSA to determine whether quarters can be established, the State agency shall allow the individual to participate for 6 more months. The individual must provide a document from SSA indicating that the number of quarters is under review. SSA is developing a document to meet this requirement.

We are drafting regulations to address 40 quarter verification which will be based on the procedures outlined in this memorandum. Until regulations are published, FCS and SSA strongly encourage State agencies to follow these procedures. Please let us know if you have any questions.

Yvette S. Jackson
Deputy Administrator
Food Stamp Program

Attachments

cc: Food Stamp Program Director
All Regions

Certification Pending Verification Procedures for Legal Immigrants

NOTE: These procedures do not apply to refugees, asylees, deportees, or applicants with a claim to eligibility based on military service because the 40-quarter provision does not apply to these individuals.

Legal immigrants who claim eligibility based on social security coverage will be asked to answer the following questions:

1. How many quarters have you worked in jobs covered by social security? *(If the answer to question 1 is 40 quarters or more, the applicant does not need to answer questions 3 and 4.)*
2. When did you first enter this country?
3. Did your spouse work in this country?
4. Did your parents work in this country when you were under age 18?

A quarter of coverage may be earned in less than a quarter of a year, and an individual does not have to have worked continuously for 10 years to have 40 quarters of coverage. If the answer to question 1 is "yes," the State agency shall verify the individual's date of entry from the individual's INS documents. If the date is consistent with having 40 quarters of work, no further documentation is necessary. If the individual reports less than 40 quarters, but answers "yes" to question 3 or 4, the State agency shall total the number of quarters worked by the individual, spouse, and/or parents.

If the individual's responses indicate the possibility that 40 quarters of coverage exist, the State agency shall include the individual in the household. If the individual's circumstances are clearly inconsistent with having 40 creditable quarters, the State agency shall determine the individual ineligible. The State agency shall inform the immigrants of their fair hearing rights and that a claim will be established for any benefits to which they were not entitled. The State agency shall keep track of each individual certified pending verification (CPV) from SSA.

The individual shall also provide the full name, social security number, date of birth, and sex of each individual for whom quarters are claimed. This identifying information will be needed to access the SSA QC query system when it is operational. In addition, each individual claiming quarters must sign a release form (copy attached) giving SSA permission to release information to the State agency and the applicant. This document shall be retained in the case file. It will document an individual's consent to release of information when these cares are verified with SSA.

An addendum to the current Computer Matching and Privacy Protection Act agreement between SSA and each State agency is being drafted. In accordance with that agreement, the State agency will send identifying information for immigrants to SSA for overnight processing. In its response, SSA will provide information about qualifying quarters of work.

Social Security Administration

Consent for Release of Information

TO: Social Security Administration

______________ ______________ ______________
Name Date of Birth Social Security Number

I authorize the Social Security Administration to release information or records about me to:

NAME	ADDRESS

I want this information released because:

____
____
____
____

(There may be a charge for releasing information.)

Please release the following information:

____ Social Security Number
____ Identifying information (includes date and place of birth, parents' names)
____ Monthly Social Security benefit amount
____ Monthly Supplemental Security Income payment amount
____ Information about benefits/payments I received from ________ to ________
____ Information about my Medicare claim/coverage from ________ to ________
(specify) ______________________________
____ Medical records
____ Record(s) from my file (specify)______________________________
____
____ Other (specify)______________________________

I am the individual to whom the information/record applies or that person's parent (if a minor) or legal guardian. I know that if I make any representation which I know is false to obtain information from Social Security records, I could be punished by a fine or imprisonment or both.

Signature:______________________________
(Show signatures, names, and addresses of two people if signed by mark.)
Date:______________ Relationship:______________

SSA-3288

Dear Colleague:

On August 22, 1996, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 was signed. This law contains several provisions affecting the payment of Supplemental Security Income (SSI) benefits to noncitizens. The Administration is committed to working to ensure the new law is implemented in a manner that fully protects the rights of those affected.

