

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, CA 95814



March 12, 2008

ALL-COUNTY INFORMATION NOTICE NO.: I-18-08

TO: ALL COUNTY WELFARE DIRECTORS
ALL COUNTY CAPI PROGRAM MANAGERS

REASON FOR THIS TRANSMITTAL

- State Law Change
 Federal Law or Regulation Change
 Court Order
 Clarification Requested by One or More Counties
 Initiated by CDSS

SUBJECT: IHSS-Residual Eligibility for Non-Citizens**REFERENCE: ACIN I-23-99**

This All-County Information Notice (ACIN) provides instructions for determining if non-citizens who are not eligible for the Personal Care Services Program (PCSP) or the In-Home Supportive Services Plus Waiver (IPW) program due to their immigration status, meet the immigration status requirements for the In-Home Supportive Services-Residual (IHSS-R) program.

Background

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law (PL) 104-193, as a general rule, restricts eligibility for non-citizens for all federal public benefits and bars most non-citizens from Supplemental Security Income/State Supplementary Payment (SSI/SSP), but there are a number of exceptions. PL 104-193 (as amended, and reflected in Title 8, U.S. Code (8 USC), Section 1641(b)) also established the definition for "Qualified Alien" and the New Affidavit of Support for individuals who sponsor immigrants into this country (see Attachment A for definition of Qualified Alien).

Restrictions for Federal Programs

Non-citizens who are not Qualified Aliens are not eligible for federally funded public benefits (8 USC, Sec. 1611). Full scope Medi-Cal with federal financial participation (FFP) is one of the federal public benefits barred under these provisions. Certain types of emergency services, including emergency services under Medi-Cal, are exempt from this ban.

Some non-citizens who are Qualified Aliens and entered the United States on or after August 22, 1996, are also barred from federal public benefits for five years (8 USC, Sec. 1613). Exemptions from this ban include refugees and asylees, and those who qualify for the U.S. military veteran or active duty exception.

Eligibility for PCSP or IPW

To be eligible for PCSP or IPW, an individual must be eligible for full scope FFP Medi-Cal. The California Department of Health Care Services (DHCS) has sole responsibility for determining who is eligible for full scope FFP Medi-Cal. Each recipient's eligibility for full scope FFP Medi-Cal is reflected on the Medi-Cal Eligibility (MELG) screen of the Case Management and Information and Payrolling System (CMIPS) as Yes (Y) or No (N). This field is populated based on results of an electronic interface between the CMIPS and the Medi-Cal Eligibility Data System (MEDS) for those cases that have had a Medi-Cal determination.

Counties must determine IHSS-R eligibility for applicants or recipients who are not eligible for full scope FFP Medi-Cal.

Eligibility for IHSS-R

Welfare and Institutions Code (WIC) Section 12305.6 states that non-citizens who would be eligible for SSI/SSP but for the provisions of PL 104-193, continue to be eligible for IHSS-R. This means that any non-citizen who meets the immigration status criteria as they existed for SSI/SSP on August 21, 1996 (before enactment of PL 104-193), is potentially eligible for IHSS-R.

Under those former SSI/SSP rules, any non-citizen who was lawfully admitted for permanent residence (LAPR) or considered to be Permanently Residing Under Color of Law (PRUCOL) meets the immigration status criteria for SSI/SSP eligibility, and is potentially eligible for IHSS-R. The PRUCOL categories and verification requirements can be found in 20 CFR 416.1618 (see Attachment B). WIC Section 12305.6 makes all Qualified Aliens and SSI/SSP PRUCOLs potentially eligible for IHSS-R regardless of entry date or length of U.S. residence. Please note that some of the former SSI/SSP PRUCOL categories now meet the current definition of Qualified Alien.

