

later than 60 days after the end of the calendar quarter in which the alleged violation occurred unless that person could not have known of the alleged violation, in which case the 60-day time limit will run from the discovery of the alleged violation.

Massey, Commissioner, *concurring in part*:

I wholeheartedly support conditions to all market-based tariffs that declare manipulation off limits. Such outrageous behavior has cast a pall over the promise of energy markets and has brought some companies to dire financial straits. These tariff conditions should deter bad behavior in the future. If they fail to do so, then at least the Commission will have industry wide legal tools to provide appropriate remedies. I commend Chairman Wood's strong leadership in developing this proposal.

I am writing separately to express my concern with one aspect of today's proposal. I would not limit the monetary penalty for tariff violations to disgorgement of unjust profits. Market manipulation can raise the market prices paid by all market participants and collected by all sellers. The Natural Gas Act requires that all rates and charges be just and reasonable. Where the market has been manipulated so as to affect the market price, that price is not just and reasonable and is therefore unlawful. Simply requiring that bad actors disgorge their individual profits does not make the market whole because all sellers received the unlawful price caused by the manipulation. The narrow remedy of profit disgorgement is not an adequate remedy for the adverse effect of the bad behavior on the market price, and may not be an adequate deterrent to future behavior. The appropriate remedy may be that the manipulating seller makes the market whole.<sup>1</sup> Unfortunately, today's order appears to take this remedy off of the table. I would prefer to tailor the remedy to the circumstances of each case. I encourage comments on this issue.

For these reasons, I concur in part with today's order.

**William L. Massey,**  
Commissioner.

Brownell, Commissioner, *concurring*:

Today we issue a Notice of Proposed Rulemaking (NPR) to amend the blanket certificates for unbundled gas sales service held by persons making sales for resale at negotiated rates in interstate commerce to require that sellers adhere to a code of conduct. The stated purpose of the proposed revisions is to ensure the integrity of the gas market that remains within the Commission's jurisdiction. Importantly, the NPR attempts to balance three goals:

- Effective remedies on behalf of customers in the event anti-competitive behavior or other market abuses occur;
- Clearly delineated "rules of the road" to persons making sales for resale at negotiated rates in interstate commerce, at the same

time, not impairing the Commission's ability to provide remedies for market abuses whose precise form and form can not be envisioned today; and

- Reasonable bounds within which conditions on market conduct will be implemented so as not to create unlimited regulatory uncertainty for individual market participants or harm to the marketplace in general.

I appreciate the need to balance these goals but still have some fundamental concerns about the proposal, particularly Sections 284.288(a) and 284.403(a). Scarcity pricing is a market response to a supply and demand imbalance. What constitutes legitimate forces of supply and demand and what defines scarcity pricing? I also fear that as the precise definition of manipulation develops over time we will end up with overly proscriptive "rules of the road" that will dampen innovative, legitimate business tools. Finally, I am concerned the proposed regulations could lead to the segmentation of the as commodity market. The only sales of natural gas that the Commission currently has jurisdiction to regulate are sales for resale of domestic gas by pipelines, local distribution companies, or their affiliates so long as they do not produce the gas that they sell. Could blanket certificate holders face a competitive disadvantage due to compliance with the code of conduct, or could there be any negative impact on natural gas prices? I ask for your comment on whether application of the code of conduct to only part of the natural gas market will have any adverse effects on the natural gas market.

**Nora Mead Brownell,**  
Commissioner.

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## SOCIAL SECURITY ADMINISTRATION

### 20 CFR Parts 404 and 416

[Regulation Nos. 4 and 16]

RIN: 0960-AF47

#### Federal Old-Age, Survivors and Disability Insurance; Determining Disability and Blindness; Clarification of the Education and Previous Work Experience Categories in the Medical-Vocational Rules

**AGENCY:** Social Security Administration.

**ACTION:** Proposed rules.

**SUMMARY:** We propose revising our regulations to clarify how we evaluate your work experience and how we evaluate illiteracy or inability to communicate in English when we decide whether you are disabled.

We propose these revisions to ensure that our regulations clearly reflect our longstanding policy that, if you have skilled or semiskilled work experience, but you cannot use your skills in other

work (*i.e.*, your skills are not transferable to other work), your ability to adjust to other work is no greater than it would be if you had only unskilled work experience.

