

California Code Of Regulations

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Title 22@ Social Security

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Division 1@ Employment Development Department

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Subdivision 1@ Director of Employment Development

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Division 1@ Unemployment and Disability Compensation

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Part 1@ Unemployment Compensation

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Chapter 5@ UNEMPLOYMENT COMPENSATION BENEFITS

1326-13 Citizenship and Verification of Immigration Status

Article 3@ FILING, DETERMINATION, AND PAYMENT OF UNEMPLOYMENT COMPENSATION BENEFIT CLAIMS

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Section 1326-13@ Citizenship and Verification of Immigration Status

(a)

Scope. Section 121 of the Immigration Reform and Control Act of 1986, 42 USC 1320b-7(d), requires the department to determine, as a condition of eligibility for unemployment compensation benefits, the citizenship status of all claimants. It also requires the department to verify with the Immigration and Naturalization Service (INS) that the immigration status of claimants who are neither United States citizens nor United States nationals is satisfactory, based on documents presented by such claimants. This section sets forth the department's procedures for implementing these requirements.

(b)

General Rule. As required by Section 1326-2(b)(13) of these regulations, all claimants shall declare, as a condition of eligibility for unemployment compensation benefits, that they are United States citizens or United States nationals and, if not, that they are in a satisfactory immigration status. At the time of the first and continuous certification for benefits, the claimant shall declare under penalty of perjury that he or she is a U.S. citizen or national; or an alien in satisfactory immigration status, and permitted to work by the INS, as required by Section 1326-6(b)(10) of these regulations. A claimant who declares himself or herself to be in a satisfactory immigration status shall, as a further condition of eligibility, have that status verified by the INS based on documents presented by

the claimant. Such verification shall be either through an automated system utilizing the claimant's alien registration or file number, known as the Systematic Alien Verification for Entitlements or "SAVE" system, or by the department sending a photocopy of the original document the claimant submits as evidence of his or her satisfactory immigration status to the INS for inspection. The department shall provide a claimant who declares that he or she is in a satisfactory immigration status but who presents no document when filing his or her claim, a reasonable opportunity to present such documents for INS verification. The department shall provide a claimant who presents a document bearing his or her alien registration or file number for verification through the SAVE system, but whose immigration status is not verified by the INS through that system, a reasonable opportunity to present additional or other documents for INS's verification. The department shall not delay, deny, reduce, or terminate the claimant's eligibility pending any period of reasonable opportunity or the INS's verification response. If the INS does not verify the claimant's status the department shall consider the claimant's immigration status as unsatisfactory and shall determine or redetermine the claimant's eligibility based on that response. If the department determines that a claimant is ineligible because he or she is not in a satisfactory immigration status, it shall determine if benefits paid on the claim constitute an overpayment and, if so, the extent to which the claimant is liable for the overpayment under Section 1375-1 of these regulations.

(c)

Definitions. As used in the general rule, the following terms have the meanings assigned:(1) "Satisfactory immigration status" means that the claimant is lawfully residing in the United States and is authorized to work. It includes the following verification responses from the INS:(A) Legal permanent resident--employment

authorized. (B) Cuban/Haitian entrant--temporary employment authorized. (C) Section 245 A of the Immigration and Nationality Act--temporary resident--temporary employment authorized. (D) Section 210 of the Immigration and Nationality Act--temporary resident--temporary employment authorized. (E) Conditional resident alien--employment authorized. (F) Alien granted asylum/refugee status--employment authorized. (G) Alien granted parolee status--employment authorized. (H) Alien who has applied for a legal status, including any of the statuses set forth herein, to whom the INS has granted employment authorization pending its determination on his or her application. (I) Alien whose departure the INS does not contemplate enforcing. The department shall use this INS verification response in determining whether the claimant is permanently residing in the United States under color of law, referred to hereinafter as "PRUCOL." A claimant determined by the department to be PRUCOL shall be considered to be in a satisfactory immigration status. If the INS responds to the department's verification request by notifying the department that the claimant's employment authorization is temporary, with a specific expiration date, the department may consider the claimant's satisfactory status to expire as of that date and it shall make a determination or redetermination of the claimant's eligibility as of that date unless the claimant, prior thereto, provides documents that establish that the claimant is verified under a category that extends the expiration date. If the INS responds to the department's verification request for a claimant by notifying the department that the claimant's employment authorization is temporary, but without a specific expiration date, the claimant shall notify the department of the expiration date of the authorization applicable to his or her status. If the INS responds to the department's verification request for a claimant by including information about the length of time a claimant has been in