Counties may accept the following Medi-Cal "Ref/Alien Ind" codes as proof of non-citizen status that meets the former SSI/SSP criteria:

- | | |
|---------|---------------------------|
| C | Conditional entrant |
| D | Deportation Withheld |
| E, F, R | Refugees |
| K | Lawful Permanent Resident |
| L | Asylee |

Many of the Medi-Cal PRUCOL statuses are temporary in nature or may differ from the SSI/SSP definition. Counties must separately verify immigration status, except for those listed above, to ensure they meet SSI/SSP criteria and are still current. It should be noted that PRUCOL is no longer recognized by the U.S. Citizenship and Immigration Service (CIS), formerly the Immigration and Naturalization Service (INS), so SSI/SSP PRUCOL category found at 20 CFR 416.1618 (b)(17) can rarely be used because CIS will no longer verify the defined situation.

In addition, Senate Bill 1569 (Chapter 672, Statutes of 2006) made certain victims of human trafficking, domestic violence and other serious crimes potentially eligible for IHSS-R. Refer to All-County Letter (ACL) 06-60 for detailed instructions on this non-citizen category.

Examples of non-citizens who would be ineligible for IHSS-R because they do not meet one of the PRUCOL definitions include:

- Non-immigrants, such as students or visitors on temporary 6 month visas
- Undocumented non-citizens
- Applicants for a status other than lawful permanent residence, such as those with a pending application for asylum.

Sponsor Deeming

For IHSS-R, non-citizens are subject to the SSI/SSP sponsor deeming provisions. Most, but not all, LAPRs have a sponsor. For SSI/SSP and IHSS-R, the length of the sponsor deeming period depends on the type of Affidavit signed. Under the Old Affidavit (I-134), sponsor deeming lasts for three years from the date of lawful admission. Under the New Affidavit (I-864), sponsor deeming lasts until the immigrant naturalizes or can be credited with 40 quarters of work. The I-864 was introduced on December 19, 1997, but the Old Affidavit was still used for some immigrants lawfully admitted after that date. Sponsor deeming makes most, but not all immigrants ineligible for IHSS-R due to excess income or resources.

The calculation of deemed income and resources from a sponsor for IHSS-R follows the methodology used for the SSI/SSP program and can be found in 20 CFR 416.1166a and 416.1204. These rules are reflected on the State form SOC 811 that should be used to calculate income and resources deemed from a sponsor. A sponsor's income is not subject to any of the regular or deemed income exclusions. When an immigrant is subject to sponsor deeming, the county must obtain a statement of facts regarding the sponsor's income and resources.

Share of Cost (SOC) Comparison

The immigration status and sponsor deeming rules used for IHSS-R must also be followed for purposes of the SOC comparison when a person eligible for PCSP or IPW has a SOC greater than zero.

Cash Assistance Program for Immigrants (CAPI) and IHSS-R

For the time being, anyone who is eligible for CAPI would meet the IHSS-R requirements. This will hold true at least until December 19, 2007. It might not be true after that because CAPI has just a 10 year sponsor deeming period, whereas the federal deeming period is indefinite for those who signed the New Affidavit. It is also true that persons who are not eligible for CAPI may be eligible for IHSS-R.

Any questions regarding these adjustments should be directed to the Adult Programs Branch, Operations and Technical Assistance Unit at (916) 229-4000.

Sincerely,

Original Document Signed By:

EVA L. LOPEZ
Deputy Director
Adult Programs Division

Attachments

c: CWDA

ATTACHMENT A

TITLE 8 > CHAPTER 14 > SUBCHAPTER JV > § 1641

§ 1641. Definitions

(a) IN GENERAL,-Except as otherwise provided in this chapter, the terms used in this chapter have the same meaning given such terms in section 101(a) of the Immigration and Nationality Act [8 U.S.C. 1101 (a)].

(b) Qualified alien,-For purposes of this chapter, the term "qualified alien" means an alien who, at the time the alien applies for, receives, or attempts to receive a Federal public benefit, is-

(1) an alien who is lawfully admitted for permanent residence under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.],

(2) an alien who is granted asylum under section 208 of such Act [8 U.S.C. 1158],

(3) a refugee who is admitted to the United States under section 207 of such Act [8 U.S.C. 1157],

(4) an alien who is paroled into the United States under section 212(d)(5) of such Act [8 U.S.C. 1182 (d)(5)] for a period of at least 1 year,

(5) an alien whose deportation is being withheld under section 243(h) of such Act [8 U.S.C. 1253] (as in effect immediately before the effective date of section 307 of division C of Public Law 104-208) or section 241(b)(3) of such Act [8 U.S.C. 1231 (b)(3)] (as amended by section 305(a) of division C of Public Law 104-208),

(6) an alien who is granted conditional entry pursuant to section 203(a)(7) of such Act [8 U.S.C. 1153 (a)(7)] as in effect prior to April 1, 1980; or

(7) an alien who is a Cuban and Haitian entrant (as defined in section 501(e) of the Refugee Education Assistance Act of 1980).