We also propose revisions to clarify which medical-vocational rules apply if you are illiterate or unable to communicate in English; who we consider to be "illiterate or unable to communicate in English"; and how we evaluate your claim if you are illiterate, unable to communicate in English, or both.

**DATES:** To be sure that your comments are considered, submit them no later than September 5, 2003.

**ADDRESSES:** You may give us your comments by: using our Internet site facility (*i.e.*, Social Security Online) at: <http://policy.ssa.gov/pnpublic.nsf/LawsRegs>; e-mail to [regulations@ssa.gov](mailto:regulations@ssa.gov); by telefax to (410) 966-2830, or, by letter to the Commissioner of Social Security, P.O. Box 17703, Baltimore, Maryland 21235-7703. You may also deliver them to the Office of Regulations, Social Security Administration, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235-6401, between 8 a.m. and 4:30 p.m. on regular business days. Comments are posted on our Internet site, at <http://policy.ssa.gov/pnpublic.nsf/LawsRegs> or you may inspect them on regular business days by making arrangements with the contact person shown in this preamble.

**FOR FURTHER INFORMATION CONTACT:** Martin Sussman, Regulations Officer, Social Security Administration, Office of Regulations, 100 Altmeyer Building, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401, [regulations@ssa.gov](mailto:regulations@ssa.gov), (410) 965-1767, or TTY (410) 966-5609 for information about these rules. For information on eligibility or filing for benefits, call our national toll-free number, 1-800-772-1213 or TTY 1-800-325-0778 or visit our Internet Web site, Social Security Online, at [www.ssa.gov](http://www.ssa.gov).

#### SUPPLEMENTARY INFORMATION:

#### What Programs Would These Proposed Regulations Affect?

These proposed regulations would affect disability determinations and decisions we make under title II and title XVI of the Social Security Act (the Act). In addition, to the extent that Medicare and Medicaid eligibility are based on entitlement to benefits under title II and eligibility for benefits under title XVI, these proposed regulations would also affect the Medicare and Medicaid programs.

<sup>1</sup> The Commission has accepted the make the market whole remedy as part of a settlement for withholding generation from the California PX market. See 102 FERC ¶ 61,108 (2003).

**Who Can Get Disability Benefits?**

Title XVI of the Act provides for Supplemental Security Income (SSI) payments on the basis of disability if you are disabled and have limited income and resources. Under title II of the Act, we provide for the payment of disability benefits if you are disabled and belong to one of the following three groups:

- Workers insured under the Act,
- Children of insured workers, and
- Widows, widowers, and surviving divorced spouses (see 20 CFR 404.336) of insured workers.

Under title XVI of the Act, we provide for Supplemental Security Income (SSI) payments on the basis of disability if you are disabled and have limited income and resources.

**How Do We Define Disability?**

Under both the title II and title XVI programs, disability must be the result of any medically determinable physical or mental impairment or combination of impairments that is expected to result in death or which has lasted or is expected to last for a continuous period of at least 12 months. Our definitions of disability are shown in the following table:

If you file a claim under . . .	And you are . . .	Disability means you have a medically determinable impairment(s) as described above and that results in . . .
Title II .....	An adult or a child .....	The inability to do any substantial gainful activity (SGA).
Title XVI .....	A person age 18 or older .....	The inability to do any SGA.
Title XVI .....	A person under age 18 .....	Marked and severe functional limitations.

In addition, we only consider you to be disabled if your physical or mental impairment(s) is so severe that you are not only unable to do your previous work, but you cannot, considering your age, education, and work experience, engage in any other kind of substantial gainful work that exists in the national economy. This is true regardless of whether this kind of work exists in the immediate area in which you live, whether a specific job vacancy exists for you, or whether you would be hired if you applied for work. (See sections 223(d)(2)(A) and 1614(a)(3)(B) of the Act.)

We will not consider you under a disability unless you furnish medical and other evidence that we need to show that you are disabled. (See section 223(d)(5)(A) and, by reference to section 223(d)(5), section 1614(a)(3)(H) of the Act.) However, when we decide whether you are disabled (or whether you continue to be disabled), we will develop a complete medical history of at least the preceding twelve months for any case in which we decide that you are not disabled. (See sections 223(d)(5)(B) and 1614(a)(3)(H) of the Act.)

