Title of collection	Number of annual responses	Frequency of response	Average burden per response	Estimated annual burden (hours)
Participant Employment Data Form	3,080 (electronic)	One Time	5 minutes	257
	300 (manual)	One Time	7 minutes	35
Participant Update Form	12,320 (electronic)	Quarterly	4 minutes	821
	1,200 (manual)	Quarterly	5 minutes	100
Change in Employment Status	1,540 (electronic)	Completed only if employment changes.	3 minutes	77
	150 (Manual)		4 minutes	10
State Quarterly	72	Quarterly	15 minutes for each report.	18
State Semiannual	36	Semiannual		9
Annual Reports	18	Annual		4.5
Stakeholder Interviews	50	Varies per Stakeholder	10 minutes	8.3
Total				2,210.2

II. The information collections listed below have been submitted to OMB for clearance. Written comments and recommendations on the information collections would be most useful if received within 30 days from the date of this publication. Comments should be directed to the SSA Reports Clearance Officer and the OMB Desk Officer at the addresses listed at the end of this publication. You can obtain copies of the OMB clearance packages by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him.

1. Current Rule Regarding Continuation of Full Benefit Standard for Persons Institutionalized—0960–0516. The information collected by the Social Security Administration will be used to determine if a recipient of Supplemental Security Income benefits, who is temporarily institutionalized, is eligible to receive a full benefit. The respondents will be such recipients and their physicians.

Number of Respondents: 60,000.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Average Burden: 5,000 hours.

2. Request for Review of Hearing Decision/Order—0960–0277. The information collected on form HA–520 is needed to afford claimants their statutory right under the Social Security Act to request review of a hearing decision. The data will be used to determine the course of action appropriate to resolve each issue. The respondents are claimants denied or dissatisfied with a decision made regarding their claim.

Number of Respondents: 103,932.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Average Burden: 17,322 hours.

3. Statement Regarding Date of Birth and Citizenship—0960–0016. The information collected on form SSA–702 is used by the Social Security Administration in conjunction with other evidence to establish a claimant's age or citizenship when better proofs are not available. The respondents are individuals who have knowledge of the birth and citizenship of the applicant.

Number of Respondents: 1,200.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Average Burden: 200 hours.

4. Disability Update Report—0960–0511. The Social Security Act requires a periodic review of the disabled status of recipients whose benefits are based on disability to determine whether they continue to be eligible for these benefits. SSA uses the information collected on the SSA–455 to identify those beneficiaries who have medically improved and/or returned to work and have substantial earnings, and to decide whether a full medical continuing disability review should be conducted or deferred to a later date. The respondents are recipients of supplemental security income and/or social security disability benefits.

Number of Respondents: 900,000.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 225,000 hours.

(SSA Address)

Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235.

(OMB Address)

Office of Management and Budget, OIRA, Attn: Lori Schack, New Executive Office Building, Room 10230, 725 17th St., NW, Washington, D.C. 20503.

Dated: May 20, 1999.

Frederick W. Brickenkamp,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 99–13246 Filed 5–26–99; 8:45 am]

BILLING CODE 4190–29–U

SOCIAL SECURITY ADMINISTRATION

[Social Security Acquiescence Ruling 99-3 (5)]

McQueen v. Apfel; Definition of Highly Marketable Skills for Individuals Close to Retirement Age—Titles II and XVI of the Social Security Act

AGENCY: Social Security Administration.

ACTION: Notice of Social Security Acquiescence Ruling.

SUMMARY: In accordance with 20 CFR 402.35(b)(2), the Commissioner of Social Security gives notice of Social Security Acquiescence Ruling 99-3 (5).

EFFECTIVE DATE: May 27, 1999.

FOR FURTHER INFORMATION CONTACT: Cassia W. Parson, Litigation Staff, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 966-0446.

SUPPLEMENTARY INFORMATION: Although not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this Social Security Acquiescence Ruling in accordance with 20 CFR 402.35(b)(2).

A Social Security Acquiescence Ruling explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act (the Act) or regulations when the Government has decided not to seek further review of that decision or is unsuccessful on further review.

We will apply the holding of the Court of Appeals' decision as explained in this Social Security Acquiescence Ruling to claims at all levels of

administrative review within the Fifth Circuit. This Social Security Acquiescence Ruling will apply to all determinations or decisions made on or after May 27, 1999. If we made a determination or decision on your application for benefits between February 17, 1999, the date of the Court of Appeals' decision, and May 27, 1999, the effective date of this Social Security Acquiescence Ruling, you may request application of the Social Security Acquiescence Ruling to the prior determination or decision. You must demonstrate, pursuant to 20 CFR 404.985(b)(2) or 416.1485(b)(2), that application of the Ruling could change our prior determination or decision in your case.