(c) Treatment of certain battered aliens as qualified aliens
For purposes of this chapter, the term "qualified alien" includes

(1) an alien who-

(A) has been battered or subjected to extreme cruelty in the United States by a spouse or a parent, or by a member of the spouse or parent's family residing in the same household as the alien and the spouse or parent consented to, or acquiesced in, such battery or cruelty, but only if (in the opinion of the agency providing such benefits) there is a substantial connection between such battery or cruelty and the need for the benefits to be provided; and

(B) has been approved or has a petition pending which sets forth a prima facie case for -

(i) status as a spouse or a child of a United States citizen pursuant to clause (ii), (iii), or (iv) of section 204(a)(1)(A) of the Immigration and Nationality Act [8 U.S.C. 1154(a)(1)(A)(ii), (iii), (iv)],

(ii) classification pursuant to clause (ii) or (iii) of section 204(a)(1)(B) of the Act [8 U.S.C. 1154(a)(1)(B)(ii), (iii)],

(iii) suspension of deportation under section 244(a)(3) of

(iii) suspension of deportation under section 244(a)(3) of the Immigration and Nationality Act [8 U.S.C. 1254(a)(3)] (as in effect before the title III-A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996). (2)

(iv) status as a spouse or child of a United States citizen pursuant to clause (i) of section 204(a)(1)(A) of such Act [8 U.S.C. 1154(a)(1)(A)(i)], or classification pursuant to clause (i) of section 204(a)(1)(B) of such Act [8 U.S.C. 1154(a)(1)(B)(i)J]; (3)

(v) cancellation of removal pursuant to section 240A(b)(2) of such Act [8 U.S.C. 1229b(b)(2)];

(2) an alien -

(A) whose child has been battered or subjected to extreme cruelty in the United States by a spouse or a parent of the alien (without the active participation of the alien in the battery or cruelty), or by a member of the spouse or parent's family residing in the same household as the alien and the spouse or parent consented or acquiesced to such battery or cruelty, and the alien did not actively participate in such battery or cruelty, but only if (in the opinion of the agency providing such benefits) there is a substantial connection between such battery or cruelty and the need for the benefits to be provided; and

(B) who meets the requirement of subparagraph (B) of paragraph (1); or

(3) an alien child who -

(A) resides in the same household as a parent who has been battered or subjected to extreme cruelty in the United States by that parent's spouse or by a member of the spouse's family residing in the same household as the parent and the spouse consented or acquiesced to such battery or cruelty, but only if (in the opinion of the agency providing such benefits) there is a substantial connection between such battery or cruelty and the need for the benefits to be provided; and

(B) who meets the requirement of subparagraph (B) of paragraph (1).

This subsection shall not apply to an alien during any period in which the individual responsible for such battery or cruelty resides in the same household or family eligibility unit as the individual subjected to such battery or cruelty.

After consultation with the Secretaries of Health and Human Services, Agriculture, and Housing and Urban Development, the Commissioner of Social Security, and with the heads of such Federal agencies administering benefits as the Attorney General considers appropriate, the Attorney General shall issue guidance (in the Attorney General's sole and unreviewable discretion) for purposes of this subsection and section 1631(f) of this title, concerning the meaning of the terms "battery" and "extreme cruelty", and the standards and methods to be used for determining whether a substantial connection exists between battery or cruelty suffered and an individual's need for benefits under a specific Federal, State, or local program.

AMENDMENTS

2000 - Subsec. (c)(l)(B)(iii). Pub. L. 106-386 amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: "cancellation of removal under section 240A of such Act (as in effect prior to April 1, 1997),".