**Who Makes the Rules, Regulations, and Procedures for Providing Evidence of Disability?**

Section 205(a) of the Act and, by reference to section 205(a), section 1631(d)(1) provide that “\* \* \* [t]he Commissioner of Social Security shall have full power and authority to make rules and regulations and to establish procedures, not inconsistent with the provisions of this title, which are necessary or appropriate to carry out such provisions, and shall adopt reasonable and proper rules and regulations to regulate and provide for the nature and extent of the proofs and

evidence and the method of taking and furnishing the same in order to establish the right to benefits hereunder.”

**How Do We Decide Whether You Are Disabled?**

To decide whether you are disabled under the statutory definition, we use a five-step sequential evaluation process, which we describe in our regulations at §§ 404.1520 and 416.920. We follow the five steps in order and stop as soon as we can make a determination or decision. The steps are:

1. Are you working and is the work you are doing substantial gainful activity? If you are working and engaging in substantial gainful activity, we find that you are not disabled regardless of your medical condition or your age, education, and work experience. If not, we go on to step 2 of the sequence.
2. Do you have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities? If you do not, we find that you are not disabled. If you do, we go on to step 3 of the sequence.
3. Do you have an impairment(s) that meets or equals the severity of an impairment listed in appendix 1 of subpart P of part 404 of our regulations? If you do, and the impairment(s) meets the duration requirement, we find you disabled. If you do not, we go on to step 4 of the sequence.
4. Considering your residual functional capacity (RFC) and the physical and mental demands of the work you have done in the past, does your impairment(s) prevent you from doing your past relevant work? If not, we find that you are not disabled. If so, we go on to step 5 of the sequence.
5. Considering your RFC and your age, education, and past work

experience, does your impairment(s) prevent you from doing any other work? If it does, and your impairment(s) meets the duration requirement, we find that you are disabled. If it does not, we find that you are not disabled.

We use different sequential evaluation processes if we are deciding whether your disability continues. See §§ 404.1594 and 416.994 of our regulations. However, these different processes also include steps that consider your RFC and past relevant work, and your ability to adjust to other work considering your RFC, age, education, and work experience.

**How Do We Use the Medical-Vocational Rules?**

At step 5 of the sequential evaluation process, we use the medical-vocational rules in appendix 2 of subpart P of part 404. (By reference, § 416.969 of the regulations provides that appendix 2 also applies to adults claiming SSI payments based on disability.) The medical-vocational rules take administrative notice of the existence of numerous unskilled occupations at the exertional levels defined in the regulations, such as “sedentary,” “light,” and “medium.” The rules consider your RFC and your age, education, and past work experience in terms of your ability to adjust to other work.

The medical-vocational rules direct a determination or decision as to whether you are disabled if your RFC and age, education, and past work experience exactly match the criteria in a rule. If your RFC or age, education, and past work experience do not match the criteria in a medical-vocational rule, the rules provide a framework for making a determination or decision at this step.

The medical-vocational rules reflect our policy that we consider that, as you

get older, your advancing age makes it increasingly more difficult for you to make an adjustment to other work. They also reflect our policy that we consider that, if you are illiterate or unable to communicate in English, you may have more difficulty adjusting to other work than a person who is literate and able to communicate in English.

If you have skilled or semiskilled work experience, you may have gained skills that make it easier for you to adjust to other work—even at an advanced age. If your skills can be used in (transferred to) other skilled or semiskilled work within your RFC, we will ordinarily find that you can adjust to other work and are not disabled regardless of your age or education.

Our regulations at §§ 404.1565(a) and 416.965(a) provide that, if your skills cannot be transferred to other work within your RFC, we consider you to be no better off than if you have only unskilled work experience. When all other vocational factors are the same, we will make the same decision if you have work skills that do not transfer to other work, as we will for a person who has unskilled work experience.

#### What Revisions Are We Proposing To Make, and Why?

Experience has shown that some of these medical-vocational rules can be subject to misinterpretation if you have skilled or semiskilled past relevant work or are illiterate or unable to communicate in English. Therefore, we propose to revise these rules, as described below, to make them clearer and easier to follow. None of these proposed modifications would change any of our policies.