Additionally, when we received this precedential Court of Appeals' decision and determined that a Social Security Acquiescence Ruling might be required, we began to identify those claims that were pending before us within the circuit and that might be subject to readjudication if an Acquiescence Ruling were subsequently issued. Because we determined that an Acquiescence Ruling is required and are publishing this Social Security Acquiescence Ruling, we will send a notice to those individuals whose claims we have identified which may be affected by this Social Security Acquiescence Ruling. The notice will provide information about the Acquiescence Ruling and the right to request readjudication under the Ruling. It is not necessary for an individual to receive a notice in order to request application of this Social Security Acquiescence Ruling to the prior determination or decision on his or her claim as provided in 20 CFR 404.985(b)(2) or 416.1485(b)(2), discussed above.

If this Social Security Acquiescence Ruling is later rescinded as obsolete, we will publish a notice in the **Federal Register** to that effect as provided for in 20 CFR 404.985(e) or 416.1485(e). If we decide to relitigate the issue covered by this Social Security Acquiescence Ruling as provided for by 20 CFR 404.985(c) or 416.1485(c), we will publish a notice in the **Federal Register** stating that we will apply our interpretation of the Act or regulations involved and explaining why we have decided to relitigate the issue.

(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; 96.005 - Special Benefits for Disabled Coal Miners; 96.006 - Supplemental Security Income.)

Dated: May 4, 1999.

Kenneth S. Apfel,

Commissioner of Social Security.

Acquiescence Ruling 99-3 (5)

McQueen v. *Apfel*, 168 F.3d 152 (5th Cir. 1999)—Definition of Highly Marketable Skills for Individuals Close to Retirement Age—Titles II and XVI of the Social Security Act.[1]

Issue: Whether the Social Security Administration (SSA) is required to find that a claimant close to retirement age (60-64) and limited to sedentary or light work has ''highly marketable'' skills before determining that the claimant has transferable skills and, therefore, is not disabled.

Statute/Regulation/Ruling Citation: Sections 223(d)(2)(A) and 1614(a)(3)(B) of the Social Security Act (42 U.S.C. 423(d)(2)(A) and 1382c(a)(3)(B)); 20 CFR 404.1520(f)(1), 404.1563(d), 404.1566(c), 416.920(f)(1), 416.963(d), 416.966(c); 20 CFR Part 404, Subpart P, Appendix 2, sections 201.00(f) and 202.00(f); Social Security Ruling 82-41.

Circuit: Fifth (Louisiana, Mississippi and Texas).

McQueen v. *Apfel*, 168 F.3d 152 (5th Cir. 1999).

Applicability of Ruling: This Ruling applies to determinations or decisions at all administrative levels of review (i.e., initial, reconsideration, Administrative Law Judge (ALJ) hearing and Appeals Council).

Description of Case: The claimant, Orie W. McQueen, applied for disability insurance benefits claiming he had not worked since he suffered an injury on September 10, 1992. Following the denial of his application for benefits at both the initial and reconsideration steps of the administrative review process, the claimant requested and received a hearing before an ALJ, which was held on July 11, 1994. Mr. McQueen, who had worked as a traveling insurance salesman, turned 60 years old on September 29, 1994, during the period following the hearing and prior to the ALJ's decision on April 24, 1995.

The ALJ issued a decision finding that Mr. McQueen was not disabled and denying his claim for disability benefits. The ALJ determined that although Mr. McQueen's impairment was severe and prevented him from doing his past work as a traveling insurance salesman, he possessed work skills that were ''readily transferable to jobs within his vocational profile'' and, therefore, must be found not disabled. In reaching this decision, the ALJ relied, in part, on the testimony of a vocational expert who testified that Mr. McQueen's skills in insurance sales could be transferred to an in-office insurance job. Mr. McQueen requested Appeals Council review of the ALJ's decision and the Appeals Council denied his request for review.

The claimant sought judicial review of SSA's decision in district court. The claimant contended, among other things, that the ALJ failed to apply the correct legal standard applicable to the claimant's age category in determining that Mr. McQueen was not disabled. The case was referred to a magistrate judge who found that the district court had no jurisdiction to consider whether the ALJ applied the wrong legal standard. The magistrate also recommended upholding the ALJ's findings. The district court adopted the magistrate's recommendations.