1997 - Subsec. (b)(5). Pub. L. 105-33, Sec. 5562, substituted "section 243(h) of such Act (as in effect immediately before the effective date of section 307 of division C of Public Law 104-208) or section 241(b)(3) of such Act (as amended by section 305(a) of division C of Public Law 104-208)" for "section 243(h) of such Act".

Subsec. (b)(7). Pub. L. 105-33, Sec. 5302(c)(3), added par. (7).

Subsec. (c). Pub. L. 105-33, Sec. 5571(b), inserted at end "After consultation with the Secretaries of Health and Human Services, Agriculture, and Housing and Urban Development, the Commissioner of Social Security, and with the heads of such Federal agencies administering benefits as the Attorney General considers appropriate, the Attorney General shall issue guidance (in the Attorney General's sole and unreviewable discretion) for purposes of this subsection and section 1631(f) of this title, concerning the meaning of the terms 'battery' and 'extreme cruelty', and the standards and methods to be used for determining whether a substantial connection exists between battery or cruelty suffered and an individual's need for benefits under a specific Federal, State, or local program."

Subsec. (c)(l)(A). Pub. L. 105-33, Sec. 5571(a), substituted "agency providing such benefits)" for "Attorney General, which opinion is not subject to review by any court)".

Subsec. (c)(l)(B)(iii). Pub. L. 105-33, Sec. 5581(b)(7)(A), substituted "(as in effect prior to April 1, 1997)," for", or".

Subsec. (c)(l)(B)(v). Pub. L. 105-33, Sec. 5581(b)(7)(B), added cl. (v).

Subsec. (c)(2)(A). Pub. L. 105-33, Sec. 5571(a), substituted "agency providing such benefits)" for "Attorney General, which opinion is not subject to review by any court)".

Subsec. (c)(2)(B). Pub. L. 105-33, Sec. 5581(b)(6), substituted "subparagraph (B) of paragraph (l)" for "clause (ii) of subparagraph (A)".

Subsec. (c)(3). Pub. L. 105-33, Sec. 5571(c), added par. (3).

1996 - Subsec. (c). Pub. L. 104-208, Sec. 501, added subsec. (c).

Subsec. (c)(l)(B)(iii). Pub. L. 104-208, Sec. 308(g)(8)(E), substituted "cancellation of removal under section 240A of such Act" for "suspension of deportation and adjustment of status pursuant to section 244(a)(3) of such Act".

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 5302(c)(3) of Pub. L. 105-33 effective, except as otherwise provided, as if included in the enactment of title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-193, see section 5308 of Pub. L. 105-33, set out as a note under section 1612 of this title.

Amendment by sections 5562, 5571(a)-(c), 5581(b)(6), (7) of Pub. L. 105-33 effective as if included in the enactment of title IV of

the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-193, see section 5582 of Pub. L. 105-33, set out as a note under section 1367 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 308(g)(8)(E) of Pub. L. 104-208 effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104-208, set out as a note under section 1101 of this title.

Amendment by section 501 of Pub. L. 104-208 effective Sept. 30, 1996, see section 591 of Pub. L. 104-208, set out as a note under section 1101 of this title.

ATTACHMENT B

CFR 20 Title Page

Sec. 416.1618 When you are considered permanently residing in the United States under color of law.

(a) General. We will consider you to be permanently residing in the United States under color of law and you may be eligible for SSI benefits if you are an alien residing in the United States with the knowledge and permission of the Immigration and Naturalization Service and that agency does not contemplate enforcing your departure. The Immigration and Naturalization Service does not contemplate enforcing your departure if it is the policy or practice of that agency not to enforce the departure of aliens in the same category or if from all the facts and circumstances in your case it appears that the Immigration and Naturalization Service is otherwise permitting you to reside in the United States indefinitely. We make these decisions by verifying your status with the Immigration and Naturalization Service following the rules contained in paragraphs (b) through (e) of this section.