Our rules say that we will find you disabled at step 5 if you are a younger individual (age 45–49), you can do only sedentary work, you are unable to communicate in English or unable to read or write in English, and your work experience is unskilled or you have no transferable skills. (See paragraph (h) of § 201.00 of appendix 2.) However, this policy is not reflected as clearly as it could be in the corresponding medical-vocational rules in Table No. 1 of appendix 2. Therefore, we propose revising the rules in Table No. 1 to make them clearer by:

- Revising the previous work experience criterion of rule 201.17 to clarify that this rule applies if you have unskilled or no work experience, or if you have skilled or semiskilled work experience with no transferable skills; and
- Revising the education criterion in rule 201.19 to clarify that this rule

applies only if you are at least literate and able to communicate in English.

(The revisions we propose in rules 201.17 and 201.19 will also necessitate editorial revisions in the text of rules 201.18 and 201.20 because of the format of Table 1. However, this will not result in a change of the criteria for either of these rules.)

Our rules also say that we will find you disabled at step 5 if you are closely approaching advanced age (age 50–54), you are limited to light work, you are either illiterate or unable to communicate in English, and you have no work experience, unskilled work experience, or no transferable skills. (See paragraph (d) of § 202.00 of appendix 2.) However, this policy is not reflected as clearly as it could be in the medical-vocational rules in Table No. 2 of appendix 2. Therefore, we propose revising the rules in Table No. 2 to make them clearer by:

- Revising the previous work experience criterion in rule 202.09 to clarify that this rule applies if you have unskilled or no work experience, or if you have skilled or semiskilled work experience with no transferable skills; and
- Revising the education criterion in rule 202.11 to clarify that this rule applies only if you are at least literate and able to communicate in English.

(The revisions we propose in rules 202.09 and 202.11 will also necessitate editorial revisions in the text of rules 202.10 and 202.12 because of the format of Table 2. However, this will not result in a change of the criteria for either of these rules.)

A similar principle to those described above for Tables No. 1 and No. 2 applies under paragraph (c) of § 203.00 of appendix 2 and the medical-vocational rules in Table No. 3 of appendix 2. These provisions do not make it as clear as they could that we will find you disabled if you are closely approaching retirement age (age 60–64), you are illiterate or unable to communicate in English, and you have unskilled work experience or no transferable skills. Therefore, we propose revising § 203.00(c) and the rules in Table No. 3 of appendix 2 by:

- Revising the last sentence of current § 203.00(c) to make clear that, if you are limited to medium work, you are closely approaching retirement age (age 60–64), you have a marginal or less education (which includes being illiterate or unable to communicate in English), and you have unskilled work experience or skilled or semiskilled work experience with no transferable skills, a finding of disability is appropriate;

- Revising the education criterion of rule 203.01 to clarify that it applies if you are illiterate or unable to communicate in English;

- Revising the previous work experience criterion of rule 203.01 to clarify that it applies if you have no work experience, unskilled work experience, or if you have no transferable skills; and

- Revising the education criteria of rules 203.03 and 203.04 to clarify that they apply only if you have a limited education and are at least literate and able to communicate in English.

(The revisions we propose in rules 203.03 and 203.04 will necessitate an editorial revision in the text of rule 203.05 because of the format of Table 3. However, this will not result in a change of the criteria for this rule.)

In addition, we plan to revise Social Security Ruling 99–3p, “Title XVI: Evaluation of Disability and Blindness in Initial Claims for Individuals Age 65 or Older” (64 FR 33337). Although SSR 99–3p provides guidelines for evaluating disability claims for individuals age 65 and over, it includes informational discussions about evaluation of individuals under age 65 as well. Some of the material in the ruling about § 203.00 of appendix 2 could be misleading, and we will revise that material consistent with the final version of these proposed rules.

We also propose revising our rules in §§ 404.1564 and 416.964 to clarify how we evaluate your ability to adjust to other work if you are illiterate or unable to communicate in English and what we mean by “illiterate or unable to communicate in English.” Several aspects of our policy are not as clear as they could be in our regulations.

We therefore propose revising the last sentence in §§ 404.1564(b) and 416.964(b), and reorganizing current §§ 404.1564(b)(1) and (b)(5) and 416.964(b)(1) and (b)(5) by combining paragraphs (b)(1) and (b)(5) into proposed §§ 404.1564(b)(1) and 416.964(b)(1). We also propose revising the text in (b)(1) to make it clearer. These proposed changes would clarify that “illiterate or unable to communicate in English” is a single education category. Currently, these sections discuss illiteracy separately from the inability to communicate in English, and they are not organized clearly.