These provisions affect noncitizens who are currently receiving SSI benefits, as well as noncitizens who may apply for benefits in the future. We want to inform you of our plans for implementing the major provisions of the law so you are equipped to provide help to any legal immigrants with whom your groups works.

The new law prohibits payment of SSI to many noncitizens. The law is effective upon enactment for noncitizens applying for SSI benefits after August 22, 1996. For those currently receiving SSI benefits, their benefits will continue until we have reviewed their case, which will occur next Spring and Summer. Only the following noncitizens may ~~get~~ continue to get SSI:

- Refugees, asylees and noncitizens whose deportation has been withheld (subject to 5-year eligibility limit).
- Certain active duty Armed Forces personnel and honorably discharged veterans. Their spouses/children also may qualify.
- Lawfully admitted aliens who have 40 qualifying work quarters (quarters earned by spouse/parents may also count).

We are asking for your help in informing your constituents who are immigrants ~~(according to our records, about 82 percent of noncitizen SSI recipients met the time requirements for citizenship as of December 1994)~~ about the new law. In particular, to help avoid alarm that SSI benefits will terminate immediately under the new law, we are asking for your help in making sure that noncitizens currently receiving SSI understand that their benefits **will not be stopped until the following steps have been followed:**

- They receive a notice (sometime in February or March 1997) from the Social Security Administration (SSA) telling them we will be reviewing their citizenship or immigration status and they have 90 days to respond.
- After the 90-day-period, if they are not in one of the eligibility categories, they will receive another letter from SSA telling them when their benefits will be stopped. This letter will explain how they can appeal the decision and how they can have their benefits continued during their appeal.

Insert A

A general informational fact sheet describing how the new law affects noncitizens is enclosed. If you have any questions, please call _______ at ___________.

A

Finally, in working with your noncitizen constituents in addressing the new requirements of this law, it may be helpful to know that, according to our records, about 82 percent of noncitizen SSI recipients met the time requirements for citizenship as of December 1994.

Sincerely,

Joan Wainwright

Enclosure

INTERIM PROCESS FOR ESTABLISHING 40 QCs

- o Declarative/Self-Attestation declaration
  - Based on the client's allegation of work and using the quarter of coverage fact sheet provided by SSA, the Agency worker makes a determination of whether the client meets this exception.
  - A quarter of coverage history can later be obtained through SSA's automated QC history response system (beginning 1/97) to verify the work history determination.

"DRAFT"

ESTABLISHING QUARTERS

The term "quarter" means the 3 calendar month periods ending with March 31, June 30, September 30 and December 31 of any year.

Social Security credits (formerly called "quarters of coverage") are earned by working at a job covered by Social Security. Each worker can earn a maximum of 4 credits each year.

For 1978 and later, credits are based solely on the total yearly amount of earnings. All types of earnings follow this rule. The amount of earnings needed to earn a credit increases and is different for each year. For 1978 through 1996, the amount of earnings needed for each credit is:

1978.........$250	1988.........$470
1979.........$260	1989.........$500
1980.........$290	1990.........$520
1981.........$310	1991.........$540
1982.........$340	1992.........$570
1983.........$370	1993.........$590
1984.........$390	1994.........$620
1985.........$410	1995.........$630
1986.........$440	1996.........$640
1987.........$460	

A current year quarter may be included in the 40 quarter computation. Use the current year amount as the divisor to determine the number of quarters available. DO NOT CREDIT CALENDAR QUARTERS THAT HAVE NOT ENDED.

18 years ago

If you need to use quarters before 1978, a credit was earned:

- For each calendar quarter in which an individual earned $50 or more in wages (including agricultural wages for years before 1955);

- For each calendar quarter in which an individual earned $100 or more in self-employment income (Net earnings for the year must be at least $400 before **any** quarters were credited); and/or

- For each $100 (limited to a total of 4) of agricultural wages earned during the year, regardless of the quarter they were earned, for years 1955 through 1977.