(b) Categories of aliens who are permanently residing in the United States under color of law. Aliens who are permanently residing in the United States under color of law are listed below. None of the categories includes applicants for an Immigration and Naturalization **status other than those applicants listed in paragraph (b) (6) of this section** or those covered under paragraph (b) (17) of this section. None of the categories allows SSI eligibility for nonimmigrants; for example, students or visitors. Also listed are the most common documents that the Immigration and Naturalization Service provides to aliens in these categories:

(1) Aliens admitted to the United States pursuant to 8 U.S.C. **1153 (a) (7), (section 203(a) (7) of the Immigration and Nationality Act)**. We ask for INS Form I-94 endorsed "'Refugee-Conditional Entry'".

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(2) Aliens paroled into the United States pursuant to 8 U.S.C. **1182 (d) (5) (section 212(d) (5) of the Immigration and Nationality Act)** including Cuban/Haitian Entrants. We ask for INS Form I-94 with the notation that the alien was paroled pursuant to section 212 (d) (5) of the Immigration and Nationality Act. For Cuban/Haitian Entrants, we ask for INS Form I-94 stamped "'Cuban/Haitian Entrant (Status Pending) reviewable January 15, 1981. Employment authorized until January 15, 1981.'" (Although the forms bear this notation, Cuban/Haitian Entrants are admitted under section 212 (d) (5) of the Immigration and Nationality Act.);

(3) Aliens residing in the United States pursuant to an indefinite stay of deportation. We ask for an Immigration and Naturalization Service letter with this information or INS Form I-94 with such a notation;

(4) Aliens residing in the United States pursuant to an indefinite voluntary departure. We ask for an Immigration and Naturalization Service letter or INS Form I-94 showing that a voluntary departure has been granted for an indefinite time period;

(5) Aliens on whose behalf an immediate relative petition has been approved and their families covered by the petition, who are entitled to voluntary departure (under 8 **CFR** 242.5(a)(2)(vi)) and whose departure the Immigration and Naturalization Service does not contemplate enforcing. We ask for a copy of INS Form I-94 or I-210 letter showing that status;

(6) Aliens who have filed applications for adjustment of status pursuant to section 245 of the Immigration and Nationality Act (8 U.S.C. 1255) that the Immigration and Naturalization Service has accepted as "properly filed" (within the meaning of 8 **CFR** 245.2(a)(1) or (2)) and whose departure the Immigration and Naturalization Service does not contemplate enforcing. We ask for INS Form I-181 or a passport properly endorsed;

(7) Aliens granted stays of deportation by court order, statute or regulation, or by individual determination of the Immigration and Naturalization Service pursuant to section 106 of the Immigration and Nationality Act (8 U.S.C. 1105a) or relevant Immigration and Naturalization Service instructions, whose departure that agency does not contemplate enforcing. We ask for INS Form I-94 or a letter from the Immigration and Naturalization Service, or copy of a court order establishing the alien's status;

(8) Aliens granted asylum pursuant to section 208 of the Immigration and Nationality Act (8 U.S.C. 1158). We ask for INS Form I-94 and a letter establishing this status;

(9) Aliens admitted as refugees pursuant to section 207 of the Immigration and Nationality Act (8 U.S.C. 1157) or section 203(a)(7) of the Immigration and Nationality Act (8 U.S.C. 1153(a)(7)). We ask for INS Form I-94 properly endorsed;

(10) Aliens granted voluntary departure pursuant to section 242(b) of the Immigration and Nationality Act (8 U.S.C. 1252(b)) or 8 **CFR** 242.5 whose departure the Immigration and Naturalization Service does not contemplate enforcing. We ask for INS Form I-94 or I-210 bearing a departure date;

(11) Aliens granted deferred action status pursuant to Immigration and Naturalization Service Operations Instruction 103.1(a)(ii) prior to June 15, 1984 or 242.1(a)(22) issued June 15, 1984 and later. We ask for INS Form I-210 or a letter showing that departure has been deferred;

(12) Aliens residing in the United States under orders of supervision pursuant to section 242 of the Immigration and Nationality Act (8 U.S.C. 1252(d)). We ask for INS Form I-220B;

(13) Aliens who have entered and continuously resided in the United States since before January 1, 1972 (or any date established by section 249 of the Immigration and Nationality Act, 8 U.S.C. 1259). We ask for any proof establishing this entry and continuous residence;