For clarification purposes, we also propose revising the text of paragraphs (b)(1) and (b)(5) of current §§ 404.1564 and 416.964 (in proposed §§ 404.1564(b)(1) and 416.964(b)(1)) to clarify what we mean by the terms “illiterate” and “unable to communicate

in English.” On August 28, 2001, we issued final rules revising § 201.00(h) of Appendix 2 to clarify that the term “illiterate” means the inability to read or write in English (see 66 FR 45162). At that time, we also said that we would examine the use of the term “illiterate” throughout our regulations and, when appropriate, provide further clarification (66 FR 45163). The revisions we propose would make clear that we consider you to be illiterate or unable to communicate in English if you are unable to do any one, or any combination of, the following: read a simple message in English, write a simple message in English, speak in English, or understand English.

We also propose, in revised §§ 404.1564(b)(1) and 416.964(b)(1), to clarify that the rules we use if you are illiterate or unable to communicate in English also apply if you are both illiterate and unable to communicate in English. Although this is our longstanding policy, lack of clarity in our regulations has resulted in a different policy being applied to claims arising in the 5th Circuit (Louisiana, Mississippi, Texas) as the result of a court decision that interpreted our regulations differently from what we intended. (See Social Security Acquiescence Ruling 86–3(5), *Martinez v. Heckler*, 735 F.2d 795 (5th Cir. 1984)). This revision to clarify our regulations will allow us to restore national consistency to our disability programs and to rescind this Acquiescence Ruling.

#### Clarity of These Proposed Rules

Executive Order (E.O.) 12866, as amended by E.O. 13258, requires each agency to write all rules in plain language. In addition to your substantive comments on these proposed rules, we invite your comments on how to make these rules easier to understand. For example:

- Have we organized the material to suit your needs?
- Are the requirements in the rules clearly stated?
- Do the rules contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rules easier to understand?
- Would more (but shorter) sections be better?
- What else could we do to make the rules easier to understand?

#### Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** on the Internet site

for the Government Printing Office: [http://www.access.gpo.gov/su\\_docs/aces/aces140.html](http://www.access.gpo.gov/su_docs/aces/aces140.html). It is also available on the Internet site for SSA (i.e., Social Security Online): <http://www.ssa.gov/regulations/>.

#### Regulatory Procedures

##### *Executive Order 12866*

We have consulted with the Office of Management and Budget (OMB) and determined that these proposed rules meet the criteria for a significant regulatory action under Executive Order 12866, as amended by Executive Order 13258. Thus, they are subject to review by OMB. We have also determined that these proposed rules meet the plain language requirement of Executive Order 12866, as amended by Executive Order 13258.

##### *Regulatory Flexibility Act*

We certify that these proposed regulations will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Therefore, a regulatory flexibility analysis, as provided in the Regulatory Flexibility Act, as amended, is not required.

##### *Paperwork Reduction Act*

These proposed regulations would impose no reporting or recordkeeping requirements subject to OMB clearance. (Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security Disability Insurance; 96.002, Social Security Retirement Insurance; 96.004, Social Security Survivors Insurance; 96.006, Supplemental Security Income)

#### List of Subjects

##### *20 CFR Part 404*

Administrative practice and procedure, Blind, Disability benefits, Old Age, Survivors, and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

##### *20 CFR Part 416*

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income.

Dated: April 3, 2003.

**Jo Anne B. Barnhart**,  
*Commissioner of Social Security.*

For the reasons set out in the preamble, we propose to amend subpart P of part 404 and subpart I of part 416 of 20 CFR Chapter III as set forth below:

## PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950– )

### Subpart P—[Amended]

1. The authority citation for subpart P of part 404 continues to read as follows:

**Authority:** Secs. 202, 205(a), (b), and (d)–(h), 216(i), 221(a) and (i), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a), (b), and (d)–(h), 416(i), 421(a) and (i), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189.

2. Amend § 404.1564 by revising the last sentence of paragraph (b), revising paragraph (b)(1), removing paragraph (b)(5), and redesignating paragraph (b)(6) as paragraph (b)(5), to read as follows:

#### **§ 404.1564 Your education as a vocational factor.**

\* \* \* \* \*

(b) *How we evaluate your education.*

\* \* \* In evaluating your educational level, we use the following categories:

(1) *Illiterate or unable to communicate in English.* We consider an individual to be within the education level of illiterate or unable to communicate in English if he or she is illiterate, or unable to communicate in English, or both.