NOTE: Determinations made using this information are not binding on the Social Security Administration for programs administered by that Agency.

"DRAFT"

"DRAFT"

"DRAFT"

QUARTERS OF COVERAGE

Fact Sheet

Purpose?

THIS INFORMATION IS PROVIDED TO ASSIST YOU IN DETERMINING WHETHER YOUR CLIENT MEETS THE 40 QUARTER EXCEPTION AS DEFINED IN P.L. 104-193. WE RECOMMEND THAT ALL FINDINGS BASED ON THIS INFORMATION BE CONFIRMED WITH THE SOCIAL SECURITY ADMINISTRATION AFTER ITS AUTOMATED QC HISTORY RESPONSE SYSTEM IS OPERATIONAL.

ESTABLISHING EARNINGS

To establish wages, self employment income and/or tips for quarters of coverage purposes, you should be convinced that the earnings actually exist and that the evidence submitted to prove those earnings does, in fact, verify their existence. You should also be convinced that the amounts shown on the evidence is bonafide and belongs to the individual.

In addition to an individual's **personal statements and records,** the following documents may help you determine earnings exist:

- **Employer Statements/Records**
  - Forms W-2 and/or W-2C
  - Employer prepared wage statements
  - Signed statement by custodian of the employer's records

- **Tax and Other Official Records**
  - IRS Copy of the employee's tax return
  - Union records
  - Records of State unemployment insurance agencies

- **Other Records**
  - Pay vouchers, envelopes and similar unsigned employer wage statements to the individual, a State agency or a Federal agency
  - Individual's copy of Federal, State or local income tax returns
  - Statements of persons having knowledge of the individual's employment and/or wages

- **Personal Earnings and Benefit Estimate Statement (PEBES)** issued by the Social Security Administration (A PEBES can be obtained by calling 1-800-772-1213).

- **Self-Employment Income Records**
  - Form 1040 (Income Tax Return) filed with IRS; **or**
  - Schedule SE or other written statement which includes enough information to determine the amount of self-employment income; **and**
  - Proof of payment that taxes were paid.

"DRAFT"

FARMWORKER JUSTICE FUND, INC.
1111 19th Street, N.W., Suite 1000
Washington, D.C. 20036
Phone (202) 776-1757

FAX MEMORANDUM

TO: STEPHEN WARNATH, DOMESTIC POLICY COUNCIL
YVETTE S. JACKSON, USDA FOOD & CONSUMER SERVICE

FROM BRUCE GOLDSTEIN B.G.

DATE: October 17, 1996

RE: FOOD STAMP PROGRAM: WELFARE BILL "WORK REQUIREMENT" AND STATE WAIVER PROCEDURES

We appreciate your consideration of the "forty quarters" issue under the new welfare bill's amendments to the food stamp and other programs and the need to ensure that the few legal immigrants who are entitled to receive public benefits under the new statutory changes actually receive them.

As indicated above, the attached memo addresses a second major food stamp issue that will affect farmworkers and many other low-wage workers who work at seasonal jobs or are otherwise changing jobs with periods of unemployment between them. We are concerned that the states be given guidance about their ability to seek waivers from the Department of Agriculture food stamp officials regarding the "work requirement," which disqualifies recipients from food stamps if they are unemployed for more than three months. Such waivers will be vital for many migrant and seasonal farmworkers.

Again, we appreciate your consideration and understand the complexity and enormous number of tasks facing the Administration in implementing the new law.

Implementing the Work Requirement / Unemployment Disqualification in the Food Stamp Provisions of the 1996 Welfare Reform Bill

This memo concerns the food stamp statute's new "work requirement" and its provision for granting states' requests for waivers. Section 824 of the welfare bill cuts off food stamps from persons who have been unemployed (and not in a work program) for three months or more while receiving food stamps during the preceding 36 months. It does *not* apply to persons who are: under age 18, over age 50, disabled, parents or other persons with responsibility for a dependent child, or pregnant women. Nonetheless, this provision will affect many individuals, including thousands of seasonal farmworkers.