a particular immigration status, the department may use such information in making a determination with respect to the claimant's status during his or her base period under Section 1264-1 of these regulations. (2) "Reasonable opportunity" means a period of twenty-one calendar days. This period shall begin, with respect to a claimant who files an initial claim in accordance with these regulations but lacks any document required by this section to complete the claim, on the day of such filing. This period shall begin, with respect to a claimant whose immigration status is not verified under subdivision (b) of this section, on the day the department notifies the claimant in person or by telephone or on the date of a written notification mailed to the claimant. The period of reasonable opportunity may be extended upon a showing of good cause for the claimant's late presentation of documents. "Good cause" shall have the same meaning as under Section 1328 of the Code and Section 5005 of this Title with respect to the untimely filing of an appeal and shall include mistake, inadvertence, surprise, or excusable neglect. (3) "Primary verification" means verification through the automated system implemented by INS for such purposes and based on the original proof of immigration registration with the INS bearing the claimant's alien admission number or alien file number. (4) "Secondary verification" means a verification which is not primary, as defined above. To request a secondary verification, the department shall send to the INS a photocopy of the original document presented by the claimant to establish his or her immigration status as satisfactory and which either: (A) The department has determined constitutes reasonable evidence of a satisfactory immigration status, if the department has made any such determination, or (B) Which the claimant believes establishes his or her immigration status as satisfactory.

(1)

"Satisfactory immigration status" means that the claimant is lawfully residing in the United States and is authorized to work. It includes the following verification responses from the INS: (A) Legal permanent resident--employment authorized. (B) Cuban/Haitian entrant--temporary employment authorized. (C) Section 245 A of the Immigration and Nationality Act--temporary resident--temporary employment authorized. (D) Section 210 of the Immigration and Nationality Act--temporary resident--temporary employment authorized. (E) Conditional resident alien--employment authorized. (F) Alien granted asylum/refugee status--employment authorized. (G) Alien granted parolee status--employment authorized. (H) Alien who has applied for a legal status, including any of the statuses set forth herein, to whom the INS has granted employment authorization pending its determination on his or her application. (I) Alien whose departure the INS does not contemplate enforcing. The department shall use this INS verification response in determining whether the claimant is permanently residing in the United States under color of law, referred to hereinafter as "PRUCOL." A claimant determined by the department to be PRUCOL shall be considered to be in a satisfactory immigration status. If the INS responds to the department's verification request by notifying the department that the claimant's employment authorization is temporary, with a specific expiration date, the department may consider the claimant's satisfactory status to expire as of that date and it shall make a determination or redetermination of the claimant's eligibility as of that date unless the claimant, prior thereto, provides documents that establish that the claimant is verified under a category that extends the expiration date. If the INS responds to the department's verification request for a claimant by notifying the department that the claimant's employment authorization is temporary, but without a specific expiration date, the claimant shall notify the department of the expiration date of the authorization applicable to his or her status. If the INS responds to the department's

verification request for a claimant by including information about the length of time a claimant has been in a particular immigration status, the department may use such information in making a determination with respect to the claimant's status during his or her base period under Section 1264-1 of these regulations.

(A)

Legal permanent resident--employment authorized.

(B)

Cuban/Haitian entrant--temporary employment authorized.

(C)

Section 245 A of the Immigration and Nationality Act--temporary resident--temporary employment authorized.

(D)

Section 210 of the Immigration and Nationality Act--temporary resident--temporary employment authorized.

(E)

Conditional resident alien--employment authorized.

(F)

Alien granted asylum/refugee status--employment authorized.

(G)

Alien granted parolee status--employment authorized.

(H)

Alien who has applied for a legal status, including any of the statuses set forth herein, to whom the INS has granted employment authorization pending its determination on his or her application.

(I)

Alien whose departure the INS does not contemplate enforcing. The department shall use this

INS verification response in determining whether the claimant is permanently residing in the United States under color of law, referred to hereinafter as "PRUCOL." A claimant determined by the department to be PRUCOL shall be considered to be in a satisfactory immigration status. If the INS responds to the department's verification request by notifying the department that the claimant's employment authorization is temporary, with a specific expiration date, the department may consider the claimant's satisfactory status to expire as of that date and it shall make a determination or redetermination of the claimant's eligibility as of that date unless the claimant, prior thereto, provides documents that establish that the claimant is verified under a category that extends the expiration date. If the INS responds to the department's verification request for a claimant by notifying the department that the claimant's employment authorization is temporary, but without a specific expiration date, the claimant shall notify the department of the expiration date of the authorization applicable to his or her status. If the INS responds to the department's verification request for a claimant by including information about the length of time a claimant has been in a particular immigration status, the department may use such information in making a determination with respect to the claimant's status during his or her base period under Section 1264-1 of these regulations.

(2)

"Reasonable opportunity" means a period of twenty-one calendar days. This period shall begin, with respect to a claimant who files an initial claim in accordance with these regulations but lacks any document required by this section to complete the claim, on the day of such filing. This period shall begin, with respect to a claimant whose immigration status is not verified under subdivision (b) of this section, on the day the department notifies the claimant in person or by telephone or on the date of a written notification mailed to the claimant. The period of reasonable opportunity may be extended upon a showing of good cause for the claimant's late presentation of

documents. "Good cause" shall have the same meaning as under Section 1328 of the Code and Section 5005 of this Title with respect to the untimely filing of an appeal and shall include mistake, inadvertence, surprise, or excusable neglect.