(i) *Illiterate.* Illiterate means either unable to read in English, unable to write in English, or both. Generally, a person who cannot read or write in English has had little or no formal schooling in English. We consider someone illiterate if he or she either cannot read or cannot write (or both) a simple message, such as instructions or inventory lists in English. If an individual can sign his or her name in English or read or write in another language, this does not mean that we will consider him or her to be literate in English. We will make this decision based on all of the evidence.

(ii) *Inability to communicate in English.* Because the ability to speak and understand English is generally learned or enhanced at school, we consider this as an education factor. Because English is the primary language of this country, it may be more difficult for someone who does not speak English or does not understand English to adjust to other work than it is for someone who can speak and understand English, regardless of the amount of education the person may have in another language. We consider an individual to be unable to communicate in English if he or she cannot speak English, or cannot understand English, or both.

\* \* \* \* \*

3. Amend Table No. 1 in appendix 2 to subpart P of part 404—Medical-Vocational Guidelines by revising the previous work experience criterion of

rule 201.17, revising the education criterion of rule 201.19, and revising rules 201.18 and 201.20 to read as follows:

**Appendix 2 to Subpart P of Part 404—  
Medical-Vocational Guidelines**  
\* \* \* \* \*

**TABLE NO. 1.—RESIDUAL FUNCTIONAL CAPACITY: MAXIMUM SUSTAINED WORK CAPABILITY LIMITED TO SEDENTARY WORK AS A RESULT OF SEVERE MEDICALLY DETERMINABLE IMPAIRMENT(S)**

Rule	Age	Education	Previous work experience	Decision
201.17	Younger individual age 45–49	Illiterate or unable to communicate in English.	Unskilled or none or skilled or semiskill—skills not transferable.	Disabled.
201.18	.....do	Limited or less—at least literate and able to communicate in English.	Unskilled or none	Not disabled.
201.19	.....do	.....do	Skilled or semi-skilled—skills not transferable.	Do.
201.20	.....do	Limited or less	Skilled or semi-skilled—skills transferable.	Do.

4. Amend Table No. 2 in appendix 2 to subpart P of part 404—Medical-

Vocational Guidelines by revising the work experience criterion of rule 202.09, revising the education criterion

of rule 202.11, and revising rules 202.10 and 202.12 to read as follows:

**TABLE NO. 2.—RESIDUAL FUNCTIONAL CAPACITY: MAXIMUM SUSTAINED WORK CAPABILITY LIMITED TO LIGHT WORK AS A RESULT OF SEVERE MEDICALLY DETERMINABLE IMPAIRMENT(S)**

Rule	Age	Education	Previous work experience	Decision
202.09	Closely approaching advanced age.	Illiterate or unable to communicate in English.	Unskilled or none or skilled or semi-skilled—skills not transferable.	Disabled.
202.10	.....do	Limited or less—at least literate and able to communicate in English.	Unskilled or none	Not disabled.
202.11	.....do	.....do	Skilled or semi-skilled—skills not transferable.	Do.
202.12	.....do	Limited or less	Skilled or semi-skilled—skills transferable.	Do.

5. Revise last sentence of paragraph (c) of 203.00, appendix 2 to subpart P of part 404—Medical-Vocational Guidelines to read as follows:

**§ 203.00**

(c) \* \* \* For individuals closely approaching retirement age (60–64) with

past work experience of unskilled work, or skilled or semiskilled work experience with no transferable skills, and a marginal education or less (which includes being illiterate or unable to communicate in English), a finding of disabled is appropriate.

6. Amend Table No. 3 in appendix 2 to subpart P of part 404—Medical-Vocational Guidelines by revising the education and previous work experience criteria in rule 203.01, revising the education criterion in rule 203.04, and revising rules 203.03 and 203.05 to read as follows:

**TABLE NO. 3.—RESIDUAL FUNCTIONAL CAPACITY: MAXIMUM SUSTAINED WORK CAPABILITY LIMITED TO MEDIUM WORK AS A RESULT OF SEVERE MEDICALLY DETERMINABLE IMPAIRMENT(S)**

Rule	Age	Education	Previous work experience	Decision
203.01	Closely approaching retirement age.	Marginal or less (includes illiterate or unable to communicate in English).	Unskilled or none or skilled or semi-skilled—skills not transferable.	Disabled.
203.02	.....do	Limited or less	None	Do.