Fortunately, the law permits a state to request a waiver from the USDA from this work-requirement provision when there is an unemployment rate over 10% or an insufficient number of jobs in "the area in which the individuals reside." The waiver will help seasonally-employed, low-wage workers, like farmworkers, who live or work in areas where, during their off-season, there is high unemployment and a shortage of jobs.

Indeed, periods of unemployment are endemic to farmworkers.

— Follow-the-crop-migrants "work an average of only 29 weeks per year, 25 of them in farm work, yielding a median income of $5,000 a year." U.S. Department of Labor, *Migrant Farmworkers: Pursuing Security in an Unstable Labor Market,* Research Report No. 5 Based on Data From the National Agricultural Workers Survey at 31 (May 1994).

-- In Congressional testimony on December 14, 1995, the Department of Agriculture's Chief Economist testified, "There is no time during the year in which the entire agricultural workforce is engaged in agricultural work. Even at peak employment periods, the number of employed farm workers is 1 million less than the number of farm workers. . . ."

— Barbara Jordan's Commission on Immigration Reform concluded even if the "the supply of illegal farmworkers dried up tomorrow (or if growers chose to stop hiring illegal workers), the supply of work-authorized farmworkers is ample, even in peak harvest months." *Legal Immigration: Setting Priorities* (June 1995) at 173.

— A report to Congress by the California Rural Legal Assistance, Inc., *Joblessness in the California Heartland*, graphically shows that in California's 17 predominantly agricultural counties, unemployment rates during 1986 to 1995 ranged from a low of 9.6% to 19.1%.

— A study commissioned and published by the U.S. Commission on Agricultural Workers concluded that Florida's predominantly rural counties have higher unemployment rates than its urban counties. Griffith & Camposeco, "Labor, Immigration Reform, and the Production of Winter Vegetables in South Florida," in *Case Studies and Research Reports of the Commission on Agricultural Workers, Appendix I* at 586 (1993). Florida Legal Services reviewed government data and found that in Florida's nine-county citrus belt, this year's average unemployment rates ranged from a low of 7.1% in May to a high of 11.2% in June 1996. In the summer of 1995, however, the rates shot up to 14%.

If properly implemented, the new law's waiver provisions will meet the need of seasonal workers for food stamps during annual periods of unemployment. Proper implementation is unlikely to occur unless the USDA issues prompt guidance.

The waiver provision does not define the 10% unemployment methodology, the labor surplus provision or the relevant geographic area. These omissions are significant delegations of flexibility to USDA and the states. (Congress was specific about such terms when it wanted to be. Under the block grant program's variable funding formula, for example, section 103 specifies criteria for determining high unemployment periods).

The USDA should stress several important points to the states:

— The federal agency should advise states that the state has the flexibility to define term "area" in a variety of ways, including by grouping together contiguous jurisdictions within the state, as long as it uses reliable data. For example, a state (despite having an average state-wide unemployment rate of 7%) could seek waivers, all at once, for its major agricultural areas, major urban areas, and the 14 contiguous counties in the central part of the state (even though some of the individual counties had less than 10% unemployment).

— States should be told that they may seek a waiver of the work requirement based on 10% unemployment for any period of 2 months or more in a twelve month period. There is no statutory obligation, for example, to prove that unemployment averaged more than 10% for an entire year. For many seasonal workers, it is the peak unemployment period, not the entire year, that causes the inability to find year-round work and the need for food stamps during their unemployment. For example, in south Florida's Collier County (where much of Edward R. Murrow's *Harvest of Shame* was filmed) unemployment dips to about 5 or 6% during the winter vegetable season but rises to 10 or 10.5% for three to four months during the summer off-season. A waiver should be granted in that situation to allow food stamps to be given to unemployed farmworkers.