Mr. McQueen appealed to the Court of Appeals for the Fifth Circuit. On appeal, the claimant argued that the ALJ adjudicated his claim as if he were a person younger than 60 years old and applied the wrong standard under the disability regulations. The claimant contended that the ALJ was required under the regulations to find that he had skills that were ''highly marketable''—and not just ''readily transferable''—before deciding that he was not disabled. The Court of Appeals for the Fifth Circuit determined that the district court had jurisdiction to decide the issue of whether the ALJ applied the correct legal standard in deciding Mr. McQueen's claim. Because the issue was properly raised to the district court, the court of appeals concluded that the issue was properly before it on appeal.

Holding: The Fifth Circuit noted that a claimant for disability benefits bears the burden of proof for the first four steps of the five-step sequential evaluation process for determining disability. Once a claimant has satisfied his or her burden of proving at step four that he or she is unable to perform his or her previous work as a result of a severe impairment, the burden shifts to SSA at step five to show the existence of other work in the national economy that the claimant can perform, considering the claimant's residual functional capacity, age, education and work experience. The court observed that 20 CFR 404.1563(d) of the regulations provides rules relating to the consideration of a claimant's age for determinations at step five of the evaluation process for persons age 55 or

[1] Although the court of appeals' decision in *McQueen* concerned the interpretation of certain provisions of the title II disability program regulations, the title XVI disability program regulations contain provisions identical to those at issue in *McQueen*. Therefore, this Ruling extends to both title II and title XVI disability claims.

over.[2] Section 404.1563(d) states that if a claimant is of advanced age (55 or over), has a severe impairment, and cannot do medium work (see section 404.1567(c)), such claimant may not be able to work unless he or she has skills that can be transferred to less demanding jobs which exist in significant numbers in the national economy. In addition, section 404.1563(d) states that ''[i]f you are close to retirement age (60-64) and have a severe impairment, we will not consider you able to adjust to sedentary or light work unless you have skills which are highly marketable.''

The court of appeals observed that none of the hypothetical questions concerning sedentary work which the ALJ posed to the vocational expert at the hearing, and in subsequent written interrogatories, asked the vocational expert whether a claimant with Mr. McQueen's residual functional capacity and vocational characteristics could still be expected to adjust to other work at age 60. The court further observed that there was nothing in the hypothetical questions posed to the vocational expert, on whose testimony the ALJ relied, to indicate that the ALJ considered the standard in section 404.1563(d) for claimants close to retirement age.

In addition, the court noted that the Fifth Circuit had not yet addressed the issue of whether section 404.1563(d) requires SSA to ''specifically find that a 60- to 64-year-old claimant has 'highly marketable' skills in order to deny him disability benefits.'' The court further noted that a number of other circuits and district courts have found that the failure to make a specific finding on high marketability renders [SSA's] decision unsupported by substantial evidence.'' The court of appeals stated that it agreed with these circuits and district courts. The court indicated that as of September 29, 1994, the date Mr. McQueen turned 60 years old, Mr. McQueen was ''close to retirement age'' for purposes of section 404.1563(d). The court of appeals held, therefore, that with respect to benefits for the period beginning on that date, SSA was required by the regulation to find that Mr. McQueen possessed ''highly marketable'' skills before it could find that Mr. McQueen had transferable skills and deny disability benefits. The court determined that with respect to disability benefits denied Mr. McQueen for that period, ''the ALJ's decision cannot stand because it includes no finding that McQueen possessed highly marketable skills.''

The court of appeals found that the ALJ's decision, as it related to the period beginning September 29, 1994, was not supported by substantial evidence, because it failed to treat Mr. McQueen as ''close to retirement age'' and denied him disability benefits without a finding under section 404.1563(d) that he possessed ''highly marketable'' skills. In addition, the court stated that SSA's ''disregard for its own standards concerning McQueen's advanced age does not constitute good cause for the failure to incorporate [into the administrative case record] necessary evidence'' regarding the marketability of the claimant's skills, ''[n]or does the record evince any other good cause for that failure.'' The Fifth Circuit thereupon reversed the judgment of the district court with instructions to remand the case to SSA to grant Mr. McQueen's application and to calculate the disability benefits due the claimant pursuant to the court's opinion.

Statement As To How McQueen Differs From SSA's Interpretation Of The Regulations

At step five of the sequential evaluation process, SSA considers a claimant's chronological age in conjunction with residual functional capacity, education and work experience to determine whether a claimant can do work other than past relevant work. SSA takes into account how age affects a claimant's ability to adapt to new work situations and do work in competition with others in the workplace.