TABLE NO. 3.—RESIDUAL FUNCTIONAL CAPACITY: MAXIMUM SUSTAINED WORK CAPABILITY LIMITED TO MEDIUM WORK AS A RESULT OF SEVERE MEDICALLY DETERMINABLE IMPAIRMENT(S)—Continued

Rule	Age	Education	Previous work experience	Decision
203.03	.....do	Limited—at least literate and able to communicate in English.	Unskilled	Not disabled.
203.04	.....do	.....do	Skilled or semi-skilled—skills not transferable.	Do.
203.05	.....do	Limited or less	Skilled or semi-skilled—skills transferable.	Do.
*	*	*	*	*

\* \* \* \* \*

**PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED**

**Subpart I—[Amended]**

7. The authority citation for subpart I of part 416 continues to read as follows:

**Authority:** Secs. 702(a)(5), 1611, 1614, 1619, 1631(a), (c), and (d)(1), and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1382, 1382c, 1382h, 1383(a), (c), and (d)(1), and 1383b); secs. 4(c) and 5, 6(c)–(e), 14(a) and 15, Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1808 (42 U.S.C. 421 note, 423 note, 1382h note).

8. Amend § 416.964 by revising the last sentence of paragraph (b), revising paragraph (b)(1), removing paragraph (b)(5), and redesignating paragraph (b)(6) as paragraph (b)(5), to read as follows:

**§ 416.964 Your education as a vocational factor.**

\* \* \* \* \*

(b) *How we evaluate your education.* \* \* \* In evaluating your educational level, we use the following categories:

(1) *Illiterate or unable to communicate in English.* We consider an individual to be within the education level of illiterate or unable to communicate in English if he or she is illiterate, or unable to communicate in English, or both.

(i) *Illiterate.* Illiterate means either unable to read in English, unable to write in English, or both. Generally, a person who cannot read or write in English has had little or no formal schooling in English. We consider someone illiterate if he or she either cannot read or cannot write (or both) a simple message, such as instructions or inventory lists in English. If an individual can sign his or her name in English or read or write in another language, this does not mean that we will consider him or her to be literate in English. We will make this decision based on all of the evidence.

(ii) *Inability to communicate in English.* Because the ability to speak and understand English is generally learned or enhanced at school, we consider this as an education factor. Because English is the primary language of this country, it may be more difficult for someone who does not speak English or does not understand English to adjust to other work than it is for someone who can speak and understand English, regardless of the amount of education the person may have in another language. We consider an individual to be unable to communicate in English if he or she either cannot speak English, or cannot understand English, or both.

\* \* \* \* \*

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**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 1**

[REG–131997–02]

RIN 1545–BA85

**Section 42 Carryover and Stacking Rule Amendments**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking and notice of public hearing.

**SUMMARY:** This document contains proposed regulations that amend several existing regulations concerning the low-income housing tax credit. These proposed regulations primarily reflect changes to the law made by the Community Renewal Tax Relief Act of 2000 and affect owners of low-income housing projects who claim the credit and the State or local housing credit agencies who administer the credit. This document also contains a notice of a public hearing on these proposed regulations.

**DATES:** Written or electronic comments, requests to speak, and outlines of topics to be discussed at the public hearing scheduled for September 23, 2003, must be received by September 5, 2003.

**ADDRESSES:** Send submissions to: CC:PA:RU (REG–131997–02), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:PA:RU (REG–131997–02), Courier’s Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically directly to the IRS Internet site at <http://www.irs.gov/regs>. The public hearing will be held in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Concerning the regulations, Lauren R. Taylor, (202) 622–3040, or Christopher J. Wilson, (808) 539–2874; concerning submission of comments, the hearing, or to be placed on the building access list to attend the hearing, Guy Traynor, (202) 622–7180 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

**Background**

The Community Renewal Tax Relief Act of 2000 (Pub. L. 106–554) (2000 Act) amended various provisions in section 42 of the Internal Revenue Code (Code), including provisions relating to the time for meeting the 10 percent basis requirement for carryover allocations under section 42(h)(1)(E) and (F), and the order in which housing credit dollar amounts are allocated from the different components of a State’s housing credit ceiling under section 42(h)(3)(C). To conform the existing regulations to these changes, the proposed regulations contain amendments to § 1.42–6 (Buildings qualifying for carryover allocations) and § 1.42–14 (Allocation rules for post-1989 State housing credit