— States should consider identifying counties of significant agricultural production as "areas" for which a waiver should be granted due to shortages of jobs.

— The states should be advised that their analysis of areas in which there are insufficient jobs may rely on the Department of Labor's report of Labor Surplus Areas Eligible for Federal Procurement Preference.

Bruce Goldstein, Farmworker Justice Fund, Inc. (202) 776-1757 10/17/96

FARMWORKER JUSTICE FUND, INC.
1111 19th Street, N.W., Suite 1000
Washington, D.C. 20036
Phone (202) 776-1757

To: Stephen Warnath, White House Domestic Policy Council

From: Bruce Goldstein, Co-Director, Farmworker Justice Fund, Inc. BG

Date: October 7, 1996

Re: Welfare law's forty quarters provision: Social Security guidelines

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Cecilia Munoz forwarded to me for comment the Social Security guidelines for correcting Social Security earnings reports. We appreciate the opportunity.

1. Focusing on the SSA guidelines as a model is misplaced. These guidelines result from the stringent standards in the Social Security Act, 42 U.S.C. § 405(c), for proving correction of Social Security records. The welfare bill does not contain those standards. Congress has recognized the special situation that farmworkers face in proving their past employment, which should be considered a much closer analogy. 8 U.S.C. § 1160; 8 C.F.R. § 210.

> The welfare bill does not require a noncitizen applicant to correct his or her Social Security records. The welfare bill, as you know, merely requires someone to have worked forty quarters as defined by the income-levels under the Social Security Act and regulations. The special statutory problems regarding the correction of Social Security records will be insuperable for many Farmworkers. In addition, the SSA framework has a different purpose. The SSA is in large part concerned with the exact amount of someone's past earnings because it helps determine benefit levels. Here, by contrast, the amount of past earnings is not critical. Most applicants who actually worked during a year will have earned the minimal amounts needed to be credited with four quarters of employment. Thus, the SSA's stringent guidelines should not be the model or the starting point.

2. Welfare officials should be instructed to expect that farmworkers will need to use alternative methods of proving past employment earnings and that farmworkers' need to use such alternative methods should not cause their claim of forty quarters of employment to be treated with skepticism.

> The SSA guidelines offer several alternative ways of proving earnings, but they also imply that the methods are part of a hierarchical list, with the later ones to be treated with skepticism. Such skepticism might make sense for many occupations because most employers in other fields report earnings or at least provide pay stubs. The nation's 1.6 million migrant and seasonal farmworkers, however, have experienced widespread failure of employers to report earnings, provide pay stubs or send W-2 forms. Moreover, it will be difficult for farmworkers to get such employers, even if they can be reached, to now admit that the employment occurred. Agency officials should be told to expect that farmworkers will need to rely on alternative methods of proof, including statements of the applicants and their friends and family.

3. Section 1734 would probably doom the applications of many farmworkers who actually worked forty quarters or more. That section provides that when evidence of wages cannot be obtained, "an individual's allegation as to the amount of wages may be accepted" but only if the allegation pertains to one year, the employer has posted information with SSA in the adjacent year, the earnings are "consistent with the earnings" in the adjacent year, and other requirements are met. Many farmworkers will lack records for numerous years because it is so common for agricultural employers not to supply earnings information. Farmworkers need to be able to attest to their employment, especially for their early years (for many, the mid to late 1980's) when most were transitioning from the underground labor force to documented employment.

4. Section 1727, if adopted as part of the welfare guidelines, would also make it difficult for many farmworkers to "prove" that they did in fact work even though it allows evidence that is not based directly on employer records. Because farmworkers frequently will not have employer records, any guidance must state clearly that corroboration can be in the form of a witness statement, and that witness statements can contain reasonable estimates of employment periods and earnings.

