

Supporting Statement for PRUCOL
Permanent Residence in the United States Under Color of Law
20 CFR 416.1615 and 416.1618
OMB No. 0960-0451

A. Justification

1. Introduction/Authoring Laws and Regulations

Sections 1631(e)(1)(A) and (B) of the *Social Security Act (Act)* preclude the Commissioner of the Social Security Administration (SSA) from making determinations of eligibility for Supplemental Security Income (SSI) payments based only on declarations. Section 1614(a)(1)(B) of the *Act* allows eligibility for SSI payments for aliens who are permanently residing in the United States under color of law (PRUCOL), that is lawfully admitted for permanent residence, if they meet all other eligibility factors.

20 CFR 416.1615 of the *Code of Federal Regulations (CFR)* provides the criteria and documents that result in a finding of being lawfully admitted for permanent residence. In addition, *Berger v. Secretary, HHS (Second Circuit, August 26, 1985)*, which provides categories and criteria for determining PRUCOL, binds the agency. 20 CFR 416.1618 implements the Berger decision and provides the criteria, categories, and evidentiary requirements that result in a finding of PRUCOL.

Under *Public Law 104-193 (A)(401) and (402)*, a noncitizen must be a “qualified alien” and meet certain additional requirements to be eligible for Supplemental Security Income (SSI). This law also established an exception to the new “qualified alien” requirements for nonqualified aliens who were receiving SSI as of August 22, 1996. (Nonqualified aliens are noncitizens who do not meet the definition of “qualified alien.”) Under this provision, nonqualified aliens who were receiving SSI on August 22, 1996, could remain eligible for SSI (if they met all other eligibility requirements) until September 30, 1997, at which time SSA would suspend benefits if the nonqualified alien had not acquired qualified alien status. *Public Law 105-33, section 5301(c)*, extended the effective date of the suspensions for nonqualified aliens to September 30, 1998.

Public Law 105-306, section 2, enacted October 28, 1998, provides that nonqualified aliens who were receiving SSI on August 22, 1996, would remain eligible for SSI after September 30, 1998 as long as they met all other eligibility requirements. SSI eligibility for this group of aliens – “grandfathered nonqualified aliens” – will continue to be determined based on the rules governing SSI eligibility for noncitizens in effect prior to August 22, 1996, i.e., the PRUCOL standard. PRUCOL aliens must present evidence of their status at application and periodically thereafter in accordance with the regulations at 20 CFR 416.1618.

2. Description of Collection

SSA requires the claimants or recipients to submit evidence of their alien status. Without this information, SSA would not be able to determine whether the individuals are eligible for SSI payments. When SSA cannot verify evidence of alien status through the regular claimant interview process, SSA verifies the validity of the evidence of PRUCOL for grandfathered nonqualified aliens with the Department of Homeland Security (DHS) using DHS Form G-845 Supplement, Document Verification Request Supplement (OMB No. 1615-0101). Based on the DHS response, SSA determines whether the individual is PRUCOL. SSA does not maintain any forms or applications for respondents to use, rather, the regulations listed in 20 CFR 416.1615 and 416.1618 specify the information respondents need to submit to SSA to show evidence of PRUCOL. Respondents are qualified and unqualified aliens who apply SSI payments under PRUCOL.

3. Use of Information Technology to Collect the Information

SSA collects the information via personal or telephone interviews during the claimant interview process. Using the Modernized Supplemental Security Income Claims System (MSSICS), the interview collects information from the individual that SSA uses to determine eligibility for SSI payments. During this information collection process, or through the DHS response, SSA verifies an individual's PRUCOL status.

4. Why We Cannot Use Duplicate Information

The nature of the information we are collecting and the manner in which we are collecting it preclude duplication. SSA does not use another collection instrument to obtain similar data.

5. Minimizing Burden on Small Respondents

This collection does not affect small businesses or other small entities.

6. Consequence of Not Collecting Information or Collecting it Less Frequently

If SSA did not collect this information, we would be unable determine whether a PRUCOL claimant is eligible for SSI payments. If SSA collected the information less frequently, it could delay a claimant's eligibility determination and might preclude needy individuals from receiving payment. There are no technical or legal obstacles to burden reduction.

7. Special Circumstances

There are no special circumstances that would cause SSA to conduct this information collection in a manner inconsistent with 5 *CFR* 1320.5.

8. Solicitation of Public Comment and Other Consultations with the Public

SSA published the 60-day advance Federal Register Notice on January 13, 2012 at 77 FR 2114, and we received no public comments. We published the 30-day Notice on March 30, 2012 at 77 FR 19406. If we receive any comments on the

second Notice, we will forward them to OMB. We did not consult with the public on this information collection.

9. Payment or Gifts to Respondents

SSA does not provide payments or gifts to the respondents.

10. Assurances of Confidentiality

SSA protects and holds confidential the information it collects in accordance with *42 U.S.C. 1306, 20 CFR 401 and 402, 5 U.S.C. 552* (Freedom of Information Act), *5 U.S.C. 552a* (Privacy Act of 1974), and OMB Circular No. A-130.

11. Justification for Sensitive Questions

The information collection does not contain any questions of a sensitive nature.

12. Estimates of Public Reporting Burden

Approximately 1,300 individuals respond once annually. The estimated average completion time is 5 minutes, for 108 annual burden hours. The total burden represents burden hours, and SSA did not calculate a separate cost burden.

13. Annual Cost to the Respondents (Other)

There is no known cost burden to the respondents.

14. Annual Cost To Federal Government

The annual cost to the Federal government for conducting this collection is approximately \$2,850. This is a projection of the costs for collecting the information through a personal interview.

15. Program Changes or Adjustments to the Information Collection Request

The burden decreased due to the number of PRUCOL aliens who are no longer eligible for SSI payments, or who are deceased.

16. Plans for Publication Information Collection Results

SSA will not publish the results of the information collection.

17. Displaying the OMB Approval Expiration Date

SSA is not requesting an exception to the requirement to display an expiration date.

18. Exceptions to Certification Statement

SSA is not requesting an exception to the certification requirements at *5 CFR 1320.9* and related provisions at *5 CFR 1320.8(b)(3)*.

B. Collections of Information Employing Statistical Methods

SSA does not use statistical methods for this information collection.