(14) Aliens granted suspension of deportation pursuant to section 244 of the Immigration and Nationality Act (8 U.S.C. 1254) and whose departure the Immigration and Naturalization Service does not contemplate enforcing. We ask for an order from the immigration judge;

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(15) Aliens whose deportation has been withheld pursuant to section 243(h) of the Immigration and Nationality Act (8 U.S.C. 1253(h)). We ask for an order from an immigration judge showing that deportation has been withheld;

(16) Aliens granted lawful temporary resident status pursuant to section 245A of the Immigration and Nationality Act (8 U.S.C. 1255a). We

ask for INS form I-688 showing that status; or

(17) Any other aliens living in the United States with the knowledge and permission of the Immigration and Naturalization Service and whose departure that agency does not contemplate enforcing.

(c) How to prove you are in a category listed in paragraph (b) of this section. You must give us proof that you are in one of the categories in paragraph (b) of this section. You may give us--

(1) Any of the documents listed in paragraph (b) of this section; or

(2) Other information which shows that you are in one of the categories listed in paragraph (b) of this section.

(d) We must contact the Immigration and Naturalization Service. (1) We must contact the Immigration and Naturalization Service to verify the information you give us to prove you are permanently residing in the United States under color of law.

(21) If you give us any of the documents listed in paragraphs (b1 (11, (21, (31, (41, (B1, (91, (111, (121, (131, (151, or (161 of this section, we will pay you benefits if you meet all other eligibility requirements. We will contact the Immigration and Naturalization Service to verify that the document you give us is currently valid.

(31) If you give us any of the documents listed in paragraphs (b1 (51, (61, (71, (101, or (141 of this section, or documents that indicate that you meet paragraph (b1 (171 of this section, or any other information to prove you are permanently residing in the United States under color of law, we will contact the Immigration and Naturalization Service to verify that the document or other information is currently valid. We must also get information from the Immigration and Naturalization Service as to whether that agency contemplates enforcing your departure. We will apply the following rules:

(i) If you have a document that shows that you have an Immigration and Naturalization Service status that is valid for an indefinite period we will assume that the Immigration and Naturalization Service does not contemplate enforcing your departure. Therefore, we will pay you benefits if you meet all other eligibility requirements. If, based on the information we get from the Immigration and Naturalization Service, we find that your document is currently valid, we will consider this sufficient proof that the Immigration and Naturalization Service does not contemplate enforcing your departure. We will continue your benefits. However, if we find that your document is not currently valid, we will suspend your benefits under Sec.416.1320.

(ii) If you have a document that appears currently valid and shows you have an Immigration and Naturalization Service status for at least 1 year, or that shows the Immigration and Naturalization Service is allowing you to remain in the United States for a specified period due to conditions in your home country, we will assume that the Immigration and Naturalization Service does not contemplate enforcing your departure. Therefore, we will pay you benefits if you meet all other eligibility requirements. If, based on the information we get from the Immigration and Naturalization Service, we learn that your document is currently valid and that agency does not contemplate enforcing your departure, we will continue your benefits. However, if we learn that your document is not currently valid or that the Immigration and Naturalization Service does contemplate enforcing your departure, we will suspend your benefits under Sec.416.1320.

(iii) If you have a document that shows you have an Immigration and Naturalization Service status valid for less than 1 year, or if your document has no expiration date, or if you have no document, we will not pay you benefits until the Immigration and Naturalization Service

confirms that your document is currently valid and we get

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information from that agency that indicates whether it contemplates enforcing your departure. If that agency does not contemplate enforcing your departure, we will pay you benefits if you meet all other eligibility requirements.

(iv) If at any time after you begin receiving benefits we receive information from the Immigration and Naturalization Service which indicates that the Immigration and Naturalization Service contemplates enforcing your departure, we will suspend your benefits under Sec.

416.1320 and any benefits you have received after the date that the Immigration and Naturalization Service began contemplating enforcing departure will be overpayments under subpart E of this part.

(e) What "United States" means. We use the term United States in this section to mean the 50 States, the District of Columbia, and the Northern Mariana Islands.

(Approved by the Office of Management and Budget under control number **0960-0451**)