(3)

"Primary verification" means verification through the automated system implemented by INS for such purposes and based on the original proof of immigration registration with the INS bearing the claimant's alien admission number or alien file number.

(4)

"Secondary verification" means a verification which is not primary, as defined above.

To request a secondary verification, the department shall send to the INS a photocopy of the original document presented by the claimant to establish his or her immigration status as satisfactory and which either: (A) The department has determined constitutes reasonable evidence of a satisfactory immigration status, if the department has made any such determination, or (B) Which the claimant believes establishes his or her immigration status as satisfactory.

(A)

The department has determined constitutes reasonable evidence of a satisfactory immigration status, if the department has made any such determination, or

(B)

Which the claimant believes establishes his or her immigration status as satisfactory.

(d)

Priority of documents. Claimants who state they are in a satisfactory immigration status in making the declaration described in this section shall present documentary proof of that status for purposes of verification by the INS, in the following order: (1) Alien registration documents or other evidence of immigration registration with the INS that contain the alien's admission number or

alien file number (or numbers, if the claimant has more than one number); (2) If the claimant does not possess the documents described in subdivision (d)(1), such other original documents that the department has determined constitute reasonable evidence of a satisfactory immigration status, if the department has made such a determination; (3) If the claimant does not possess the documents described, first, in subdivision (d)(1), or, second, in subdivision (d)(2), or does not possess the documents described, first, in subdivision (d)(1), and the department has not made any determination under subdivision (d)(2), then any original documents that the claimant believes constitute evidence of a satisfactory immigration status. To ensure the documents presented to establish his or her immigration status as satisfactory pertain to the claimant, any claimant required to present such documents under the provisions of this regulation shall also present one of the documents set forth in Section 1326-2(b)(2) of these regulations to establish his or her identity.

(1)

Alien registration documents or other evidence of immigration registration with the INS that contain the alien's admission number or alien file number (or numbers, if the claimant has more than one number);

(2)

If the claimant does not possess the documents described in subdivision (d)(1), such other original documents that the department has determined constitute reasonable evidence of a satisfactory immigration status, if the department has made such a determination;

(3)

If the claimant does not possess the documents described, first, in subdivision (d)(1), or, second, in subdivision (d)(2), or does not possess the documents described, first, in

subdivision (d)(1), and the department has not made any determination under subdivision (d)(2), then any original documents that the claimant believes constitute evidence of a satisfactory immigration status. To ensure the documents presented to establish his or her immigration status as satisfactory pertain to the claimant, any claimant required to present such documents under the provisions of this regulation shall also present one of the documents set forth in Section 1326-2(b)(2) of these regulations to establish his or her identity.

(e)

Reasonable opportunity to present documents. If a claimant declares that he or she is in a satisfactory immigration status but presents no documents for verification, the department shall provide the claimant a reasonable opportunity to present such documents. If, during such period, the claimant presents a document described in subdivision (d)(2) or (d)(3), the department shall send a photocopy of the document to the appropriate INS office for secondary verification. Pending such a period of reasonable opportunity and INS's response to the department's verification request based on any documents presented by the claimant during such a period, the department shall not, based upon the claimant's current immigration status, delay, deny, reduce or terminate his or her eligibility. If a claimant declares that he or she is in a satisfactory immigration status and presents his or her registration document or other proof of immigration registration with the INS containing the claimant's alien admission number or alien file number, but the INS is unable to verify the claimant's status, the department shall provide the claimant a reasonable opportunity to submit other or additional documentary evidence of his or her satisfactory immigration status. Photocopies of such documentary evidence including the document initially presented by the claimant, if he or she chooses to continue to rely on it as establishing a satisfactory

status, shall be sent to the INS for secondary verification. Pending such a period of reasonable opportunity and the INS's response to the department's verification request, the department shall not, based on the claimant's current immigration status, delay, deny, reduce or terminate his or her eligibility based on his or her current immigration status.

(f)

Determinations, redeterminations, and appeals. If the department concludes, after considering INS's response to its verification request, that the claimant is not in a satisfactory immigration status, it shall determine the claimant ineligible for unemployment compensation benefits or redetermine the claimant's eligibility with respect to any week for which the department has paid benefits pending INS's response. The department shall notify any claimant to whom it pays benefits pending INS's response, prior to or at the time of any such payment, that if the department concludes that the claimant is not in a satisfactory immigration status, the department shall reconsider its determination and may determine the claimant liable for any benefits paid pending INS's response in accordance with Section 1375-1 of these regulations. If, as a result of the department's determination or reconsidered determination, the claimant is determined to be ineligible, the claimant may appeal such determination or reconsidered determination in accordance with Section 1328 of the Code.

(g)

If any subdivision of this regulation or its application to any person or circumstance is held invalid, the invalidity shall not affect other subdivisions or applications of this regulation which can be given effect without the invalid subdivision or application, and in this respect the subdivisions of this regulation are severable.