> Farmworkers frequently lack documents about their earnings. For some quarters, there will be no corroborating documents available because the farmworkers never got any, the employers cannot be reached, or the migrant worker lacked the storage space to keep the records. They must be permitted to provide their own statement and statements of other persons to prove their employment. Moreover, neither the farmworkers nor another witness will always be able to "show clearly the amount of wages paid and when they were paid." For some quarters, farmworkers will be able to say generally that they worked a crop season of a certain length and earned roughly a certain sum of money. Very often they will have been paid in cash by a farm labor contractor and there will not have been much "clear" about the wage payments. Witness statements will often be similar. This is the reality. Such evidence should suffice.

5. Section 1728, which imposes specific authentication requirements for unsigned employer wage statements, would render meaningless many of the wage documents that some farmworkers managed to get and maintain. Many wage documents are quite informal. Again, it is just unrealistic to expect farmworkers who really worked in a quarter and kept an employer's record to always have a document that meets the specific standards of that section.

6. Sections 1730 and 1735 refer to income tax records. Many farmworkers do not have adequate IRS records but should not be penalized for that.

> Especially during their first few years working in agriculture, many farmworkers' employers did not provide them with earnings information, did not report earnings to the IRS, and the farmworkers were often told that they earned so little that they did not have to file income tax forms. In addition, some employers falsely characterized farmworkers as "self-employed" and claimed that the farmworkers should have filed their own tax information as self-employed individuals. See, *e.g.*, *Secretary of Labor v. Lauritzen*, 835 F.2d 1529 (7th Cir. 1988) (rejecting claim by business that cucumber pickers were self-employed sharecroppers, rather than employees).

7. Section 1731 refers to unemployment compensation records. Farmworkers "often do not apply for UI benefits when out of work" and "many workers are still excluded from UI benefits" by state law. Dept. Of Labor, U.S. Farmworkers in the Post-IRCA Period (March 1993) at 31. Agricultural employers, especially farm labor contractors, are also notorious for failing to report earnings or pay in to unemployment funds.

8. Section 1733 dismisses the importance of the personal records kept by workers. Because farmworkers are frequently illiterate, this will not be much of an issue. However, farmworkers who kept their own diaries or wage records and state in writing that such records were kept accurately should be applauded for trying to gain control over an undisciplined labor relations system and should be credited with such work.

9. Clarification is needed. Unlike the Social Security program, the welfare law allows crediting of more than one quarter of work per quarter if an applicant's spouse worked or if the applicant was a minor and had one or more parents work. This needs to be stated very clearly in any guidelines.

10. Persons legalized under the SAW program should be presumed eligible as long as they state that they have been working during the last ten years in the United States. Most SAW applicants were in "Group II" and had to prove that they worked at least 90 days in seasonal agricultural during the one year ending May 1, 1986. A small percentage proved that they met the "Group I" standard of 90 days of seasonal agricultural employment during the 3 years ending May 1, 1986. Unfortunately, this does not mean that all their employment (i.e., non- seasonal agricultural employment or employment beyond 90 days) appears in the INS records for those years. Thus, the INS records, which are confidential and should be kept so, should not be used to determine all the employment that occurred. Nonetheless, they are indicative of a ten-year relationship to the U.S. labor force.

11. Finally, the SSA instructions do not contain any indication of the kind of patience and understanding that is needed in dealing with farmworkers and their records. Agribusiness has consistently sought new waves of foreign workers from third world countries. Consequently, many farmworkers do not speak English, do not read English, are illiterate in Spanish or their other first language, and have only a sixth-grade education or less. Migrating workers usually lack telephones, filing cabinets and other resources needed to get records and keep them. For migrant workers, the effort to secure statements from other witnesses to their employment from 8 years ago will be a difficult, time consuming task. They should not starve in the process.

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cc Jeremy
Steve W
Elena Kagan
Emily Bromberg
Richard Green

FAX TRANSMITTAL MEMO

TO: Diana Fortuna

FROM: Bruce Goldstein

DATE: 10/3/96

RE: Attachments you requested

No. Pages: 21 **(including this page)**

FYI: Bad 40 Quarter instructions from Fla.