To this end, SSA's regulations provide that in order to find that a claimant whose sustained work capability is limited to light work or less and who is close to retirement age (60-64) possesses skills that can be used in (transferred to) other work, ''there must be very little, if any, vocational adjustment required in terms of tools, work processes, work settings, or the industry.'' 20 CFR Part 404, Subpart P, Appendix 2, section 202.00(f). SSA's regulations provide the same rule for a claimant whose sustained work capability is limited to sedentary work and who is of advanced age (55 and over). 20 CFR Part 404, Subpart P, Appendix 2, Section 201.00(f). If the claimant's skills are transferable to other work under this standard, SSA will consider such skills ''highly marketable'' under 20 CFR 404.1563(d) and 416.963(d). SSA's regulations do not require a specific, separate and distinct finding that a claimant's skills are ''highly marketable'' in reaching a conclusion that the claimant has transferable skills.

The Fifth Circuit interpreted 20 CFR 404.1563(d) to require SSA to make an additional finding regarding the marketability of a claimant's skills in order to determine whether the skills of a claimant close to retirement age are transferable to sedentary or light work. The court held that in the absence of a finding by SSA that the skills of such a claimant are ''highly marketable,'' SSA may not conclude that the claimant possesses transferable skills and is not disabled.

Explanation of How SSA Will Apply the McQueen Decision Within the Circuit

This Ruling applies only to cases in which the claimant resides in Louisiana, Mississippi or Texas at the time of the determination or decision at any level of administrative review, i.e., initial, reconsideration, ALJ hearing or Appeals Council review.

In the case of a claimant whose sustained work capability is limited to sedentary or light work as a result of a severe impairment, who is close to retirement age (age 60-64), and who has skills, an adjudicator will make a separate finding regarding the marketability of the claimant's skills when determining whether the claimant's skills are transferable to other work under the standard specified in section 201.00(f) or 202.00(f) of 20 CFR Part 404, Subpart P, Appendix 2. Unless the adjudicator finds that the claimant's skills are ''highly marketable,'' the adjudicator will conclude that the claimant's skills are not transferable to other work even if the standard for finding transferability of skills specified in section 201.00(f) or 202.00(f) is otherwise met. For purposes of this Ruling, an adjudicator will consider the claimant's skills to be ''highly marketable'' only if the skills are sufficiently specialized and coveted by employers so as to make the claimant's age irrelevant in the hiring process and enable the claimant to obtain employment with little difficulty. In determining whether a claimant's skills meet this definition of ''highly marketable,'' an adjudicator will consider:

(1) whether the skills were acquired through specialized or extensive education, training or experience; and

(2) whether the skills give the claimant a competitive edge over other, younger, potential employees with

[2] Section 404.1563 and the corresponding title XVI regulation, section 416.963, are entitled ''Your age as a vocational factor.'' Sections 404.1563(b)-(d) and 416.963(b)-(d) specify three age categories: ''Younger person'' (under age 50); ''Person approaching advanced age'' (age 50-54); and ''Person of advanced age'' (age 55 or over). The last category includes a subcategory—a person close to retirement age (age 60-64).

whom the claimant would compete for jobs requiring those skills, giving consideration to the number of such jobs available and the number of individuals competing for such jobs.[3]

SSA intends to clarify the regulations at issue in this case, 20 CFR 404.1563 and 416.963, through the rule making process and may rescind this Ruling once such clarification is made.

[FR Doc. 99–13510 Filed 5–26–99; 8:45 am]

BILLING CODE 4190–29–F

STATE JUSTICE INSTITUTE

Sunshine Act Meeting; Notice of Public Meeting

DATE: Saturday, July 31, 1999, 9:00 am–5:00 pm.

PLACE: Williamsburg Lodge, Colonial Williamsburg, Williamsburg, VA 23187–1776.

MATTERS TO BE CONSIDERED: Consideration of concept papers submitted for Institute funding.

PORTIONS OPEN TO THE PUBLIC: All matters other than those noted as closed below.

PORTIONS CLOSED TO THE PUBLIC: Internal personnel matters and Board of Directors' committee meetings.

CONTACT PERSON: David Tevelin, Executive Director, State Justice Institute, 1650 King Street Suite 600, Alexandria, VA 22314, (703) 684–6100.

David I. Tevelin,

Executive Director.

[FR Doc. 99–13577 Filed 5–24–99; 4:28 pm]

BILLING CODE 6820–SC–M

TENNESSEE VALLEY AUTHORITY

Stabilization of Unfinished Dam Structure of The Columbia Dam and Reservoir Project

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Issuance of record of decision.

SUMMARY: This notice is provided in accordance with the Council on Environmental Quality's regulations (40 CFR 1500 to 1508) and TVA's implementing procedures. TVA has decided to implement the dam site stabilization Option 2 identified in its Final Environmental Impact Statement (EIS), Use Of Lands Acquired For The Columbia Dam Component Of The Duck River Project. The Final EIS was made available to the public in April 1999. A Notice of Availability of the Final EIS was published in the **Federal Register** on April 16, 1999.

The Final EIS also analyzed various uses of the property acquired for the Columbia Project. TVA has not yet made a final decision on the use of these properties, but expects to decide this soon. When the land use decision is made, another Record of Decision will be issued. Although the dam structure is located on project property, stabilizing the existing dam structure will have no effect on the land use decision. TVA has determined that the two actions are independent of each other.

FOR FURTHER INFORMATION CONTACT: Linda B. Oxendine, Senior NEPA Specialist, Environmental Management, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 8C, Knoxville, Tennessee 37902–1499; telephone (423) 632–3440 or e-mail lboxendine@tva.gov.

SUPPLEMENTARY INFORMATION: In 1968, TVA proposed the Duck River Project that involved the construction of two dams and reservoirs on the Duck River in middle Tennessee, south of Nashville. As proposed, one dam was to be built at River Mile 248 near Normandy and the other at River Mile 136 near Columbia. Congress began appropriating money for the Duck River Project in December 1969. Construction of Normandy Dam and Reservoir began in June 1972 and was completed in 1976. Construction of the Columbia Dam and Reservoir was begun in August 1973 but was halted in 1983 because of the potential to jeopardize the continued existence of several endangered mussel species within the Duck River.

In 1995, after efforts to transplant endangered mussels to other stream reaches failed, TVA decided the Columbia Dam Project could not be completed. Accordingly, TVA proposed to address future use of the lands acquired for the project and what should be done about the unfinished dam structure.

The Columbia Project lands are located in the Duck River watershed between the city of Columbia (on the west) and U.S. Route 431, Lewisburg-Franklin Pike (on the east), in Maury County, Tennessee. The reach of the Duck River included in this study extends from approximately River Mile 130, in Columbia, upstream to River Mile 165, at Carpenters Bridge, 3 kilometers (2 air miles) west of U.S. Route 431.

When construction of Columbia Dam was halted in 1983, the Columbia Project was about 45 percent complete. The concrete portion of the dam was about 90 percent complete and the earth-filled section was about 60 percent complete. The river had been diverted through a 600-meter (2000-foot) long constructed channel located along the east side of the work site (the diversion channel) and a dike had been built to keep normal stream flow out of the construction site. Approximately 46 percent of the land required for the reservoir (5200 of 11,140 hectares [12,800 of 27,500 acres]) had been acquired, and approximately half of the 72 kilometers (45 miles) of roads affected by the reservoir had been relocated.

On February 25, 1995, TVA issued a Notice of Intent to prepare an EIS on alternatives for use of lands acquired for the Columbia Project. The Tennessee Duck River Development Agency, the U.S. Army Corps of Engineers, and the U.S. Fish and Wildlife Service decided to cooperate in the preparation of this EIS. A public scoping meeting was held at Culleoka School near the Project site on April 18, 1995. The Notice of Availability of the Draft EIS was published on January 6, 1997. The public and interested agencies were invited to submit written comments on the draft or to attend a public meeting on January 27, 1997 at Columbia Senior High School.

TVA received a total of 2,890 separate sets of comments which included input from over 4,600 individuals, three federal agencies, four state agencies, six identified county and local governmental agencies, and over 20 other organizations. The comments indicated that most people and agencies want the Columbia Project lands to be available for a variety of public uses and little or none of this land used for industrial, commercial, or residential development. Only 43 comments were received about the existing dam structure and what should be done about it. Comments were mixed, but most supported implementation of Option 2, stabilization of the dam with a lower profile. The Notice of Availability of the Final EIS was published on April 16, 1999.

[3] Although the court did not adopt SSA's interpretation of ''highly marketable'' skills, the Fifth Circuit in *McQueen* also did not set forth specific, alternative criteria for determining when a claimant's skills may be considered ''highly marketable.'' Therefore, in the absence of a statement by the Fifth Circuit of a specific definition, we have adopted, for purposes of this Ruling, the standard articulated in *Preslar* v. *Secretary of Health and Human Services*, 14 F.3d 1107 (6th Cir. 1994), for which we published Acquiescence Ruling 95-1(6), for determining when the skills of a claimant close to retirement age may be considered ''highly marketable.'' Although this standard was not specifically adopted or discussed by the court in *McQueen*, the court did cite the *Preslar* decision in support of its holding in *McQueen*.